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SALUS POPULI SUPREMA LEX ESTO

"The welfare of the people shall be the supreme law."

ROBIN CARNAHAN

SECRETARY OF STATE

MISSOURI REGISTER

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Documents will be accepted for filing on all regular workdays from 8:00 a.m. until 5:00 p.m. We encourage early filings to facilitate the timely publication of the *Missouri Register*. Orders of Rulemaking appearing in the *Missouri Register* will be published in the *Code of State Regulations* and become effective as listed in the chart above. Advance notice of large volume filings will facilitate their timely publication. We reserve the right to change the schedule due to special circumstances. Please check the latest publication to verify that no changes have been made in this schedule. To review the entire year's schedule, please check out the website at http://www.sos.mo.gov/adrules/pubsched.asp

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The rules are codified in the *Code of State Regulations* in this system—

Title	***Code of State Regulations***	**Division**	**Chapter**	**Rule**
1	CSR	10-	1.	010
Department		Agency, Division	General area regulated	Specific area regulated

They are properly cited by using the full citation , i.e., 1 CSR 10-1.010.

Each department of state government is assigned a title. Each agency or division within the department is assigned a division number. The agency then groups its rules into general subject matter areas called chapters and specific areas called rules. Within a rule, the first breakdown is called a section and is designated as (1). Subsection is (A) with further breakdown into paragraph 1., subparagraph A., part (I), subpart (a), item I. and subitem a.

RSMo—The most recent version of the statute containing the section number and the date.

Rules appearing under this heading are filed under the authority granted by section 536.025, RSMo 2000. An emergency rule may be adopted by an agency if the agency finds that an immediate danger to the public health, safety or welfare, or a compelling governmental interest requires emergency action; follows procedures best calculated to assure fairness to all interested persons and parties under the circumstances; follows procedures which comply with the protections extended by the *Missouri* and the *United States Constitutions*; limits the scope of such rule to the circumstances creating an emergency and requiring emergency procedure, and at the time of or prior to the adoption of such rule files with the secretary of state the text of the rule together with the specific facts, reasons and findings which support its conclusion that there is an immediate danger to the public health, safety or welfare which can be met only through the adoption of such rule and its reasons for concluding that the procedure employed is fair to all interested persons and parties under the circumstances.

Rules filed as emergency rules may be effective not less than ten (10) days after filing or at such later date as may be specified in the rule and may be terminated at any time by the state agency by filing an order with the secretary of state fixing the date of such termination, which order shall be published by the secretary of state in the *Missouri Register* as soon as practicable.

All emergency rules must state the period during which they are in effect, and in no case can they be in effect more than one hundred eighty (180) calendar days or thirty (30) legislative days, whichever period is longer. Emergency rules are not renewable, although an agency may at any time adopt an identical rule under the normal rulemaking procedures.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 10—Nursing Home Program

EMERGENCY AMENDMENT

13 CSR 70-10.030 Prospective Reimbursement Plan for Nonstate-Operated Facilities for ICF/MR Services. The division is adding subparagraph (4)(A)1.I.

PURPOSE: This amendment outlines how the Fiscal Year 2007 trend factor will be applied to adjust per diem rates for ICF/MRs participating in the Medicaid program.

*EMERGENCY STATEMENT: The Department of Social Services, Division of Medical Services by rule and regulation must define the reasonable costs, manner, extent, quantity, quality, charges and fees of medical assistance provided. For State Fiscal Year 2007, the appropriation by the General Assembly included additional funds to increase nonstate-operated ICF/MR facilities' reimbursement rates by seven percent (7%). The Division of Medical Services is carrying out the General Assembly's intent by providing for a per diem increase to ICF/MR facility reimbursement rates of seven percent (7%). The seven percent (7%) increase is necessary to ensure that payments for ICF/MR facility per diem rates are in line with the funds appropriated for that purpose. There are a total of nine (9) nonstate-operated ICF/MF facilities currently enrolled in Missouri Medicaid, all of which will receive a seven percent (7%) increase to their reimbursement rates. This emergency amendment will ensure payment for ICF/MR services to approximately eighty-nine (89) ICF/MR Missourians throughout State Fiscal Year 2007 in accordance with the appropriation authority. This emergency amendment must be implemented on a timely basis to ensure that quality ICF/MR services continue to be provided to Medicaid patients in ICF/MR facilities for State Fiscal Year 2007 in accordance with the appropriation authority. As a result, the Division of Medical Services finds an immediate danger to public health, safety, and/or welfare and a compelling governmental interest, which requires emergency action. The Missouri Medical Assistance program has a compelling governmental interest in providing continued cash flow for ICF/MR services. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended by the **Missouri** and **United States Constitutions**. The Division of Medical Services believes this emergency amendment is fair to all interested persons and parties under the circumstances. A proposed amendment covering this same material is published in this issue of the **Missouri Register**. This emergency amendment was filed January 24, 2007, effective February 3, 2007, expires August 1, 2007.*

(4) Prospective Reimbursement Rate Computation.

(A) Except in accordance with other provisions of this rule, the provisions of this section shall apply to all providers of ICF/MR services certified to participate in Missouri's Medicaid program.

1. ICF/MR facilities.

A. Except in accordance with other provisions of this rule, the Missouri Medical Assistance Program shall reimburse providers of these LTC services based on the individual Medicaid-recipient days of care multiplied by the Title XIX prospective per diem rate less any payments collected from recipients. The Title XIX prospective per diem reimbursement rate for the remainder of state Fiscal Year 1987 shall be the facility's per diem reimbursement payment rate in effect on October 31, 1986, as adjusted by updating the facility's allowable base year to its 1985 fiscal year. Each facility's per diem costs as reported on its Fiscal Year 1985 Title XIX cost report will be determined in accordance with the principles set forth in this rule. If a facility has not filed a 1985 fiscal year cost report, the most current cost report on file with the department will be used to set its per diem rate. Facilities with less than a full twelve (12)-month 1985 fiscal year will not have their base year rates updated.

B. For state FY-88 and dates of service beginning July 1, 1987, the negotiated trend factor shall be equal to two percent (2%) to be applied in the following manner: Two percent (2%) of the average per diem rate paid to both state- and nonstate-operated ICF/MR facilities on June 1, 1987, shall be added to each facility's rate.

C. For state FY-89 and dates of service beginning January 1, 1989, the negotiated trend factor shall be equal to one percent (1%) to be applied in the following manner: One percent (1%) of the average per diem rate paid to both state- and nonstate-operated ICF/MR facilities on June 1, 1988 shall be added to each facility's rate.

D. For state FY-91 and dates of service beginning July 1, 1990, the negotiated trend factor shall be equal to one percent (1%) to be applied in the following manner: One percent (1%) of the average per diem rate paid to both state- and nonstate-operated ICF/MR facilities on June 1, 1990, shall be added to each facility's rate.

E. FY-96 negotiated trend factor. All nonstate-operated ICF/MR facilities shall be granted an increase to their per diem rates effective for dates of service beginning January 1, 1996, of six dollars and seven cents ($6.07) per patient day for the negotiated trend factor. This adjustment is equal to four and six-tenths percent (4.6%) of the weighted average per diem rates paid to nonstate-operated ICF/MR facilities on June 1, 1995, of one hundred and thirty-one dollars and ninety-three cents ($131.93).

F. State FY-99 trend factor. All nonstate-operated ICF/MR facilities shall be granted an increase to their per diem rates effective for dates of service beginning July 1, 1998, of four dollars and forty-seven cents ($4.47) per patient day for the trend factor. This adjustment is equal to three percent (3%) of the weighted average per diem rate paid to nonstate-operated ICF/MR facilities on June 30, 1998, of one hundred forty-eight dollars and ninety-nine cents ($148.99).

G. State FY-2000 trend factor. All nonstate-operated ICF/MR facilities shall be granted an increase to their per diem rates effective for dates of service beginning July 1, 1999, of four dollars and sixty-three cents ($4.63) per patient day for the trend factor. This adjustment is equal to three percent (3%) of the weighted average per diem rate paid to nonstate-operated ICF/MR facilities on April 30, 1999, of one hundred fifty-four dollars and forty-three cents ($154.43). This increase shall only be used for increases for the salaries and fringe benefits for direct care staff and their immediate supervisors.

H. State FY-2001 trend factor. All nonstate-operated ICF/MR facilities shall be granted an increase to their per diem rates effective for dates of service beginning July 1, 2000, of four dollars and eighty-one cents ($4.81) per patient day for the trend factor. This adjustment is equal to three percent (3%) of the weighted average per diem rate paid to nonstate-operated ICF/MR facilities on April 30, 2000, of one hundred sixty dollars and twenty-three cents ($160.23). This increase shall only be used for increases for salaries and fringe benefits for direct care staff and their immediate supervisors.

I. State FY-2007 trend factor. All nonstate-operated ICF/MR facilities shall be granted an increase of seven percent (7%) to their per diem rates effective for dates of service billed for state Fiscal Year 2007 and thereafter. This adjustment is equal to seven percent (7%) of the per diem rate paid to nonstate-operated ICF/MR facilities on June 30, 2006.

2. Adjustments to rates. The prospectively determined reimbursement rate may be adjusted only under the following conditions:

A. When information contained in a facility's cost report is found to be fraudulent, misrepresented or inaccurate, the facility's reimbursement rate may be reduced, both retroactively and prospectively, if the fraudulent, misrepresented or inaccurate information as originally reported resulted in establishment of a higher reimbursement rate than the facility would have received in the absence of this information. No decision by the Medicaid agency to impose a rate adjustment in the case of fraudulent, misrepresented or inaccurate information in any way shall affect the Medicaid agency's ability to impose any sanctions authorized by statute or rule. The fact that fraudulent, misrepresented or inaccurate information reported did not result in establishment of a higher reimbursement rate than the facility would have received in the absence of the information also does not affect the Medicaid agency's ability to impose any sanctions authorized by statute or rules;

B. In accordance with subsection (6)(B) of this rule, a newly constructed facility's initial reimbursement rate may be reduced if the facility's actual allowable per diem cost for its first twelve (12) months of operation is less than its initial rate;

C. When a facility's Medicaid reimbursement rate is higher than either its private pay rate or its Medicare rate, the Medicaid rate will be reduced in accordance with subsection (2)(B) of this rule;

D. When the provider can show that it incurred higher cost due to circumstances beyond its control and the circumstances are not experienced by the nursing home or ICF/MR industry in general, the request must have a substantial cost effect. These circumstances include, but are not limited to:

(I) Acts of nature, such as fire, earthquakes and flood, that are not covered by insurance;

(II) Vandalism, civil disorder, or both; or

(III) Replacement of capital depreciable items not built into existing rates that are the result of circumstances not related to normal wear and tear or upgrading of existing system;

E. When an adjustment to a facility's rate is made in accordance with the provisions of section (6) of this rule; or

F. When an adjustment is based on an Administrative Hearing Commission or court decision.

AUTHORITY: sections 208.153, 208.159 and 208.201, RSMo 2000. This rule was previously filed as 13 CSR 40-81.083. Original rule filed Aug. 13, 1982, effective Nov. 11, 1982. For intervening history please consult the ***Code of State Regulations****. Amended: Filed Jan. 16, 2007. Emergency amendment filed Jan. 24, 2007, effective Feb. 3, 2007, expires Aug. 1, 2007. A proposed amendment covering this same material is published in this issue of the* ***Missouri Register****.*

The Secretary of State shall publish all executive orders beginning January 1, 2003, pursuant to section 536.035.2, RSMo Supp. 2006.

EXECUTIVE ORDER
07-01

WHEREAS, emergencies may arise at any time, including but not limited to power outage due to tornado, rain, snow or ice storm, propane or gas shortages due to extremely cold conditions requiring carriers to travel out of state to haul fuel and distribute such fuel upon their return, flooding conditions, potential terrorist attack, or other unforeseen emergencies; and

WHEREAS, many of these emergencies occur after normal working hours or on holidays; and

WHEREAS, the safety and welfare of the inhabitants of the affected areas may require the rapid identification of an emergency situation that necessitates the need to suspend state enforcement of federal commercial vehicle and driver laws; and

WHEREAS, Section 390.23 of Title 49, Code of Federal Regulations, provides that a Governor of a State, or the Governor's authorized representatives having authority to declare emergencies, may declare an emergency thereby exempting motor carriers or drivers operating a commercial vehicle from the Federal Motor Carrier Safety Regulations, Parts 390-399, both while providing assistance to the emergency relief efforts during the emergency, and while returning empty to the motor carrier's terminal or driver's normal work reporting location; and

NOW THEREFORE, I, Matt Blunt, Governor of the State of Missouri, by virtue of the authority vested in me by the Constitution and laws of the State of Missouri, do hereby order as follows:

1. The Director of the Missouri Department of Transportation is authorized to issue an emergency declaration of a regional emergency within the meaning of 49 CFR section 390.23(a)(1) or a local emergency within the meaning of 49 CFR section 390.23(a)(2) for the limited purpose of temporarily suspending the usual requirements of Parts 390-399 of Title 49, Code of Federal Regulations, with reference to motor carriers and operators of commercial motor vehicles, when such official determines that an emergency situation exists which requires the suspension of federal commercial motor vehicle and driver laws. An emergency declaration issued pursuant to this order shall not exceed the duration of the motor carrier's or driver's direct assistance in providing emergency relief, or five days from the date of the initial declaration of the emergency, whichever is less; and

2. The Director of the Missouri Department of Transportation, or the Director's designee, is also authorized to issue overdimension and overweight permits for commercial motor carriers engaged in interstate and intrastate disaster relief efforts in the affected regions identified by the regional or local emergency declaration(s) authorized in paragraph 1 above, subject to the following application requirements in obtaining such a permit:

The permittee will be required to supply:

Year, Make, License plate number, and Vehicle Identification Number (VIN) of the power unit and trailer;
Size, Make and Serial Number (last 4 digits) of commodity being hauled;
Origin, Destination and Consecutive Routing;
Overall Width, Height, Length and length of trailer and load only; and
Date of Movement.

The permit process can be expedited by calling:

866-831-6277
573-526-5314; or
573-522-8176.

This Executive Order shall allow continuous movement, including nighttime and moves during curfew hours and holiday restriction periods. Clearance lights in lieu of flags and reflectorized oversize load signs mounted on the front and rear of the vehicle and load are required for nighttime movement or when visibility is less than 500'. One (1) escort shall be required to the rear of the vehicle and load on interstates and other divided highways and such escort shall be required for the front of the vehicle and load on all other highways when the load width exceeds 12'4".

However, this Executive Order shall not suspend the applicability of the standard overdimension/overweight permit fee requirements; and

3. The Director of the Missouri Department of Transportation, or the Director's designee, is also authorized to waive the commercial motor vehicle regulatory requirements regarding the purchase of trip permits for registration and fuel and to waive the mileage restrictions on restricted plates for commercial motor carriers engaged in interstate disaster relief efforts in any of the affected states identified by regional emergency declarations authorized in paragraph 1 above; and

4. The Director of the Missouri Department of Transportation, or the Director's designee, shall notify the Governor's office as soon as possible of any emergency declarations issued pursuant to this order.

