

**Rulemaking Report**

Updated January 11, 2016

Affected Rule: Amendment to 10 CSR 20-6.300 Concentrated Animal Feeding Operations (CAFO)

1. What is the purpose of this rulemaking?

The primary purpose of the rulemaking is to assure that 10 CSR 20-6.300 is consistent with state statute amendments enacted August 28, 2013 by House Bill 28 that amended 644.015, RSMo. In addition to the changes resulting from the state statute amendment, the department is proposing minor revisions to definitions and language.

Revisions to the CAFO rule that have been identified and will be proposed for rulemaking include:

- 1) update of regulatory definitions
- 2) incorporation of the construction permit exemption
- 3) modifications to the operating permit process regarding neighbor notice and application requirements
- 4) incorporation of changes to inspection requirements for wet flush facilities

2. Why is the rulemaking being proposed now?

The rulemaking is being proposed as soon as possible following the effective change to statutes enacted August 28, 2013 by the Missouri State Legislature. The rule changes are necessary to incorporate construction permit exemptions and changes to the operating permit application process. The existing rule includes statements requiring construction permits when one is no longer needed. The existing rule also conflicts with current statute regarding the timing of neighbor notification. It is also important to clarify what documentation is needed when a new or expanding facility applies for an operating permit when no construction permit was required.

3. Will the rulemaking incorporate any document by reference, rather than state the language within the rulemaking?

The changes proposed in this rulemaking will not incorporate any document by reference.

4. Does this rulemaking prescribe environmental standards, limits or conditions and is a Regulatory Impact Report required for this rulemaking?

The changes proposed in this rulemaking do not prescribe environmental standards, limits or conditions. This rule revision incorporates statutory changes and existing federal requirements and also provides clarification where requested by stakeholders. However, a Regulatory Impact Report is provided for clarity.

5. What authority does DNR have to carry out this rulemaking?

Authority is found in Section 640.710. RSMo - The Department shall promulgate rules regulating the establishment, permitting, design, construction, operation and management of Class I facilities. The Department shall have the authority and jurisdiction to regulate the establishment, permitting, design, construction, operation and management of any Class I facility.

6. What does the rulemaking require and how does it produce benefits?

The proposed rulemaking will include the following primary components:

- 1) Revisions to regulatory definitions. These revisions are to ensure Missouri's regulatory definitions are no less stringent than federal regulatory definitions.
- 2) Neighbor notification of a new or expanding CAFO must occur before filing an operating permit application. Prior to the enactment of House Bill 28 neighbor notification of a new or expanding CAFO was required before filing a construction permit application. This requirement is being removed from 10 CSR 20-8.300 and added to 10 CSR 20-6.300.
- 3) As per House Bill 28, any point source that proposes construction of an earthen storage structure must obtain a construction permit; all other construction related activities are exempt from construction permit requirements.
- 4) Reduced inspections of wet flush systems - infrastructure must be inspected once per week and lagoons operating less than one foot from the emergency spillway must be inspected once per day. This is a statutory change being incorporated into regulation.
- 5) Documentation required when a new or expanding facility applies for an operating permit. Application requirements are being reduced overall. Those that are retained are being removed from 10 CSR 20-8.300 and added to 10 CSR 20-6.300.

No environmental benefits are anticipated as a result of this rule-making. No benefits to the permittee are anticipated, this revision only incorporates changes to state statute into 10 CSR-20-6.300 for consistency and clarity. House Bill 28 did benefit the permittees by reducing cost and administrative burdens associated with construction permits.

CAFO facilities are still required to be constructed in accordance with all regulatory design requirements. They are also subject to inspections to verify compliance with Missouri Clean Water Law.

7. Who is most likely affected by the rulemaking?

All new or expanding Class I CAFO's are potentially affected by this rulemaking and House Bill 28. Only projects that include an earthen storage structure will require a construction permit. All other construction projects were exempted by House Bill 28. This rulemaking incorporates that exemption into 10 CSR 20-6.300. The Department currently maintains operating permits for approximately 470 Class I CAFOs.

8. What impact will the rulemaking have on small businesses? (A small business is defined by statute as a for-profit enterprise with fewer than 50 full or part-time employees.)

This rulemaking is not expected to have a substantial impact on small businesses as a whole. Small businesses may benefit from reduced cost and administrative requirements when constructing new or expanded facilities. The rule also incorporates language regarding reduced inspection requirements at some facilities. Permittees are already exempt by state law, this rulemaking only incorporates the exemption into 10 CSR 20-6.300.

9. What are the probable costs for the Department or any other public agency in the implementation and enforcement of the rulemaking?

This revision will not incur any new costs for the Department or other public agency, it only incorporates existing state law into the regulation. The rule changes are needed for consistency and clarity. No changes to the Department's current implementation and enforcement procedures are proposed. The exemptions provided by House Bill 28 reduced the Department's costs on construction permits. However, some of those costs were transferred to increased efforts on operating permits.

10. What is the anticipated effect of the rulemaking on state revenue?

This revision will not have an effect on state revenue, it only incorporates existing state law and into the regulation. The exemptions provided by House Bill 28 reduced state revenue by eliminating the collection of construction permit fees for new and expanding facilities.

11. Who was/will be involved in developing the rulemaking?

The Water Pollution Control Branch held two stakeholder meetings to seek public input on the proposed rulemaking. Stakeholders present included, individuals and/or companies currently regulated by the program, commodity and environmental groups, Department permitting and enforcement staff as well as management. A partial list of these organizations is shown below. The Missouri Clean Water Commission will have final approval on the proposed rulemaking.

Missouri Pork Association	Missouri Coalition for the Environment
Missouri Farm Bureau	Washington University Law Clinic
The Poultry Federation	USDA-Natural Resources Conservation Service
Missouri Agribusiness Association	USDA-Farm Service Agency
Missouri Dairy Association	US EPA Region 7
Missouri Cattlemen's Association	MU Commercial Agriculture Program
Premium Standard Farms	Cargill Pork
MFA	MoArk

12. How has/will the development of the rulemaking been/be shared with interested parties and the public at large?

As stated in above, the Department held workgroup meetings on this rulemaking. This workgroup is made up of state agencies, producers, environmental groups and other stakeholders. The workgroup met to evaluate the proposed rule components. Furthermore, Department staff has been proactive in educating permit holders of the impending revisions to state regulations. Meeting announcements and other pertinent rule development information is posted on a website dedicated to this rulemaking project.

13. Who may I contact to either ask questions or provide input on this rulemaking?

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14. What is the expected calendar for this rulemaking, particularly the dates for the comment period and public hearing?

The Department expects to hold a public hearing regarding this rule on April 2016.

Publication in the <i>Missouri Register</i>	March 1, 2016
<i>Public Hearing</i>	April 6, 2016
Public Comment Period	March 1, 2016 thru
End of Public Comment	May 18, 2016
<i>CWC Order of Rulemaking Adoption</i>	July 13, 2016
Publication of Order in <i>Missouri Register</i>	September 15, 2016
Rule Published in <i>Code of State Regulations</i>	September 30, 2016
Rule Effective Date	October 30, 2016