Under this heading will appear the text of proposed rules and changes. The notice of proposed rulemaking is required to contain an explanation of any new rule or any change in an existing rule and the reasons therefor. This is set out in the Purpose section with each rule. Also required is a citation to the legal authority to make rules. This appears following the text of the rule, after the word "Authority."

Entirely new rules are printed without any special symbology under the heading of the proposed rule. If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission. Rules which are proposed to be amended will have new matter printed in boldface type and matter to be deleted placed in brackets.

An important function of the *Missouri Register* is to solicit and encourage public participation in the rulemaking process. The law provides that for every proposed rule, amendment or rescission there must be a notice that anyone may comment on the proposed action. This comment may take different forms.

If an agency is required by statute to hold a public hearing before making any new rules, then a Notice of Public Hearing will appear following the text of the rule. Hearing dates must be at least thirty (30) days after publication of the notice in the *Missouri Register.* If no hearing is planned or required, the agency must give a Notice to Submit Comments. This allows anyone to file statements in support of or in opposition to the proposed action with the agency within a specified time, no less than thirty (30) days after publication of the notice in the *Missouri Register*.

An agency may hold a public hearing on a rule even though not required by law to hold one. If an agency allows comments to be received following the hearing date, the close of comments date will be used as the beginning day in the ninety (90)-day-count necessary for the filing of the order of rulemaking.

If an agency decides to hold a public hearing after planning not to, it must withdraw the earlier notice and file a new notice of proposed rulemaking and schedule a hearing for a date not less than thirty (30) days from the date of publication of the new notice.

Proposed Amendment Text Reminder:
Boldface text indicates new matter.
[Bracketed text indicates matter being deleted.]

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation Commission
Chapter 14—Adopt-A-Highway Program

PROPOSED AMENDMENT

7 CSR 10-14.020 Definitions. The commission is adding sections (6), (7), (10), (15) and (16) and renumbering other sections accordingly.

PURPOSE: This amendment includes definitions of additional terms used in this chapter.

(6) Chief engineer means the chief engineer of the Missouri Department of Transportation or his/her authorized representative.

(7) Chief operating officer means the chief operating officer of the Missouri Department of Transportation or his/her authorized representative.

*[(6)]***(8)** Commission means the Missouri Highways and Transportation Commission, or its authorized representative.

*[(7)]***(9)** Department means the Missouri Department of Transportation.

(10) Director means the director of the Missouri Department of Transportation or his/her authorized representative.

*[(8)]***(11)** Litter means any unsightly matter that may include, but is not limited to, disposable packaging, containers, cans, bottles, paper and cigar or cigarette butts. Litter does not include hazardous, heavy or large items.

*[(9)]***(12)** Participant means any individual, including individuals within a group, who will be participating in the program activity.

*[(10)]***(13)** Program means the Adopt-A-Highway Program.

*[(11)]***(14)** Program activity means litter pickup and/or beautification and/or mowing.

(15) Signs mean the Adopt-A-Highway signs provided by the department.

(16) State maintenance engineer means the state maintenance engineer of the Missouri Department of Transportation or his/her authorized representative.

*[(12)]***(17)** Violent criminal activity means any offense having as an element the use, attempted use, or threatened use of physical force against the person or property of another or any offense involving weapons.

AUTHORITY: sections ***226.130 and*** *227.030, RSMo [1994]* ***2000****. Original rule filed Feb. 15, 1995, effective July 30, 1995. Emergency amendment filed Feb. 8, 2000, effective Feb. 18, 2000, expired Aug. 15, 2000. Amended: Filed July 10, 2000, effective Jan. 30, 2001. Amended: Filed Jan. 7, 2002.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

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 the Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, 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.*

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation Commission
Chapter 14—Adopt-A-Highway Program

PROPOSED AMENDMENT

7 CSR 10-14.030 Application for Participation. The commission is amending section (3) and is adding section (4). Other sections have been amended due to reorganization and renumbering.

PURPOSE: This amendment provides for the state maintenance engineer and district engineer to have authority to approve or deny applications for participation in the program.

(1) The adopter or adopter representative of a group who desires to participate in the program shall submit an application to the commission on a form provided by the commission.

(A) An application completed by an individual on behalf of a group or organization must identify the group or organization for which the application is being submitted and failure to identify the group or organization on the application will result in rejecting the application.

(B) The adopter representative will certify on the application form that the group or organization does not deny membership on the basis of race, color, or national origin.

(2) Eligible Adopters. Eligible adopters include civic and nonprofit organizations, commercial and private enterprises and individuals:

*[1)]***(A)** *[w]***W**ho have not been convicted of, or pled guilty or no contest to, a violent criminal activity, except as provided below;

[2)] **(B)** *[w]***W**hose participants have not been convicted of, or pled guilty or no contest to, a violent criminal activity, except as provided below;

[3)] **(C)** *[f]***F**or whom state or federal courts have not taken judicial notice of a history of violence; or

[4)] **(D)** *[w]***W**ho do not deny membership on the basis of race, color, or national origin. Any individual adopter or participant may be eligible ten (10) years after the completion of any incarceration, probation or parole. Applicants who do not meet the eligibility requirements will be denied participation in the program. The commission reserves the right to limit the number of adoptions for a single group.

(3) Acceptance of Application. The *[commission will have sole responsibility in determining whether an application is rejected or accepted and determining what highways will or will not be eligible for adoption]* **state maintenance engineer and district engineer have the authority to approve applications of individuals or groups applying to participate in the program**.

[(A) The commission may refuse to grant a request to participate if the applicant has submitted false statements of a material fact or has practiced or attempted to practice any fraud or deception in an application. Material facts include statements regarding convictions of violent criminal activity or membership qualifications.

(B) An application completed by an individual on behalf of a group or organization must identify the group or organization for which the application is being submitted and failure to identify the group or organization on the application will result in rejecting the application.

(C) The adopter representative will certify on the application form that the group or organization does not deny membership on the basis of race, color, or national origin.]

(4) Denial of Application. The director, chief engineer, chief operating officer, and state maintenance engineer are authorized to deny requests for participation in the program.

(A) A request for participation in the program may be denied if the applicant does not meet the eligibility requirements or has submitted false statement(s) of a material fact or has practiced or attempted to practice any fraud or deception in an application. Material facts include statements regarding convictions of violent criminal activity or membership qualifications.

AUTHORITY: sections ***226.130 and*** *227.030, RSMo [1994]* ***2000****. Original rule filed Feb. 15, 1995, effective July 30, 1995. Emergency amendment filed Feb. 8, 2000, effective Feb. 18, 2000, expired Aug. 15, 2000. Amended: Filed July 10, 2000, effective Jan. 30, 2001. Amended: Filed Jan. 7, 2002.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

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 the Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, 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.*

Title 7—DEPARTMENT OF HIGHWAYS AND TRANSPORTATION
Division 10—Missouri Highways and Transportation Commission
Chapter 14—Adopt-A-Highway Program

PROPOSED AMENDMENT

7 CSR 10-14.040 Agreement; Responsibilities of Adopter and Commission. The commission amends subsections (2)(A), (2)(B), (2)(C), (2)(D), (2)(E), (2)(F), (2)(O), (2)(S), (2)(T), section (3) and subsection (3)(D) and adds subsection (2)(U).

PURPOSE: This amendment clarifies the responsibilities of the adopter and the commission, particularly with respect to safety training.

(2) Responsibilities of Adopter. The adopter shall—

(A) Abide by all provisions contained in the agreement and any other terms and conditions as required by the department **or commission**;

(B) Provide to the commission, in writing, the name and complete mailing address, including street address, of the adopter representative and notify the commission within thirty (30) days*[, in writing,]* of any change of the adopter representative's name or address;

(C) Abide by all safety requirements as listed in the department's *[S]*safety *[Tips]* brochure;

(D) Have the adopter, if the adopter is one individual, or the adopter representative *[participating in the program activity]* attend a safety *[training meeting]* **briefing** conducted by the *[commission]* **department and obtain safety meeting materials, including but not limited to a safety video, provided by the department,** before participation in the initial program activity;

(E) Have all members of the group participating in the program activity attend a safety *[training]* meeting conducted by the adopter representative*[,]* **that includes, but is not limited to, viewing the safety video provided by the department,** before participation in the initial program activity;

(F) Have the adopter or adopter representative submit to the commission, in writing on a form provided by the department, the following information: 1) the name and street address of each participant; 2) a release of liability signed by each participant or parent or legal guardian of the participant if participant is a minor; 3) the participant's acknowledgement that he/she has attended a safety *[training]* meeting **and has viewed the safety video**; and 4) if

the participant is not a minor, the participant's statement that he/she has not been convicted of, or pled guilty or no contest to, a violent criminal activity;

(O) Prohibit participants from possessing, consuming, or being under the influence of alcohol or drugs while participating in the program **activity**;

(S) *[Have the adopter or adopter representative s]***S**ubmit to the commission within five (5) working days of any program activity, the following information: 1) the adopter's name; 2) the date of the program activity; 3) the total hours involved in the program activity; and 4) the total number of bags of trash picked up. This information can be provided by calling **or e-mailing** the *[department]* **commission** representative **identified on the agreement**, *[by E-mailing the department representative]* or by filling out and mailing the *[A]***a**ctivity *[R]***r**eport form provided by the department. This information will enable the department to monitor the program's success; *[and]*

(T) Not subcontract or assign its responsibilities under this program to any other enterprise, organization, or individual unless assignee is also an *[active]* adopter*[.]* **and written approval has been given by the commission; and**

(U) Not decorate or alter the signs.

(3) Responsibilities of Commission. The commission *[shall]* **will**—

(D) Provide **a** safety *[training]* **briefing and safety materials** to the adopter*[, if the adopter is one individual, or the adopter representative]* which includes but is not limited to a safety video and *[S]*safety *[Tips]* brochure;

AUTHORITY: sections ***226.130 and*** *227.030, RSMo [1994]* ***2000****. Original rule filed Feb. 15, 1995, effective July 30, 1995. Emergency amendment filed Feb. 8, 2000, effective Feb. 18, 2000, expired Aug. 15, 2000. Amended: Filed July 10, 2000, effective Jan. 30, 2001. Amended: Filed Jan. 7, 2002.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

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 the Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication in the ***Missouri Register****. No public hearing is scheduled.*

Title 7—DEPARTMENT OF HIGHWAYS AND TRANSPORTATION
Division 10—Missouri Highways and Transportation Commission
Chapter 14—Adopt-A-Highway Program

PROPOSED AMENDMENT

7 CSR 10-14.050 Sign. The commission is amending subsections (1)(A) and (1)(C), and section (2), adding new sections (3) and (4), amending and renumbering previous section (3) and renumbering previous section (4).

PURPOSE: This amendment provides that signs may contain wording to identify an individual in whose memory the adoption is being made, that signs shall not be altered or decorated by the adopter and that the limitation on the number of replacement signs is for the length of the agreement only.

(1) The signs shall—

(A) Identify the adopter*[, but are not intended to be, an advertising medium or serve as a means of providing a public forum for the participants]* **or, subject to the approval of the commission, may identify an individual in whose memory the adoption is being made**;

(C) Have the actual name of the adopter**, or individual in whose memory the adoption is being made,** with no telephone numbers, logos, slogans or addresses, including *[i]***I**nternet addresses, with verbiage kept to a minimum.

(2) The signs shall not contain wording *[which]* **that** is obscene, profane, or sexually suggestive or implies an obscenity, profanity or sexual content.

(3) Signs are not intended to be an advertising medium or serve as a means of providing a public forum for the participants.

(4) The signs shall not be altered or decorated by the adopter at any time.

*[(3)]***(5)** The erection of a sign is not a requirement for participation in the program. If**, during the length of the agreement,** a sign is damaged, destroyed, stolen, or removed from its foundation by an act of vandalism, the department will provide and erect a **single** replacement sign at department cost. If the replacement sign is damaged, destroyed, stolen or removed from its foundation by an act of vandalism, the department will provide and erect *[one additional]* **a second** replacement sign at department cost. If the second replacement sign is damaged, destroyed, stolen, or removed from its foundation by an act of vandalism, no further sign will be provided or erected.

*[(4)]***(6)** Two (2) signs will be erected for each adopter, one at each end of the adopted section, at a location determined by the department.

AUTHORITY: sections ***226.130 and*** *227.030, RSMo [1994]* ***2000****. Original rule filed Feb. 15, 1995, effective July 30, 1995. Emergency amendment filed July 10, 2000, effective July 20, 2000, expired Nov. 17, 2000. Amended: Filed July 10, 2000, effective Jan. 30, 2001. Amended: Filed Jan. 7, 2002.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

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 the Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication in the ***Missouri Register****. No public hearing is scheduled.*

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation Commission
Chapter 14—Adopt-A-Highway Program

PROPOSED AMENDMENT

7 CSR 10-14.060 Modification or Termination of the Agreement. The commission is amending sections (1) and (2).

PURPOSE: This amendment provides for the authority to terminate or modify the agreement.

(1) The agreement may be modified or terminated at the *[sole]* discretion of the *[commission]* **director, chief engineer, chief operating officer, or state maintenance engineer**.

(2) The *[commission]* **director, chief engineer, chief operating officer, and state maintenance engineer** reserve*[s]* the right to terminate the program agreement and remove the signs when*[, in the sole judgment of the commission,]* it is found that:

*AUTHORITY: sections **226.130 and** 227.030, RSMo [1994] **2000**. Original rule filed July 10, 2000, effective Jan. 30, 2001. Amended: Filed Jan. 7, 2002.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

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 the Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication in the **Missouri Register**. No public hearing is scheduled.*

Title 8—DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
Division 50—Workers' Compensation
Chapter 8—Tort Victims

PROPOSED RULE

8 CSR 50-8.010 Rules Governing Tort Victims

PURPOSE: This rule sets forth requirements for filing and pursuing claims against the Tort Victims' Compensation Fund, sections 537.675 through 537.693, RSMo.

(1) Compliance with Rule. Any party pursuing a claim against the Tort Victims' Compensation Fund shall comply with this rule.

(2) Terms Defined.

(A) Terms defined in section 537.675, RSMo, shall have the same meaning when used in this rule.

(B) The following terms, when used in this rule, shall mean:

1. Award—A final administrative determination made by the division on a claim against the Tort Victims' Compensation Fund, or a final decision made by an administrative law judge or legal advisor following an evidentiary hearing, or a final decision by the Labor and Industrial Relations Commission or by the appellate court;

2. Claimant—A person filing a claim against the Tort Victims' Compensation Fund, alleging to be an uncompensated tort victim;

3. Due diligence in enforcing the judgment—Utilization of reasonable lawful efforts to collect the amount of the judgment (in whole or in part) from the judgment debtor, from the judgment debtor's policy or policies of insurance, and from the judgment debtor's property, without unreasonable delay;

4. Judgment debtor—A person or entity against whom judgment has been obtained and which judgment remains unsatisfied;

5. Tortfeasor—A person or entity whose negligent, grossly negligent, reckless or intentional act or acts, or failure to act, personally or through an agent, results in injury or death to any other person.

(3) Filing of Claims and Supporting Documentation.

(A) A claim against the Tort Victims' Compensation Fund must be commenced by the filing of an Application for Tort Victims Compensation (form WCT-1) with the Tort Victims' Compensation Program at the division's Jefferson City office. An application may be made on the WCT-1 form printed by the division, or an accurate photocopy thereof.

(B) The Application for Tort Victims' Compensation (form WCT-1) may be filed in person at the division's Jefferson City office or by mailing to the division's Jefferson City office. An Application for Tort Victims' Compensation presented or mailed to a division office other than the Jefferson City office shall be rejected for filing.

(C) Any Application for Tort Victims' Compensation shall not be considered filed with the division until completed in its entirety and date-stamped by the division. Upon the filing of an Application for Tort Victims' Compensation with the division, the division shall assign a case identification number to the proceedings and acknowledge receipt of the Application for Tort Victims' Compensation by mailing an acknowledgment letter by first class mail, postage prepaid, to the claimant at the claimant's last known address or to the last known address of the claimant's attorney or other legal representative. The case identification number for a case commenced during the initial claims period shall contain the prefix "ICP." The case identification number for a case commenced after December 31, 2002, shall have as its prefix the calendar year of its filing (e.g., "2003," "2004").

(D) All correspondence and communications concerning any pending Application for Tort Victims' Compensation shall be directed to the division's Jefferson City office, and shall bear the case identification number assigned by the division. All forms, reports, affidavits, medical records, and other documents concerning any Application for Tort Victims' Compensation shall be filed with the division's Jefferson City office, and shall bear the case identification number assigned by the division.

(E) Within thirty (30) days after filing of the Application for Tort Victims' Compensation, the claimant shall file with the division's Jefferson City office a certified copy of a final monetary judgment against a tortfeasor for personal injury or wrongful death, as well as documentation that all appeals are final, or that the time for appeal has expired. In a case where no final judgment has been rendered, within thirty (30) days after filing of the Application for Tort Victims' Compensation, the claimant shall file with the division's Jefferson City office the affidavit establishing the basis upon which the requirement of a final judgment should be waived, in accordance with section 537.678.2, RSMo.