This order shall terminate on January 1, 2008, unless extended or revoked in whole or in part.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri in the City of Jefferson on this 2nd day of January 2007.

Matt Blunt
Governor

ATTEST:

Robin Carnahan
Secretary of State

EXECUTIVE ORDER
07-02

WHEREAS, I have been advised by the Director of the State Emergency Management Agency that severe winter storm systems causing damages associated with snow, freezing rain, sleet and ice have impacted communities across the State of Missouri; and

WHEREAS, interruption of public services are occurring as a result of the severe weather that began on January 12, 2007 and continues; and

WHEREAS, the severe weather that began on January 12, 2007 and continuing has created a condition of distress and hazard to the safety, welfare, and property of the citizens of the State of Missouri beyond the capabilities of some local and other established agencies; and

WHEREAS, the resources of the State of Missouri may be needed to assist affected jurisdictions and to help relieve the condition of distress and hazard to the safety and welfare of our fellow Missourians; and

WHEREAS, protection of the safety and welfare of the citizens of the State requires an invocation of the provisions of Section 44.100 and 44.110, RSMo.

NOW, THEREFORE, I, MATT BLUNT, GOVERNOR OF THE STATE OF MISSOURI, by virtue of the authority vested in me by the Constitution and Laws of the State of Missouri, including Sections 44.100 and 44.110, RSMo, do hereby declare that a State of Emergency exists in the State of Missouri. I do hereby direct that the Missouri State Emergency Operations Plan be activated.

I further authorize the use of state agencies to provide assistance, as needed.

This order shall terminate on February 15, 2007, unless extended in whole or in part.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri in the City of Jefferson on this 12th day of January 2007.

Matt Blunt, Governor

Robin Carnahan, Secretary of State

EXECUTIVE ORDER
07-03

WHEREAS, I have been advised by the Director of the State Emergency Management Agency that severe winter storm systems causing damages associated with snow, freezing rain, sleet and ice have impacted communities across the State of Missouri; and

WHEREAS, interruption of public services are occurring as a result of the severe weather that began on January 12, 2007 and continues; and

WHEREAS, the severe weather that began on January 12, 2007 and continuing has created a condition of distress and hazard to the safety, welfare, and property of the citizens of the State of Missouri beyond the capabilities of some local and other established agencies; and

WHEREAS, the resources of the State of Missouri may be needed to assist affected jurisdictions and to help relieve the condition of distress and hazard to the safety and welfare of our fellow Missourians; and

WHEREAS, protection of the safety and welfare of the citizens of the State requires an invocation of the provisions of Section 44.100 and 44.110, RSMo.

NOW, THEREFORE, I, MATT BLUNT, GOVERNOR OF THE STATE OF MISSOURI, by virtue of the authority vested in me by the Constitution and laws of the State of Missouri, including Section 41.480.2, RSMo, order and direct the Adjutant General of the State of Missouri, or his designee, to forthwith call and order into active service such portions of the organized militia as he deems necessary to aid the executive officials of Missouri, to protect life and property, and it is further ordered and directed that the Adjutant General or his designee, and through him, the commanding officer of any unit or other organization of such organized militia so called into active service take such action and employ such equipment as may be necessary in support of civilian authorities, and provide such assistance as may be authorized and directed by the Governor of this State.

This order shall terminate on February 15, 2007, unless extended in whole or in part.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri in the City of Jefferson on this 12th day of January 2007.

Matt Blunt, Governor

Robin Carnahan, Secretary of State

EXECUTIVE ORDER
07-04

WHEREAS, I have been advised by the Director of the Missouri State Emergency Management Agency that a natural disaster of significant proportions has occurred in Missouri, which has been affected by severe weather; and

WHEREAS, the severe winter weather that began on January 12, 2007 and continuing has created a condition of distress and hazards to the safety and welfare of the citizens of the State of Missouri beyond the capabilities of some local jurisdictions, and other established agencies; and

WHEREAS, the Missouri Department of Natural Resources is charged by law with protecting and enhancing the quality of Missouri's environment and with enforcing a variety of environmental rules and regulations; and

WHEREAS, to respond to the emergency and to expedite the cleanup and recovery process, it is necessary to adjust certain environmental rules and regulations on a temporary and short-term basis.

NOW, THEREFORE, I, MATT BLUNT, GOVERNOR OF THE STATE OF MISSOURI, by virtue of the authority vested in me by Chapter 44, RSMo, do hereby issue the following order:

The Director of the Missouri Department of Natural Resources is vested with full discretionary authority to temporarily waive or suspend the operation of any statutory or administrative rule or regulation currently in place under his purview in order to best serve the interest of the public health and safety during the period of the emergency and the subsequent recovery period.

This order shall terminate on February 15, 2007, unless extended in whole or in part.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri in the City of Jefferson on this 12th day of January 2007.

Matt Blunt, Governor

ATTEST:

Robin Carnahan, Secretary of State

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 6—DEPARTMENT OF HIGHER EDUCATION
Division 10—Commissioner of Higher Education
Chapter 2—Student Financial Assistance Program

PROPOSED AMENDMENT

6 CSR 10-2.020 Student Eligibility and Application Procedures. The commissioner is amending subsection (1)(J).

PURPOSE: This amendment is revising academic requirements for renewal students.

(1) Definitions.

(J) Satisfactory academic progress means that a student **is maintaining a cumulative grade point average (CGPA) of at least two and one-half (2.5) on a four-point (4.0) scale, or the equivalent on another scale, and is** successfully *[is]* completing sufficient courses in his/her course of study to secure the certificate or degree toward which s/he is working in no more than the number of semesters or their equivalent normally required by the institution in which the student is enrolled, by means such as suggested in the following table:

Program	By End of Semester	Completed Percentage of Program Requirements	Completed Semester (or) Hours
One-year	1	20%	(or) 6
One-year	2	60%	(or) 18
One-year	3	100%	(or) 30
Two-year	2	25%	(or) 15
Two-year	3	50%	(or) 30
Two-year	4	75%	(or) 45
Two-year	5	100%	(or) 60
Four-year	2	12.5%	(or) 15
Four-year	3	25.0%	(or) 30
Four-year	4	37.5%	(or) 45
Four-year	5	50.0%	(or) 60
Four-year	6	60.0%	(or) 72
Four-year	7	70.0%	(or) 84
Four-year	8	80.0%	(or) 96
Four-year	9	90.0%	(or) 102
Four-year	10	100.0%	(or) 120

Students at institutions on the quarter system must meet at least the equivalent standard of satisfactory progress in terms of quarter hours. Institutions also shall report their own standards for satisfactory academic progress to the department by July 1 of each year as they are to be applied by that institution in the subsequent academic year. **Calculation of CGPA shall be based on the approved institution's policies as applied to other students in similar circumstances.**

*AUTHORITY: section 173.210, RSMo [1994] **2000**. Original rule filed Aug. 7, 1978, effective March 17, 1979. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Jan. 12, 2007.*

PUBLIC COST: This proposed amendment will not cost sate 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 Higher Education, Financial Assistance and Outreach Group, Kelli Reed, Interim Director of Financial Assistance, 3515 Amazonas Drive, Jefferson City, MO 65109. 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 6—DEPARTMENT OF HIGHER EDUCATION
Division 10—Commissioner of Higher Education
Chapter 2—Student Financial Assistance Program

PROPOSED AMENDMENT

6 CSR 10-2.080 Higher Education Academic Scholarship Program. The commissioner is amending subsection (1)(O).

PURPOSE: This amendment is revising academic requirements for renewal students.

(1) Definitions.

(O) Satisfactory academic degree progress or satisfactory academic progress shall be **a cumulative grade point average (CGPA) of at least two and one-half (2.5) on a four-point (4.0) scale, or the equivalent on another scale, and, with the exception of grade point average, as otherwise** determined by the approved institution's policies as applied to other students at the approved institution receiving assistance under Title IV financial aid programs included in the Higher Education Act of 1965. **The calculation of CGPA shall be based on the approved institution's policies as applied to other students in similar circumstances.**

*AUTHORITY: section 173.250, RSMo [1994] **2000**. Original rule filed Nov. 14, 1986, effective Feb. 28, 1987. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Jan. 12, 2007.*

PUBLIC COST: This proposed amendment will not cost sate 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 Higher Education, Financial Assistance and Outreach Group, Kelli Reed, Interim Director of Financial Assistance, 3515 Amazonas Drive, Jefferson City, MO 65109. 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 6—DEPARTMENT OF HIGHER EDUCATION
Division 10—Commissioner of Higher Education
Chapter 2—Student Financial Assistance Program

PROPOSED AMENDMENT

6 CSR 10-2.120 Competitiveness Scholarship Program. The commissioner is amending subsection (1)(M) and section (5).

PURPOSE: This amendment is revising academic requirements for renewal students and standardizing the calculation of awards.

(1) Definitions.

(M) Satisfactory academic degree progress or satisfactory academic progress shall be **a cumulative grade point average (CGPA) of at least two and one-half (2.5) on a four-point (4.0) scale or the equivalent on another scale and, with the exception of grade point average, as otherwise** determined by the approved institution's policies as applied to other students at the approved institution receiving assistance under Title IV financial aid programs included in the Higher Education Act of 1965. **Calculation of CGPA shall be based on the approved institution's policies as applied to other students in similar circumstances.**

(5) Competitiveness Scholarship Program Award Limits and Criteria.

(B) For part-time students enrolled in courses totaling six (6), seven (7) or eight (8) semester credit hours, or the equivalent, the award amount shall be calculated based on six (6) semester credit hours. For part-time students enrolled in courses totaling nine (9), ten (10), or eleven (11) semester credit hours, or the equivalent, the award amount shall be calculated based on nine (9) semester credit hours.

*[(B)]***(C)** Financial need shall be used by the approved institution in determining applicant eligibility for awards under the competitiveness scholarship program.

*[(C)]***(D)** The first year of the competitiveness scholarship program funds shall be awarded only to applicants as initial recipients.

*[(D)]***(E)** Applicants who qualify as initial recipients under the provisions of this rule in the second and each subsequent year of the program will be awarded based on the availability of program funds.

*[(E)]***(F)** If sufficient program funds are unavailable to award to initial recipients, the awards will be made based on the earliest date the completed applications are received by the coordinating board until all funds have been expended.

*[(F)]***(G)** During the second and each subsequent year in which awards are made under the competitiveness scholarship program, the renewal recipients shall have priority in the awarding of program funds. If sufficient program funds are unavailable to award all eligible renewal recipients, priority for program funds shall be awarded based on the earliest date the completed application is received by the coordinating board in the following order: fifth-year, fourth-year, third-year and second-year students as defined by the approved institution.

*[(G)]***(H)** An applicant receiving an award under the competitiveness scholarship program shall have made satisfactory academic progress as defined by the approved institution and meet all other eligibility criteria according to the provisions of this rule to be eligible for a subsequent award under the competitiveness scholarship program.

*[(H)]***(I)** The award amount for any given academic year will be disbursed to the approved institution, equally, according to the number of semesters at the approved institution and awarded for each semester of part-time enrollment.

*[(I)]***(J)** Awards will not be made for periods of enrollment during the summer term(s).

*[(J)]***(K)** An applicant's approved institution choice may be changed prior to the beginning of the first day of classes and may transfer between approved institutions during the academic year. The deadline for these actions is August 1 for the fall semester and January 1 for the winter or spring semester. Failure to notify the coordinating board by the prescribed dates of this action may result in loss of the award.

*[(K)]***(L)** Award notifications will be sent to applicants by the coordinating board after the awards have been determined. Notification of awards also will be sent to the student financial aid office at the approved institution where the applicant plans to or has enrolled.

*[(L)]***(M)** The applicant's award will be sent to the approved institution to be endorsed by the applicant in accordance with the requirements of subsection (3)(B) of this rule.

*[(M)]***(N)** Should an applicant withdraw prior to the end of the approved institution's refund period during the period of the scholarship, then a refund shall be calculated and made to the coordinating board by the approved institution within forty (40) days from the day on which the applicant withdraws. The amount of the refund will be calculated by the approved institution based on the refund formula of that institution.

*AUTHORITY: section 173.262, RSMo [1994] **2000**. Original rule filed May 24, 1990, effective Nov. 30, 1990. Amended: Filed Jan. 12, 2007.*

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 Higher Education, Financial Assistance and Outreach Group, Kelli Reed, Interim Director of Financial

Assistance, 3515 Amazonas Drive, Jefferson City, MO 65109. 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 10—DEPARTMENT OF NATURAL RESOURCES
Division 10—Air Conservation Commission
Chapter 5—Air Quality Standards and Air Pollution Control Rules Specific to the St. Louis Metropolitan Area

PROPOSED RESCISSION

10 CSR 10-5.375 Motor Vehicle Emission Inspection Waiver. This rule was required by section 307.366.6, RSMo. The rule specified the procedures and limits for receiving a waiver after failing a motor vehicle emission re-inspection in the basic inspection and maintenance program as established under 11 CSR 50-2.400 Emission Test Procedures. This rule will be obsolete after September 1, 2007 because 643.303, RSMo requires that the Missouri Air Conservation Commission promulgate rulemakings by July 1, 2007 to implement a transition from the current St. Louis vehicle emissions test program to a new vehicle emissions test program by September 1, 2007 that would apply to the entire St. Louis ozone nonattainment area. The evidence supporting the need for this proposed rulemaking is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address and phone number listed in the Notice of Public Hearing at the end of this rule. More information concerning this rulemaking can be found at the Missouri Department of Natural Resources' Environmental Regulatory Agenda website, www.dnr.mo.gov/regs/regagenda.htm.

PURPOSE: This rule complies with section 307.366.4, RSMo. It specifies the procedures and limits for receiving a waiver after failing a motor vehicle emission reinspection in the basic inspection and maintenance program as established under 11 CSR 50-2.400. This regulation is proposed for rescission because 643.303, RSMo requires that the Missouri Air Conservation Commission promulgate rulemakings by July 1, 2007 to implement a transition from the current St. Louis vehicle emissions test program to a new vehicle emissions test program by September 1, 2007 that would apply to the entire St. Louis ozone nonattainment area. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is 643.303, RSMo.

AUTHORITY: section 307.366.4, RSMo Supp. 1999. Original rule filed Jan. 14, 1997, effective Aug. 30, 1997. Amended: Filed Aug. 4, 2000, effective March 30, 2001. Rescinded: Filed Jan. 16, 2007.

