

Jason Kander

Secretary of State
Administrative Rules Division

RULE TRANSMITTAL

Administrative Rules Stamp

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SEP 21 2016

SECRETARY OF STATE
ADMINISTRATIVE RULES

Rule Number 13 CSR 40-15.455

COPY

Use a "SEPARATE" rule transmittal sheet for EACH individual rulemaking.

Name of person to call with questions about this rule:

Content Sarah Madden Phone 522-8368 FAX 522-6092

Email address Sarah.Madden@dss.mo.gov

Data Entry Debbie Lindquist Phone 526-0414 FAX 522-6092

Email address Deborah.Lindquist@dss.mo.gov

Interagency mailing address 221 W High, Broadway Bldg., Jefferson City, Mo 65109

TYPE OF RULEMAKING ACTION TO BE TAKEN

- Emergency rulemaking, include effective date
- Proposed Rulemaking
- Withdrawal Rule Action Notice In Addition Rule Under Consideration
- Request for Non-Substantive Change
- Statement of Actual Cost
- Order of Rulemaking

Effective Date for the Order _____

Statutory 30 days OR Specific date _____

Does the Order of Rulemaking contain changes to the rule text? NO

YES—LIST THE SECTIONS WITH CHANGES, including any deleted rule text:

Small Business Regulatory
Fairness Board (DED) Stamp

JCAR Stamp

JOINT COMMITTEE ON
SEP 21 2016
ADMINISTRATIVE RULES

Missouri Department of
SOCIAL SERVICES

Your Potential. Our Support.

JEREMIAH W. (JAY) NIXON, GOVERNOR • BRIAN KINKADE, DIRECTOR

JULIE GIBSON, DIRECTOR

FAMILY SUPPORT DIVISION

PO BOX 2320 JEFFERSON CITY, MO • 65102-2320

WWW.DSS.MO.GOV • 573-751-3221 • 573-751-0507

September 21, 2016

Jason Kander
Secretary of State
Administrative Rules Division
600 West Main Street
Jefferson City, Missouri 65101

Re: 13 CSR 40-15.455 – Eligibility for Individuals with a Drug Felony Conviction

Dear Secretary Kander,

CERTIFICATION OF ADMINISTRATIVE RULE

I do hereby certify that the attached is an accurate and complete copy of the proposed rulemaking lawfully submitted by the Family Support Division, Department of Social Services.

The Family Support Division, Department of Social Services has determined and hereby certifies that this proposed rulemaking will not have an economic impact on small businesses. The Family Support Division further certifies that it has conducted an analysis of whether or not there has been a taking of real property pursuant to section 536.017, RSMo 2000, that the proposed rulemaking does not constitute a taking of real property under relevant state and federal law, and the proposed rulemaking conforms to the requirements of 1.310, RSMo Supp. 2009, regarding user fees.

The Family Support Division, Department of Social Services has determined and hereby also certifies that this proposed rulemaking complies with the small business requirements of 1.310, RSMo, in that it does not have an adverse impact on small businesses consisting of fewer than fifty full or part-time employees or it is necessary to protect the life, health, or safety of the public, or that this rulemaking complies with 1.310, RSMo, by exempting any small business consisting of fewer than fifty full or part-time employees from its coverage, by implementing a federal mandate, or by implementing a federal program administered by the state or an act of the general assembly.

Statutory Authority: sections 208.040.5(6), RSMO 2015 & 207.022, RSMo 2014

If there are any questions regarding the content of this proposed rulemaking, please contact:

Sarah G. Madden
221 West High Street, Room 230
Jefferson City, MO 65102
573-526-0414
Sarah.Madden@dss.mo.gov

Sincerely,



Julie Gibson, Director
Family Support Division

Attachments

RELAY MISSOURI

FOR HEARING AND SPEECH IMPAIRED

1-800-735-2466 VOICE • 1-800-735-2966 TEXT PHONE

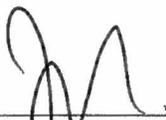
An Equal Opportunity Employer, services provided on a nondiscriminatory basis.