(F) Within thirty (30) days after filing of the Application for Tort Victims' Compensation, the claimant shall file with the division's Jefferson City office all documentation evidencing that the claimant has not collected the full amount of the judgment and that the claimant has exercised due diligence in enforcing the judgment against the tortfeasor. This documentation may include, but is not limited to, certified copies of the tortfeasor's discharge in bankruptcy, insurance policies of the tortfeasor, documents evidencing insolvency of the tortfeasor's insurer, affidavits, documents evidencing attempts at execution, attachment, garnishment, sequestration, etc., results of asset searches, and other similar documentation.

(G) Within thirty (30) days after filing of the Application for Tort Victims' Compensation, the claimant shall file with the division's Jefferson City office the medical reports bearing upon claimant's injuries occasioned by the tortfeasor, including diagno-

sis, treatment, prognosis and description of permanent injury and disability.

(H) Within thirty (30) days after filing of the Application for Tort Victims' Compensation, the claimant shall file with the division's Jefferson City office legible identical photocopies of all bills and documents supporting the payment of all unreimbursed expenses and medical costs, and documents supporting claims of lost wages or other income, or loss of support occasioned by the injuries or the death.

(I) If, in the judgment of the division, additional documentation is required of the claimant, the claimant shall provide same upon written request of the division, within twenty (20) days of such written request.

(J) Upon application of the claimant, the division may allow additional time for the filing of any documents required under subsections (E), (F), (G), (H), and (I) of this section.

(K) After filing the Application for Tort Victims' Compensation, if the claimant fails timely to take all necessary steps to support the claim as may be required by the division, including, but not limited to, the filing of any documents required under subsections (E), (F), (G), (H) and (I) of this section, the division may dismiss the claim without prejudice. After such dismissal without prejudice, the claimant may refile the claim unless it is then barred by the applicable statute or statutes of limitation. A claim which is refiled after having been dismissed shall be given a different case identification number.

(L) Except for claims filed during the initial claims period, if it appears to the division that the claim has not been filed within the time limits established by section 537.684.2, RSMo, the division may enter its order dismissing the claim, and such dismissal shall be deemed a final award for purposes of review by the Labor and Industrial Relations Commission.

(4) Administrative Review of Claims; Request for Hearing on Administrative Determination; Failure of Timely Request for Hearing.

(A) Within sixty (60) days after the filing of an Application for Tort Victims' Compensation, the division shall commence an administrative review of the Application for Tort Victims' Compensation and of the documentation provided by the claimant. During this review, the division may require the claimant to produce additional documentation as contemplated in subsection (3)(I) hereinabove, and may also require the claimant to file one (1) or more affidavits or to answer written questions under oath.

(B) Upon completion of the administrative review, the division shall issue its administrative determination awarding compensation in an amount certain or denying compensation in full. The division shall, immediately upon issuance of the administrative determination, send a copy thereof by first class mail, postage prepaid, to the claimant at the claimant's last known address or to the last known address of the claimant's attorney or other legal representative. The administrative determination shall contain a notice advising the claimant of the claimant's right to a hearing on the claim, instructions for requesting a hearing, and a form for the filing of the request for hearing.

(C) In the event the claimant does not wish to accept the administrative determination, the claimant shall, within twenty (20) days after the issuance of the administrative determination, sign and file with the division's Jefferson City office the request for hearing, utilizing the form provided with the administrative determination.

(D) In the event the claimant does not file the request for hearing within twenty (20) days after the issuance of the administrative determination, the administrative determination shall become the final award in the case.

(E) Upon timely filing of the request for hearing, the division shall immediately assign the case to an administrative law judge or legal advisor for evidentiary hearing.

(F) The claimant may withdraw the request for hearing, with prejudice, at any time after the filing of the request and prior to the conclusion of the evidentiary hearing. The withdrawal of the request for hearing must be in writing and must be signed by the claimant and/or by the claimant's attorney. The claimant may not withdraw the request for hearing without prejudice. Upon withdrawal of the request for hearing, the administrative determination shall become the final award in the case.

(5) Evidentiary Hearing; Where and When Held; How Conducted; Award; Review.

(A) All evidentiary hearings of claims against the Tort Victims Compensation Fund shall be held in the division's Jefferson City office.

(B) Within twenty (20) days after the timely filing of the request for hearing, the administrative law judge or legal advisor to whom the case is assigned shall set the date and time for the evidentiary hearing. The notice of the date and time of the evidentiary hearing shall be sent by first class mail, postage prepaid, to the claimant at the claimant's last known address or to the last known address of the claimant's attorney or other legal representative.

(C) The evidentiary hearing shall be a simple informal proceeding. The rules of evidence in civil cases in the state of Missouri shall apply, except that the administrative law judge or legal advisor may take official notice of the contents of the division's file. A record shall be made of all evidentiary hearings held under this rule. All exhibits offered into evidence shall be marked for identification with the case identification number assigned by the division. All exhibits admitted into evidence shall become a part of the record and shall be retained in the division's file. Any exhibits offered into evidence, but not admitted into evidence by the administrative law judge or legal advisor, may be retained in the division's file for purposes of appellate review by the Labor and Industrial Relations Commission and/or the appropriate appellate court.

(D) The claimant shall be prepared to present all evidence at the date and time set for the evidentiary hearing. The hearing shall be completed on the scheduled date, unless, in the sole discretion of the administrative law judge or legal advisor, there is insufficient time to conclude the hearing on the scheduled date, in which case the hearing shall be concluded on the next available date. The administrative law judge or legal advisor may grant the claimant additional time after the hearing, not exceeding ten (10) days, to submit additional documentary evidence, if, in the sole discretion of the administrative law judge or legal advisor, the failure to allow such additional time would result in substantial injustice to the claimant.

(E) All requests for continuance of an evidentiary hearing shall be in writing, shall bear the case identification number assigned by the division, and shall be filed with the division's Jefferson City office. The administrative law judge or legal advisor shall continue an evidentiary hearing only for good cause, and the evidentiary hearing, when continued, shall be rescheduled for the next available date.

(F) If the claimant fails to appear for the evidentiary hearing at the date and time scheduled, the administrative law judge or legal advisor, in his or her sole discretion, may reschedule the evidentiary hearing for the next available date, or may dismiss the request for hearing with prejudice. The dismissal of the request for hearing by the administrative law judge or legal advisor for such failure of the claimant to appear shall render the administrative determination the final award in the case. Immediately upon the rendering of a dismissal of a request for hearing by the administrative law judge or legal advisor for failure of the claimant to appear, the division shall send a copy thereof by first class mail, postage prepaid, to the claimant at the claimant's last known address or to the last known address of the claimant's attorney or other legal representative. Such dismissal shall be deemed a final award for pur-

poses of review by the Labor and Industrial Relations Commission.

(G) Within thirty (30) days after the conclusion of the evidentiary hearing, the administrative law judge or legal advisor shall issue the decision in the case, either awarding compensation in an amount certain or denying compensation in full.

(H) The division shall, immediately upon issuance of the decision, send a copy thereof by first class mail, postage prepaid, to the claimant at the claimant's last known address or to the last known address of the claimant's attorney or other legal representative. The decision shall contain a notice advising the claimant of claimant's right to have the decision reviewed by the Labor and Industrial Relations Commission, and informing the claimant of the time for filing the petition for review.

(I) A petition for review must be filed with the Labor and Industrial Relations Commission within thirty (30) days following the date of notification or mailing of such decision to the claimant, as provided by section 537.690.1, RSMo, and such petition for review shall be filed with the commission on a form provided for such purpose by the commission.

(6) Procedure for Payment of Awards on Claims Made During Initial Claims Period.

(A) On June 30, 2003, the division shall determine the aggregated amount of all final, unappealable awards made on claims filed during the initial claims period, and bearing case identification numbers with the prefix "ICP." Any award that is not final as of June 30, 2003 (due to a pending petition for review before the commission, or due to a pending appeal before the court of appeals) shall not be figured into this determination, but shall be figured into the determination in the subsequent annual claims period (if funds are available).

(B) If the aggregated amount of all final, unappealable awards as of June 30, 2003 does not exceed the total amount of money in the fund, the division shall cause the awards to be paid in full on or before September 30, 2003. If the aggregated amount of all final, unappealable awards as of June 30, 2003 exceeds the total amount of money in the fund, the division shall cause the awards to be paid on a prorata basis on or before September 30, 2003.

(C) The payments shall be made by check, payable to the claimant (or to such other person or persons as may be specified in the award), and shall be sent by first class mail, postage prepaid, to the claimant at the claimant's last known address or to the last known address of the claimant's attorney or other legal representative.

(7) Procedure for Payment of Awards on Claims Made During an Annual Claims Period.

(A) On June 30 of the year following the close of an annual claims period, the division shall determine the aggregated amount of all final, unappealable awards made on claims filed during the annual claims period, plus all final, unappealable awards made on claims filed during any prior claims period but which were not included in the determination made on June 30 of the year following the close of that claims period. Any award that is not final as of the date of the determination (due to a pending petition for review before the commission, or due to a pending appeal before the court of appeals) shall not be figured into this determination, but shall be figured into the determination in the subsequent annual claims period (if funds are available).

(B) If the aggregated amount of all final, unappealable awards as of June 30 of the year following the close of an annual claims period does not exceed the total amount of money in the fund, the division shall cause the awards to be paid in full on or before September 30 of that year. If the aggregated amount of all final, unappealable awards as of June 30 of the year following the close of an annual claims period exceeds the total amount of money in the fund, the division shall cause the awards to be paid on a prorata basis on or before September 30 of that year.

(C) The payments shall be made by check, payable to the claimant (or to such other person or persons as may be specified in the award), and shall be sent by first class mail, postage prepaid, to the claimant at the claimant's last known address or to the last known address of the claimant's attorney or other legal representative.

(D) If there are no funds available, the procedures set forth in section 537.684.9 and 10, RSMo shall be followed.

(8) Attorney's Fees. Sections 537.675 through 537.693, RSMo do not give the division jurisdiction to allow, deny or otherwise regulate attorney's fees in proceedings against the Tort Victims' Compensation Fund. Therefore, the division shall make no rulings or findings regarding attorney's fees; however, upon written request made to the division by the claimant, the division may order that payment of any award be made jointly to the claimant and to the claimant's attorney, in order to facilitate the payment of lawful attorney's fees.

(9) Payor of Last Resort. The Tort Victims' Compensation Fund is a payor of last resort. Therefore, the division shall examine all other payment sources or potential payment sources available to the claimant and shall take them into account when determining the amount of the final award. Other payment sources may include, but are by no means limited to, court-ordered restitution, medical insurance, life insurance, disability insurance, premises liability insurance, uninsured motorist coverage, underinsured motorist coverage, and workers' compensation benefits.

(10) One (1) Claim per Occurrence. Only one (1) claim may be brought against the Tort Victims' Compensation Fund for the injury of any one (1) person arising out of any occurrence or any causally related series of occurrences. Only one (1) claim may be brought against the Tort Victims' Compensation Fund for the death of any one (1) person. Those parties identified in section 537.681.1(2)(a) and (b) must join in one (1) claim against the Tort Victims' Compensation Fund and must prove their status to the satisfaction of the division and to the exclusion of any other parties who might be eligible for compensation under section 537.681.1, RSMo.

(11) Legal Disability of a Claimant. If any claimant is a minor, mentally or physically incapacitated or disabled, the division may require that a conservatorship be established and that any award be made payable to the conservator. In no instance shall payment be made directly from the Tort Victims' Compensation Fund to any person legally incompetent to receive such payment, but shall be made instead to a parent, conservator, guardian or attorney-in-fact under a durable power of attorney for the benefit of said person, as the division shall order.

(12) Acts or Conduct of Victim; Effect on Award. The division may consider the contributory fault, comparative fault, or other acts or conduct of the victim in determining the amount of the award, pursuant to sections 537.681.2 and 537.684.3 (4), RSMo.

(13) Unjust Enrichment.

(A) In determining whether an award against the Tort Victims' Compensation Fund can be made without unjustly enriching a tortfeasor, the division shall evaluate whether the tort victim can and will prevent access by the tortfeasor to the proceeds of any award.

(B) An unjust enrichment determination shall not be based solely on the presence of the tortfeasor in the household at the time of the injury or death, or at the time of the award. The presence of the tortfeasor in the household is only one (1) factor to be considered in determining unjust enrichment, and the determination shall

be made on a case-by-case basis according to the unique facts and circumstances of each case.

(14) Disclosure.

(A) No information obtained by the division shall be disclosed to persons other than the parties to the proceedings, and their attorneys, except by order of the division or the commission, but information may be used for statistical purposes.

(B) A request to inspect, or to receive copies of, any documents in the possession of the division as a result of a claim made against the Tort Victims' Compensation Fund shall be made in writing to the division's Jefferson City office.

(C) The charge for copies of documents shall not exceed the actual cost of document search and duplication.

(D) Persons inspecting documents shall not alter, deface or mark the documents in any manner.

(15) Mailings to Attorney. When a claimant is represented by an attorney, the division shall make all mailings to both the claimant and to the claimant's attorney.

AUTHORITY: sections 537.675–537.693, RSMo Supp. 2001. Original rule filed Jan. 8, 2002.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed rule is scheduled for March 25, 2002, at 10:00 a .m. in Room 109 of the Department of Labor and Industrial Relations, 3315 West Truman Blvd., Jefferson City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Anyone may file a statement in support of or in opposition to this proposed rule prior to the hearing with the Division of Workers' Compensation, Attn: Nasreen D. Esmail, Chief Legal Advisor, PO Box 58, Jefferson City, MO 65102-0058.

SPECIAL NEEDS: If you have special needs addressed by the Americans With Disabilities Act, please notify us at (573) 526-4941 at least five (5) working days prior to the hearing.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 10—Air Conservation Commission
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods and Air Pollution Control Regulations for the Entire State of Missouri

PROPOSED AMENDMENT

10 CSR 10-6.110 Submission of Emission Data, Emission Fees and Process Information. The commission proposes to amend subsection (5)(A). If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency to replace the current rule that is in the Missouri State Implementation Plan.

PURPOSE: This amendment will establish emission fees for Missouri facilities as required annually. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is section 643.079 of the Missouri state statutes.

(5) Emission Fees.

(A) Any air contaminant source required to obtain a permit under sections 643.010–643.190, RSMo, except sources that produce charcoal from wood, shall pay an annual emission fee, regardless of their EIQ reporting frequency, of *[twenty-five dollars and seventy cents ($25.70)]* **thirty-one dollars and no cents ($31.00)** per ton of regulated air pollutant emitted *[during]* **starting with** calendar year *[2001]* **2002** in accordance with the conditions specified in subsection (5)(B) of this rule. Sources which are required to file reports once every five (5) years may use the information in their most recent EIQ to determine their annual emission fee.

*AUTHORITY: section 643.050, RSMo 2000. Original rule filed June 13, 1984, effective Nov. 12, 1984. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Jan. 16, 2002.*

PUBLIC COST: This proposed amendment will cost $7,827,195 in FY 2003 and $12,766,767 in FY 2004. For the years after FY 2004, the total annualized aggregate cost is $12,766,767 for the life of the rule. The estimated cost of this amendment is based on the first full fiscal year cost that is for FY 2004. Therefore, this amendment cost is the difference between the proposed FY 2004 fiscal note cost of $12,766,767 using the proposed thirty-one dollar ($31) per ton of regulated air pollutant fee and the FY 2004 fiscal note cost of $11,629,872 estimated last year using the twenty-five dollar and seventy cents ($25.70) per ton of regulated air pollutant fee. This difference equals $1,136,895. Note attached fiscal note for assumptions that apply.

PRIVATE COST: This proposed amendment will have a total annualized aggregate cost of $22,064,766 for the life of the rule. The estimated cost of this amendment is based on the first full fiscal year cost that is for FY 2004. Therefore, this amendment cost is the difference between the proposed FY 2004 fiscal note cost of $22,064,766 using the proposed thirty-one dollar ($31) per ton of regulated air pollutant fee and the FY 2004 fiscal note cost of $20,806,545 estimated last year using the twenty-five dollar and seventy cents ($25.70) per ton of regulated air pollutant fee. This difference equals $1,258,221. Note attached fiscal note for assumptions that apply.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed amendment will begin at 9:00 a.m., March 28, 2002. The public hearing will be held at the Drury Inn & Suites, Ballroom, 11980 Olive Street, Creve Coeur, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Roger D. Randolph, Director, Missouri Department of Natural Resources' Air Pollution Control Program, 205 Jefferson Street, PO Box 176, Jefferson City, MO 65102-0176, (573) 751-4817. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., April 4, 2002. Written comments shall be sent to Chief, Planning Section, Missouri Department of Natural Resources' Air Pollution Control Program, 205 Jefferson Street, PO Box 176, Jefferson City, MO 65102-0176.

FISCAL NOTE
PUBLIC ENTITY COST

I. RULE NUMBER

Title: 10 - Department of Natural Resources

Division: 10 - Air Conservation Commission

Chapter: 6 - Air Quality Standards, Definitions, Sampling and Reference Methods and Air Pollution Control Regulations for the Entire State of Missouri

Type of Rulemaking: Proposed Amendment

Rule Number and Name: 10 CSR 10 - 6.110 Submission of Emission Data, Emission Fees and Process Information

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Missouri Department of Natural Resources /Air Pollution Control Program	$10,005,095
Misc. Public Entities (listed below)	$ 2,761,672
Totals	$12,766,767

*Cost estimates are reported as annualized aggregates.