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

PRIVATE COST: This proposed rescission 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 rescission will begin at 9:00 a.m., March 29, 2007. The public hearing will be held at the Café 37, Walnut Room, 37 Court Square, West Plains, 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 Director, Missouri Department of Natural Resources' Air Pollution Control Program, 1659 East Elm 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 5, 2007. Written comments shall be sent to Chief, Operations Section, Missouri Department of Natural Resources' Air Pollution Control Program, 1659 East Elm Street, PO Box 176, Jefferson City, MO 65102-0176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 10—Air Conservation Commission
Chapter 5—Air Quality Standards and Air Pollution Control Rules Specific to the St. Louis Metropolitan Area

PROPOSED RESCISSION

10 CSR 10-5.380 Motor Vehicle Emissions Inspection. This rule was required by sections 643.300–643.355, RSMo and met the 1990 Clean Air Act requirements that the ozone state implementation plan contain necessary enforceable measures to implement a mandatory inspection and maintenance program in order to reduce vehicle emissions in the St. Louis ozone nonattainment area. This rule will be obsolete after September 1, 2007 because 643.303, RSMo requires that the Missouri Air Conservation Commission promulgate rulemakings by July 1, 2007 to implement a transition from the current St. Louis vehicle emissions test program to a new vehicle emissions test program by September 1, 2007 that would apply to the entire St. Louis ozone nonattainment area. The evidence supporting the need for this proposed rulemaking is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address and phone number listed in the Notice of Public Hearing at the end of this rule. More information concerning this rulemaking can be found at the Missouri Department of Natural Resources' Environmental Regulatory Agenda website, www.dnr.mo.gov/regs/regagenda.htm.

PURPOSE: This rule enacts the provisions of sections 643.300–643.355, RSMo and meets the 1990 Clean Air Act requirement that the ozone state implementation plan contains necessary enforceable measures to upgrade the mandatory inspection and maintenance program in order to reduce vehicle emissions in the St. Louis nonattainment area. This regulation is proposed for rescission because 643.303, RSMo requires that the Missouri Air Conservation Commission promulgate rulemakings by July 1, 2007 to implement a transition from the current St. Louis vehicle emissions test program to a new vehicle emissions test program by September 1, 2007 that would apply to the entire St. Louis ozone nonattainment area. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is 643.303, RSMo.

AUTHORITY: section 643.310.1, RSMo 2000. Original rule filed June 14, 1982, effective Jan. 13, 1983. For intervening history, please consult the ***Code of State Regulations****. Rescinded: Filed Jan. 16, 2007.*

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

PRIVATE COST: This proposed rescission 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 rescission will begin at 9:00 a.m., March 29, 2007. The public hearing will be held at the Café 37, Walnut Room, 37 Court Square, West Plains, 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 Director, Missouri Department of Natural Resources' Air Pollution Control Program,

1659 East Elm 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 5, 2007. Written comments shall be sent to Chief, Operations Section, Missouri Department of Natural Resources' Air Pollution Control Program, 1659 East Elm Street, PO Box 176, Jefferson City, MO 65102-0176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 10—Air Conservation Commission
Chapter 5—Air Quality Standards and Air Pollution Control Rules Specific to the St. Louis Metropolitan Area

PROPOSED RULE

10 CSR 10-5.381 On-Board Diagnostics Motor Vehicle Emissions Inspection. If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency for inclusion in the Missouri State Implementation Plan. The evidence supporting the need for this proposed rulemaking is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address and phone number listed in the Notice of Public Hearing at the end of this rule. More information concerning this rulemaking can be found at the Missouri Department of Natural Resources' Environmental Regulatory Agenda website, www.dnr.mo.gov/regs/regagenda.htm.

PURPOSE: This rule enacts the provisions of sections 643.300–643.355, RSMo and meets the 1990 Federal Clean Air Act Amendments requirement that the ozone state implementation plan contains necessary enforceable measures to maintain the mandatory vehicle emissions inspection and maintenance program. The purpose of the inspection and maintenance program is to reduce and prevent ground-level ozone forming vehicle emissions in the St. Louis nonattainment area.

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. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) Applicability.

(A) Except as provided in subsection (1)(B) of this rule, subject vehicles include all vehicles operated on public roadways in the geographical area containing the City of St. Louis and the counties of Franklin, Jefferson, St. Charles, and St. Louis, and which are—

1. Registered in the area with the state of Missouri Department of Revenue;

2. Leased, rented, or privately owned and are not registered in the geographical area but are primarily operated in the area. A vehicle is primarily operated in the area if at least fifty-one percent (51%) of the vehicle's annual miles are in the area;

3. Owned or leased by federal, state, or local government agencies, and are primarily operated in the geographical area, but are not required to be registered by the state of Missouri; or

4. Owned, leased, or operated by civilian and military personnel on federal installations located within the geographical area, regardless of where the vehicles are registered.

(B) The following vehicles are exempt from this rule:

1. Heavy duty gasoline-powered and heavy duty diesel-powered vehicles;

2. Light duty gasoline-powered vehicles and trucks manufactured prior to the 1996 model year and light duty diesel-powered vehicles and trucks manufactured prior to the 1997 model year;

3. Motorcycles and motortricycles;

4. Vehicles which are powered exclusively by electric or hydrogen power or by fuels other than gasoline, ethanol (E10 and E85), or diesel;

5. Motor vehicles registered in an area subject to the inspection requirements of sections 643.300 to 643.355, RSMo, that are domiciled and operated exclusively in an area of the state not subject to the inspection requirements of sections 643.300 to 643.355, RSMo, if the vehicle is granted an Out of Area waiver described in paragraph (3)(K)6. of this rule;

6. New and unused motor vehicles, of model years of the current calendar year and of any calendar year within two (2) years of such calendar year, that have an odometer reading of less than six thousand (6,000) miles at the time of original sale by a motor vehicle manufacturer or licensed motor vehicle dealer to the first user;

7. New motor vehicles that have not been previously titled and registered, for the four (4)-year period following their model year of manufacture, provided that the odometer for such motor vehicles has fewer than forty thousand (40,000) miles showing at the first required biennial safety inspection conducted under sections 307.350 to 307.390, RSMo. Otherwise, such motor vehicles shall be subject to the emissions inspection requirements of subsection (3)(B) of this rule during the same period that the biennial safety inspection is conducted;

8. Motor vehicles that are driven fewer than twelve thousand (12,000) miles between biennial safety inspections. Written or printed proof of this exemption shall be provided by the owner to the Department of Revenue.

A. The proof of exemption from the emissions inspection requirement shall consist of two (2) vehicle safety inspection reports issued to the owner of the vehicle being exempted.

B. The first safety inspection report shall have been issued during the vehicle's previous safety inspection. The second safety inspection report shall have been issued within the sixty (60) days of the owner's registration request.

C. Both vehicle safety inspection reports must document the odometer reading at the time of the vehicle's safety inspections, and the difference between these two (2) odometer readings shall be no greater than eleven thousand nine hundred and ninety-nine (11,999);

9. Historic motor vehicles registered pursuant to section 301.131, RSMo;

10. School buses;

11. Tactical military vehicles; and

12. Visitor, employee or military personnel vehicles on federal installations provided appointments do not exceed sixty (60) calendar days.

(2) Definitions.

(A) Business day—All days, excluding Saturdays, Sundays, and holidays, that an inspection station is open to the public.

(B) Compliance cycle—The two (2)-year duration during which a subject vehicle in the enhanced emissions inspection program area is required to comply with sections 643.300–643.355, RSMo.

1. For private entity vehicles, the compliance cycle begins sixty (60) days prior to the subject vehicle's registration expiration.

2. For public entity vehicles, the compliance cycle begins on January 1 of each even-numbered calendar year. The compliance cycle ends on December 31 of each odd-numbered calendar year.

(C) Contractor—The state contracted company who shall implement the decentralized motor vehicle emissions inspection program as specified in sections 643.300–643.355, RSMo, and the state contracted company who shall implement the acceptance test procedure.

(D) Department—The Missouri Department of Natural Resources, the state agency responsible for oversight of the vehicle emissions inspection and maintenance program that is required by the 1990 Federal Clean Air Act Amendments.

(E) Data Link Connector (DLC)—The terminal required to be installed on all On-Board Diagnostics (OBD) equipped vehicles that allows communication with a vehicle's OBD system.

(F) Diagnostic Trouble Code (DTC)—An alphanumeric code consisting of five (5) characters which is stored by a vehicle's On-Board Diagnostics system if a vehicle malfunctions or deteriorates in such a way as to potentially raise the vehicle's tailpipe or evaporative emissions more than 1.5 times the federal test procedure certification limits. The code indicates the system or component that is in need of diagnosis and repair to prevent the vehicle's emissions from increasing further.

(G) Emissions inspection—Tests performed on a vehicle in order to evaluate whether the vehicle's emissions control components are present and properly functioning.

(H) Gross Vehicle Weight Rating (GVWR)—The value specified by the manufacturer as the maximum design loaded weight of a single vehicle.

(I) Ground-level ozone—A colorless, odorless gas formed by the mixing of volatile organic compounds and oxides of nitrogen from stationary and mobile pollution sources in the presence of heat and sunlight. Ground-level ozone is a strong oxidizer that negatively affects human health by causing diminished lung function in both healthy individuals and those with pre-existing respiratory problems.

(J) Heavy Duty Vehicle (HDV)—Any motor vehicle rated at eight thousand five hundred one (8,501) pounds GVWR or more.

(K) Initial emissions inspection—An emissions inspection consisting of the inspection series that occurs the first time a vehicle is inspected in a compliance cycle.

(L) Licensed emissions inspection station—Any business that has met the licensing requirements and been licensed to offer vehicle emissions inspection services on behalf of the department.

(M) Licensed emissions inspector—Any individual that has met the licensing requirements and been licensed to conduct vehicle emissions inspections on behalf of the department.

(N) Light Duty Truck (LDT)—Any motor vehicle rated at eight thousand five hundred pounds (8,500) GVWR or less which has a vehicle curb weight of six thousand (6,000) pounds or less and which has a basic vehicle frontal area of forty-five (45) square feet or less, which is—

1. Designed primarily for purposes of transportation of property or is a derivation of such a vehicle;

2. Designed primarily for transportation of persons and has a capacity of more than twelve (12) persons; or

3. Available with special features enabling off-street or off-highway operation and use.

(O) Light Duty Vehicle (LDV)—A passenger car or passenger car derivative capable of seating twelve (12) passengers or less that is rated at six thousand (6,000) pounds GVWR or less.

(P) Malfunction Indicator Lamp (MIL)—An amber-colored warning light located on the dashboard of vehicles equipped with On-Board Diagnostics systems indicating to the vehicle operator that the vehicle either has a malfunction or has deteriorated enough to cause a potential increase in the vehicle's tailpipe or evaporative emissions.

(Q) Missouri State Highway Patrol (MSHP)—The state agency responsible for the oversight of the vehicle safety inspection and maintenance program.

(R) On-Board Diagnostics (OBD)—A vehicle emissions early-warning system required by federal law to be installed on all light-duty 1996 and newer model year vehicles for sale in the United States. The OBD system monitors sensors attached to all emissions-control related components on a vehicle to ensure that the emissions control system operates properly throughout a vehicle's lifetime. If the emissions control system malfunctions or deteriorates, the OBD system will illuminate the Malfunction Indicator Lamp and store one (1) or more Diagnostic Trouble Codes.

(S) On-Board Diagnostics (OBD) test—A test in which a vehicle's OBD system is connected to a hand-held tool or computer capable of determining—

1. Vehicle signature information, including, but not limited to, the electronic vehicle identification number (VIN) and other unique parameter identifiers;

2. If the OBD system's readiness monitors have been set;

3. If the MIL is functioning correctly; and

4. If the OBD system has stored any DTCs that are commanding the MIL to be illuminated.

(T) Qualifying repair—Any repair or adjustment performed on a vehicle's emissions control system after failing an initial emissions inspection, that is reasonable to the test method failure. Repairs performed by a repair technician that were not authorized by the vehicle owner's signature on a repair receipt will not be considered a qualifying repair. The qualifying repair must be performed within ninety (90) days of the date of initial emissions inspection. The qualifying repair may consist of either—

1. The parts costs, spent by a vehicle owner or charged to a vehicle owner by a repair technician, that are appropriate for the type of emissions inspection failure; or

2. The parts and recognized labor costs, charged to a vehicle owner by a Recognized Repair Technician, that are appropriate for the type of emissions inspection failure.

(U) Readiness monitor—A design feature of On-Board Diagnostics systems. If a readiness monitor has been set, then the OBD system has completed a diagnostic check on that component. If a readiness monitor has not been set, then the OBD system has not completed a diagnostic check on that component.

(V) Recognized labor costs—The labor costs that a Recognized Repair Technician charges for emissions repair services rendered to a vehicle that fails its emissions inspection.

(W) Recognized Repair Technician—Any person who—

1. Is professionally engaged full-time in vehicle repair or employed by an ongoing business whose purpose is vehicle repair. A Recognized Repair Technician may only be recognized by the department at one (1) place of employment;

2. Has valid certifications from the National Institute for Automotive Service Excellence (ASE) in Electrical Systems (A6), Engine Performance (A8), and Advanced Engine Performance Specialist (L1) that have not expired; and

3. Has not been reported by the department to the attorney general for unlawful merchandising practices according to subsection 643.330.5, RSMo.

(X) Definitions of certain terms specified in this rule, other than those defined in this rule section, may be found in 10 CSR 10-6.020.

(3) General Provisions.

(A) Subject Vehicle Compliance.

1. Private entity vehicle compliance.

A. Motor vehicles subject to this rule shall demonstrate compliance with emissions standards in this rule. Such demonstration shall be made through the test methods specified in section (5) of this rule and be completed according to the compliance cycle specified in paragraph (2)(B)1. of this rule, the inspection intervals specified in subsection (3)(B) of this rule, and the inspection periods specified in subsection (3)(C) of this rule.

B. Completion of the emissions inspection requirements is necessary for vehicle registration renewal, or registration transfer.

C. Failure to complete a vehicle emissions inspection during the compliance cycle or before vehicle registration shall be a violation of this rule. These violations are subject to penalties specified in subsection 643.355.5, RSMo.

2. Public entity vehicle compliance.

A. All subject vehicles owned by federal, state and local governments shall be emissions inspected according to the compliance cycle specified in paragraph (2)(B)2. of this rule and the inspection intervals specified in subsection (3)(B) of this rule.

B. All federal agencies shall ensure employee and military personnel vehicles meet the requirements of this subsection according to the December 1999 *Interim Guidance for Federal Facility*

Compliance With Clean Air Act Sections 118(c) and 118(d) and Applicable Provisions of State Vehicle Inspection and Maintenance Programs. This guidance document is incorporated by reference in this rule, as published by the U.S. Environmental Protection Agency (EPA), Office of Transportation and Air Quality, 2000 Traverwood, Ann Arbor, MI 48105. This rule does not incorporate any subsequent amendments or additions to this guidance document.