AFFIDAVIT

PUBLIC COST

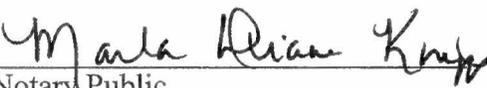
State of MISSOURI)
) ss.
County of COLE)

I, Julie Gibson, Director, Family Support Division, Department of Social Services, first being duly sworn, on my oath, state that it is my opinion that the attached fiscal note for the proposed rule, 13 CSR 40-15.455 is a reasonably accurate estimate.



Julie Gibson, Director
Family Support Division

Subscribed and sworn to before me this 21st day of September 2016. I, Marla Diane Knipp, am commissioned as a Notary Public within the County of Moniteau, State of Missouri, and my commission expires February 28, 2019



Notary Public



MARLA DIANE KNIPP
My Commission Expires
February 28, 2019
Moniteau County
Commission #15148729

**FISCAL NOTE
PUBLIC COST**

- I. Department Title: Department of Social Services
Division Title: Family Support Division (FSD)
Chapter Title: Income Maintenance (IM) & FAMIS**

Rule Number and Name:	13 CSR 40-15.455 Eligibility for individuals with a drug felony conviction
Type of Rulemaking:	Proposed Rulemaking

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
	\$44,765 (\$6,525 EBT + \$38,240 FAMIS for FY15, however the additional cost was absorbed within current core authority
	\$17,006 projected for FY16, however the additional cost is being absorbed within current core authority
	Ongoing costs are expected to increase by \$9,176 each year.

III. WORKSHEET

Eligibility for individuals with a drug felony conviction

Senate Bill 680 from 2014 amended RSMo 208.247 allowing persons who have pled guilty or are found guilty under federal or state law of a felony involving possession or use of a controlled substance to be eligible for the Food Stamp program if they meet certain criterion for eligibility.

FSD implemented this law into policy and procedure effective August 28, 2014, as required by law. In FY 2015 (September 2014-June 2015), there was an increase of 1,106 Food Stamp cases due to persons convicted of a drug felony now meeting the eligibility criteria. To date in FY 2016, there have been an additional 1,052 additional Food Stamp cases added, for a total of 2,158 new cases in the past twenty (20) months. FSD estimates an increase of 1,296 new Food Stamp cases per year ongoing (2,158/20 months=108 per month * 12 months).

FSD EBT Estimated Costs

EBT costs to process each Food Stamp cases are \$0.59 per month. In FY 2015, the increased costs to process new cases due to persons convicted of a drug felony now meeting the eligibility criteria was \$6,525 (1,106 new cases * \$0.59 per case* 10 months (September 2014- June 2015)).

The total EBT costs to process additional Food Stamp cases due to persons convicted of a drug felony now meeting the eligibility criteria to date in FY 2016 is \$12,732 (increase of 1,106 cases from FY 2015 + increase of 1,052 to date in FY 2016 = 2,158 new cases * \$0.59 per case * 10 months (July 2015-April 2016). With the increase in new Food Stamp cases estimated to reach 1,296 in FY 2016, the total estimated EBT costs due to new Food Stamp cases from this change is \$17,006 (1,106+1,296 = 2402* \$0.59 per case * 12 months) for FY 2016.

FSD estimates that the number of Food Stamp cases will continue to rise by 1,296 cases per year due to this change. Using the same methodology as above, the total estimated EBT costs for FY 2017- FY 2019 are as follows

FY 2017: 3,698 (2,402+1,296 cases) * \$0.59 per case* 12 months) = \$26,182 (rounded up)

FY 2018: 4,994 cases (3,698+1,296 cases) * \$0.59 per case * 12 months) = \$35,358 (rounded up)

FY 2019: 6,290 cases (4,994 + 1,296 cases) * \$0.59 per month * 12 months) = \$44,533 (rounded down)

This cost can be absorbed within the current EBT core authority.