III. WORKSHEET

Missouri Department of Natural Resources /Air Pollution Control Program (APCP) Costs

APCP Costs	FY2003**	FY2004	Annualized Aggregate
Salaries	$1,953,558	$ 4,110,346	$ 4,110,346
Fringe Benefits	$ 684,242	$ 1,438,971	$ 1,438,971
Operating Expenses	$ 960,011	$ 1,421,698	$ 1,421,698
Grants to Local Air Agencies	$ 991,250	$ 2,081,625	$ 2,081,625
Refunds	$ 31,250	$ 62,500	$ 62,500
Department Overhead	$ 456,978	$ 889,955	$ 889,955
Totals	$5,077,289	$10,005,095	$10,005,095
Local Air Agencies (Kansas City, Springfield, St. Louis City, St. Louis County) Costs			
Salaries, fringes, operating, and overhead	$991,250	$2,081,625	$2,081,625
Less Grant from MDNR		($2,081,625)	($2,081,625)
Totals	$0	$0	$0

**See Assumptions #1 and #2 on page 2 of this Fiscal Note.

Public Entity Costs

Source Description	Number of Facilities
Gas & Electric	44
Sanitary Services	33
Hospitals	25
Rehabilitation Centers	2
Schools	9
Correctional Facility	2
National Security	5

Post Office	2
Transportation	3
Other	4
Totals	129

Public Entity Costs	FY 2003	FY 2004	Annualized Aggregate
EIQ Fees	$1,176,641	$1,188,407	$1,188,407
EIQ Preparation	$ 124,582	$ 124,582	$ 124,582
Compliance Costs	$1,448,683	$1,448,683	$1,448,683
Total Costs	$2,749,906	$2,761,672	$2,761,672

Costs	FY2003	FY2004	Annualized Aggregate
Departmental Costs	$5,077,289	$10,005,095	$10,005,095
Public Entity Costs	$2,749,906	$ 2,761,672	$ 2,761,672
Total Costs	$7,827,195	$12,766,767	$12,766,767

IV. ASSUMPTIONS

1. The estimated cost of this amendment is based on the first full fiscal year cost that is for FY2004. Therefore, this amendment cost is the difference between the proposed FY2004 fiscal note cost of $12,766,767 using the proposed $31.00 per ton of regulated air pollutant fee and the FY2004 fiscal note cost of $11,629,872 estimated last year using the $25.70 per ton of regulated air pollutant fee. This difference equals a difference of $1,136,895.

2. Public entity costs for this amendment will exceed the most recent amendment fiscal note since the emission fee is proposed to increase to $31.00 per ton of regulated air pollutant. The public entity costs are provided for informational purposes and to provide fee collection estimates. The costs are based on the most recent data available to the department and are expected to be more accurate than previous fiscal notes for the same fiscal years.

3. All emission fees are assumed to be submitted during the last six (6) months of FY2003 (January 1, 2003-June 30, 2003). Department costs for FY2003 are for the last six (6) months of FY2003 (January 1, 2003-June 30, 2003).

4. The cost to the facility of filling out the EIQ is held constant at the 1999 value of $124,582 assuming that the cost of EIQ preparation occurs in the last half of FY 2003 (January 1, 2003-June 30, 2003).

5. Cost and affected entity estimates are based on data presently entered in the tracking systems of the Air Pollution Control Program. This data is subject to change as additional information is reviewed, updated, and entered. Fees for public entities are based on $31.00 per ton of regulated air pollutant and includes $30.00 to help support air pollution control efforts in Missouri and $1.00 towards continued development of the Missouri Emission Inventory System.

6. The emission fees paid by public entities may vary depending on their current information and their chargeable emissions with fees remaining relatively constant. However, new controls decrease the amount of their emission fees.

7. State projections are based on the most current information regarding budget-appropriation levels. Increases or decreases in appropriations result from additions or deletions to the budget. Variations in operating expenses occur as a result of program budget decreases or increases by the legislature.

8. The costs to prepare EIQ forms and for compliance are taken from information provided by facilities.

9. The EIQ fees are assumed to increase by 1% from FY2003 to FY2004.

FISCAL NOTE
PRIVATE ENTITY COST

I. RULE NUMBER

Title: 10 - Department of Natural Resources

Division: 10 - Air Conservation Commission

Chapter: Air Quality Standards, Definitions, Sampling and Reference Methods and Air Pollution Control Regulations for the Entire State of Missouri

Type of Rulemaking: Proposed Amendment

Rule Number and Name: 10 CSR 10 - 6.110 Submission of Emission Data, Emission Fees and Process Information

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
2,642 Facilities (listed below)	Listed below	$22,064,766

*Cost estimates are reported as annualized aggregates.

III. WORKSHEET

01	AGRICULTURAL PRODUCTION CROPS	0
02	AGRICULTURAL PRODUCTION LIVESTOCK AND ANIMAL SPECIALTIES	1
07	AGRICULTURAL SERVICES	43
10	METAL MINING	9
12	COAL MINING	7
14	MINING AND QUARRYING OF NONMETALLIC MINERALS, EXCEPT FUELS	319
15	BUILDING CONSTRUCTION GENERAL CONTRACTORS AND OPERATIVE	1
16	HEAVY CONSTRUCTION OTHER THAN BUILDING CONSTRUCTION	0
17	CONSTRUCTION SPECIAL TRADE CONTRACTORS	5
20	FOOD AND KINDRED PRODUCTS	126
21	TOBACCO PRODUCTS	0
22	TEXTILE MILL PRODUCTS	2

SIC Code	SIC Description	Number of Facilities
23	APPAREL AND OTHER FINISHED PRODUCTS MADE FROM FABRICS	2
24	LUMBER AND WOOD PRODUCTS, EXCEPT FURNITURE	63
25	FURNITURE AND FIXTURES	27
26	PAPER AND ALLIED PRODUCTS	23
27	PRINTING, PUBLISHING, AND ALLIED INDUSTRIES	77
28	CHEMICALS, BRIQUETS, PAINTS	170
29	PETROLEUM REFINING AND RELATED INDUSTRIES	146
30	RUBBER AND MISCELLANEOUS PLASTICS PRODUCTS	53
31	LEATHER AND LEATHER PRODUCTS	10
32	STONE, CLAY, GLASS, AND CONCRETE PRODUCTS	323
33	PRIMARY METAL INDUSTRIES	60
34	FABRICATED METAL PRODUCTS, EXCEPT MACHINERY AND TRANSPORTATION	106
35	INDUSTRIAL AND COMMERCIAL MACHINERY AND COMPUTER EQUIPMENT	49
36	ELECTRONIC AND OTHER ELECTRICAL EQUIPMENT AND COMPONENTS	54
37	TRANSPORTATION EQUIPMENT	61
38	MEASURING, ANALYZING, AND CONTROLLING INSTRUMENTS	6
39	MISCELLANEOUS MANUFACTURING INDUSTRIES	19
40	RAILROAD TRANSPORTATION	0
41	LOCAL AND SUBURBAN TRANSIT AND INTERURBAN HIGHWAY PASSENGER	1
42	MOTOR FREIGHT TRANSPORTATION AND WAREHOUSING	26
44	WATER TRANSPORTATION	4
45	TRANSPORTATION BY AIR	3
46	PIPELINES, EXCEPT NATURAL GAS	28

SIC Code	SIC Description	Number of Facilities
47	TRANSPORTATION SERVICES	3
48	COMMUNICATIONS	2
49	ELECTRIC, GAS, SANITARY SERVICES, AND LANDFILLS	121
50	WHOLESALE TRADE-DURABLE GOODS	18
51	WHOLESALE TRADE-NON-DURABLE GOODS	159
52	LUMBER/HARDWARE	0
54	FOOD STORES	0
55	AUTOMOTIVE DEALERS AND GASOLINE SERVICE STATIONS	1
57	HOME FURNITURE, FURNISHINGS, AND EQUIPMENT STORES	0
59	MISCELLANEOUS RETAIL	1
60	BANK	0
63	INSURANCE CARRIERS	0
65	REAL ESTATE	0
70	HOTELS, ROOMING HOUSES, CAMPS, AND OTHER LODGING PLACES	1
72	PERSONAL SERVICES AND DRY CLEANERS	431
73	BUSINESS SERVICES	5
75	AUTOMOTIVE REPAIR, SERVICES, AND PARKING	8
76	MISCELLANEOUS REPAIR SERVICES	2
80	HEALTH SERVICES	45
82	EDUCATIONAL SERVICES	4
83	Nurse Home	1
84	MUSEUMS, ART GALLERIES, AND BOTANICAL AND ZOOLOGICAL GARDENS	0
87	ENGINEERING, ACCOUNTING, RESEARCH, MANAGEMENT, AND RELATED	3
91	EXECUTIVE, LEGISLATIVE, AND GENERAL GOVERNMENT, EXCEPT FINANCE	0
92	CORRECTIONS	2
95	ADMINISTRATION OF ENVIRONMENTAL QUALITY AND HOUSING PROGRAMS	0

SIC Code	SIC Description	Number of Facilities
97	MILITARY	2
**	OTHER	9

** Did not have SIC Code

IV. ASSUMPTIONS

1. The estimated cost of this amendment is based on the first full fiscal year cost that is for FY2004. Therefore, this amendment cost is the difference between the proposed FY2004 fiscal note cost of $22,064,766 using the proposed $31.00 per ton of regulated air pollutant fee and the FY2004 fiscal note cost of $20,806,545 estimated last year using the $25.70 per ton of regulated air pollutant fee. This difference equals a difference of $1,258,221.

2. Private entity costs for this amendment will exceed the most recent amendment fiscal note since the emissions fee is proposed to increase to $31.00 per ton of regulated air pollutant. The costs in this fiscal note are to provide information and to provide fee collection estimates. The costs are based on the most recent data available to the department and are expected to be more accurate than previous fiscal notes for the same fiscal years.

3. All emission fees are assumed to be submitted during the last six (6) months of FY2003 (January 1, 2003-June 30, 2003).

4. The cost to the facility of filling out the EIQ is held constant at the 1999 value of $2,160,418 assuming that the cost of EIQ preparation occurs in the last half of FY 2003 (January 1, 2003-June 30, 2003).

5. Cost and effected entity estimates are based on data presently entered in the tracking systems of the Air Pollution Control Program. This data is subject to change as additional information is continuously entered and as data is reviewed. Fees for private entities are based on $31.00 per ton of regulated air pollutant and includes $30.00 to help support air pollution control efforts in Missouri and $1.00 towards continued development of the Missouri Emission Inventory System.

6. The emission fees paid by public entities may vary depending on their current information and their chargeable emissions with fees remaining relatively constant. However, new controls decrease the amount of their emission fees.

7. The costs to prepare EIQ forms and for compliance are taken from information provided by facilities.

8. The EIQ fees are assumed to increase by 1% from FY2003 to FY2004.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 60—Public Drinking Water Program
Chapter 4—Contaminant Levels and Monitoring

PROPOSED AMENDMENT

10 CSR 60-4.050 Maximum Turbidity Contaminant Levels and Monitoring Requirements *and Filter Backwash Recycling*. The commission is amending the title and subsections (1)(A), (1)(D) and adding section (4).

PURPOSE: This amendment adopts the new federal filter backwash recycling requirements established in EPA's rule published in the June 11, 2001 Federal Register (66 FR 31086). This is a primacy rule that the State must adopt in order to retain delegation of the federal program. The federal rule, fact sheets and supporting documents such as the Regulatory Impact Analysis are available at most public libraries and on the Internet at http://www.epa.gov/safewater/filterbackwash.html.

This amendment will benefit the public by providing greater health protection from microbial pathogens such as Cryptosporidium. It will also benefit water systems and the department by ensuring they have the information necessary to evaluate whether site-specific recycle practices may adversely affect the system's ability to meet Cryptosporidium removal requirements.

(1) Applicability.

(A) This rule applies to all public water systems that use surface **water** or groundwater under the direct influence of surface water. Requirements and compliance dates vary depending on system size.

(D) Beginning on the effective date of this rule, any water treatment plant proposed for construction or major modification must be designed to meet the filter backwash requirements in section (4) of this rule.

(4) Filter Backwash Recycling.

(A) Applicability. All surface water and groundwater under the direct influence of surface water systems that use conventional filtration or direct filtration treatment and that recycle spent filter backwash water, thickener supernatant, or liquids from dewatering processes must meet the requirements of this section.

(B) Reporting. A system must notify the department in writing by December 8, 2003, if the system recycles spent filter backwash water, thickener supernatant, or liquids from dewatering processes. This notification must include, at a minimum, the following information:

1. A plant schematic showing the origin of all flows which are recycled (including, but not limited to, spent filter backwash water, thickener supernatant, and liquids from dewatering processes), the hydraulic conveyance used to transport them, and the location where they are reintroduced back into the treatment plant; and

2. Typical recycle flow in gallons per minute (gpm), the highest observed plant flow experienced in the previous year (gpm), design flow for the treatment plant (gpm), and department-approved operating capacity for the plant where the department has made such determinations.

(C) Treatment Technique Requirement. Any system that recycles spent filter backwash water, thickener supernatant, or liquids from dewatering processes must return these flows through the processes of a system's existing conventional or direct filtration system or at an alternate location approved by the department by June 8, 2004. If capital improvements are required to modify the recycle location to meet this requirement, all capital improvements must be completed not later than June 8, 2006.

(D) Record Keeping. The system must collect and retain on file recycle flow information for review and evaluation by the department beginning June 8, 2004. This information shall include, but may not be limited to:

1. A copy of the recycle notification and information submitted to the department under subsection (4)(B) of this rule;

2. A list of all recycle flows and the frequency with which they are returned;

3. Average and maximum backwash flow rate through the filters and the average and maximum duration of the filter backwash process in minutes;

4. Typical filter run length and a written summary of how filter run length is determined;

5. The type of treatment provided for the recycle flow; and

6. Data on the physical dimensions of the equalization and/or treatment units, typical and maximum hydraulic loading rates, type of treatment chemicals used and average dose and frequency of use, and frequency at which solids are removed, if applicable.

*AUTHORITY: section 640.100, RSMo [Supp. 1999] **2000**. Original rule filed May 4, 1979, effective Sept. 14, 1979. Amended: Filed April 14, 1981, effective Oct. 11, 1981. Amended: Filed July 12, 1991, effective Feb. 6, 1992. Amended: Filed Feb. 1, 1996, effective Oct. 30, 1996. Amended: Filed Dec. 15, 1999, effective Sept. 1, 2000. Amended: Filed Jan. 16, 2002.*

PUBLIC COST: This amendment is anticipated to cost the Department of Natural Resources about ten thousand three hundred dollars ($10,300) in FY03, eight thousand six hundred forty dollars ($8,640) in FY04, and about six thousand four hundred dollars ($6,400) annually for the duration of the rule. This amendment is anticipated to cost publicly-owned public water systems about four thousand eight hundred dollars ($4,800) annually, as an annualized cost, for the duration of the rule.

PRIVATE COST: This amendment is anticipated to cost ten (10) privately-owned public water systems about $2,001,600 in one-time capital improvement costs and one thousand six hundred dollars ($1,600) annually in record keeping/administrative costs.

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may submit comments in support of or in opposition to this proposed amendment. An information meeting and public hearing will be held at 10 a.m. on May 23, 2002 at the DNR Conference Center, 1738 East Elm Street, Jefferson City, Missouri. In preparing your comments, please include the regulatory citation and the **Missouri Register** page number. Please explain why you agree or disagree with the proposed change and include alternative language.*

Written comments must be postmarked or received by June 14, 2002. Comments shall be mailed or faxed to: Ms. Linda McCarty, Public Drinking Water Program, PO Box 176, Jefferson City, MO 65102. The fax number is (573) 751-3110.

FISCAL NOTE
PUBLIC ENTITY COST

I. RULE NUMBER

Title:	10
Division:	60
Chapter:	4
Type of Rulemaking:	Proposed Amendment
Rule Number and Name:	10 CSR 60-4.050 Maximum Turbidity Contaminant Levels and Monitoring Requirements

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Natural Resources	FY03 = $10,330 FY04 (first full fiscal year of implementation) = $8,640 Annualized Aggregate Cost* for FY05 and all subsequent years = $6,400
30 Publicly-owned public water systems using surface water and recycling their filter backwash	Annualized Aggregate Cost* = $4,800 Estimated cost for the first full fiscal year of compliance (FY04) = $4,800

* Because the duration of the rule cannot be estimated accurately, an annualized aggregate cost is provided. The annualized costs shown are expected to remain constant for the duration of the rule. This does not take into account inflationary factors, which are unknown.