C. Failure to complete a vehicle emissions inspection within the compliance cycle specified in paragraph (2)(B)2. of this rule shall be a violation of this rule. These violations are subject to penalties specified in subsection 643.355.5, RSMo.

3. Vehicle fleets.

A. Vehicle fleets of any size may be emissions inspected by the fleet operator, provided the owners or operators of such vehicle fleets acquire the state contractor's equipment to conduct the emissions inspections.

B. Vehicle fleets using such equipment shall be subject to the same inspection requirements as non-fleet vehicles.

C. Fleet inspection facilities shall be subject to quality assurance evaluations at least as stringent as those performed at public inspection stations.

D. Fleet owners or operators may make repairs to fleet vehicles on-site.

(B) Emissions Inspection Intervals.

1. Subject vehicles, manufactured as odd-numbered model year vehicles are required to be inspected in each odd-numbered calendar year. Subject vehicles manufactured as even-numbered model year vehicles are required to be inspected in each even-numbered calendar year.

2. At the time of registration transfer, subject vehicles are required by subsection 643.315.1, RSMo to be inspected regardless of the vehicle model year. At the time of registration transfer, prior to the sale of a vehicle, sellers of vehicles are required to provide the purchaser with an emissions inspection compliance certificate or compliance waiver that is valid for registering the vehicle according to inspection period requirements of subsection (3)(C) of this rule. Vehicles being sold shall not be subject to another emissions inspection for ninety (90) days after the date of sale or transfer of such vehicle.

(C) Emissions Inspection Periods.

1. An emissions inspection performed on a subject vehicle via the vehicle inspection process described in subsections (3)(H)–(K) of this rule is valid, for the purposes of obtaining registration or registration renewal, for a duration of sixty (60) days from the date of passing inspection or waiver issuance.

2. Reinspections occurring fewer than ninety (90) days after the initial emissions inspection are subject to subsections (3)(J) and (3)(K) of this rule.

3. Reinspections occurring more than ninety (90) days after the initial emissions inspection shall be considered to be an initial emissions inspection as defined in subsection (2)(K) of this rule and are subject to subsection (3)(H) of this rule.

(D) Emissions Inspection Fee.

1. At the time of an initial emissions inspection, the vehicle owner or driver shall pay no more than twenty-four dollars ($24) to the licensed emissions inspection station. The inspection station shall determine the forms of payment accepted.

2. This inspection fee shall include one (1) free reinspection, provided that the reinspection is conducted within twenty (20) business days of the initial emissions inspection at the same inspection station that performed the initial inspection.

3. Licensed emissions inspection stations shall pre-pay the state two dollars and fifty cents ($2.50) for each paid emissions inspection that they intend to perform. The fee shall be paid to the Director of Revenue and submitted to the Missouri State Highway Patrol. The MSHP shall deposit the fee into the "Missouri Air Emissions Reduction Fund" as established by section 643.350, RSMo. The MSHP will then notify the contractor, who will authorize the inspection equipment to release the number of paid emissions inspections pre-paid by each licensed emissions inspection station.

(E) Emissions Inspection Equipment.

1. Performance features of emissions inspection equipment. Computerized inspection equipment is required for performing any measurement on subject vehicles. The inspection equipment shall meet or exceed all applicable EPA requirements. Newly acquired emissions inspection equipment shall be subject to the acceptance test procedures administered by the department's contractor to ensure compliance with the emissions inspection program specifications.

A. Emissions inspection equipment shall be capable of testing all subject vehicles as required by paragraph (3)(E)3. of this rule. The emissions inspection equipment shall be updated as needed to accommodate new technology vehicles. The updates shall be provided by the state's contractor without cost to the state or the licensed emissions inspection stations.

B. At a minimum, emissions inspection equipment shall be:

(I) Automated to the highest degree commercially available to minimize the potential for intentional fraud and/or human error;

(II) Secure from tampering and/or abuse; and

(III) Based upon written specifications.

2. Functional characteristics of computerized test systems. The test system shall be composed of motor vehicle test equipment controlled by a computer.

A. The test system shall automatically:

(I) Make pass/fail decisions for all measurements;

(II) Record test data to an electronic medium;

(III) Conduct regular self-testing of recording accuracy;

(IV) Perform electrical calibration and system integrity checks before each test, as applicable; and

(V) Initiate immediate system lockouts for—

(a) Tampering with security aspects of the test system;

(b) Failing to conduct or pass periodic calibration or leak checks for the evaporative system pressure test equipment;

(c) Fraudulent testing activity; or

(d) For a full data recording medium.

B. Test systems shall include a telecommunications data link to the contractor's Vehicle Inspection Database (VID) as specified in the contract between the department and the contractor. Emissions inspection information shall be uploaded to the VID via this telecommunications data link according to subparagraphs (3)(F)2.C. and (3)(F)5.D. of this rule.

C. The test system shall ensure accurate data collection by limiting, cross-checking, and/or confirming manual data entry.

3. On-Board Diagnostics (OBD) test equipment. OBD test equipment shall meet the standards specified in 40 CFR part 85, subpart W, section 2231. Section 2231 is incorporated by reference in this rule, as published by the EPA, Office of Transportation and Air Quality, 2000 Traverwood, Ann Arbor, MI 48105 on April 5, 2001. This rule does not incorporate any subsequent amendments or additions to section 2231. The OBD test equipment shall be able to communicate with all known OBD protocols and connect to and communicate with a minimum of ninety-eight percent (98%) of all subject vehicles.

4. All emissions inspection equipment shall meet the quality control requirements described in paragraph (3)(L)5. of this rule.

(F) Emissions Inspection Station Requirements.

1. Premises.

A. Each licensed emissions inspection station shall have an inspection area within an enclosed building of sufficient length, width and height to accommodate a full size light duty vehicle or light duty truck.

B. The licensed emissions inspection station shall be in compliance with applicable city, county and state regulations relating to zoning, merchant licensing, fictitious names and retail sales tax numbers.

C. The emissions inspection area shall be sufficiently lighted, adequately heated and cooled and properly ventilated to conduct an emissions inspection.

2. Equipment. Each licensed emissions inspection station shall have the following equipment located at or near the inspection area:

A. Scraper. The scraper may be used to remove old windshield stickers;

B. Emissions inspection equipment, including hardware, software, forms, and windshield stickers. The equipment shall be purchased or leased by the inspection station from the state's contractor; and

C. Telecommunications. The station shall provide data transmission capabilities for the emissions inspection equipment. The telecommunications capabilities may be either high-speed or low-speed. The cost of this telecommunications service is the responsibility of the licensed emissions inspection station.

3. Personnel.

A. Each licensed emissions inspection station shall have a minimum of one (1) licensed emissions inspector on duty during all business days during the station's hours of inspection, except for short periods of time due to illness or annual vacation.

B. Each licensed emissions inspection station will designate, on the station license application, the emissions inspection station manager who will be in charge of emissions inspections. The emissions inspection station manager shall be responsible for the daily operation of the station and will ensure that complete and proper emissions inspections are being performed. The emissions inspection station manager shall be present at the licensed emissions inspection station during all business days during the station's hours of inspection, except for short periods of time due to illness or annual vacation.

C. If the station is without at least one (1) emissions inspector or one (1) emissions inspection station manager, then the station shall be prohibited from conducting emissions inspections.

4. Licensing.

A. Any person, firm, corporation, partnership or governmental entity requesting an emissions inspection station license shall submit a completed emissions inspection station application to the department or to the MSHP.

B. A vehicle emissions inspection station license shall be valid for twelve (12) months from the date of issuance. A completed emissions inspection station license application shall be accompanied by a check or money order for one hundred dollars ($100) made payable to the Director of Revenue and submitted to either the Missouri Department of Natural Resources, Air Pollution Control Program, Attn: Inspection and Maintenance, PO Box 176, Jefferson City, MO 65102-0176 or the MSHP. Under no circumstances will cash be accepted for the license fee.

C. For the purposes of emissions and safety inspection license synchronization, a vehicle emissions inspection station license may be valid for fewer than twelve (12) months from the date of issuance. A completed emissions inspection station license application shall be accompanied by a check or money order made payable to the Director of Revenue and submitted to either the Missouri Department of Natural Resources, Air Pollution Control Program, Attn: Inspection and Maintenance, PO Box 176, Jefferson City, MO 65102-0176 or the MSHP. The check or money order shall submit the pro-rated fee of eight dollars and thirty-three cents ($8.33) times the number of months between the month of the application, including the month of application, for the emissions inspection license and the month that the safety inspection license will be renewed. Under no circumstances will cash be accepted for the license fee.

D. Except as provided by subparagraph (3)(F)4.C. of this rule, station licenses are valid for a period of one (1) year from the date of issuance, unless the license is suspended or revoked by the department or the MSHP. The owners of licensed emissions inspection stations that are renewing their emissions inspection license shall complete the requirements of subparagraph (3)(F)4.B. of this rule.

E. Along with the application fee, applicants shall submit the following information on a form provided by either the department or the MSHP:

(I) A copy of the current, valid business license;

(II) Proof of liability insurance;

(III) The business' federal and state taxpayer identification number;

(IV) The physical address of the inspection station;

(V) The mailing address, if different from physical address, of the inspection station;

(VI) The phone and fax number of the inspection station;

(VII) The first and last name of the licensed emissions inspector(s) employed by that station; and

(VIII) The first and last name of the emissions inspection station manager(s) employed by that station.

F. No license issued to an emissions inspection station may be transferred or used at any other location. Any change in ownership or location shall void the current station license. The department must be notified immediately when a change of ownership or location occurs or when a station discontinues operation. Businesses that change locations will not be charged another license fee for the cost of the new license if the former license was current. Businesses that change owners will be treated as new licensees and charged another license fee for the new license.

G. When an emissions inspection station license has been suspended or revoked, or when a station discontinues operation, all emissions inspection supplies including, but not limited to, blank vehicle inspection reports and windshield stickers, shall be released on demand to the department or the MSHP. The failure to account for all inspection supplies will be sufficient cause for the department to not reinstate an emissions inspection station license. The department will refund the station for the number of pre-paid emissions inspections remaining on the inspection equipment at the time the station discontinues operation or chooses not to renew its emissions inspection license.

H. No emissions inspection station license will be issued to a spouse, children, son/daughter-in-law, employee or any person having an interest in the business for the privilege to conduct emissions inspections at the same location or in close proximity to the location of an emissions inspection station whose license is under suspension or revocation, unless the applicant can provide reasonable assurance that the licensee under suspension or revocation will not be employed, manage, assist in the station operation or otherwise benefit financially from the operation of the business in any way.

5. Operations.

A. Every emissions inspection must be performed according to the procedures described in this rule. Once an emissions inspection has begun, it shall be completed and shall not be terminated. A vehicle may not be passed or failed based upon a partial inspection.

B. A proper and complete emissions inspection shall consist of the OBD test method described in section (5) of this rule, the immediate printing and subsequent issuance of a vehicle inspection report to the motorist, and the immediate uploading of the emissions inspection data to the contractor's VID.

C. For each completed emissions inspection, the emissions inspection equipment shall print a vehicle inspection report that meets the requirements of subsections (4)(A) and (4)(B) of this rule.

D. All emissions inspection records shall be transmitted to the state's contractor as soon as an inspection is complete for the purpose of real time registration verification by the Department of Revenue and program oversight by the department or the MSHP.

E. The emissions inspection fee described in subsection (3)(D) of this rule shall be charged for each inspection performed, except at locations where the fleet operator is inspecting fleet vehicles at their own inspection facility.

F. Emissions inspection windshield stickers will be issued to an emissions inspection station by the MSHP, and can be printed by only that station. Emissions inspection windshield stickers shall be kept secure to prevent them from being lost, damaged or stolen. If windshield stickers are lost, damaged or stolen, the incident shall be reported immediately to the MSHP.

G. All emissions inspections must be conducted at the licensed emissions inspection station in the approved inspection area.

H. The inspection of a vehicle shall be made only by an individual who has a current, valid emissions inspector license.

I. No person without a current, valid emissions inspector license shall issue a vehicle inspection report or a windshield sticker.

J. No owner, operator or employee of an inspection station shall furnish, loan, give or sell a vehicle inspection report or windshield sticker to any person except those entitled to receive it.

K. If an emissions inspector or an emissions inspection station manager resigns or is dismissed, the emissions inspection station manager or station owner shall report these changes to the department immediately or within two (2) business days. The emissions inspection station manager or station owner shall complete an amendment form to inform the department of these changes in personnel.

L. All current manuals, bulletins or other rules issued by the department must be read and initialed by the station owner or operator and each emissions inspector. These resources must be available, either in printed or electronic form, at all times for ready reference by inspectors, department and MSHP staff.

M. If the department is asked to settle a difference of opinion between a vehicle owner and an emissions inspection station manager or emissions inspector concerning the inspection standards and procedures, the decisions of the department concerning emissions inspection standards and procedures will be final.

N. Emissions inspection station operators are permitted to advertise as official emissions inspection stations.

6. Hours of operation.

A. The normal business hours of every public inspection station shall be at least eight (8) continuous hours per day, five (5) days per week.

B. Both inspection station managers and emissions inspectors are obligated to conduct emissions inspections and re-inspections of vehicles during normal business hours.

(I) A vehicle shall be emissions inspected within a two (2)-hour period after being presented unless other vehicles are already being emissions inspected.

(II) A re-inspection must begin within one (1) hour when a vehicle is presented during the twenty (20) consecutive-day period allowed by law for re-inspections excluding Saturdays, Sundays and state holidays.

7. Display of inspection station and inspector licenses, sign and poster.

A. The department shall provide each licensed emissions inspection station with one (1) station license certificate. The station license certificate shall be framed under clean glass or plastic and displayed in a conspicuous location discernible to those presenting vehicles for emissions inspections.

B. The department shall provide each licensed emissions inspector with one (1) inspector license certificate. The emissions inspector licenses must be framed under clean glass or plastic and displayed in a conspicuous location discernible to those presenting vehicles for emissions inspections.

C. The department shall provide each licensed emissions inspection station one (1) official sign, made of metal or other durable material, to designate the station as an official emissions inspection station. The sign designating the station as an emissions inspection station shall be displayed in a location visible to motorists driving past the inspection station. Additional signs may be purchased for a fee equal to the cost to the state for each additional sign.

D. The department shall provide each licensed emissions inspection station with one (1) poster that informs the public that required repairs or corrections need not be made at that inspection station. The poster must be displayed in a conspicuous location discernible to those presenting vehicles for emissions inspections. Additional posters may be purchased for a fee equal to the cost to the state for each additional poster.

(G) Emissions Inspector Requirements.

1. Every person requesting vehicle emissions inspector license shall submit a completed vehicle emissions inspector application to the department. The emissions inspector application shall include a facial photograph with dimensions of two inches (2") in length and two inches (2") in width.