FSD-FAMIS Costs

The DSS added functionality to The Family Assistance Management Information System (FAMIS) to support SB 680, allowing individuals who have pled guilty or nolo contendere to or is found guilty under federal or state law of a felony involving possession or use of a controlled substance to be eligible for the food stamp program. The FAMIS completed this programming to modify the Food Stamp eligibility determination process, modified the Sanction/Disqualification screen, created a new compliance screen, created new reports, and create new notices to Food Stamp eligibles now meeting eligibility criteria. The total costs for this programming was \$38,240.00 in FY 2015. There is no impact after FY 2015.

This cost was absorbed within the current core authority.

IV. ASSUMPTIONS

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 40—Family Support Division
Chapter 15—Supplemental Nutrition Assistance Program (Food Stamps)**

PROPOSED RULE

13 CSR 40-15.455 Eligibility for individuals with a drug felony conviction

PURPOSE: *This rule establishes the requirements to determine whether a participant who has pled guilty or nolo contendere to or is found guilty under federal or state law of a felony involving possession or use of a controlled substance can be eligible for Food Stamp benefits.*

(1) Scope. This rule specifies how the division shall implement the authority granted in section 208.247, RSMo 2014 to determine whether a participant is eligible for Food Stamps if he or she has pled guilty or nolo contendere to or is found guilty under federal or state law of a felony involving possession or use of a controlled substance.

(2) Definitions. For purposes of this rule, the following terms shall mean:

(A) Participant: Any individual who is currently eligible for food stamp benefits, who has applied for food stamp benefits, who has received food stamp benefits, or who currently receives food stamp benefits, administered by the division.

(B) Custody: A participant is considered in custody when the individual has been remanded to the custody of the Missouri department of corrections, United States Bureau of Prisons or a state penal institution in any other state, to serve a sentence of imprisonment imposed by a court of one (1) year or more. Custody shall not mean pre-trial detention.

(C) Food Stamps benefits: The Supplemental Nutrition Assistance Program (SNAP) operated by the United States Department of Agriculture (USDA) Food and Nutrition Services, pursuant to 7 U.S.C. chapter 51, and in conjunction with the division to provide benefits to low-income individuals who are in need of aid to purchase food;

(D) Approved substance abuse treatment program: An alcohol and drug abuse treatment program or provider certified by the department of mental health, division of behavioral health.

(3) Any participant may request a determination of eligibility for the exemption from Food Stamp eligibility disqualification set forth in section 208.247, RSMo 2014. The request for a determination of the section 208.247, RSMo 2014 exemption shall be submitted in writing to the division or, if available, electronically through the division's website. The participant shall provide the following information in order to establish eligibility for the exemption:

(A) The participant's name;

(B) A list of the participant's felony crimes involving the use or possession of controlled substances to which the participant has pleaded guilty or nolo contendere, or has been found guilty of committing, the dates of the guilty plea or finding of guilt, and the court involved; and,

(C) The participant's certification that the participant, after August 28, 2014:

1. Has not pled guilty or nolo contendere to or been found guilty of an additional controlled substance misdemeanor or felony offense within one (1) year after the participant's release from custody; or

2. Has not pled guilty or nolo contendere to or been found guilty of an additional controlled substance misdemeanor or felony offense within one (1) year after the date of conviction if the participant was not committed to custody.

(D) A participant who has been released from custody or pled guilty or nolo contendere to a controlled substance misdemeanor or felony offense less than three (3) years prior to the request for a determination of the section 208.247, RSMo 2014 exemption shall provide a statement either on a form provided by the division or on an official document of the division of probation and parole, division of

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behavioral health, or the court that the participant has complied with all obligations imposed by court, by the division of probation and parole and by the division of behavioral health. A participant will be considered to have complied with all obligations imposed by a court or the division of probation and parole if the Missouri Board of Probation and Parole has not taken action to revoke the participant's probation or parole.