III. WORKSHEET

Estimated DNR Costs:

1. Initial mailing to 100 PWSs: 8 hours x $20/hr = $160 + $250 postage = $410
2. Review information from PWSs that practice recycle: 40 PWSs x 8 hrs/reviews = 320 hrs x $20/hr average cost of labor = $6,400
3. Notice to PWSs of needed changes (1 PWS with 2 water treatment plants): 8 hrs x $20/hr average cost of labor x 2 WTPs = $320
4. Review/approve changes and capital improvement projects (2 projects - 1 week per project): 40 hrs x $20/hr average cost of labor x 2 projects = $1,600
5. Verify changes/construction (2 projects – 2 days per project): 16 hrs x $20 average cost of labor x 2 projects = $640
6. Review PWSs new recordkeeping information during "annual" inspections: 40 PWSs x 8 hrs x $20/hr average cost of labor = $6,400/yr

Total estimated DNR costs = $9,370 one-time incurred in FY03-FY04 + $6,400 per year for the duration of the rule

Estimated Publicly-owned Public Water System Costs:

1. Notify DNR of recycling practice: 8 hrs x 30 PWSs x $20/hr average cost of labor = $4,800 (one-time cost)
2. Maintain new recordkeeping: 8 hrs/yr x 30 PWSs x $20/hr average cost of labor = $4,800/yr

Total estimated publicly-owned public water system costs = $4,800 one time and $4,800 annual costs

IV. ASSUMPTIONS

1) Missouri has approximately 100 public water systems using surface water and groundwater under the direct influence of surface water.

2) Approximately 40% of these public water systems practice recycle of some sort. Approximately 75% of these 40 systems are publicly-owned.

3) All publicly-owned public water systems affected by this rule already practice recycle in accordance with this rule.

4) DNR mails an initial "notice of requirements" to all surface water (SW) & ground water under the direct influence of surface water (GWUDISW) public water systems (approximately 100). About 30 of these systems are publicly-owned. This notice includes information on the recordkeeping requirements of the FBR, which become effective June 8, 2004.

5) SW & GWUDISW systems that practice "recycle" must notify the department by December 8, 2003. This notice must include seven pieces of information specified in the rule: the origin of all recycle flow; the hydraulic conveyance; the location where recycle flow is reintroduced; the typical recycle flow rate; the highest water treatment plant (WTP) flow in past year; the WTP design flow; and the department-approved WTP capacity.

6) The department must review the information received from the public water systems that practice recycle and determine if any changes in their recycle practices are required.

7) The department must notify the public water systems required to make changes to their recycle practices in order to comply with the FBR requirements, and advise them that these changes must be made by June 4, 2004 (or June 8, 2006, if capital improvements are needed). Only one public water system falls in this category and it is privately-owned.

8) The public water systems required to make changes to their recycle practices (including any needed capital improvements), must notify the department of their plans to comply with the FBR requirements, and must initiate the design of the needed changes to their recycle practices.

9) Once these public water systems have designed the needed changes/capital improvements to comply with the FBR requirements, the department must review and approve the public water systems' proposed changes/capital improvements.

10) Once the department has approved the proposed changes/capital improvements, the public water systems must then implement/construct the needed changes/capital improvements.

11) Once the public water systems have implemented/constructed the needed changes/capital improvements, the department must verify by inspection, that the changes/capital improvements have been made.

12) The public water systems that practice recycle, must maintain the new recordkeeping information on file.

13) The department must review the public water systems' new recordkeeping during annual inspections.

14) Under design guide regulations currently being developed, new surface water systems will not be allowed to recycle.

FISCAL NOTE
PRIVATE ENTITY COST

I. RULE NUMBER

Title: 10
Division: 60
Chapter: 4
Type of Rulemaking: Proposed Amendment
Rule Number and Name: 10 CSR 60-4.050 Maximum Turbidity Contaminant Levels and Monitoring Requirements

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed amendment:	**Classification by types of the business entities which would likely be affected:**	**Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:**
10	Privately-owned public water systems	Annualized Aggregate Cost* = $1,600 One-time cost of $2,001,600

* Because the duration of the rule cannot be estimated accurately, an annualized aggregate cost is provided. The annualized costs shown are expected to remain constant for the duration of the rule. This does not take into account inflationary factors, which are unknown.

III. WORKSHEET

1) Notify the department of recycling practice: 8 hrs x 10 PWSs x $20/hr average cost of labor = $1,600 one-time costs
2) Design/construct any needed changes/capital improvements: 1 PWSs with 2 treatment plants = 2 x $1 million = $2 million one-time costs
3) Maintain new recordkeeping: 8 hrs/yr x 10 PWSs x $20/hr average cost of labor = $1,600/yr

Total privately-owned public water system costs = $2,001,600 one-time costs + $1,600/yr

IV. ASSUMPTIONS

1. Missouri has approximately 100 public water systems using surface water and groundwater under the direct influence of surface water.

2. Approximately 40% of these public water systems practice recycle of some sort. Approximately 25% of these 40 systems are privately-owned.

3. One privately-owned public water system (with two water treatment plants) will be required to institute changes to meet this rule.

4. Surface water and groundwater under the direct influence of surface water public water systems that practice "recycle" must notify the department by December 8, 2003. This notice must include: the origin of all recycle flow; the hydraulic conveyance; the location where recycle flow is reintroduced; the typical recycle flow rate; the highest water treatment plant (WTP) flow in past year; the WTP design flow; and the state-approved WTP capacity.

5. Public water systems required to make changes to their recycle practices (including any needed capital improvements), must notify the department of their plans to comply with the FBR requirements, and must initiate the design of the needed changes to their recycle practices. Water systems required to make changes to their recycle practices in order to comply with this rule must make these changes by June 4, 2004 (or June 8, 2006, if capital improvements are needed).

6. The public water systems that practice recycle must maintain the new recordkeeping information on file.

7. Design guide regulations currently under development will not allow new surface water systems to recycle.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 60—Public Drinking Water Program
Chapter 4—Contaminant Levels and Monitoring

PROPOSED RESCISSION

10 CSR 60-4.060 Maximum Radionuclide Contaminant Levels and Monitoring Requirements. This rule established maximum contaminant levels and sampling and monitoring requirements for radionuclides.

PURPOSE: This rule is being proposed for rescission and readoption in order to adopt new federal requirements published in the December 7, 2000 ***Federal Register*** *(65 FR 76707). The new federal rule modifies monitoring requirements and sets a maximum contaminant level for uranium. The federal rule, fact sheets, and supporting documents are available at most public libraries and on the Internet at http://www.epa.gov/safewater/radionuc.html. Due to the nature of the changes, the commission determined that proposing to rescind and readopt the rule would present the new requirements more clearly than a proposed amendment. If the proposed rule is not finalized, this proposed rescission will be withdrawn and the existing rule will remain in effect.*

AUTHORITY: section 640.100, RSMo Supp. 1993. Original rule filed May 4, 1979, effective Sept. 14, 1979. Amended: Filed April 14, 1981, effective Oct. 11, 1981. Rescinded: Filed Jan. 16, 2002.

PUBLIC COST: This proposed rescission is anticipated to cost state agencies and political subdivisions less than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rescission is anticipated to cost private entities less than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may submit comments in support of or in opposition to this proposed rescission. An information meeting and public hearing will be held at 10 a.m. on May 23, 2002 at the DNR Conference Center, 1738 East Elm Street, Jefferson City, Missouri. In preparing your comments, please include the regulatory citation and the ***Missouri Register*** *page number. Please explain why you agree or disagree with the proposed change and include alternative options or language.*

Written comments must be postmarked or received by June 14, 2002. Comments shall be mailed or faxed to: Ms. Linda McCarty, Public Drinking Water Program, PO Box 176, Jefferson City, MO 65102. The fax number is (573) 751-3110.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 60—Public Drinking Water Program
Chapter 4—Contaminant Levels and Monitoring

PROPOSED RULE

10 CSR 60-4.060 Maximum Radionuclide Contaminant Levels and Monitoring Requirements

PURPOSE: This rule establishes maximum contaminant levels and monitoring requirements for radionuclides.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. Therefore, the material which is so incorporated is on file with the agency who filed this rule, and with the Office of the Secretary of State. Any interested person may view this material at either agency's headquarters or the same will be made available at the Office of the Secretary of State at a cost not to exceed actual cost of copy reproduction. The entire text of the rule is printed here. This note refers only to the incorporated by reference material.

(1) Maximum Contaminant Levels (MCL) and Compliance Dates.

(A) MCL for Combined Radium-226 and Radium-228. The maximum contaminant level for combined radium-226 and radium-228 is five picocuries per liter (5 pCi/L). The combined radium-226 and radium-228 value is determined by the addition of the results of the analysis for radium-226 and the analysis for radium-228.

(B) MCL for Gross Alpha Particle Activity (Excluding Radon and Uranium). The maximum contaminant level for gross alpha particle activity (including radium-226 but excluding radon and uranium) is fifteen picocuries per liter (15 pCi/L).

(C) MCL for Beta Particle and Photon Radioactivity.

1. The average annual concentration of beta particle and photon radioactivity from man-made radionuclides in drinking water must not produce an annual dose equivalent to the total body or any internal organ greater than four (4) millirem/year (mrem/year).

2. Except for the radionuclides listed in Table A, the concentration of man-made radionuclides causing four (4) mrem total body or organ dose equivalents must be calculated on the basis of two (2) liter per day drinking water intake using the one hundred sixty-eight (168) hour data list in "Maximum Permissible Body Burdens and Maximum Permissible Concentrations of Radionuclides in Air and in Water for Occupational Exposure," NBS (National Bureau of Standards) Handbook 69 as amended August 1963, U.S. Department of Commerce, which is incorporated by reference. If two (2) or more radionuclides are present, the sum of their annual dose equivalent to the total body or to any organ shall not exceed four (4) mrem/year.

Table A.—Average Annual Concentrations Assumed to Produce a Total Body or Organ Dose of Mrem/Year

Radionuclide	Critical Organ	pCi per Liter
Tritium	Total body	20,000
Strontium-90	Bone Marrow	8

(D) MCL for Uranium. The maximum contaminant level for uranium is thirty micrograms per liter (30 μg/L).

(E) Compliance Dates. Community water systems (CWSs) must comply with the MCLs listed in subsections (1)(A)–(D) of this rule beginning December 8, 2003. Compliance shall be determined in accordance with the requirements of 10 CSR 60-5.010 and section (2) of this rule. Compliance with Consumer Confidence Report and public notice requirements for radionuclides is required on December 8, 2003.

(2) Monitoring Frequency and Compliance Requirements for Radionuclides in Community Water Systems.

(A) Monitoring and Compliance Requirements for Gross Alpha Particle Activity, Radium-226, Radium-228, and Uranium.

1. Community water systems must conduct initial monitoring to determine compliance with subsections (1)(A), (B) and (D) of this rule by December 31, 2007. For the purposes of monitoring for gross alpha particle activity, radium-226, and radium-228, the detection limits are:

A. The detection limit for gross alpha particle activity is three (3) pCi/L;

B. The detection limit for radium-226 is one (1) pCi/L; and

C. The detection limit for radium-228 is one (1) pCi/L.

2. Applicability and sampling location for existing community water systems or sources. All existing CWSs using groundwater, surface water, or systems using both ground and surface water must sample at every entry point to the distribution system that is representative of all sources being used (hereafter called a sampling point) under normal operating conditions. The system must take each sample at the sample sampling point unless conditions make another sampling point more representative of each source or the department has designated a distribution system location, in accordance with part (2)(A)4.B.(III) of this rule.

3. Applicability and sampling location for new community water systems or sources. All new CWSs or CWSs that use a new source of water must begin to conduct initial monitoring for the new source within the first quarter after initiating use of the source. CWSs must conduct more frequent monitoring when ordered by the department in the event of possible contamination or when changes in the distribution system or treatment processes occur which may increase the concentration of radioactivity in finished water.

4. Initial monitoring for gross alpha particle activity, radium-226, radium-228, and uranium.

A. Systems without acceptable historical data, as defined below, shall collect four (4) consecutive quarterly samples at all sampling points before December 31, 2007.

B. Grandfathering of data. Systems may use historical monitoring data collected at a sampling point to satisfy the initial monitoring requirements for that sampling point, for the following situations.

(I) To satisfy initial monitoring requirements, a community water system having only one (1) entry point to the distribution system may use the monitoring data from the last compliance monitoring period that began between June 1, 2000 and December 8, 2003.

(II) To satisfy initial monitoring requirements, a community water system with multiple entry points and having appropriate historical monitoring data for each entry point to the distribution system may use the monitoring data from the last compliance monitoring period that began between June 1, 2000 and December 8, 2003.

(III) To satisfy initial monitoring requirements, a community water system with appropriate historical data for a representative point in the distribution system may use the monitoring data from the last compliance monitoring period that began between June 1, 2000 and December 8, 2003, provided that the department finds that the historical data satisfactorily demonstrate that each entry point to the distribution system is expected to be in compliance based upon the historical data and reasonable assumptions about the variability of contaminant levels between entry points. The department must make a written finding indicating how the data conforms to the these requirements.

C. For gross alpha particle activity, uranium, radium-226, and radium-228 monitoring, the department will waive the final two (2) quarters of initial monitoring for a sampling point if the results of the samples from the previous two (2) quarters are below the detection limit.

D. If the average of the initial monitoring results for a sampling point is above the MCL, the system must collect and analyze quarterly samples at that sampling point until the system has results from four (4) consecutive quarters that are at or below the MCL, unless the system enters into another schedule as part of a formal compliance agreement with the department.

3. Reduced monitoring. Community water systems may reduce the future frequency of monitoring from once every three (3) years to once every six (6) or nine (9) years at each sampling point, based on the following criteria.

A. If the average of the initial monitoring results for each contaminant (that is, gross alpha particle activity, uranium, radium-226, or radium-228) is below the detection limit specified in paragraph (2)(A)1. of this rule, the system must collect and analyze for that contaminant using at least one (1) sample at that sampling point every nine (9) years.

B. For gross alpha particle activity and uranium, if the average of the initial monitoring results for each contaminant is at or above the detection limit but at or below one-half (1/2) the MCL, the system must collect and analyze for that contaminant using at least one (1) sample at that sampling point every six (6) years. For combined radium-226 and radium-228, the analytical results must be combined. If the average of the combined initial monitoring results for radium-226 and radium-228 is at or above the detection limit but at or below one-half (1/2) the MCL, the system must collect and analyze for that contaminant using at least one (1) sample at that sampling point every six (6) years.

C. For gross alpha particle activity and uranium, if the average of the initial monitoring results for each contaminant is above one-half (1/2) the MCL but at or below the MCL, the system must collect and analyze at least one (1) sample at that sampling point every three (3) years. For combined radium-226 and radium-228, the analytical results must be combined. If the average of the combined initial monitoring results for radium-226 and radium-228 is above one-half (1/2) the MCL but at or below the MCL, the system must collect and analyze at least one (1) sample at that sampling point every three (3) years.

D. Systems must use the samples collected during the reduced monitoring period to determine the monitoring frequency for subsequent monitoring periods (for example, if a system's sampling point is on a nine (9)-year monitoring period, and the sample result is above one-half (1/2) the MCL, then the next monitoring period for that sampling point is three (3) years).

E. If a system has a monitoring result that exceeds the MCL while on reduced monitoring, the system must collect and analyze quarterly samples at that sampling point until the system has results from four (4) consecutive quarters that are below the MCL, unless the system enters into another schedule as part of a formal compliance agreement with the department.

4. Compositing. To fulfill quarterly monitoring requirements for gross alpha particle activity, radium-226, radium-228, or uranium, a system may composite up to four (4) consecutive quarterly samples from a single entry point if analysis is done within a year of the first sample. The department will treat analytical results from the composited as the average analytical result to determine compliance with the MCLs and the future monitoring frequency. If the analytical result from the composited sample is greater than one-half (1/2) the MCL, the department may direct the system to take additional quarterly samples before allowing the system to sample under a reduced monitoring schedule.

5. Gross alpha particle activity measurement.

A. A gross alpha particle activity measurement may be substituted for the required radium-226 measurement provided that the measured gross alpha particle activity does not exceed five (5) pCi/L. A gross alpha particle activity measurement may be substituted for the required uranium measurement provided that the measured gross alpha particle activity does not exceed fifteen (15) pCi/L.

B. The gross alpha measurement shall have a confidence interval of ninety-five percent (95%) (1.65σ, where σ is the standard deviation of the net counting rate of the sample) for radium-226 and uranium. When a system uses a gross alpha particle activity measurement in lieu of a radium-226 and/or uranium measurement, the gross alpha particle activity analytical result will be used to determine the future monitoring frequency for radium-226 and/or uranium. If the gross alpha particle activity result is less than detection, one-half (1/2) the detection limit will be used to determine compliance and the future monitoring frequency.

(B) Monitoring and Compliance Requirements for Beta Particle and Photon Radioactivity. To determine compliance with the maximum contaminant levels in subsection (1)(C) of this rule for beta

particle and photon radioactivity, a system must monitor at a frequency as follows:

1. Community water systems (both surface and ground water) designated by the department as vulnerable must sample for beta particle and photon radioactivity. Systems must collect quarterly samples for beta emitters and annual samples for tritium and strontium-90 at each entry point to the distribution system (hereafter called a sampling point), beginning within one (1) quarter after being notified by the department. Systems already designated by the department must continue to sample until the department reviews and either reaffirms or removes the designation.