2. All vehicle emissions inspectors must be at least eighteen (18) years of age and able to read and understand documents written in English. The emissions inspector written exam may include an oral component to evaluate the applicant's ability to read and understand documents written in English.

3. Emissions inspectors must be thoroughly familiar with the emissions inspection equipment. Emissions inspectors must demonstrate competency while performing an emissions inspection on a vehicle prior to the issuance of the inspector's license. A minimum grade of eighty percent (80%) is required to pass the practical examination or reexamination.

4. Emissions inspectors must pass a written test that demonstrates their knowledge of the fundamentals of OBD testing and repairs and the procedures of the emissions inspection program. A minimum grade of eighty percent (80%) is required to pass the written examination or reexamination.

5. If the applicant meets the requirements of paragraph (3)(G)1.–(3)(G)4. of this rule, an emissions inspector license will be issued without charge. Licenses are valid for a period of three (3) years from the date of issuance, or until suspended or revoked by the department or the MSHP. An emissions inspector whose license has been suspended or revoked may be required to successfully complete a department-approved retraining program and pass a written and/or practical reexamination before the license will be reinstated.

6. If the emissions inspector leaves the employment of one licensed emissions inspection station and enters the employment of another licensed emissions inspection station, the emissions inspection station manager of the station that the inspector is transferring to shall follow the procedures described in subparagraph (3)(F)5.K. of this rule. The emissions inspector's license is transferable with the licensed emissions inspector, provided the emissions inspector's license has not expired.

7. An emissions inspector may be reexamined at any time, and if s/he fails the reexamination or refuses to be reexamined, the license issued to him/her shall be suspended. If a vehicle emissions inspector fails a reexamination, s/he cannot again be tested until a period of thirty (30) days has elapsed.

8. An emissions inspector license may be renewed before the expiration date or sixty (60) days after expiration without a reexamination. If the license has expired more than sixty (60) days before the license renewal application is submitted, a reexamination will be required. A vehicle emissions inspector does not have authority to conduct any inspections during the sixty (60)-day grace period unless the license has been properly renewed.

(H) Emissions Inspection Procedures. The emissions inspection procedure shall meet the following requirements:

1. Vehicles shall be inspected in as-received condition. An official inspection, once initiated, shall be performed in its entirety regardless of immediate outcome, except in the case of an invalid test condition;

2. The initial emissions inspection shall be performed according to the test method described in section (5) of this rule without repair or adjustment at the emission inspection station prior to commencement of any tests. Emissions inspections performed within ninety (90) days of the initial emissions inspection shall be considered a reinspection and are subject to provisions of subsection (3)(J) of this rule;

3. If a subject vehicle passes the emissions test method described in section (5) of this rule according to the standards described in subsection (3)(I) of this rule, the emissions inspection station shall issue the vehicle owner or driver a vehicle inspection report certifying that the vehicle has passed the emissions inspection,

and provide a windshield sticker for the windshield of the subject vehicle according to subsection (4)(A) of this rule. The positioning of the windshield sticker on the windshield of the vehicle shall take place on the premises of the emissions inspection station;

4. If a subject vehicle fails the emissions test method described in section (5) of this rule according to the standards described in subsection (3)(I) of this rule, the emissions inspection station shall provide the vehicle owner or driver with a vehicle inspection report indicating what parts of the test method of the emissions inspection that the vehicle failed, a repair facility performance report, and a copy of the customer complaint procedure according to subsection (4)(B) of this rule; and

5. If a subject vehicle fails the emissions test method described in section (5) of this rule, the vehicle owner shall have the vehicle repaired. The vehicle shall be reinspected according to the appropriate inspection period as determined by paragraphs (3)(C)2. and (3)(C)3. of this rule and the reinspection procedures described in subsection (3)(J) of this rule.

(I) Emissions Inspection Standards. Subject vehicles shall fail the emissions inspection if the vehicle does not meet the OBD test standards specified in 40 CFR part 85, subpart W, section 2207. Section 2207 is incorporated by reference in this rule, as published by the EPA, Office of Transportation and Air Quality, 2000 Traverwood, Ann Arbor, MI 48105 on April 5, 2001. This rule does not incorporate any subsequent amendments or additions to section 2207.

(J) Emissions Reinspection Procedures.

1. Emissions reinspection fee.

A. To qualify for one free reinspection, the vehicle owner or driver shall present the previous vehicle inspection report and the completed repair data sheet to the emissions inspection station that conducted the initial emissions inspection, within twenty (20) business days of the initial emissions inspection.

B. Reinspections occurring more than twenty (20) calendar days after the initial emissions inspection shall only be performed upon payment of the emissions inspection fee to the emissions inspection station, except at locations where the fleet operator is inspecting fleet vehicles at their own facility.

2. Reinspection procedure.

A. Vehicles that fail the emissions inspection described in section (5) of this rule shall be reinspected according to the test method described in section (5) of this rule to determine if the repairs were effective for correcting failures on the previous inspection, thereby reducing or preventing an increase in present and future tailpipe or evaporative emissions.

B. The station-based reinspection shall be performed without repair or adjustment to the vehicle at the emissions inspection station prior to inspections.

3. If the subject vehicle passes a reinspection, then the procedures in paragraph (3)(H)3. of this rule shall be followed.

4. If the subject vehicle fails a reinspection, the vehicle owner may either:

A. Have more repairs performed on the vehicle and have the vehicle reinspected; or

B. Apply for a cost-based waiver according to the requirements in paragraphs (3)(K)1.–(3)(K)4. of this rule.

(K) Emissions Inspection Waivers.

1. Cost-based waivers. Vehicles shall be issued a cost-based waiver under the following conditions:

A. The subject vehicle has failed the initial emissions inspection, has had qualifying repairs, and has failed an emissions reinspection;

B. The vehicle owner or operator has taken the vehicle to the department or has made an appointment for the department representative to travel to the location of the vehicle and presented to the department representative the vehicle inspection reports, stating that the vehicle presented has failed the initial emissions inspection and all subsequent emissions reinspections;

C. The subject vehicle has all of its emissions control components correctly installed and operating as designed by the vehicle manufacturer.

(I) To the extent practical, the department representative shall use the MSHP air pollution control device inspection method described in 11 CSR 50-2.280 to fulfill the requirement of this subparagraph.

(II) If the vehicle fails the visual inspection described in 11 CSR 50-2.280, then the vehicle will be denied a cost-based waiver;

D. The vehicle operator has presented to the department representative all itemized receipts of qualifying repairs. The qualifying repairs must meet the requirements of paragraph (3)(K)2. of this rule. The itemized receipts must meet the requirements of paragraph (3)(K)3. of this rule; and

E. To the extent practical, the department representative has verified that the repairs indicated on the itemized receipts for qualifying repairs were made and that the parts were repaired/replaced as claimed.

2. The minimum amount spent on qualifying repairs for cost-based waivers shall—

A. Exceed four hundred fifty dollars ($450) for vehicles not repaired by the owner of the failed vehicle;

B. Exceed four hundred dollars ($400) for all vehicles repaired by the owner of the failed vehicle. Only the parts costs for the following parts listed in 40 CFR 51.360(a)(5) will be accepted:

(I) Oxygen sensors;
(II) Catalytic converters;
(III) EGR valves;
(IV) Evaporative canisters;
(V) PCV valves;
(VI) Air pumps;
(VII) Distributors;
(VIII) Ignition wires;
(IX) Coils;
(X) Spark plugs; and
(XI) Any hoses, gaskets, belts, clamps, brackets, or other accessories directly associated with these parts;

C. Exceed two hundred dollars ($200) for all motorists who provide the department representative with reasonable and reliable proof that the owner is financially dependent on state and federal disability benefits and other public assistance programs. The proof must be provided thirty (30) calendar days prior to each emissions inspection. The proof shall consist of government issued documentation providing explanation of the motorist's disability and financial assistance with regard to personal income;

D. Be inclusive of parts costs paid for emissions repair services. Recognized labor costs shall be applied toward a cost-based waiver. For qualifying repairs performed by someone other than a Recognized Repair Technician, parts costs, but not labor costs, shall be applied toward a cost-based waiver;

E. Not include the fee for an emissions inspection or reinspection;

F. Not include the fee for a safety inspection or reinspection;

G. Not include charges for obtaining a written estimate of needed repairs;

H. Not include the charges for repairs necessary for the vehicle to pass a safety inspection;

I. Not include costs for repairs performed on the vehicle before the initial emissions inspection failure or more than ninety (90) days after the initial emissions inspection failure;

J. Not include expenses that are incurred for the repair of emissions control devices or data link connectors that have been found during either a safety or an emissions inspection to be tampered with, rendered inoperative, or removed; and

K. Not include costs for emissions repairs or adjustments covered by a vehicle manufacturer's warranty, insurance policy, or contractual maintenance agreement. The emissions repair costs covered by warranty, insurance, or maintenance agreements shall be separated from other emissions repair costs and shall not be applied

toward the cost-based waiver minimum amount. The operator of a vehicle within the statutory age and mileage coverage under subsection 207(b) of the federal Clean Air Act shall present a written denial of warranty coverage, with a complete explanation, from the manufacturer or authorized dealer in order for this provision to be waived.

3. The vehicle operator shall present the original of all itemized repair receipts to the department representative to demonstrate compliance with paragraph (3)(K)2. of this rule. The itemized repair receipt(s) shall—

A. Include the name, physical address and phone number of the repair facility and the model year, make, model and VIN of the vehicle being repaired;

B. Describe the diagnostic test(s) performed to identify the reason the vehicle failed an emissions inspection;

C. Describe the emissions repair(s) that were indicated by the diagnostic test(s);

D. Describe the emissions repairs that were authorized by the vehicle owner or driver and performed by the repair technician;

E. Describe the vehicle part(s) that were serviced or replaced;

F. Describe the readiness monitors that were either set to ready or left unset;

G. Describe the diagnostic test(s) performed after the repairs were completed to verify that the vehicle's emissions control system is now operating as it was designed to operate by the manufacturer;

H. Clearly list the labor costs, if the vehicle was repaired by a repair technician, and parts costs separately for each repair. Unclear repair receipts that do not identify the vehicle that was repaired, do not itemize the actual cost of the parts that were serviced, do not list the labor costs separately from the parts costs, do charge state sales tax on parts exempted from state sales as defined in 10 CSR 10-6.320, or contain fraudulent information or parts costs as determined by department representative may not be accepted for the purpose of obtaining a cost-based waiver;

I. Include the repair technician's name (printed or typed), signature and, if applicable, the unique identification number of the Recognized Repair Technician that performed the repair work; and

J. Confirm that payment was collected or financed for the services rendered and/or parts replaced as listed on the itemized repair receipt(s).

4. If the conditions of paragraphs (3)(K)1.–3(K)3. of this rule have been met, the department representative shall issue a cost-based waiver and affix the windshield sticker to the vehicle. The windshield sticker shall meet the requirements of paragraph (4)(A)2. of this rule.

5. The contractor shall provide the means to issue cost-based waivers from either the department's offices or from a portable solution as required by the contract.

6. Out of area waivers. Provided the vehicle owner or driver submits a completed, signed waiver affidavit to the department indicating that the vehicle will be operated exclusively in an area of the state not subject to the inspection requirements of sections 643.300 to 643.355, RSMo, for the next twenty-four (24) months, the department shall issue an emissions inspection vehicle inspection report, with an indicator to show that the vehicle has received an out of area waiver to the vehicle owner or driver, and a windshield sticker shall be affixed to the subject vehicle.

7. Reciprocity waivers. Provided the vehicle owner or driver presents proof, acceptable to the department, that the subject vehicle has successfully passed an OBD emissions inspection in another state within the previous sixty (60) calendar days, the department shall issue an emissions inspection vehicle inspection report with an indicator to show that the vehicle has received a reciprocity waiver to the vehicle owner or driver, and a windshield sticker shall be affixed to the subject vehicle.

A. Reciprocity waivers shall be issued if the motorist submits proof of a passing OBD emissions inspection from one (1) of the following states: Alaska, Arizona, Connecticut, Delaware, District of Columbia, Georgia, Illinois, Louisiana, Maine, Massachusetts, Maryland, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Tennessee unless tested in Shelby County (Memphis), Rhode Island, Texas, Utah, Vermont, Virginia, Washington, and Wisconsin.

B. Should any of these states discontinue the use of pass/fail OBD inspections, the reciprocity waiver shall not be granted.

8. The contractor shall provide the means to issue out of area and reciprocity waivers from either the department's offices or from a portable solution as required by the contract.

(L) Quality Control Requirements.

1. Quality control for the contractor(s). The department shall appoint entities under contractual agreement with the department to facilitate the operating of decentralized emissions inspection stations that will conduct vehicle emissions for the purpose of reducing or preventing vehicle pollution that contributes to ground-level ozone formation.

2. Quality control for emissions inspection stations.

A. Licensed emissions inspection stations shall conduct their business in such a way that it satisfies the intent of the vehicle emissions inspection program, which is to accurately identify the vehicles that fail to meet the OBD emissions test standards so that these vehicles may be effectively repaired.

B. Failure to comply with the provisions of this rule and the purposes stated in subparagraph (3)(L)2.A. of this rule shall be considered a violation of this rule and shall be sufficient cause for the department or MSHP to immediately suspend emissions and/or safety inspection station licenses and the ability to conduct emissions and/or safety inspections.

C. Licensed emissions inspection stations shall be financially responsible for all vehicles that are being inspected.

3. Quality control for emissions inspectors.

A. The contractor shall provide to the department an education and training plan, to be approved by the department prior to implementation, for licensed emissions inspectors. Inspectors shall not be licensed unless they have passed all training requirements.

B. Failure to comply with the provisions of this rule and the contract shall be considered a violation of this rule and shall be sufficient cause for the department or MSHP to immediately suspend safety and/or emissions inspector licenses and the ability to conduct safety and/or emissions inspections.

C. As specified in the contract, the contractor shall maintain for the department an electronic database of licensed emissions inspector information, that at a minimum includes the inspector's name, unique identification number, date of license issuance, stations of employment, date of any license suspensions or revocations, and a list of inspection results by date and by model year, make model, and VIN.

4. Quality control for emissions inspection records.

A. All inspection records, calibration records, and control charts shall be accurately created, recorded, maintained and secured by the contractor.

B. The contractor shall make available all records and information requested by the department and shall fully cooperate with department, MSHP, and other state agency representatives who are authorized to conduct audits and other quality assurance procedures.

C. The contractor shall maintain emissions inspection records, including all inspection results and repair information.

(I) These records shall be kept readily available to the department and the MSHP for at least three (3) years after the date of an initial emissions inspection.

(II) These records shall be made available to the department and the MSHP on a real time continual basis through the use of an automated data communication system as specified in the contract.

(III) These records shall also be made available immediately upon request for review by department and MSHP personnel.