(E) The participant shall also submit with the request for determination a signed written statement from an approved substance abuse treatment program to establish compliance with the substance abuse treatment requirements set forth in section 208.247.1(1)(a) to (1)(d), RSMo 2014. Directories containing lists of approved substance abuse treatment programs can be found on the Department of Mental Health's website. The statement shall either be on a form provided by the division or shall be on an official document of the approved substance abuse treatment program. The statement shall be accompanied by documentation of the name, mailing address, and telephone number of the approved substance abuse treatment program and the name of telephone number of the person, designee, or agent that is verifying the provider's statements to the division. The statement shall certify that the participant:

1. Is currently successfully participating in a substance abuse treatment program approved by the division of behavioral health; or,
2. Is currently enrolled in and accepted for treatment and participation in a substance abuse treatment program approved by the division of behavioral health, but is subject to a waiting list to receive available treatment, and the participant remains enrolled in the program and will enter the treatment program at the first available opportunity; or,
3. Has satisfactorily completed a substance abuse treatment program approved by the division of behavioral health; or,
4. Was determined by a division of behavioral health certified treatment provider not to need substance abuse treatment.

(F) The participant shall attest that s/he has demonstrated sobriety through voluntary urinalysis testing. The participant shall be responsible for any fees incurred for the voluntary urinalysis testing. The participant shall satisfy this requirement by providing the division the written test results of a urinalysis, provided by an official licensed drug testing vendor/facility, which shows the participant tested negative for illegal controlled substances, as defined in 21 USC section 802(6), other than those legally prescribed to the participant, at the time of the test. The test shall be completed following the participant's last plea of guilty or nolo contendere to or finding of guilt for a controlled substance misdemeanor or felony offense involving possession or use of a controlled substance. The participant shall not use any self-administered test process to satisfy this requirement.

(4) Any participant who has pled guilty or nolo contendere to or been found guilty of two (2) subsequent felony offenses involving possession or use of a controlled substance after the date of the first controlled substance felony conviction shall not be eligible for the section 208.247, RSMo 2014 exemption.

(5) Any participant who, after August 28, 2014, has pled guilty or nolo contendere to or is found guilty under federal or state law of an additional controlled substance misdemeanor or felony offense within one (1) year after release from custody or, if not committed to custody, within one (1) year after the date of conviction shall not be eligible for the section 208.247, RSMo 2014 exemption.

(6) The participant's request for a determination of a drug conviction exemption submitted by the participant shall be true, accurate, and complete.

(7) Food stamp benefits received by a participant for him or herself during a period in which the participant did not qualify for the exemption shall be a debt due to the state and collected as overpayment.

(8) Any participant aggrieved by a decision of the division under this regulation may request a hearing pursuant to section 208.080, RSMo 2014. The following procedure shall apply to all administrative hearings requested under this section:

(A) Copies or printouts of case.net information, business record affidavits, written reports, letters or documents from the Missouri Board of Probation and Parole, division of probation and parole, division of behavioral health, or any state or federal court or parole or probation office, and the contents of the aforementioned documents submitted by the individual or the division at the hearing are declared to be competent evidence and admissible into evidence at the hearing to be considered by the hearing officer along with any other evidence or testimony submitted.

(B) A business record affidavit that meets the requirements of section 490.692, RSMo 2015 shall be prima facie evidence of it being properly executed and signed without the need for further proof of identification.

(C) Copies or printouts of case.net information, business record affidavits, written reports, letters or documents from the Missouri Board of Probation and Parole, division of probation and parole, division of behavioral health, or any state or federal court or parole or probation office and the contents of the aforementioned documents reporting that the participant has failed to meet any of the requirements for the drug conviction exemption as set forth in this regulation shall create a rebuttable presumption that the participant has failed to meet the requirements of this regulation and shall shift the burden of proof to the participant to refute the presumption.

AUTHORITY: Sections 207.022 and 208.247, RSMo 2014.

PUBLIC COST: This proposed amendment will cost the Family Support Division of the Missouri Department of Social Services \$87,744 for FY 2015; however, the additional cost can be absorbed with the current core authority.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Department of Social Services, Family Support Division, Julie Gibson, Director, P.O. Box 2320, Jefferson City, MO, 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*