A. If the gross beta particle activity minus the naturally occurring potassium-40 beta particle activity at a sampling point has a running annual average (computed quarterly) less than or equal to fifty (50) pCi/L (screening level), the department may reduce the frequency of monitoring at that sampling point to once every three (3) years. Systems must collect all samples required in paragraph (2)(B)1. of this rule during the reduced monitoring period.

B. For systems in the vicinity of a nuclear facility, the department may allow the CWS to use environmental surveillance data collected by the nuclear facility in lieu of monitoring at the system's entry point(s), where the department determines such data is applicable to the community water system. In the event that there is a release from a nuclear facility, systems, using surveillance data must begin monitoring at the community water system's entry point(s) in accordance with paragraph (2)(B)1. of this rule.

2. Community water systems (both surface and ground water) designated by the department as using waters contaminated by effluents from nuclear facilities must sample for beta particle and photon radioactivity. Systems must collect quarterly samples for beta emitters and iodine-131 and annual samples for tritium and strontium-90 at each entry point to the distribution system (hereafter called a sampling point), beginning within one (1) quarter after being notified by the department. Systems already designated by the department as systems using waters contaminated by effluents from nuclear facilities shall continue to sample until the department reviews and either reaffirms or removes the designation.

A. Quarterly monitoring for gross particle activity shall be based on the analysis of monthly samples or the analysis of a composite of three (3) monthly samples. The former is recommended.

B. For iodine-131, a composite of five (5) consecutive daily samples shall be analyzed once each quarter. As ordered by the department, more frequent monitoring shall be conducted when iodine-131 is identified in the finished water.

C. Annual monitoring for strontium-90 and tritium shall be conducted by means of analysis of four (4) quarterly samples, or with department approval, a composite of samples collected in four (4) consecutive quarters.

D. If the gross beta particle activity minus the naturally occurring potassium-40 beta particle activity at a sampling point has a running annual average (computed quarterly) less than or equal to fifteen (15) pCi/L, the department may reduce the frequency of monitoring at that sampling point to every three (3) years. Systems must collect all samples required in paragraph (2)(B)2. of this rule during the reduced monitoring period.

E. For systems in the vicinity of a nuclear facility, the department may allow the CWSs to utilize environmental surveillance data collected by the nuclear facility in lieu of monitoring at the system's entry point(s), where the department determines if such data is applicable to the water system. In the event that there is a release from a nuclear facility, systems using surveillance data must begin monitoring at the community water system's entry point(s) in accordance with paragraph (2)(B)2. of this rule.

3. Community water systems designated by the department to monitor for beta particle and photon radioactivity shall not apply to the department for a waiver from the monitoring frequencies specified in paragraph (2)(B)1. or (2)(B)2. of this rule.

4. Community water systems may analyze for naturally occurring potassium-40 beta particle activity from the same or equivalent sample used for the gross beta particle activity analysis. Systems are allowed to subtract the potassium-40 beta particle activity value from the total gross beta particle activity value to determine if the screening level is exceeded. The potassium-40 beta particle activity must be calculated by multiplying elemental potassium concentrations (in mg/L) by a factor of 0.82.

5. If the gross beta particle activity minus the naturally occurring potassium-40 beta particle activity exceeds the screening level, an analysis of the sample must be performed to identify the major radioactive constituents present in the sample and the appropriate doses must be calculated and summed to determine compliance with paragraph (1)(C)1., using the formula in paragraph (1)(C)2. Doses must also be calculated and combined for measured levels of tritium and strontium to determine compliance.

6. Systems must monitor monthly at the sampling point(s) which exceed the maximum contaminant level in subsection (1)(C) beginning the month after the exceedance occurs. Systems must continue monthly monitoring until the system has established, by a rolling average of three (3) monthly samples, that the MCL is being met. Systems who establish that the MCL is being met must return to quarterly monitoring until they meet the requirements set forth in subparagraph (2)(B)1.B. or subparagraph (2)(B)2.A of this rule.

(C) General Monitoring and Compliance Requirements for Radionuclides.

1. The department may require more frequent monitoring than specified in subsections (2)(A) and (2)(B) of this rule, or may require confirmation samples at its discretion. The results of the initial and confirmation samples will be averaged for use in compliance determinations.

2. Each public water system shall monitor at the time designated by the department during each compliance period.

3. Compliance with subsections (1)(A)–(D) of this rule will be determined based on the analytical result(s) obtained at each sampling point. If one (1) sampling point is in violation of an MCL, the system is in violation of the MCL.

A. For systems monitoring more than once per year, compliance with the MCL is determined by a running annual average at each sampling point. If the average of any sampling point is greater than the MCL, then the system is out of compliance with the MCL.

B. For systems monitoring more than once per year, if any sample result will cause the running average to exceed the MCL at any sample point, the system is out of compliance with the MCL immediately.

C. Systems must include all samples taken and analyzed under the provisions of this section in determining compliance, even if that number is greater than the minimum required.

D. If a system does not collect all required samples when compliance is based on a running annual average of quarterly samples, compliance will be based on the running average of the samples collected.

E. If a sample result is less than the detection limit, zero (0) will be used to calculate the annual average, unless a gross alpha particle activity is being used in lieu of radium-226 and/or uranium. If the gross alpha particle activity result is less than detection, one-half (1/2) the detection limit will be used to calculate the annual average.

4. The department has the discretion to delete results of obvious sampling or analytic errors.

5. If the MCL for radioactivity set forth in subsection (1)(A)–(D) of this rule is exceeded, the operator of a community water system must give notice to the department pursuant to 10 CSR 60-7.010 and to the public as required by 10 CSR 60-8.010.

(3) Non-Community Water Systems. Non-community water systems must monitor for radionuclides as directed by the department.

AUTHORITY: section 640.100, RSMo 2000. Original rule filed May 4, 1979, effective Sept. 14, 1979. Amended: Filed April 14, 1981, effective Oct. 11, 1981. Rescinded and readopted: Filed Jan. 16, 2002.

PUBLIC COST: This proposed rule is anticipated to cost the Department of Natural Resources approximately three hundred twenty thousand eight hundred thirty-three dollars ($320,833) per year as an annualized cost for the duration of the rule and six hundred ninety-three (693) publicly-owned community water systems approximately $3,397,315 per year as an annualized cost for the duration of the rule. Detailed information may be found in the fiscal note accompanying this rule.

PRIVATE COST: This proposed rule is anticipated to cost five hundred one (501) privately-owned community water systems approximately five hundred twenty-two thousand three hundred eighty dollars ($522,380) per year in the aggregate as an annualized cost for the duration of the rule. Detailed information may be found in the fiscal note accompanying this rule.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may submit comments in support of or in opposition to this proposed rule. An information meeting and public hearing will be held at 10 a.m. on May 23, 2002 at the DNR Conference Center, 1738 East Elm Street, Jefferson City, Missouri. In preparing your comments, please include the regulatory citation and the ***Missouri Register*** *page number. Please explain why you agree or disagree with the proposed change and include alternative options or language.*

Written comments must be postmarked or received by June 14, 2002. Comments shall be mailed or faxed to: Ms. Linda McCarty, Public Drinking Water Program, PO Box 176, Jefferson City, MO 65102. The fax number is (573) 751-3110.

FISCAL NOTE
PUBLIC ENTITY COST

I. RULE NUMBER

Title:	10
Division:	60
Chapter:	4
Type of Rulemaking:	Proposed Rule
Rule Number and Name:	10 CSR 60-4.060 Maximum Radionuclide Contaminant Levels and Monitoring Requirements

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Natural Resources	Annualized Aggregate Cost* = $320,833 Estimated cost for the first full fiscal year (FY04) = $316,596**
693 Publicly owned community water systems	Annualized Aggregate Cost* = $3,397,315 Estimated cost for the first full fiscal year (FY04) = $3,397,315**

* Because the duration of the rule cannot be estimated accurately, an annualized aggregate cost is provided. The annualized costs shown are expected to remain constant for the duration of the rule.

** This does not take into account inflationary factors, which are unknown.

III. WORKSHEET

Costs to Department of Natural Resources:

1. Rule management cost - There will be technical staff of 0.5 FTE in the Public Drinking Waster Program and 1.0 FTE in the regional offices to implement monitoring and conduct compliance related activities.

FTE for implementation = 1.5		
Average Personal Services cost plus fringe benefits	$67,981	
Annualized Equipment & Expense cost		$ 9,612
Total direct implementation costs	$77,593	

2. Monitoring cost – Monitoring will take advantage of grandfathering provisions and opportunities for reduced monitoring in the rule as described in the assumptions below. After the initial monitoring period ends in December 2007, the monitoring costs will be generally consistent throughout the life of the rule.

Monitoring cost estimates by fiscal year

YEAR	RAD SAMPLES	TOTAL COST
2002	1,375	$145,355
2003	1,385	$146,605
2004	1,263	$239,003
2005	2,279	$240,374
2006	2,295	$241,786
2007	2,311	$243,240

Long term cost to DNR for radionuclides (rule management plus monitoring) = $320,833

Costs to 693 Publicly Owned Water Systems

Operational cost - The 693 publicly owned water systems covered by the radionuclide rule will have all analysis costs paid by DNR but will have to collect samples to send to the state's laboratory and review the report of the results of analysis.

For Public Water Systems (PWS) in compliance:

Average monitoring labor cost per PWS	0.47 hours
Average labor cost per hour	$21.33
Annual monitoring cost per PWS	$10.12

Total annualized cost for public water systems in compliance ($10.12 X 676 systems) = $6841

For Public Water Systems (PWS) in violation (on quarterly monitoring)

Average monitoring labor cost per PWS =	5.0 hours
Average labor cost per hour =	$21.33
Annual monitoring cost per PWS	$106.65

Total annualized cost for public water systems = ($106.65 X 17 systems) = $1813

Total annualized operational cost for all public water systems ($6841 + $1813) = $8654

2. Capital Cost – Those systems exceeding the maximum contaminant level will have to install treatment to remove radionuclides. Treatment cost varies based on the size of the water system (daily flow rate) and these differences were figured into the average and total cost calculations.

   Total annualized costs for public water systems exceeding the MCL = (17 PWS X $199,333 average cost to install treatment) = $3,388,661

IV. ASSUMPTIONS

1. General:
   - Because the monitoring for all radionuclide contaminants changes somewhat under the revised 4.060, the cost estimate for the amendment is based on the total monitoring plan as if it were all new. However, significant monitoring requirements are already in place under existing rules for radionuclides and the actual cost increase due to the rule is much less. The significant increases due to the amended rule are for a change in routine gross alpha monitoring from once in four years to once in three years and the separate Ra 226 and Ra 228 monitoring that will be required. Also entry point monitoring will increase the number of samples at each system over current distribution system monitoring.
   - Many radionuclide MCL violators have deferred the installation of treatment while these new rules were under development. Therefore much of the cost for treatment would have been expended under the existing rule if systems had not delayed.
   - Radionuclide rule initial monitoring period is 12/03 - 12/07, monitoring period for grandfather data is 6/00 - 12/03.

2. Gross Alpha Particle:
   - Monitoring based on a trigger level (MCL, 1/2 MCL, detect) - numbers derived from prior monitoring.
   - Plan to use grandfathered data which allows reduced monitoring to start in 12/03.

3. Uranium:
   - Use Gross Alpha screen to limit Uranium monitoring - monitoring estimates based on existing Gross Alpha data.
   - Gross Alpha violators are expected to do quarterly monitoring.
   - Radionuclide rule initial monitoring period is 12/03 - 12/07, monitoring period for grandfather data is 6/00 -

12/03.

4. Radium 226:
   - Use Gross Alpha screen to limit RA 226 monitoring - monitoring estimates based on existing Gross Alpha data.
   - Violators will do quarterly monitoring - numbers based on existing data.
   - Gross Alpha screen only good for 1/6 year reduced monitoring, need at least one Ra 226 test to get to 1/9 year reduced schedule.

5. Radium 228:
   - Estimated levels based on existing data on Ra-228.
   - Single Ra 228 sample after rule effective for grandfathering.
   - Plan to use grandfathered data which allows reduced monitoring to start in 12/03.

6. Distribution of water systems effected by the radionuclide regulation:

	MCL violators	other systems
Public	40%	58%
Private	60%	42%

Public water systems effected by the rule are 693 public water systems classified as community water systems and owned by public entities. This includes municipalities, public water supply districts, federal and state facilities, and other publicly owned water systems. Of this group, 17 water systems are expected to violate the Maximum Contaminant Level (MCL) in the rule for one or more contaminants, resulting in increased monitoring and the need for capitol improvements to achieve compliance.

7. EPA estimate of water system costs (labor only not including testing) from the December 7, 2000 Federal Register is used for water system's costs for operational expenses. EPA estimate of water system costs from the March 2000 Radionuclide Notice of Data Availability, Technical Support Document is used for water system's costs for capitol improvements. Capital costs are amortized over the expected life of the improvements to calculate an annualized cost.

8. DNR costs are based on the fact that the state is required to pay for the cost of analysis and that all radiological samples will be analyzed in the St. Louis County Department of Health laboratory at state expense. The annual monitoring plan cost is based on the cost of analysis in this contract lab and the numbers of samples each year based on routine monitoring frequencies and use of grandfathered data described previously for each contaminant. Also, staff identified to implement the radionuclide rule are already on board to implement the existing rule.

FISCAL NOTE
PRIVATE ENTITY COST

I. RULE NUMBER

Title:	10
Division:	60
Chapter: 4	
Type of Rulemaking:	Proposed Rule
Rule Number and Name:	10 CSR 60-4.060 Maximum Radionuclide Contaminant Levels and Monitoring Requirements

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	**Classification by types of the business entities which would likely be affected:**	**Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:**
501	Privately owned community water systems	Annualized Aggregate Cost* = $522,380

* Because the duration of the rule cannot be estimated accurately, an annualized aggregate cost is provided. The annualized costs shown are expected to remain constant for the duration of the rule.

III. WORKSHEET

Costs to 501 Privately Owned Water Systems:

1. Operational cost - The 501 privately-owned water systems covered by the radionuclide rule will have all analysis costs paid by DNR but will have to collect samples to send to the state's laboratory and review the report of the results of analysis.

   For Public Water Systems (PWS) in compliance:

   Average monitoring labor cost per PWS = 0.47 hours
   Average labor cost per hour = $21.33

   Annual monitoring cost per PWS $10.12

   Total annualized cost for private water systems ($10.12 X 475) = $4807

   For Public Water Systems (PWS) in violation/on quarterly monitoring:

   Average monitoring labor cost per PWS = 5.0 hours
   Average labor cost per hour = $21.33

   Annual monitoring cost per PWS $106.65

   Total annualized cost for private water systems ($106.65 X 26) = $2773

   Total annualized operational cost for all private water systems ($4807 + $2773) = $7580

2. Capital Cost – Those systems exceeding the Maximum Contaminant Level will have to install treatment to remove radionuclides. Treatment cost varies based on the size of the water system (daily flow rate) and these differences were figured into the average and total cost calculations.
   Total annualized costs for private water systems exceeding MCL (26 PWS X $19,800 average cost) = $514,800

IV. ASSUMPTIONS

1. General:
   - Because the monitoring for all radionuclide contaminants changes somewhat under the revised 4.060, the cost estimate for the amendment is based on the total monitoring plan as if it were all new. However, significant monitoring requirements are already in place under existing rules for radionuclides and the actual cost increase due to the rule is much less. The significant increases due to the amended rule are for a change in routine gross alpha monitoring from once in four years to once in three years and the separate Ra 226 and Ra 228 monitoring that will be required. Also entry point monitoring will increase the number of samples at each system over current distribution system monitoring.
   - Many radionuclide MCL violators have deferred the installation of treatment while these new rules were under development. Therefore much of the cost for treatment would have been expended under the existing rule if systems had not delayed.
   - Radionuclide rule initial monitoring period is Dec.2003-Dec. 2007, monitoring period for grandfather data is June 2000-Dec. 2003.

2. Gross Alpha Particle:
   - Monitoring based on a trigger level (MCL, 1/2 MCL, detect) - numbers derived from prior monitoring.
   - Plan to use grandfathered data which allows reduced monitoring to start in 12/03.

3. Uranium
   - Use Gross Alpha screen to limit Uranium monitoring - monitoring estimates based on existing Gross Alpha data
   - Gross Alpha violators expected to do quarterly monitoring
   - Radionuclide rule initial monitoring period is 12/03 - 12/07, monitoring period for grandfather data is 6/00 - 12/03

4. Radium 226
   - Use Gross Alpha screen to limit RA 226 monitoring - monitoring estimates based on existing Gross Alpha data.
   - Violators will do quarterly monitoring - numbers based on existing data.
   - Gross Alpha screen only good for 1/6 year reduced monitoring, need at least one Ra-226 test to get to 1/9 year reduced schedule.

5. Radium 228
   - Estimated levels based on existing data on Ra-228.
   - Single Ra-228 sample after rule effective for grandfathering.
   - Plan to use grandfathered data which allows reduced monitoring to start in 12/03.