5. Quality control for all emissions inspection equipment.

A. At a minimum, the practices described in this section and in the contract shall be followed.

B. Preventive maintenance on all emissions inspection equipment shall be performed on a periodic basis, as provided by the contract between the department and the contractor and consistent with the EPA's and the equipment manufacturer's requirements.

C. To assure quality control, computerized analyzers shall automatically record quality control check information, lockouts, attempted tampering and any circumstances which require a service representative to work on the equipment.

D. To assure test accuracy, equipment shall be maintained by the contractor according to demonstrated good engineering procedures.

E. Computer control of quality assurance checks shall be used whenever possible. The emissions inspection equipment shall transmit the quality control results to the department's contractor as prescribed in the contract between the department and the contractor.

(M) Vehicle Registration. After a subject vehicle has passed the emissions inspection according to either paragraphs (3)(H)3. or (3)(J)3. of this rule, or received a waiver according to subsection (3)(K) of this rule, the contractor shall make electronically available to the Department of Revenue on a real time basis the emissions inspection compliance record to enable vehicle registration and compliance enforcement. Paper vehicle inspection reports may not be used for registration purposes.

(N) Violations and Penalties.

1. Persons violating this rule shall be subject to penalties contained in section 643.355, RSMo. Any person who knowingly misrepresents himself or herself as an official emissions inspection station or an inspector or a Recognized Repair Technician is guilty of a class C misdemeanor for the first offense and a class B misdemeanor for any subsequent offense. Any person who is found guilty or who has pleaded guilty to a violation of this paragraph shall be considered to have committed an offense for the purposes of this paragraph.

2. All emissions inspection station operators and emissions inspectors shall comply with the emissions inspection law, 643.300–643.355, RSMo, and this emissions inspection rule. All emissions inspections shall be conducted in accordance with this emissions inspection rule. Failure to comply with the emissions inspection law or the emissions inspection rule will subject the emissions inspection station manager and emissions inspectors to one (1) or more of the following enforcement actions:

A. Warning;

B. Suspension of inspection licenses;

C. Revocation of inspection licenses; and

D. Arrest by the MSHP.

3. Before any emissions inspection station license or emissions inspector license is suspended or revoked by the department, the holder will be notified, either in writing by certified mail or by personal service at the station's address of record, and given the opportunity to have an administrative hearing as provided by 643.320.3, RSMo.

4. Lockouts. The department or MSHP may electronically lockout any emissions inspector, station, or equipment if the department or MSHP identifies any irregularities within the emissions inspection database or any irregularities identified during either overt or covert audits. The lockout may precede warnings, license suspensions or revocations, or arrests. The state's contractor shall display a lockout warning on the monitor of any inspection equipment that is locked out by the department or MSHP. Lockouts shall prevent the performing of emissions inspections by the locked out party. Lockouts shall be cleared when the department or MSHP is satisfied that there is no longer a need for a lockout.

(4) Reporting and Record Keeping.

(A) The contractor shall provide all licensed emissions inspection stations with vehicle inspection report forms and windshield stickers for vehicles that pass an emissions inspection. After the effective date of this rule, any revision to the contractor supplied forms shall be presented to the regulated community for a forty-five (45)-day comment period.

1. The vehicle inspection report shall include:

A. A vehicle description, including license plate number, VIN, vehicle make, vehicle model, vehicle model year, and odometer reading;

B. The date and time of inspection;

C. The unique identification number of the licensed emissions inspector performing the inspection, the unique identification number and location of the inspection station, and the unique identification number of the inspection equipment;

D. The applicable inspection standards;

E. The passing OBD test results;

F. The results of the recall provisions check, if applicable, including the recall campaign;

G. A statement that the emissions inspection was performed in accordance with this state regulation;

H. A waiver indicator, if applicable;

I. The statement: "This inspection is mandated by your United States Congress"; and

J. A statement that the results have been transmitted directly to the Department of Revenue, and that the paper vehicle inspection report may not be used for vehicle registration purposes.

2. The windshield sticker shall—

A. Be affixed on the inside of the vehicle's front windshield in the lower left hand corner by the emissions inspector for each vehicle that passes the emissions inspection, or by the department representative for each vehicle that has been issued a waiver. A windshield sticker affixed to a vehicle that has been issued a waiver shall have a waiver indicator clearly visible on the sticker. Previous windshield stickers affixed to the windshield shall be removed;

B. Be as fraud resistant as required by the contract between the department and the contractor;

C. Be valid until the next emissions inspection is required as defined in subsection (3)(B) of this rule; and

D. Contain the statement: "This inspection is mandated by your United States Congress."

(B) The contractor shall provide all licensed emissions inspection stations with vehicle inspection reports for vehicles that fail an emissions inspection. After the effective date of this rule, any revision to the contractor supplied forms shall be presented to the regulated community for a forty-five (45)-day comment period. The vehicle inspection report shall include:

1. A vehicle description, including license plate number, VIN, vehicle make, vehicle model, vehicle model year, and odometer reading;

2. The date and time of inspection;

3. The unique identification number of the licensed emissions inspector performing the test, the unique identification number and location of the inspection station, and the unique identification number of the inspection equipment;

4. The applicable inspection standards;

5. The passing and failing OBD test results according to 40 CFR part 85, subpart W, section 2223. Section 2223 is incorporated by reference in this rule, as published by the EPA, Office of Transportation and Air Quality, 2000 Traverwood, Ann Arbor, MI 48105 on April 5, 2001. This rule does not incorporate any subsequent amendments or additions to section 2223;

6. The results of the recall provisions check, if applicable, including the recall campaign;

7. A statement that the emissions inspection was performed in accordance with this state regulation;

8. The statement: "This inspection is mandated by your United States Congress"; and

9. A statement that the vehicle may be reinspected for free according to subparagraph (3)(J)1.A. of this rule.

(C) The contractor shall provide all licensed emissions inspection stations with a repair facility performance report for each failing vehicle. The repair facility performance report may be included on the vehicle inspection report described in subsection (4)(B) of this rule. The repair facility performance report shall list the ten (10) facilities employing at least one (1) Recognized Repair Technician that are nearest to the inspection station that conducted the failing emissions inspection. If the inspection station employs at least one (1) Recognized Repair Technician, the repair facility performance report shall include the inspection station in the list of ten (10) facilities. The report shall include, but not be limited to, the following:

1. The name of each facility, address, and phone number;

2. The percentage of vehicles repaired by the repair facility that passed a reinspection after one (1) reinspection;

3. Other information as required by the contract between the department and the contractor; and

4. How motorists may obtain the full or customized list of facilities employing Recognized Repair Technicians from the contractor at no cost to the motorist. The list shall be viewable on a publicly available website maintained by the contractor.

(D) The contractor shall provide a mechanism for collecting vehicle repair information from all Recognized Repair Technicians. This information may be collected through the emissions inspection equipment or through an Internet solution. The information shall be used to generate the repair facility performance report described in subsection (4)(C) of this rule. The information to be collected shall include, but not be limited to, the following:

1. The total cost of repairs, divided into parts and labor;

2. The name of the person who performed the repairs and their Recognized Repair Technician's identification number;

3. The name of the repair facility and the repair facility's identification number; and

4. The inspection failure the vehicle was being repaired for and the emissions-related repairs performed.

(E) The contractor shall provide all licensed emissions inspection stations and businesses employing Recognized Repair Technicians with customer complaint forms. After the effective date of this rule, any revision to the contractor supplied forms shall be presented to the regulated community for a forty-five (45)-day comment period. The customer complaint form shall include the telephone numbers of the department and the MSHP.

1. Any challenge regarding the performance or results of the emissions inspection must be made within ten (10) business days of the failing emissions inspection.

2. Any challenge regarding the results or effectiveness of the repairs made by either licensed emissions inspection stations or Missouri Recognized Repair Technicians must be made within twenty (20) business days of the date of vehicle repair.

(F) Beginning January 1, 2008, using a method provided by the contractor, federal, state, and local government agencies shall submit a list of vehicles, by VIN, that are operated by the government agencies and that are required to be inspected during each calendar year. Submittals are due by February 1 of each calendar year. If the first is not a business day or state holiday, the list shall be submitted to the contractor by the following business day. The contractor will audit these submittals by comparing the list of submitted vehicles to the database of inspected vehicles to track government fleet compliance. The contractor shall provide the department with the results of this audit by April 1 of each calendar year.

(5) Test Methods.

(A) To the extent possible, an OBD test as defined in subsection (2)(S) of this rule and the contract shall be performed on all 1996 and later model year light duty vehicles and light duty trucks powered by gasoline and all 1997 and later model year light duty vehicles and light duty trucks powered by diesel.

(B) The OBD test shall follow the procedures described in 40 CFR part 85, subpart W, section 2222. Section 2222 is incorporated by reference in this rule, as published by the EPA, Office of Transportation and Air Quality, 2000 Traverwood, Ann Arbor, MI 48105 on April 5, 2001. This rule does not incorporate any subsequent amendments or additions to section 2222.

1. If the subject vehicle cannot be tested with the OBD test due to manufacturer design, then the subject vehicle shall be tested with only a bulb check test described in subparagraph (5)(B)2. of this rule.

2. Bulb check test.

A. Vehicles will fail the bulb check portion of the OBD test if the malfunction indicator light is not illuminated while the key is in the on position and the engine is off (KOEO).

B. Vehicles will fail the bulb check portion of the OBD test if the malfunction indicator light is illuminated while the key is in the on position and the engine is running (KOER).

C. Vehicles with keyless ignitions shall be subject to a bulb check test.

D. Vehicles that fail the bulb check portion of the OBD test shall fail the OBD test.

3. Data link connector and communications test.

A. Vehicles will fail the data link connector portion of the OBD test if the DLC is tampered with, blocked, or not located where the manufacturer located the DLC.

B. Vehicles will fail the communications portion of the OBD test if the vehicle does not transmit the necessary information to the inspection equipment after a ten (10)-second attempt, followed by two (2) additional thirty (30)-second attempts.

C. Vehicles that fail the DLC or communications portion of the OBD test shall fail the OBD test.

D. Repairs made to correct failures for DLC tampering as described in part (5)(B)3.A. of this rule shall not be eligible for cost-based waivers.

4. Readiness monitor test.

A. 1996–2000 model year gasoline-powered vehicles may pass the readiness monitor portion of the OBD test if they have no more than two (2) unset non-continuous readiness monitors.

B. 2001 and newer model year gasoline-powered vehicles may pass the readiness monitor portion of the test if they have no more than one (1) unset non-continuous readiness monitor.

C. Gasoline-powered vehicles that fail the OBD test with a catalytic converter DTC (P0420-P0439) present must have the catalyst monitor reset to pass the readiness monitor portion of the OBD retest.

D. Gasoline-powered vehicles will fail the readiness monitor portion of the OBD test if the following non-continuous monitors are not supported:

(I) Oxygen sensor; and

(II) Catalyst.

E. Vehicles that are on the readiness exemption table maintained by the contractor and authorized by the department shall be exempt from the readiness monitor portion of the OBD test.

F. Vehicles that fail the readiness monitor portion of the OBD test shall fail the OBD test.

5. Diagnostic trouble code test.

A. Vehicles will fail the diagnostic trouble code test if the OBD system has stored at least one (1) mature (non-pending, non-historic) DTC that commands the malfunction indicator light to be illuminated.

B. Vehicles will fail the diagnostic trouble code test if the vehicle commands the malfunction indicator light (MIL) to be illuminated but the OBD system has no mature (non-pending, non-historic) DTCs stored in the system.

C. The contractor shall ensure that their inspection equipment's request for DTCs does not cause the MIL to be illuminated.

D. Vehicles that fail the DTC portion of the OBD test shall fail the OBD test.

(C) If the subject vehicle passes the OBD test according to the OBD test standards specified in subsection (3)(I) of this rule and all

of the OBD test procedures described in section (5) of this rule, then the procedures in paragraph (3)(H)3. of this rule shall be followed.

(D) If the subject vehicle fails the OBD test according to the OBD test standards specified in subsection (3)(I) of this rule or any of the OBD test procedures described in section (5) of this rule, then the procedures in paragraphs (3)(H)4., (3)(H)5. and (3)(J)2. of this rule shall be followed.

AUTHORITY: section 643.310.1, RSMo Supp. 2006. Original rule filed Jan. 16, 2007.

PUBLIC COST: This proposed rule will cost four hundred twelve thousand two hundred fifty dollars ($412,250) in FY 2008 and three hundred ninety-nine thousand seven hundred one dollars ($399,701) in FY 2009. The total aggregate cost is ($1,673,801). Note attached fiscal note for assumptions that apply.

PRIVATE COST: This proposed rule will cost $14,140,880 in FY 2008 and $13,351,856 in FY 2009. The total aggregate cost is $55,283,024. Note attached fiscal note for assumptions that apply.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed rule will begin at 9:00 a.m., March 29, 2007. The public hearing will be held at the Café 37, Walnut Room, 37 Court Square, West Plains, 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 Director, Missouri Department of Natural Resources' Air Pollution Control Program, 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 5, 2007. Written comments shall be sent to Chief, Operations Section, Missouri Department of Natural Resources' Air Pollution Control Program, 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: 5 – Air Quality Standards & Air Pollution Control Rules Specific to the St. Louis Ozone Nonattainment Area

Type of Rulemaking: New rule

Rule Number and Name: 10 CSR 10-5.381 On-Board Diagnostic Motor Vehicle Emissions Inspection

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
178 government vehicle fleets	$343,968
Department of Natural Resources	($2,017,769)

III. WORKSHEET

Fiscal Year	**Number of Vehicles Tested**	**Emissions Fee**	**TOTAL REVENUE**
2008	2,986	$24.00	$ 71,660
2009	3,583	$24.00	$ 85,992
2010	3,583	$24.00	$ 85,992
2011	3,583	$24.00	$ 85,992
2012	597	$24.00	$14,332
TOTAL:	**14,332**		**$343,968**
		Acceptance Test Procedure Costs	**TOTAL COSTS**
2008		$100,000	($100,000)
2009		$ 25,000	($ 25,000)
2010		$ 25,000	($ 25,000)
2011		$ 25,000	($ 25,000)
2012		$0	$0
TOTAL:		**$175,000**	**($175,000)**
Fiscal Year	**Number of Vehicles Not Tested**	**State's Portion of Emissions Fee**	**TOTAL REVENUE**
2008	153,564	$2.50	($383,910)
2009	184,277	$2.50	($460,693)
2010	184,277	$2.50	($460,693)
2011	184,277	$2.50	($460,693)
2012	30,712	$2.50	($ 76,780)
TOTAL:	**737,107**		**($1,842,769)**
GRAND TOTAL:			**($1,673,801)**

The rule becomes effective the third month of the state fiscal year 2008 (September 1, 2007), so the number of vehicles tested during FY 08 are reduced. The contract period expires the end of the second month of the fiscal year 2012 (September 1, 2011). If the contract is extended, the cost would remain $85,992 for each full fiscal year beyond FY 2011.

The estimated costs of compliance for the first full fiscal year (FY2009) of implementation is ($399,701).

IV. ASSUMPTIONS

1. The statutory $24 emissions testing fee cap remains constant.
2. The number of entities and the number of vehicles are based upon Gateway Clean Air Program records collected by the department. The number of governmental agencies and vehicles remains constant for the duration of the contract period.
3. The fleet inspection data collection costs for the department are identical to the present costs.
4. There is an even distribution in the number of vehicles between even and odd model years, such that half of the vehicles are tested in even calendar years, and half of the vehicles are tested in odd calendar years.
5. All future costs are estimated using 2006 actual figures.
6. The rule is effective on August 30, 2007.
7. The contract ends on September 1, 2011.
8. The Acceptance Test Procedure has a first year cost of $100,000 due to program start up and thereafter an annual cost of $25,000.

FISCAL NOTE
PRIVATE ENTITY COST

I. RULE NUMBER

Title: 10 – Department of Natural Resources

Division: 10 – Air Conservation Commission

Chapter: 5 – Air Quality Standards & Air Pollution Control Rules Specific to the St. Louis ozone nonattainment area

Type of Rulemaking: New rule

Rule Number and Name: 10 CSR 10-5.381 On-Board Diagnostic Motor Vehicle Emissions Inspection

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:
2,131,176	Privately owned vehicles, 1996 – 2005 Model Years	$51,148,224
15,000	Privately owned vehicles, 1997 – 2005 Light duty diesel vehicles	$360,000
1,100	Licensed Emissions Stations Equipment	$3,300,000
1,100	Annual Licensing Fee	$440,000
600	Missouri Recognized Repair Technicians	$34,800
TOTAL COSTS:		**$55,283,024**

III. WORKSHEET

FISCAL YEAR	**GASOLINE LDV BY FY**	**INSPECTION FEE**	**FISCAL IMPACT**
2008	443,995	$24.00	$10,655,880
2009	532,794	$24.00	$12,787,056
2010	532,794	$24.00	$12,787,056
2011	532,794	$24.00	$12,787,056
2012	88,799	$24.00	$2,131,176
TOTAL:	**2,131,176**		**$51,148,224**
FISCAL YEAR	**DIESEL LDV BY FY**	**INSPECTION FEE**	**FISCAL IMPACT**
2008	3,125	$24.00	$75,000
2009	3,750	$24.00	$90,000
2010	3,750	$24.00	$90,000
2011	3,750	$24.00	$90,000
2012	625	$24.00	$15,000
TOTAL:	**15,000**		**$360,000**
GRAND TOTAL:	**2,146,176**		**$51,508,224**

IV. ASSUMPTIONS

1. The known number of vehicles tested in CY 2005 remains constant until September 1, 2007.
2. The current number of licensed safety inspection shops in the St. Louis ozone nonattainment in CY 2006 remains constant until September 1, 2007, and all licensed safety inspection shops become licensed emissions inspection shops.
3. Annual licensing fee costs are based on the $100 fee as stated in the rule and a four year contract. This cost occurs every fiscal year.
4. The current number of Missouri Recognized Repair Technicians (MRRT) in CY 2006 remains constant after September 1, 2007.
5. The $24 emissions testing fee remains constant for the duration of the contract.
6. Station inspection equipment costs are a one-time expense for the duration of the contract. The cost of the emissions inspection equipment is $3,000 per unit. This cost occurs in FY 2008.
7. ASE certifications are valid for 3 years and are a one-time $58.00 expense during the period of the contract. This one-time cost occurs in FY 2009.
8. All future costs are estimated using 2006 actual figures.
9. The rule is effective on August 30, 2007.
10. The minimum contract duration is four years, and the contract ends on September 1, 2011.
11. Initial start-up costs (e.g. equipment purchases, MRRT certification) will be higher in the first two years and decreased after that time period.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 23—*[Geological Survey and Resource Assessment Division]* ***Division of Geology and Land Survey***
Chapter 3—Well Construction Code

PROPOSED AMENDMENT

10 CSR 23-3.100 Sensitive Areas. The division is adding a new section (8).

PURPOSE: This amendment requires more stringent well drilling standards to be utilized in areas where groundwater is contaminated with contaminants of concern or degradation products in the Weldon Spring, St. Charles County, vicinity. Contaminants of concern at the U.S. Army Corps of Engineers (COE) Main Site include: trinitrotoluene (TNT) and dinitrotoluene (DNT). Department of Energy (DOE) contaminants of concern at the Chemical Plant area include 2,4,6-TNT, 2,4-DNT, 2,6-DNT, dinitrobenzene (1,3-DNB), nitrobenzene (NB), nitrate, uranium, and trichloroethylene (TCE). Only uranium and 2,4-DNT are contaminants of concern at the DOE Quarry. It also changes the name of the division.

(8) Special Area 4. Portions of St. Charles County west of the city of Weldon Spring shall be listed as Special Area 4 (Figures 7D included herein) due to the contamination of portions of the aquifer by one (1) or more of the following chemicals of concern: trinitrotoluene (TNT) and dinitrotoluene (DNT) at the U.S. Army Corps of Engineers (COE) site, 2,4,6-TNT, 2,4-DNT, 2,6-DNT, dinitrobenzene (1,3-DNB), nitrobenzene (NB), nitrate, uranium, and trichloroethylene (TCE) at the Department of Energy (DOE) Main Site, uranium, and 2,4-DNT, at the DOE Quarry, or other contaminants of the National Public Drinking Water Regulations (NPDWR). In this area it is necessary to utilize more stringent well construction standards for new wells that are drilled into the aquifer and to limit the deepening of existing upper aquifer wells.

(A) The division shall be consulted before constructing a new well in Special Area 4. The division will provide specific guidance on well drilling protocol, construction specifications and groundwater sampling on a case-by-case basis. The division must provide written approval for all new wells prior to construction.

(B) Before deepening a well in Special Area 4, groundwater sampling and analysis for the chemicals of concern must be conducted by qualified and properly trained individuals and the data submitted within sixty (60) days of the sampling event by the well installation contractor to the division. The division must provide written approval for the deepening of all new wells in Special Area 4. Wells that have been sampled and analyzed and are contaminated with chemicals of concern exceeding maximum contaminant levels (MCLs), action levels (ALs), and/or remediation goals included in the DOE/COE Record of Decision (ROD) for the Weldon Spring sites shall not be deepened.

(C) In addition to specific instructions that are provided by the division pursuant to 10 CSR 23-3.100(8)(A) and (B), the following must be performed at all new wells installed in Special Area 4:

1. All new and deepened old water wells in Special Area 4 shall be constructed with a sampling port or tap within ten feet (10') of the wellhead. Water must be purged from the sampling port prior to collection of a sample;

2. After proper well development, water from all new wells located in Special Area 4 shall be sampled and analyzed for the chemicals of concern, as determined by the division. Qualified and properly trained persons must complete sample collection. Sampling qualifications and training requirements will be determined in advance of sampling by the division and approval will be issued in written format. In order to document sampling has occurred, a copy of the chain of custody form shall be submitted by the pump installation contractor to the division within sixty (60) days of pump installation; and

3. The data report from all analyses shall be made available by the pump installation contractor to the division and the well owner within sixty (60) days of the sampling event.

(D) Properly constructed new or deepened wells that, upon sampling and analysis, are contaminated at levels exceeding MCLs, ALs, and/or remediation goals included in the DOE/COE ROD for the Weldon Spring sites shall:

1. Be plugged full-length using high-solids bentonite slurry, six percent (6%) bentonite cement or neat cement grout placed under pressure via tremie pipe which extends to within twenty-five feet (25') of the bottom of the borehole. Grout shall extend from the bottom of the borehole to within two feet (2') of land surface. Prior to plugging all pumps and debris must be removed from the wells. Any liner must be removed or perforated if possible. Casing must be cut at least three feet (3') below ground surface. A registration report and fee (if required) must be submitted within sixty (60) days of abandonment; or

2. With prior approval from the division, the well owner shall be allowed to install a water treatment system that is designed to properly treat the chemical(s) of concern. The well shall not be used for human consumption until sampling and analysis demonstrates that the water treatment system reduces contaminant levels below MCLs, ALs, and/or remediation goals included in the DOE/COE ROD for the Weldon Spring sites for all chemicals of concern. The division shall be provided a copy of the post-treatment analytical data by the pump contractor within sixty (60) days of the sampling event.

(E) Notwithstanding these provisions, the federal government does not waive its rights and authority under federal law, regulations, or executive order within the boundaries and applicable jurisdiction of federal property.

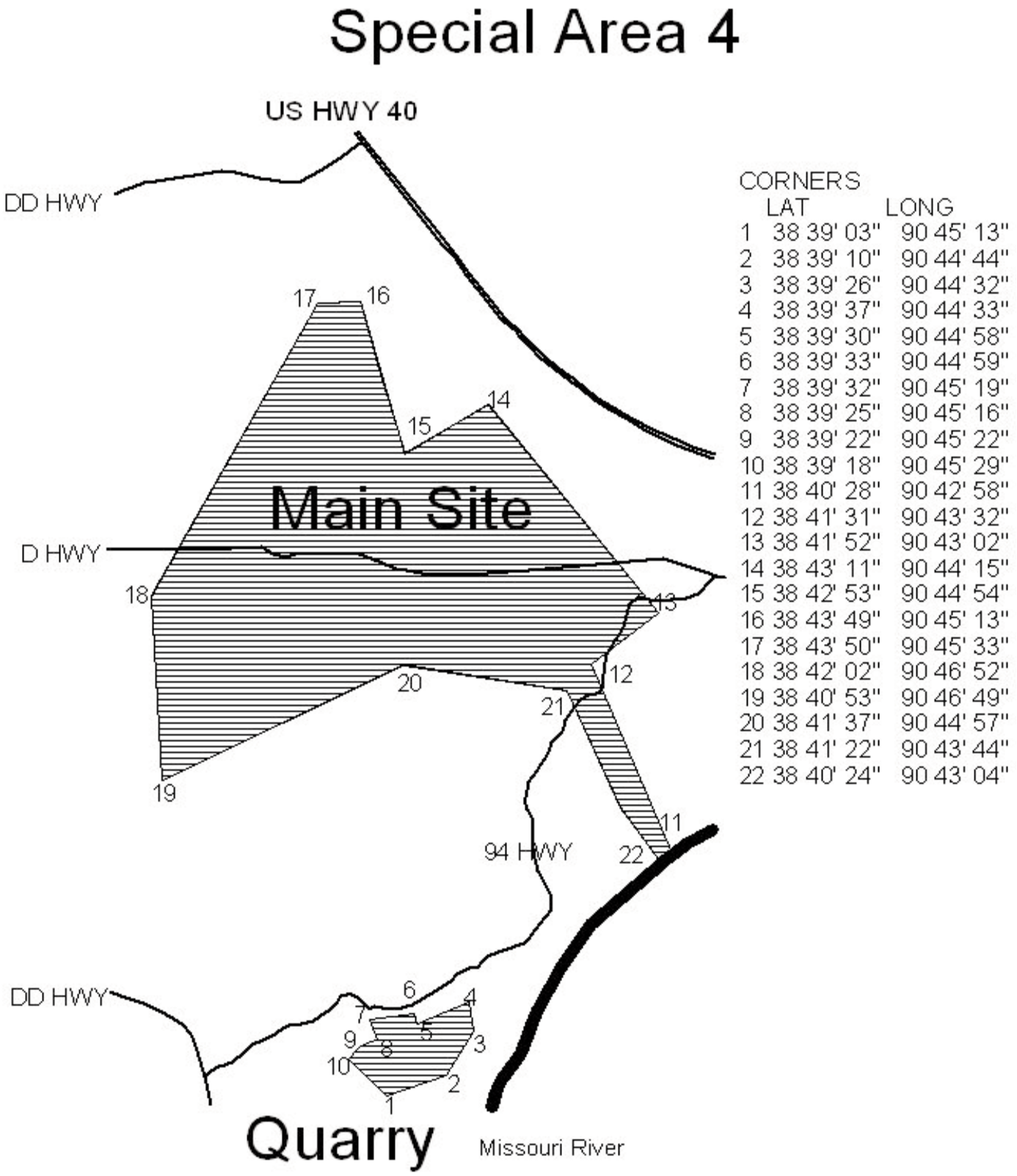

Figure 7D. Special Area 4, Weldon Spring Federal Area

AUTHORITY: sections 256.606 and 256.626, RSMo 2000. Original rule filed April 2, 1987, effective July 27, 1987. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed Jan. 4, 2007.*

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 Natural Resources, Division of Environmental Quality, Sheri Fry, PO Box 250, Rolla, MO 65402 or via email at sheri.fry@dnr.mo.gov. To be considered, comments must be received within thirty (30) days of publication of this notice in the ***Missouri Register.*** *No public hearing is scheduled.*

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 23—*[Geological Survey and Resource Assessment Division]* ***Division of Geology and Land Survey***
Chapter 5—Heat Pump Construction Code

PROPOSED AMENDMENT

10 CSR 23-5.050 Construction Standards for Closed-Loop Heat Pump Wells. The division is amending sections (6) and (8) and adding a new section (13).

PURPOSE: This amendment requires more stringent well drilling standards to be utilized in areas where groundwater is contaminated with contaminants of concern or degradation products in the Weldon Spring, St. Charles County, vicinity. Contaminants of concern at the U.S. Army Corps of Engineers (COE) site include: trinitrotoluene (TNT) and dinitrotoluene (DNT). Department of Energy (DOE) contaminants of concern at the Main Site include 2,4,6-TNT, 2,4-DNT, 2,6-DNT, dinitrobenzene (1,3-DNB), nitrobenzene (NB), nitrate, uranium, and trichloroethylene (TCE). Only uranium and 2,4-DNT are contaminants of concern at the DOE Quarry. It also changes the name of the division.

(6) Hole Depth. Closed-loop heat pump wells must not be deeper than two hundred feet (200'). A variance must be obtained in advance, from the division, to drill a heat pump well deeper than two hundred feet (200'). A heat pump well drilled in Area C (see 10 CSR 23-3.100(3)) that is less than two hundred feet (200') deep and cuts the Northview Formation must have a thirty-foot (30') grout plug set starting at ten feet (10') below the bottom of the Northview Formation. A map will be provided by the division showing the depth the grout plug must start. Follow the grouting requirement set out in 10 CSR 23-5.050 (8) for grouting the interval above the Northview Formation. *[A heat pump well drilled in Special Area 3 shall not be deeper than one hundred fifty feet (150').]* **Total depth of a new heat pump well in Special Area 3 and Special Area 4 shall be determined in advance of drilling by the division.** At any heat pump well being drilled, per division guidance, in which perchoroethylene (PCE) and/or trichoroethylene (TCE) is encountered in a pure-product phase (also known as Dense Non-Aqueous Phase Liquid or DNAPL), drilling shall cease and the division shall be notified immediately. The division will determine further action.