6. Distribution of water systems effected by the radionuclide regulation:

	MCL violators	other systems		
Public	40%		58%	
Private		60%		42%

Public water systems effected by the rule are 501 privately owned water systems classified as community water systems. This includes subdivisions, mobile home parks, nursing homes and other community public water systems in private ownership. Of this group there are 26 water systems expected to violate the MCL levels in the rule for one or more contaminants resulting in increased monitoring and the need for capitol improvements to achieve compliance.

7. EPA estimate of water system costs (labor only not including testing) from the December 7, 2000 Federal Register is used for water system's costs for operational expenses. EPA estimate of water system costs from the March 2000 Radionuclide Notice of Data Availability, Technical Support Document is used for water system's costs for capitol improvements. Capital costs are amortized over the expected life of the improvements to calculate an annualized cost.

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 2—Income Tax

PROPOSED AMENDMENT

12 CSR 10-2.165 Net Operating Losses. The director proposes to amend section (3), renumber existing sections, and add a new section (6).

PURPOSE: This amendment clarifies the application of net operating losses and conforms the regulation to recent case law.

[(3) Non-Missouri Source Losses. Net operating loss from a year when the loss company was not subject to taxation by Missouri may not be used to determine Missouri taxable income.]

[(4)] **(3)** Recomputation of the Federal Income Tax Deduction for Separate Missouri Return Filers to Reflect Consolidated Return NOL. Taxpayer's federal income tax deduction shall be determined as follows: 1) a fraction shall be created, the numerator of which is the taxpayer's original taxable income reduced by its *pro rata* share of the consolidated loss and the denominator of which is the original consolidated taxable income reduced by total consolidated loss; and 2) total federal income tax of the consolidated group after deduction of the net operating loss is multiplied by the fraction to arrive at the adjusted federal income tax deduction.

(A) Example: First, allocate the loss to the loss companies.

Company	Line 30 Loss	To Total Percent	Allocated Consolidated Loss
A	($50,000)	45.455%	$34,091
B			
C	($50,000)	45.455%	$34,091
D			
E	($10,000)	9.090%	$ 6,818
	($110,000)	100%	($75,000)

Second, reduce original taxable income by the allocated loss.

Company	1980 Original Line 30	1983 Allocated Loss	New Taxable Income	To Total Percent	1139 Tax Liability
A	*[$1,000,000]*				
	$ 100,000	($34,091)	$ 65,909	26.460%	$19,845
B	$ 50,000		$ 50,000	20.073%	$15,055
C	$ 25,000	($34,091)			
D	$ 100,000		$100,000	40.146%	$30,110
E	$ 40,000	($ 6,818)	$ 33,182	13.321%	$ 9,990
	$ 315,000	($75,000)	$249,091	100%	$75,000

(B) Actual separate return loss will be used to compute separate return federal taxable income.

[(5)] **(4)** Leaving a Consolidated Group. A former member of a consolidated group who filed a separate Missouri return must recompute its federal income tax deduction to reflect any decrease in consolidated federal income tax liability attributable to an NOL carry back by the group and to reflect any change in its relative share of federal income tax liability attributable to the net operating loss carry back by the group.

[(6)] **(5)** Taxpayers who elect a proper method of computing the federal income tax deduction for a particular year shall continue to use that method to compute the effect of NOL on the federal income tax deduction for that year, regardless of the method used in the year of the loss.

(6) When a member of an affiliated group of corporations that files a federal consolidated return files a separate Missouri return or when a member included in a federal consolidated return is properly excluded from the Missouri consolidated return and its items of income and deduction are not included in the group's Missouri consolidated return, then the carryover attributes for the Missouri return may be different from the carryover attributes for the federal consolidated return. When the filing status or combination for the Missouri return for any taxable year is different from the federal filing status or combination for that taxable year, the taxpayer must follow the federal *Internal Revenue Code* (IRC) and regulations as they would apply to the facts and circumstances for the Missouri return. Under no circumstances may the same loss or deduction be used more than once for Missouri purposes. No loss or deduction will be allowed unless the taxpayer provides a schedule identifying the source of each loss or deduction.

*AUTHORITY: section 143.961, RSMo [1986] **2000**. Original rule filed Oct. 22, 1986, effective March 26, 1987. Amended: Filed Feb. 23, 1989, effective Aug. 11, 1989. Amended: Filed Jan. 10, 2002.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

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 the Department of Revenue, Office of Legislation and Regulations, PO Box 629, Jefferson City, MO 65105. 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.*

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 41—General Tax Provisions

PROPOSED AMENDMENT

12 CSR 10-41.030 Power of Attorney. The director proposes to amend section (2).

PURPOSE: This proposed amendment expands and clarifies the definition of a duly authorized representative.

(2) In order for a third party to qualify as a duly authorized representative, the taxpayer must execute and file with the Department of Revenue a power of attorney designating the third party as taxpayer's duly authorized representative. Power of Attorney/Disclosure of Information forms are available upon request from the Department of Revenue.

(A) A duly authorized representative may be a person currently employed by the taxpayer with job duties that include but are not limited to the following:

1. Responsible for answering correspondence dealing with state tax matters in a confidential manner;

2. Responsible for answering verbal communication requests from a tax authority dealing with state tax matters;

3. Responsible for reviewing state tax matters and submitting requested information from a tax authority; and

4. Responsible for preparing tax documents (but not necessarily responsible for signing such documents) to be filed with a tax authority;

(B) The person must submit a letter, upon request by the tax authority, that s/he has the authority to perform the above job duties as his/her regular course of work on tax matters and that the information requested is strictly to be used only for the purpose of determining the taxpayer's accurate tax calculation or to determine the amount of tax payments actually submitted by the taxpayer. Such document shall be on company letterhead with the company's address and phone number.

(C) State tax matters include all taxes and fees administered by the Department of Revenue.

AUTHORITY: section 32.057.2(1)(a), RSMo [Supp. 1997] 2000. Original rule filed June 17, 1986, effective Nov. 28, 1986. Amended: Filed May 12, 1987, effective Aug. 27, 1987. Amended: Filed June 15, 1998, effective Dec. 30, 1998. Amended: Filed Jan. 10, 2002.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

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 the Department of Revenue, Office of Legislation and Regulations, PO Box 629, Jefferson City, MO 65105. 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.*

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 113—Sales/Use Tax—Use Tax

PROPOSED RULE

12 CSR 10-113.200 Determining Whether a Transaction Is Subject to Sales Tax or Use Tax

PURPOSE: Chapter 144, RSMo, contains the statutory provisions governing application of sales and use tax. This rule explains how to determine whether a transaction is subject to sales tax or use tax. This rule also explains what transactions are exempt from sales tax under the interstate commerce exemption in section 144.030.1, RSMo.

(1) In general, a sale of tangible personal property is subject to sales tax if title to or ownership of the property transfers in Missouri unless the transaction is in commerce. The seller must collect and remit the sales tax. If a sale is not subject to Missouri sales tax but the property is stored, used or consumed in Missouri, the transaction is subject to use tax. If the transaction is subject to use tax and the seller has nexus with Missouri, the seller must collect the tax at the time of the sale and remit it to the department. If the seller does not collect the tax, the buyer must pay use tax directly to the department. If a sale of tangible personal property is not subject to Missouri sales tax and the property is not stored, used or consumed in this state, no Missouri tax is due. A sale of a taxable service is subject to sales tax if the service is performed in Missouri. If the service is not performed in Missouri, the sale is not subject to tax.

(2) Definition of Terms.

(A) Nexus—contact with the state sufficient under the *United States Constitution* to allow the state to exercise its power to tax.

(B) In commerce—a transaction is in commerce if the order is approved outside Missouri and the tangible personal property is shipped from outside Missouri directly to the buyer in Missouri.

(3) Basic Application of Taxes.

(A) Title transfers when the seller completes its obligations regarding physical delivery of the property, unless the seller and buyer expressly agree that title transfers at a different time. A recital by the seller and buyer regarding transfer of title is not the only evidence of when title passes. The key is the intent of the parties, as evidenced by all relevant facts, including custom or usage of trade.

(B) Unless otherwise agreed by the parties, when a Missouri seller delivers tangible personal property to a third-party common or contract carrier for delivery to an out-of-state location, title does not transfer in Missouri and the sale is not subject to Missouri sales tax. A buyer that carries its own goods is not acting as a common or contract carrier.

(C) When an out-of-state seller delivers tangible personal property to a third-party common or contract carrier for delivery to Missouri, title transfers in Missouri. If delivery is made to seller or an agent of seller (other than a third-party common or contract carrier) in Missouri and subsequently delivered to the buyer in Missouri, the sale is subject to Missouri sales tax. If delivery is made directly from the out-of-state seller to the buyer in Missouri, the sale is subject to sales tax if the order was approved in Missouri. If the order was approved outside Missouri, the sale is not subject to sales tax, but, but the transaction is subject to use tax unless otherwise exempt.

(D) Leases of tangible personal property generally follow the same taxing guidelines as sales of tangible personal property. Leases of tangible personal property by Missouri lessors are subject to sales tax if the lessee obtains possession in Missouri. Leases of tangible personal property by non-Missouri lessors are subject to Missouri sales tax if the tangible personal property is located in Missouri prior to entering the lease and the lessee obtains possession in Missouri. Leases of tangible personal property that are not subject to sales tax are subject to use tax if the lessee stores, uses or consumes the tangible personal property in Missouri.

(4) Examples.

(A) A seller accepts orders in Missouri. The seller fills orders from its warehouses located both within and without Missouri. A customer orders goods from the seller in Missouri. The order is filled from an out-of-state warehouse and shipped directly to the customer. The transactions are subject to sales tax because the order is accepted in Missouri.

(B) A customer purchases custom fabricated goods from a Missouri seller. The order for the goods must be approved at the seller's out-of-state headquarters. The goods will be shipped by the seller directly from the out-of-state facility to the customer's Missouri location. The sale is subject to use tax because the order was approved out-of-state and the goods were shipped from out-of-state directly to the customer in Missouri. The seller must collect and remit the use tax.

(C) A Missouri seller sells pens, calendars, cups and similar items with the customer's logo printed on them. The seller sends the orders to an out-of-state supplier to custom print the items that are drop shipped directly to the customer in Missouri. The sale is subject to sales tax because the customer's order to taken by the seller is approved in Missouri.

(D) While visiting Missouri, an Illinois resident purchases a set of luggage at a Missouri department store. The buyer requests the seller to ship the luggage to an Illinois address. The sale is not subject to Missouri sales or use tax because title does not transfer in Missouri.

(E) An out-of-state customer purchases a kitchen table set from a Missouri seller. Under the terms of the sale, the seller is to ship the set to a Missouri location for storage until the customer is able to arrange to pick up the set with its truck or by third-party carrier. The sale is subject to sales tax.

(F) An Illinois construction contractor leases a backhoe from an Illinois lessor. Prior to entering the lease, the backhoe was located in Missouri. The contractor takes possession of the backhoe at the Missouri location. The lease is subject to sales tax.

(G) A seller has no place of business in Missouri. A sales representative who works from a non-Missouri location visits Missouri customers. All orders are accepted outside Missouri and goods are shipped to Missouri customers from outside the state. The seller must collect and remit use tax.

(H) A seller has a location in Missouri. A Missouri customer places an order directly with the seller's non-Missouri location via e-mail. The goods are shipped directly to the Missouri customer from the non-Missouri location. The Missouri office does not participate in the sale. The seller must collect and remit use tax.

AUTHORITY: sections 144.270 and 144.705, RSMo 2000. Original rule filed Jan. 10, 2002.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule 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 rule with the Department of Revenue, Office of Legislation and Regulations, PO Box 629, Jefferson City, MO 65105. 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.*

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 117—Sales/Use Tax—Local Taxes

PROPOSED RULE

12 CSR 10-117.100 Determining the Applicable Local Sales or Use Tax

PURPOSE: Sections 32.085 and 32.087, RSMo, authorize political subdivisions to adopt a local sales tax. Section 144.757, RSMo, authorizes any county or municipality to adopt a local use tax at a rate equal to the rate of the local sales tax in effect in that jurisdiction. This rule explains which local jurisdiction's tax applies to a transaction subject to state sales or use tax. This rule does not address the sale or lease of motor vehicles, trailers, boats and outboard motors.

(1) In general, taxing entities may impose a local sales tax on transactions that are subject to state sales tax. Counties and municipalities may also impose a local use tax at a rate no higher than the rate of the local sales tax in effect in that jurisdiction. When a transaction is subject to state sales tax, the transaction is also subject to the local sales tax adopted by the political subdivision where the seller's place of business is located. When a transaction is subject to state use tax, the transaction is also subject to the local use tax adopted by the county or municipality where the tangible personal property is first delivered in Missouri.

(2) Definition of Term.

(A) Place of business—a place where business is transacted in Missouri and that is maintained, occupied or used, directly or indirectly, by a seller or agent of the seller. A place that is temporarily maintained, occupied or used may be a place of business if all orders received at the temporary location are immediately filled from that location.

(3) Basic Application of Taxes.

(A) Sales Tax.

1. All sales of tangible personal property subject to state sales tax in for which the order is taken at a Missouri place of business are subject to the local sales tax in effect at that place of business.

2. If an outside sales employee or agent who works out of a Missouri place of business takes an order for a sale of tangible personal property subject to state sales tax, the sale is subject to the local sales tax in effect at the place of business from which the employee or agent works.

3. If an outside sales employee or agent who does not work out of a Missouri place of business takes an order in Missouri for a sale of tangible personal property subject to sales tax, the sale is subject to the local sales tax in effect where the order is taken.

4. If the order is taken outside Missouri for a sale of tangible personal property subject to Missouri sales tax, the sale is subject to the local sales tax in effect where title to the item transfers to the purchaser.

5. A sale of services subject to state sales tax is subject to the local sales tax in effect where the service is rendered or delivered.

6. Metered sales (e.g., natural gas and utilities) subject to state sales tax are subject to the local sales tax in effect where the meter is located.

(B) Use Tax—A sale of tangible personal property subject to state use tax is subject to the local use tax in effect where the item is first delivered in Missouri.

(C) Both Sales and Use Tax.

1. Sales of metered water services, electricity, electrical current and natural, artificial and propane gas, wood, coal or home heating oil for domestic use may be subject to local tax at the meter's location even though they are exempt from state tax.

2. When goods otherwise subject to state sales or use tax are purchased under a resale exemption certificate and later withdrawn from inventory for the purchaser's own use, the goods are subject to the local sales or use tax that would have been due if the original purchase had not been exempt. If the goods are commingled so that the purchaser cannot determine where the goods withdrawn from inventory were originally purchased, the goods are subject to the local sales tax in effect at the location of the purchaser.

3. All provisions of the state sales and use tax law apply to local tax. The tax permits, exemption certificates, and retail licenses required for the administration and collection of state sales and use tax also satisfy the requirements for local sales and use tax.

(4) Examples.

(A) A seller has a place of business in Missouri. The seller's outside sales people work out of seller's place of business in Missouri. These sales people accept orders at customer locations. Goods are shipped from plants and warehouses located throughout Missouri and in other states. Sales to customers located in Missouri are subject to the local sales tax in effect at the seller's place of business.

(B) An outside sales person takes an order in Missouri. The salesperson works out of an office located in a neighboring state. The salesperson fills the order from inventory, the salesperson carries and receives payment. The sale is subject to the local sales tax in effect where the order was taken. The result is the same even if the seller also has a place of business in Missouri because the salesperson does not work out of the Missouri location.

(C) A manufacturer accepts an order at its office outside Missouri from a customer in Missouri. As part of the sale, the manufacturer delivers and assembles the goods in Missouri. The parties agree that title to the goods transfers after assembly. The sale is subject to the local sales tax in effect where title to the

goods transfers. The result is the same even if the seller also has a place of business in Missouri.

(D) A sign manufacturer accepts an order at its office outside Missouri from a customer in Missouri. The customer takes title and possession of the sign at the manufacturer's location outside Missouri and has the sign delivered to the customer's Missouri location. The purchase is subject to the local use tax in effect where the sign is first delivered in Missouri.

(E) A refinery located outside Missouri sells fuel to Missouri customers through an agent located in Missouri. The customers are billed for fuel usage indicated on a meter located at the agent's Missouri facility. The sales are subject to the local sales tax in effect where the meter is located.

(F) A lumberyard purchases lumber exempt from tax because the lumber is purchased for resale. The lumberyard removes lumber from its inventory to build a storage shed at the lumberyard. The lumberyard should accrue tax on the lumber removed from inventory based on the type (sales/use) and rate of tax that would have been paid if the original purchase had not been exempt. If the lumber is commingled with lumber from other suppliers so that the lumberyard cannot determine where the lumber used was purchased, the lumber is subject to the local sales tax in effect at the lumberyard.

(G) A taxpayer operates a mobile food service business. It sells sandwiches and drinks from its trucks. Local sales tax is due based upon the location where the trucks are parked because all orders are taken and filled and all payments are made at that location.

(H) A water company provides service to residents of a community. Local sales tax is due based upon the location of the customers' residence.

(I) Taxpayer has four (4) places of business in Missouri, which participate in a sale. Location A takes the initial order. Location B approves the application for credit. Location C ships the goods from inventory contained in the warehouse to the customer instate. Location D bills the customer. The applicable local sales tax is the tax in effect at Location A, where the initial order is taken.

(J) A seller located in Kirkwood, Missouri, which is located in St. Louis County, receives an order from a buyer located in Macon, Missouri. The merchandise is shipped to Columbia, Missouri. The sale is subject to Kirkwood city and St. Louis County sales taxes.

AUTHORITY: sections 144.270 and 144.705, RSMo 2000. Original rule filed Jan. 10, 2002.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule 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 rule with the Department of Revenue, Office of Legislation and Regulations, PO Box 629, Jefferson City, MO 65105. 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.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 40—Division of Family Services
Chapter 60—Licensing of Foster Family Homes

PROPOSED AMENDMENT

13 CSR 40-60.050 Care of Children. The division is amending section (3).

PURPOSE: This proposed amendment revises the procedures relating to education and training of children in foster care.

(3) Education and Training.

(A) *[The legal custodian (the individual or agency having responsibility for the care, custody and control of a child) or the representative of the licensed child placing agency shall have the authority to determine the educational and vocational plan for the foster child in cooperation with the natural parent(s), foster parents and child of appropriate age, twelve (12) and above.]* **Educational choice and planning will be completed for all children in out-of-home care. Planning will be focused on what is in the best interest of the child and in accordance with section 167.031, RSMo.**

(B) *[Foster parent(s) shall observe the legal requirements and the plan of school attendance developed by the legal custodian.]* **For children for whom legal custody has been transferred to the Division of Family Services by court order, the Division of Family Services, as legal custodian, shall have the authority to determine the educational and vocational plan for the foster child in cooperation with the parent(s), foster parents and child who is age twelve (12) or above.**

(C) Any educational plan other than that which takes place in the traditional public school setting shall be approved by the juvenile court that has legal jurisdiction of the child.

(D) Foster parent(s) shall observe the legal requirements and the plan of school attendance developed by the Division of Family Services.

*AUTHORITY: section 210.221, RSMo [1986] **2000**. Original rule filed May 10, 1978, effective Sept. 11, 1978. Amended: Filed June 28, 1983, effective Nov. 11, 1983. Amended: Filed Jan. 8, 2002.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

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 the Division of Family Services, Children's Services, 615 Howerton Court, PO Box 88, Jefferson City, MO 65103-0088. 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.*

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 90—Missouri Senior Rx Program
Chapter 1—Eligible Seniors

PROPOSED RULE

19 CSR 90-1.010 Definitions

PURPOSE: This rule establishes the definitions that apply to 19 CSR 90-1.010 to 19 CSR 90-1.090 (eligible seniors) for implementation and administration of the Missouri Senior Rx Program.

(1) Applicant—A person who applies to participate in the program, either personally or through an authorized agent.

(2) Application—The form completed and submitted to the commission by an applicant which is used by the commission to determine the applicant's eligibility to participate in the Missouri Senior Rx Program. Also, the form completed and submitted to

the commission by a claimant which is used by the commission to redetermine the claimant's eligibility to participate in the program.

(3) Claim—In the case of a claimant, presentation to a participating pharmacy of a valid senior prescription card in order to receive prescription drugs.

(4) Claimant—A resident of this state who meets the eligibility conditions set forth in sections 208.550 to 208.571, RSMo and the regulations promulgated thereunder.

(5) Coinsurance—The percentage which is required under the program to be paid by claimant for each prescription.

(6) Deductible—The dollar amount which is required under the program to be paid annually by the claimant before participation in the program.

(7) Enrollment fee—The dollar amount which is required to be paid for enrollment in the program. Enrollment fee will only be required after application approval.

(8) Generic drug—Generic drug as defined in section 208.550(7), RSMo.

AUTHORITY: section 208.553.3(5), RSMo Supp. 2001. Emergency rule filed Jan. 16, 2002, effective March 1, 2002, expires Aug. 27, 2002. Original rule filed Jan. 16, 2002.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule 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 rule with the Department of Health and Senior Services, Missouri Senior Rx Program; Joyce Brandt, 205 Jefferson Street, Room 1310, Jefferson City, MO 65101. 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.*

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 90—Missouri Senior Rx Program
Chapter 1—Eligible Seniors

PROPOSED RULE

19 CSR 90-1.020 Eligibility and Application Process

PURPOSE: This rule establishes eligibility and the application process for eligible seniors for the Missouri Senior Rx Program.

(1) Eligibility.

(A) To be eligible to participate in the program, an applicant shall:

1. Meet the eligibility requirements in sections 208.550 to 208.571, RSMo; and

2. The commission shall determine the income level necessary to be eligible for the program under sections 208.556.4(1), (2), and (3). The commission may restrict income eligibility limits as a last resort to obtain program cost control.

(B) Program eligibility is established for a fiscal year when a valid program application is approved, unless there is a cause for earlier termination.

(2) Application Process.

(A) The application process includes all activity relating to a request for eligibility determination. It begins with the receipt by the commission of an application and continues until there is an official written disposition of the request by the third-party administrator.

(B) The application shall require the applicant to attest to the following information:

1. Age;
2. Residence;
3. Any third-party health insurance coverage;
4. Previous year prescription drug costs;
5. Annual household income for an individual or couple, if married;
6. Date of birth;
7. Gender;
8. Race (optional);
9. Social Security number (optional);
10. Self-certification of Missouri residency;
11. Self-certification of household income;
12. Certification and authorization statement; and
13. Signature of applicant or authorized agent.

(C) The applicant shall submit with the application the following documentation:

1. Documentation of residence shall include one (1) of the following: a valid drivers license; a valid Missouri state identification card; certification of residency in a nursing home; or a completed and signed federal, state, or local income tax return with the applicant's name and address preprinted on it.

2. Documentation of age shall include one (1) of the following: birth certificate; delayed birth certificate; certified hospital records; a valid drivers license or a valid Missouri state identification card.

3. Documentation of income shall be the documentation required to determine income pursuant to sections 135.010 to 135.035, RSMo.

(D) The applicant shall certify and attest that the answers to questions on the application, the items on the application form and the required documentation are true and accurate to the best of the applicant's knowledge. Before the application can be processed, the certification shall be dated and signed by the applicant or authorized agent and any other party whose signature is required in the instructions which accompany the application form.

(E) The applicant shall consent to a review of information on the application form and of the required documentation, with reasonable prior notice to the applicant, if selected for review. Program eligibility will be denied or terminated if the applicant refuses to cooperate with the request.

(F) The applicant shall assist the commission, division, or third-party administrator in securing corroboration of the applicant's information on the application form and required documentation when necessary. Program eligibility will be denied or terminated if the applicant refuses to cooperate with the request.

(G) The applicant shall submit an enrollment fee in the amount as established by the commission on an annual basis.

(3) Denial of Application.

(A) An application shall be denied if an applicant fails to comply with the provisions of sections 208.550 to 208.571, RSMo and the regulations promulgated thereunder.

(B) An applicant may apply for a refund of the enrollment fee if the commission denies his or her eligibility because the commission restricted the income eligibility limits as a last resort to obtain program cost control pursuant to section 208.556.4(3), RSMo.

AUTHORITY: section 208.553.3(5), RSMo Supp. 2001. Emergency rule filed Jan. 16, 2002, effective March 1, 2002, expires Aug. 27, 2002. Original rule filed Jan. 16, 2002.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule 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 rule with the Department of Health and Senior Services, Missouri Senior Rx Program; Joyce Brandt, 205 Jefferson Street, Room 1310, Jefferson City, MO 65101. 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.*

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 90—Missouri Senior Rx Program
Chapter 1—Eligible Seniors

PROPOSED RULE

19 CSR 90-1.030 General Payment Provisions

PURPOSE: This rule establishes the general payment provisions for eligible seniors for the Missouri Senior Rx Program.

(1) An applicant becomes eligible for the program when the application is received and approved by the third-party administrator, the applicant has paid the enrollment fee, the applicant receives a program identification card, and the program identification card is activated.

(2) An applicant for the program shall pay, in the initial year, an enrollment fee of twenty-five dollars ($25) if the applicant has an annual household income at or below twelve thousand dollars ($12,000) for an individual or at or below seventeen thousand dollars ($17,000) for a married couple or an enrollment fee of thirty-five dollars ($35) if the applicant has an annual household income between twelve thousand one dollars and seventeen thousand dollars ($12,001–$17,000) for an individual or between seventeen thousand one dollars and twenty-three thousand dollars ($17,001–$23,000) for a married couple. The enrollment fee may be adjusted by the commission to obtain program cost control under sections 208.550 to 208.571, RSMo.

(3) A claimant for the program shall pay, in the initial year, a deductible of two hundred fifty dollars ($250) if the claimant has an annual household income at or below twelve thousand dollars ($12,000) for an individual or at or below seventeen thousand dollars ($17,000) for a married couple or a deductible of five hundred dollars ($500) if the claimant has an annual household income between twelve thousand one dollars and seventeen thousand dollars ($12,001–$17,000) for an individual or between seventeen thousand one dollars and twenty-three thousand dollars ($17,001–$23,000) for a married couple. The deductible may be adjusted by the commission to obtain program cost control under sections 208.550 to 208.571, RSMo.

(4) A claimant for the program shall pay a forty percent (40%) coinsurance. The coinsurance may be adjusted by the commission on an annual basis or through the third-party administrator during the plan (or fiscal) year to obtain program cost control under sections 208.550 to 208.571, RSMo.

AUTHORITY: section 208.553.3(5), RSMo Supp. 2001. Emergency rule filed Jan. 16, 2002, effective March 1, 2002, expires Aug. 27, 2002. Original rule filed Jan. 16, 2002.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule will cost eligible seniors (those with an income at or below twelve thousand dollars ($12,000) for an individual or seventeen thousand dollars ($17,000) per couple) $44,858,000 for the first year and $73,107,990 for each year thereafter. This proposed rule will cost eligible seniors (those with an income between twelve thousand one dollars ($12,001) and seventeen thousand dollars ($17,000) for an individual and twenty-three thousand dollars ($23,000) for a couple) $19,407,200 for the first year and $30,961,250 for each year thereafter.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Health and Senior Services, Missouri Senior Rx Program; Joyce Brandt, 205 Jefferson Street, Room 1310, Jefferson City, MO 65101. 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.*

FISCAL NOTE
PRIVATE ENTITY COST

I. RULE NUMBER

Title: 19 - Department of Health and Senior Services

Division: 90 - Missouri Senior Rx Program

Chapter: 1 - Eligible Seniors

Type of Rule Making: Proposed Rule

Rule Number and Name: 19 CSR 90-1.030 General Payment Provisions

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by type of the business entities which would likely be affected:	Estimate n the aggregate as to the cost of compliance with the rule by the affected entities.
Year 1 - 40,780 Year 2 60,570 Re-enrollment costs are included in the rule for process of re-enrollment. Subsequent years should have similar enrollment to year 2. Re-enrollment costs are included in the rule for process of re-enrollment.	Missouri senior citizens with income at or below $12,000 for an individual or $17,000 per couple	Year 1 - Approximately $1,019,500 for enrollment fees $10,195,000 for deductible $33,643,500 for coinsurance on avg. $44,858,000 total cost Annually thereafter - Approximately $15,142,500 for deductible $57,965,490 for coinsurance on avg. $73,107,990 total cost Subsequent years will have deductible costs similar to year 2. The coinsurance costs are difficult to predict as prescription drug costs continue to increase.
Year 1 14,270 Year 2 –21,250 Re-enrollment costs are included in the rule for process of re-enrollment. Subsequent years should have similar enrollment to year 2. Re-enrollment costs are included in the rule for process of re-enrollment.	Missouri senior citizens with income between $12,001 and $17,000 for an individual or between $17,001 and $23,000 for a couple	Year 1 - Approximately $ 499,450 for enrollment fees $ 7,135,000 for deductible $11,772,750 for coinsurance on avg. $19,407,200 total cost Annually thereafter - Approximately $10,625,000 for deductible $20,336,250 for coinsurance on avg. $30,961,250 total cost Subsequent years will have deductible costs similar to year 2. The coinsurance costs are difficult to predict as prescription drug costs continue to increase.

III. WORKSHEET

Enrollment Fees Year 1			Deductible Year 1			Coinsurance of 40% FY 2003		
40,780	$25	$1,019,500	40,780	$250	$10,195,000	40,780	$825	$33,643,500
14,270	$35	$499,450	14,270	$500	$7,135,000	14,270	$825	$11,772,750
		$1,518,950			$17,330,000			$45,416,250
			Annually Thereafter					
			60,570	$250	$15,142,500	60,570	$957	$57,965,490
			21,250	$500	$10,625,000	21,250	$957	$20,336,250
					$25,767,500			$78,301,740

On average the senior will pay approx. $825 in coinsurance for the first year.

IV. ASSUMPTIONS

Enrollment assumptions of 55,050 for the first year and 81,820 for year 2 are based on data from the actuary, William M. Mercer, Inc., who was utilized by the Governor's Senior Prescription Drug Task Force and the Department of Health and Senior Services for fiscal note purposes for HB3 and SB4 which were truly agreed and finally passed during the 2001 Special Session. It is assumed all participants will meet a deductible of either $250 or $500. Average drug cost assumptions of approximately $2,062 per participant for the first year is based on data from William M. Mercer, Inc. The calculations for coinsurance assume the average senior will pay $825 ($2062*.40). Until the program gains cost and utilization experience, it is difficult to predict the maximum dollars spent by each participant. The program's benefits are capped at $5,000 per participant per year. If a member reaches the $5,000 cap, they will have spent $3,334 on coinsurance. For year 2, an increase in prescription drug costs of 16% was applied. This information is drawn from trends established by William M. Mercer for previous years. It is expected that subsequent years will have enrollment similar to year 2, therefore, deductible costs should be similar to year 2. Since pharmacy costs continue to increase dramatically each year, it is difficult to predict the actual coinsurance expenditures for the program. Subsequent years' coinsurance costs may increase at the annual pharmacy trend rate.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 90—Missouri Senior Rx Program
Chapter 1—Eligible Seniors

PROPOSED RULE

19 CSR 90-1.040 Claimant's Responsibilities

PURPOSE: This rule sets forth the claimant's responsibilities as a participant in the Missouri Senior Rx Program.

(1) The claimant shall notify the third-party administrator when the claimant no longer meets the eligibility requirements as set forth in sections 208.550 to 208.571, RSMo and regulations promulgated thereunder. This does not include income eligibility that is determined at initial enrollment and annual reenrollment into the program.

(2) The authorized agent or other responsible person shall notify the third-party administrator of the death of a claimant within sixty (60) days of the claimant's death.

AUTHORITY: section 208.553.3(5), RSMo Supp. 2001. Emergency rule filed Jan. 16, 2002, effective March 1, 2002, expires Aug. 27, 2000. Original rule filed Jan. 16, 2002.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule 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 rule with the Department of Health and Senior Services, Missouri Senior Rx Program; Joyce Brandt, 205 Jefferson Street, Room 1310, Jefferson City, MO 65101. 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.*

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 90—Missouri Senior Rx Program
Chapter 1—Eligible Seniors

PROPOSED RULE

19 CSR 90-1.050 Process for Reenrollment into the Program

PURPOSE: This rule establishes the process for reenrollment into the Missouri Senior Rx Program.

(1) A claimant shall submit an annual application and all required documentation as set forth in 19 CSR 90-1.020 for determination of eligibility to reenroll in the program.

(2) An applicant for reenrollment in the program becomes eligible when the application is received and approved by the third-party administrator, the applicant has paid the enrollment fee, the applicant receives a program identification card, and the program identification is activated.

AUTHORITY: section 208.553.3(5), RSMo Supp. 2001. Emergency rule filed Jan. 16, 2002, effective March 1, 2002, expires Aug. 27, 2002. Original rule filed Jan. 16, 2002.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule will cost eligible seniors (those with an income at or below twelve thousand dollars ($12,000) for an individual or seventeen thousand dollars ($17,000) per couple) $1,514,250 annually in the aggregate. This proposed rule will cost eligible seniors (those with income between twelve thousand one dollars ($12,001) and seventeen thousand dollars ($17,000) for an individual or between seventeen thousand one dollars ($17,001) and twenty-three thousand dollars ($23,000) for a couple) $743,750 annually in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Health and Senior Services, Missouri Senior Rx Program; Joyce Brandt, 205 Jefferson Street, Room 1310, Jefferson City, MO 65101. 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.*

FISCAL NOTE
PRIVATE ENTITY COST

I. RULE NUMBER

Title: 19 - Department of Health and Senior Services

Division: 90 - Missouri Senior Rx Program

Chapter: 1 - Eligible Seniors

Type of Rule Making: Proposed Rule

Rule Number and Name: 19 CSR 90-1.050 Process for Reenrollment into the Program

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by type of the business entities which would likely be affected:	Estimate n the aggregate as to the cost of compliance with the rule by the affected entities.
Year 1 – 0 entities affected Year 2 – 60,570 It is assumed that subsequent years will have similar enrollment to year 2	Missouri senior citizens with income at or below $12,000 for an individual or $17,000 per couple	Year 1 will have no re-enrollment costs these costs are in the general payment provision Year 2 will have an approximate cost of $1,514,250 for re-enrollment fees Subsequent years will have an approximate cost similar to year 2
Year 1 - 0 entities affected Year 2 - 21,250 It is assumed that subsequent years will have similar enrollment to year 2	Missouri senior citizens with income between $12,001 and $17,000 for an individual or between $17,001 and $23,000 for a couple	Year 1 will have no re-enrollment costs these costs are in the general payment provision Year 2 will have an approximate cost of $743,750 for re-enrollment fees Subsequent years will have an approximate cost similar to year 2

III. WORKSHEET

	Year 2	
60,570	$25	$1,514,250
21,250	$35	$743,750
		$2,258,000

IV. ASSUMPTIONS

Enrollment assumptions of 81,820 for year 2 are based on data from the actuary, William M. Mercer, Inc., who was utilized by the Governor's Senior Prescription Drug Task Force and the Department of Health and Senior Services for fiscal note purposes for HB3 and SB4 which were truly agreed and finally passed during the 2001 Special Session. Subsequent years are assumed to have enrollment similar to year 2.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 90—Missouri Senior Rx Program
Chapter 1—Eligible Seniors

PROPOSED RULE

19 CSR 90-1.060 Authorized Agent

PURPOSE: This rule sets forth individuals who are eligible to act as an authorized agent for the purpose of submitting an application on behalf of an eligible senior.

(1) When an applicant is adjudicated incompetent, the third-party administrator shall accept the court-appointed guardian as an authorized agent for the purpose of initiating an application on behalf of the applicant.

(2) If an applicant is incapable of submitting an application on his or her own behalf, the third-party administrator shall accept one of the following persons designated by the applicant, listed in the order of priority, as an authorized agent for the purpose of initiating the application if a power of attorney or agent's affidavit of authority accompanies the applicant:

(A) A close relative by blood or marriage, such as a parent, spouse, son, daughter, brother, or sister;

(B) A representative payee designated by the Social Security Administration; or

(C) A representative of a public/private social service agency, of which the applicant is a client, who has been designated by the agency to so act.

AUTHORITY: section 208.553.3(5), RSMo Supp. 2001. Emergency rule filed Jan. 16, 2002, effective March 1, 2002, expires Aug. 27, 2002. Original rule filed Jan. 16, 2002.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule 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 rule with the Department of Health and Senior Services, Missouri Senior Rx Program; Joyce Brandt, 205 Jefferson Street, Room 1310, Jefferson City, MO 65101. 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.*

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 90—Missouri Senior Rx Program
Chapter 1—Eligible Seniors

PROPOSED RULE

19 CSR 90-1.070 Program Identification Card

PURPOSE: This rule sets forth the requirements for the possession and use of the program identification card by the eligible senior or his or her authorized agent.

(1) The program identification card shall be retained in the possession of the claimant or the claimant's authorized agent and not be given to a participating pharmacy except for inspection and immediate return. The claimant remains responsible for its appropriate use to claim benefits. In no case may a claimant send the program identification card through the mail to a participating provider.

(2) A claimant may claim program benefits only if the claimant, or the claimant's authorized agent, presents the participating pharmacy with a valid program identification card.

(3) When a claimant is adjudicated incompetent or is incapable to claim program benefits, the claimant's authorized agent may claim such benefits on behalf of the claimant. Authorized agents must present the participating pharmacy with the claimant's program identification card; inform the pharmacy of their designation; and sign their own name and indicate their relationship to the claimant.

(4) Eligibility for the program benefits terminates upon the death of a claimant.

AUTHORITY: section 208.553.3(5), RSMo Supp. 2001. Emergency rule filed Jan. 16, 2002, effective March 1, 2002, expires Aug. 27, 2002. Original rule filed Jan. 16, 2002.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule 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 rule with the Department of Health and Senior Services, Missouri Senior Rx Program; Joyce Brandt, 205 Jefferson Street, Room 1310, Jefferson City, MO 65101. 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.*

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 90—Missouri Senior Rx Program
Chapter 1—Eligible Seniors

PROPOSED RULE

19 CSR 90-1.080 Termination from the Program

PURPOSE: This rule enumerates the reasons that an eligible senior will be terminated from participation in the Missouri Senior Rx Program.

(1) A claimant shall be terminated from the program if he or she no longer meets the eligibility requirements under sections 208.550 to 208.571, RSMo or regulations promulgated thereunder. This does not include income eligibility that is determined at initial enrollment and annual reenrollment into the program.

(2) A claimant shall be terminated from the program as set forth in section 208.556.18, RSMo.

AUTHORITY: section 208.553.3(5), RSMo Supp. 2001. Emergency rule filed Jan. 16, 2002, effective March 1, 2002, expires Aug. 27, 2002. Original rule filed Jan. 16, 2002.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule 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 rule with the Department of Health and Senior Services, Missouri Senior Rx Program; Joyce Brandt, 205 Jefferson Street, Room 1310, Jefferson City, MO 65101. 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.*

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 90—Missouri Senior Rx Program
Chapter 1—Eligible Seniors

PROPOSED RULE

19 CSR 90-1.090 Appeal Process

PURPOSE: This rule sets forth the process to appeal from the denial of or termination from participation in the Missouri Senior Rx Program.

(1) Applicants for, or claimants of, program benefits shall have the right to appeal the denial of an application for benefits or termination from the program, except for a denial or termination because the applicant or claimant has refused to submit requested information or documentation or any other information necessary to establish eligibility for the program or a termination as a result of the end of a plan (fiscal) year. Applicants for, or claimants of, program benefits shall not have the right to appeal the implementation of any cost-control measures.

(2) The third-party administrator shall provide written notice of the denial or termination directly to the applicant or claimant or their authorized agent.

(A) The notice shall include the reasons for the denial or termination;

(B) A notice of termination shall be effective no sooner than ten (10) calendar days after the date of the notice;

(C) The denial or termination may be appealed;

(D) If an appeal is made, such appeal shall be filed with the third-party administrator within thirty (30) calendar days following the date of the notice of denial or termination of program benefits.

(3) Applicant or claimant shall file an appeal within thirty (30) calendar days following the date of the notice of denial or termination with the third-party administrator.

(A) In the case of appeal of a termination of program benefits, filing of an appeal within the allowed thirty (30) calendar days shall continue benefits from the date the appeal is received by the third-party administrator until the end of the appeal process.

(B) The appeal shall include the applicant's or claimant's name, address, telephone number, program enrollment number, and the reasons for the appeal.

(4) The third-party administrator will initially seek to resolve all applicant or claimant appeals through a letter-ruling process.

(A) The letter-ruling process shall consist of the following steps:

1. The third-party administrator shall review the denial or termination, including a review of applicable documentation, to determine any possibility of an error.

2. Within thirty (30) calendar days of the receipt of the appeal, a letter shall be sent to the applicant or claimant which sets forth the results of the review. The letter will cite the reason for the results of the review and inform the applicant or claimant of the right to a formal hearing before the third-party administrator.

(B) Results and opinions set forth in letter rulings shall have no precedential authority and are subject to withdrawal or change at any time to conform with new or different interpretations of the law.

(5) If an applicant or claimant who has filed an appeal under section (3) of this rule disagrees with the third-party administrator's letter ruling, the applicant or claimant may request a formal hearing on the appeal.

(A) The applicant or claimant shall file a written request for a formal hearing within ten (10) calendar days of the date of the letter ruling by the third-party administrator.

(B) When the third-party administrator receives the formal request for a hearing, the third-party administrator shall appoint a hearing officer to address and preside over the formal hearing.

(6) The authorized agent shall have the right to file an appeal on behalf of the applicant or claimant.

(7) If the claimant does not prevail in his or her appeal, the commission reserves the right to recoup any program benefits received by the claimant during the appeal process.

AUTHORITY: section 208.553.3(5), RSMo Supp. 2001. Emergency rule filed Jan. 16, 2002, effective March 1, 2002, expires Aug. 27, 2002. Original rule filed Jan. 16, 2002.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule 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 rule with the Department of Health and Senior Services, Missouri Senior Rx Program; Joyce Brandt, 205 Jefferson Street, Room 1310, Jefferson City, MO 65101. 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.*

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 90—Missouri Senior Rx Program
Chapter 2—Participating Pharmacies

PROPOSED RULE

19 CSR 90-2.010 Definitions

PURPOSE: This rule establishes the definitions that apply to 19 CSR 90-2.010 to 19 CSR 90-2.050 (participating pharmacies) for implementation and administration of the Missouri Senior Rx Program.

(1) Applicant—A pharmacy that applies to participate in the program.

(2) Generic drug—Generic drug as defined in section 208.550(7), RSMo.

(3) Participating pharmacy—A pharmacy that meets the conditions of eligibility and participation (see 19 CSR 90–2.020).

(4) Pharmacy—A pharmacy currently licensed pursuant to Chapter 338, RSMo.

AUTHORITY: section 208.553.3(5), RSMo Supp. 2001. Emergency rule filed Jan. 16, 2002, effective March 1, 2002, expires Aug. 27, 2002. Original rule filed Jan. 16, 2002.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule 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 rule with the Department of Health and Senior Services, Missouri Senior Rx Program; Joyce Brandt, 205 Jefferson Street, Room 1310, Jefferson City, MO 65101. 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.*

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 90—Missouri Senior Rx Program
Chapter 2—Participating Pharmacies

PROPOSED RULE

19 CSR 90-2.020 Eligibility and Application Process

PURPOSE: This rule establishes eligibility and the application process for participating pharmacies for the Missouri Senior Rx Program.

(1) Eligibility.

(A) Only pharmacies that meet the criteria for an enrolled Missouri Medicaid pharmacy shall be eligible to participate in the program.

(2) Application Process.

(A) The application process includes all activity relating to a request for eligibility determination. It begins with the receipt by the division of an application and continues until there is an official written disposition of the request by the third-party administrator.

(B) Participating pharmacies shall meet the conditions of eligibility set forth in 19 CSR 90-2.020(1), both at the time of initial application for participation and on an ongoing basis.

(C) The applicant shall submit an enrollment application form to the third-party administrator. The third-party administrator shall develop and designate such form.

(D) The applicant shall consent to a review of information on the application enrollment form and of the required documentation, with reasonable prior notice to the applicant, if selected for review. Program eligibility will be denied if the applicant refuses to cooperate with the request.

(E) The applicant shall assist the commission, division, or third-party administrator in securing corroboration of the applicant's information on the application form and required documentation when necessary.

(F) The applicant shall submit with the appropriate enrollment application a signed participating pharmacy agreement as developed by the third-party administrator.

(G) A participating provider's enrollment in the program shall be effective on the date when the signatures of the third-party administrator's authorized representatives have been affixed to the provider agreement. No services rendered prior to that date shall be eligible for reimbursement.

(H) A participating pharmacy's enrollment shall cease to be effective on the date when the third-party administrator suspends or terminates the pharmacy's provider agreement. Payment or reimbursements shall not be made for prescription drugs dispensed on any dates when a pharmacy's enrollment is no longer effective.

AUTHORITY: section 208.553.3(5), RSMo Supp. 2001. Emergency rule filed Jan. 16, 2002, effective March 1, 2002, expires Aug. 27, 2002. Original rule filed Jan. 16, 2002.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule 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 rule with the Department of Health and Senior Services, Missouri Senior Rx Program; Joyce Brandt, 205 Jefferson Street, Room 1310, Jefferson City, MO 65101. 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.*

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 90—Missouri Senior Rx Program
Chapter 2—Participating Pharmacies

PROPOSED RULE

19 CSR 90-2.030 Responsibilities of Enrolled Participating Pharmacies

PURPOSE: This rule sets forth the responsibilities of the participating pharmacy in the Missouri Senior Rx Program.

(1) Enrolled participating pharmacies shall maintain prescriptions (both hardcopy, oral and computer systems) in accordance with Chapter 338, RSMo.

(2) Enrolled participating pharmacies shall provide the commission and the third-party administrator reasonable access to records necessary to determine compliance with sections 208.550 to 208.571, RSMo and the regulations promulgated thereunder and with the provider agreement.

(3) Enrolled participating pharmacies shall conform to the standards of practice in accordance with Chapter 338, RSMo.

(4) Enrolled participating pharmacies shall verify the identity of the claimant or authorized agent.

(A) For claimants, verification shall be observation of the claimant's signed program identification card.

(B) For authorized agent, verification shall include presentation of the claimant's signed program identification card, inform the pharmacy of their designation, sign their own name, and indicate their relationship to the claimant.

(5) Prior to the dispensing of prescription drugs, enrolled participating pharmacies shall take necessary steps to identify prescriptions which may not be authentic.

AUTHORITY: section 208.553.3(5), RSMo Supp. 2001. Emergency rule filed Jan. 16, 2002, effective March 1, 2002, expires Aug. 27, 2002. Original rule filed Jan. 16, 2002.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule 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 rule with the Department of Health and Senior Services, Missouri Senior Rx Program; Joyce Brandt, 205 Jefferson Street, Room 1310, Jefferson City, MO 65101. 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.*

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 90—Missouri Senior Rx Program
Chapter 2—Participating Pharmacies

PROPOSED RULE

19 CSR 90-2.040 Termination or Suspension from the Program

PURPOSE: This rule enumerates the reasons that a participating pharmacy will be terminated or suspended from participation in the Missouri Senior Rx Program.

(1) An enrolled participating pharmacy may be terminated or suspended from the program for the following reasons:

(A) Submission of a false or fraudulent claim;

(B) Failure to comply with provider agreement;

(C) Failure to meet eligibility criteria;

(D) Preclusion from participation in the Medicaid program; or

(E) Discipline by the Board of Pharmacy or the Bureau of Narcotics and Dangerous Drugs.

AUTHORITY: section 208.553.3(5), RSMo Supp. 2001. Emergency rule filed Jan. 16, 2002, effective March 1, 2002, expires Aug. 27, 2002. Original rule filed Jan. 16, 2002.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule 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 rule with the Department of Health and Senior Services, Missouri Senior Rx Program; Joyce Brandt, 205 Jefferson Street, Room 1310, Jefferson City, MO 65101. 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.*

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 90—Missouri Senior Rx Program
Chapter 2—Participating Pharmacies

PROPOSED RULE

19 CSR 90-2.050 Appeal Process

PURPOSE: This rule sets forth the process to appeal from the denial of, termination from, or suspension from participation in the Missouri Senior Rx Program.

(1) Applicants for the program or enrolled participating pharmacies shall have the right to appeal the denial of an application for or suspension or termination from the program, except for a denial, suspension or termination because the applicant has refused to submit requested information or documentation or any other information necessary to establish eligibility for the program or a termination as a result of the end of a plan (fiscal) year.

(2) The third-party administrator shall provide written notice of the denial, termination, or suspension directly to the applicant or participating pharmacy.

(A) The notice shall include the reasons for the denial, termination or suspension;

(B) A notice of termination or suspension shall be effective no sooner than ten (10) calendar days after the date of the notice;

(C) The denial, termination or suspension may be appealed;

(D) If an appeal is made, such appeal shall be filed with the third-party administrator within thirty (30) calendar days following the date of the notice of denial, suspension or termination from the program.

(3) An applicant or participating pharmacy shall file an appeal within thirty (30) calendar days following the date of the notice of denial, suspension or termination with the third-party administrator.

(A) In the case of appeal of a termination or suspension from the program, filing of an appeal within the allowed thirty (30) calendar days shall continue participation in the program from the date the appeal is received by the third-party administrator.

(B) The appeal shall include the applicant's or participating pharmacy's name, address, telephone number, program enrollment number, and the reasons for the appeal.

(4) The third-party administrator will initially seek to resolve all applicant or participating pharmacy's appeals through a letter-ruling process.

(A) The letter-ruling process shall consist of the following steps:

1. The third-party administrator shall review the denial, suspension or termination, including a review of applicable documentation, to determine any possibility of an error.

2. Within thirty (30) calendar days of the receipt of the appeal, a letter shall be sent to the applicant or participating pharmacy which sets forth the results of the review. The letter will cite the reason for the results of the review and inform the applicant or participating pharmacy of the right to a formal hearing before the third-party administrator.

(B) Results and opinions set forth in letter rulings shall have no precedential authority and are subject to withdrawal or change at any time to conform with new or different interpretations of the law.

(5) If an applicant or participating pharmacy who has filed an appeal under section (3) of this rule disagrees with the third-party administrator's letter ruling, the applicant or participating pharmacy may request a formal hearing on the appeal.

(A) The applicant or participating pharmacy shall file a written request for a formal hearing within ten (10) calendar days of the date of the letter ruling by the third-party administrator.

(B) When the third-party administrator receives the formal request for a hearing, the third-party administrator shall appoint a hearing officer to address and preside over the formal hearing.

(6) If a participating pharmacy does not prevail in its appeal, the commission reserves the right to recoup any funds received under the program during the appeal process.

(7) If a participating pharmacy has been terminated from the program, the pharmacy may be enrolled upon agreement by the third-party administrator.

AUTHORITY: section 208.553.3(5), RSMo Supp. 2001. Emergency rule filed Jan. 16, 2002, effective March 1, 2002, expires Aug. 27, 2002. Original rule filed Jan. 16, 2002.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule 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 rule with the Department of Health and Senior Services, Missouri Senior Rx Program; Joyce Brandt, 205 Jefferson Street, Room 1310, Jefferson City, MO 65101. 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.*