(8) Grouting Depth of Vertical Heat Pump Wells. Grouting the annulus of a heat pump well is very important and must be completed immediately after the well is drilled due to cave-in potential in the uncased hole. Full-length grout is recommended and may be required (see section (5)) to prevent surface contamination from entering the drinking water aquifer through the borehole. The grout required for heat pump wells greater than two hundred feet (200') in depth must be determined by the division in advance. A variance form will be issued setting the grouting requirements. If the heat pump borehole is not grouted full-length, hole size requirements stated in section (5) must be followed and nonslurry bentonite plugs must be placed into the borehole. A plug (first plug) must be placed about forty feet (40') above the total depth of the borehole. This plug must be composed of bentonite chips or pellets utilizing at least one (1) bag of bentonite resulting in at least a five foot (5') plug. Every forty feet (40') of borehole that exists above the first plug must have a plug set as described in this section. A near surface plug consisting of bentonite granules or powder must be set from a point ten feet (10') below the bottom of the trench, that connects the closed-loop to the heat pump machine, to the base of the trench. All bentonite plugs must be hydrated immediately after emplacement if they are in the unsaturated zone. All clean fill material placed between the bentonite plugs must be chlorinated. Heat pump wells in Special Area 3 **and Special Area 4** must be grouted full length with thermal grout, placed from the bottom of the borehole up to the base of the trench.

(13) Heat Pump Wells in Special Area 4. Portions of St. Charles County west of the city of Weldon Spring are listed as Special Area 4 (Figures 7D, 10 CSR 23-3.100(8)) due to the contamination of portions of the aquifer by one (1) or more of the following chemicals of concern: trinitrotoluene (TNT) and dinitrotoluene (DNT) at the Army Corps of Engineers (COE) site, 2,4,6-TNT, 2,4,-DNT, 2,6-DNT, dinitrobenzene (1,3-DB), nitrobenzene (NB), nitrate, uranium, and trichloroethylene (TCE) at the Department of Energy (DOE) main site, uranium and 2,4-DNT at the DOE Quarry, or other contaminants of the National Public Drinking Water Regulations (NPDWR). In this area it is necessary to utilize more stringent construction standards for new heat pump wells that are drilled into or through the shallow aquifer defined as the Burlington Keokuk/Fern Glen formation(s) at the main site and the Kimmswick limestone at the DOE Quarry. In Special Area 4 a qualified and properly trained individual shall collect all groundwater samples for analysis of chemicals of concern. Sampling qualifications and training requirements will be determined in advance of sampling by the division and approval will be issued in written format.

(A) The division shall be consulted before constructing a new heat pump well in Special Area 4. The division will provide specific guidance on heat pump well drilling protocol and construction specifications on a case-by-case basis. The division must provide written approval for all new heat pump wells prior to construction.

AUTHORITY: sections 256.606 and 256.626, RSMo 2000. Emergency rule filed Nov. 16, 1993, effective Dec. 11, 1993, expired April 9, 1994. Original filed Aug. 17, 993, effective March 10, 1994. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed Jan. 4, 2007.*

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 Natural Resources, Division of Environmental Quality, Sheri Fry, PO Box 250, Rolla, MO 65402 or via email at sheri.fry@dnr.mo.gov. To be considered, comments must be received within thirty (30) days of publication of this notice in the ***Missouri Register.*** *No public hearing is scheduled.*

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 80—Solid Waste Management
Chapter 9—Solid Waste Management Fund

PROPOSED RESCISSION

10 CSR 80-9.010 Solid Waste Management Fund—Planning/Organizational Grants. This rule contained procedures and provisions for solid waste management districts to apply for planning/organizational grants from the Solid Waste Management Fund.

PURPOSE: The department proposes to rescind this rule. Senate Bill 225 passed during the 2005 legislative session eliminated district administration grants.

AUTHORITY: sections 260.225 and 260.335, RSMo Supp. 1990. Emergency rule filed Aug. 15, 1991, effective Aug. 25, 1991, expired Dec. 13, 1991. Original rule filed Aug. 15, 1991, effective Feb. 6, 1992. Emergency amendment filed Sept. 15, 1993, effective Sept. 25, 1993, expired Jan. 22, 1994. Amended: Filed Sept. 15, 1993, effective May 9, 1994. Rescinded: Filed Jan. 5, 2007.

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

PRIVATE COST: This proposed rescission 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 will be held on this proposed rescission at 1:00 p.m. on April 3, 2007. The public hearing will be held at the Department of Natural Resources Conference Center in the Bennett Springs Conference Room, located at 1738 East Elm Street (rear), Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested persons. Also, any interested person may submit a written statement in support of or in opposition to this proposed rescission until 5:00 p.m. May 3, 2007. Written statements should be sent to Mr. Dennis Hansen, Department of Natural Resources, Solid Waste Management Program, PO Box 176, Jefferson City MO 65102-0176.

SPECIAL NEEDS: If you have any special needs addressed by the Americans With Disabilities Act, please notify us at (573) 751-5401 at least five (5) working days prior to the hearing.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 80—Solid Waste Management
Chapter 9—Solid Waste Management Fund

PROPOSED AMENDMENT

10 CSR 80-9.050 Solid Waste Management Fund—District Grants. The department is amending sections (1)–(6), adding new sections (3), (4) and (10) and renumbering or relettering as needed.

PURPOSE: The department is amending portions of the rule that are in conflict with Senate Bill 225 passed during the 2005 legislative session and to address findings in the February 2006 State Auditor's Report of the audit of the Solid Waste Management Program. The amendment will also add annual reporting of goals and accomplishments to increase accountability of grant funds.

PURPOSE: This rule contains procedures and provisions for solid waste management districts to qualify for grant funds from the Solid Waste Management Fund as provided for in section 260.335.2[(4)], RSMo.

(1) *[Eligibility]* **Definitions. Definitions for key words used in this rule may be found in 10 CSR 80-2.010. Additional definitions specific to this rule are as follows:**

[(A) Definitions. Definitions for key words used in this rule may be found in 10 CSR 80-2.010. Additional definitions specific to this rule are as follows:

1. Executive board. The board established by the district's solid waste management council or by the alternative management structure chosen by a district as provided for in section 260.310.4(2), RSMo;

2. Project. Project means all approved components of an organized undertaking described in a proposal, including any supporting documents as required by project type; and

3. Solid Waste Management Fund. The fund established to receive the tonnage fee charges submitted by sanitary and demolition landfills for waste disposed of in Missouri and transfer stations for waste transported out of state for disposal.]

(A) Allocated district funds. Monies from the Solid Waste Management Fund that are set aside to be disbursed to each district by the department;

(B) Competitive bid process. Procurement of goods or services that follows the guidelines outlined in 1 CSR 40;

(C) Disbursed district funds. District funds paid to each district or subgrantee;

(D) Disposal cost. Fees charged to collect, transport or deposit solid waste in a landfill, transfer station or other approved facility;

(E) District administrative grant. Planning and organizational grants disbursed by the department to each district prior to August 28, 2004;

(F) District carryover. Any remaining district funds of any completed grants that have been disbursed by the department to each district for district administrative grants, district operations grants, plan implementation grants or district subgrants;

(G) District funds. The revenue generated from the solid waste tonnage fee collected and deposited in the Solid Waste Management Fund and allocated to each district pursuant to section 260.335.2, RSMo, plus district carryover, interest income earned and state required local match funds;

(H) Executive board. The board established by each district's solid waste management council or by the alternative management structure chosen by a district as provided for in section 260.315.4(2), RSMo;

(I) Interest income. All interest earned by each district from the holding of revenue generated from the Solid Waste Management Fund;

(J) Project. All approved components of an organized undertaking described in a proposal, including any supporting documents as required by project type;

(K) Solid Waste Management Fund. The fund created in section 260.330, RSMo, to receive the tonnage fee charges submitted by sanitary and demolition landfills for waste disposed of in Missouri and transfer stations for waste transported out of state for disposal;

(L) State required local match funds. Funds committed by local governments to each district as match for district administrative grants; and

(M) Unencumbered district funds. District funds that have not been obligated in the form of purchase orders for goods and services.

(2) Eligibility.

*[(B)]***(A)** Applicability. This rule applies to the members of the executive boards of all department-recognized solid waste management districts in Missouri.

*[(C)]***(B)** Projects. The district *[grant]* funds are to be allocated for projects in accordance with the following provisions:

1. Grant monies made available by this rule shall be allocated by the district for projects contained within the district's approved solid waste management plan. These funds will be used for solid waste management projects as approved by the department. However, no grant funds will be made available for incineration without energy recovery;

2. In the event that the district solid waste management plan has not been submitted to the department, any eligible projects approved by the district and allocated monies made available by this rule shall be included in the district's solid waste management plan prior to submission;

3. In the event that the district solid waste management plan has been submitted to the department, any eligible projects approved by the district and allocated monies made available by this rule, but not contained within the plan, shall be considered an addenda to the plan. The addenda will be evidenced in quarterly and final project reports required under *[subsections (4)(B) and (C)]* **subsection (6)(B)** of this rule. Projects serving as addenda to the plan in this manner must be included in any documents required by the department to be submitted by the districts that update the plan or that verify implementation of the plan pursuant to section 260.325.5, RSMo;

4. District *[grant]* funds *[will]* **shall** not be awarded for a project whose applicant is directly involved in the evaluation and ranking of that particular project; *[and]*

[5. District grant funds may be withheld if the district has an unresolved audit with significant findings or questioned costs.]

5. District funds shall not be awarded for a project that duplicates or displaces existing resource recovery services, unless the proposed project clearly demonstrates how it will result in significant improvement or expansion of service; and

6. District funds shall not be awarded for a project that collects solid waste for disposal on a continuous basis.

*[(D)]***(C)** Grant Funds.

1. As determined by statute, an amount of the revenue generated from the solid waste tonnage fee collected and deposited in the Solid Waste Management Fund may be allocated annually to the executive board of each officially recognized solid waste management district for district grants. Further, each officially recognized solid waste management district shall be allocated, upon appropriation, a minimum amount *[of forty-five thousand dollars ($45,000)]* for district grants pursuant to section 260.335.2*[(3)]*, RSMo.

2. The district shall enter into a financial assistance agreement with the department prior to the disbursement of district funds. The financial assistance agreement shall, at a minimum, specify that all district funds will be managed in accordance with statute and this rule.

3. Quarterly the department shall notify the executive board of each district of the amount of grant funds for which the district is eligible. Upon request, the department will provide to a district the reported tonnages and tonnage fees paid into the Solid Waste Management Fund.

*[2.]***4.** *[Up to forty percent (40%) of the g]***G**rant money available to a district under subsection *[(1)(D)]***(2)(C)** of this rule within a fiscal year may be allocated for **district operations,** projects that further plan implementation and *[at least sixty percent (60%) shall be allocated for projects]* **subgrantee projects** of cities and counties within the district **pursuant to section 260.335.2, RSMo**.

*[3.]***5.** Any *[regional monies available]* **district funds allocated** to a district but not *[awarded or expended]* **requested by the district following the procedures outlined in this rule** within twenty-four (24) months of the *[state fiscal year in which it was allocated due to insufficient or inadequate project, as determined by the district's executive board or the department,]* **date of the allocation notice by the department in paragraph (2)(C)3. of this rule** may be reallocated **by the department** pursuant to section 260.335.2*[(4)]*, RSMo *[of the Missouri Solid Waste Management Law]*.

6. At the end of a district's fiscal year, a district shall only retain unspent and unencumbered district funds for district operations in an amount that shall not exceed one-fourth (1/4) of the district's previous fiscal year's expense for district operations or twenty thousand dollars ($20,000), whichever is greater. Any remaining district funds over this maximum balance shall be allocated for projects other than district operations in the district's next request for project proposals in accordance with section 260.335, RSMo.

7. At the end of a district's fiscal year, any district carryover funds and interest income in excess of twenty thousand dollars ($20,000) shall be allocated for projects other than district operations in the district's next request for project proposals in accordance with section 260.335, RSMo, unless approved by the department.

8. A solid waste management district may elect to use more than one (1) fiscal year's allocation of funds to finance a project. Prior to the department setting aside funds for this project, the district shall submit a request to the department for approval which provides justification and financial supporting documentation. The department will not release funds to the district for the project before the project is scheduled to begin incurring expenses.

9. All district funds shall be used for solid waste management activities and projects as approved by the department.

*[(E)]***(D)** Costs. **In general, the following subsections list eligible and ineligible costs for district funds. Items not listed in this section or in subsections (3)(A) and (4)(B) should be discussed with the department.**

[1. In-kind contributions. In-kind contributions are allowable project costs when they directly benefit and are specifically identifiable to the project. Ineligible costs, other than acquisition of privately owned land, are not allowable as in-kind contributions.]

*[2.]***1.** Eligible costs. Applicants can request monetary assistance in the operation of eligible projects for the following types of costs. Eligible costs may vary depending on the services, materials and activities, as specified in the *[financial assistance application]* **grant application**:

A. Collection, processing, manufacturing or hauling equipment;

B. Materials and labor for construction of buildings;

C. Engineering or consulting fees;

D. Salaries **and related fringe benefits** directly related to the project;

E. Equipment installation costs including installation freight or retrofitting of the equipment;

F. Development and distribution of informational materials;

G. Planning and implementation of informational forums including, but not limited to, workshops;

H. Travel as necessary for project completion;

I. Overhead costs directly related to the project; *[and]*

J. Laboratory analysis costs*[.]***; and**

K. Professional services for review of contracts.

*[3.]***2.** Ineligible costs. The following costs are considered ineligible for district grant funding:

A. Operating expenses, such as salaries and expenses that are not directly related to **district operations or** the project activities;

B. Costs incurred before the project start date or after the project end date;

C. Taxes;

D. Legal costs**, except as provided in (2)(D)1.K.**;

E. Contingency funds; *[and]*

F. Land acquisition*[.]***;**

G. Gifts;

H. Disposal costs, except for projects as indicated in paragraph (2)(B)6. of this rule;

I. Fines and penalties;

J. Food and beverages for district employees, board members or subgrantees at non-working meetings;

K. Memorial donations for board members, district employees, or subgrantees;

L. Office decorations, except as indicated in paragraph (3)(A)4. of this rule; and

M. Lobbyists, pursuant to section 105.470, RSMo.

(3) District Operations.

(A) Eligible Costs. The districts shall request funding for the costs that are reasonable and necessary for proper and efficient performance and administration of the district. District operations costs must be specifically for the purpose of district operations and may include:

1. Salaries and related fringe benefits of employees;

2. Cost of materials and supplies acquired, consumed or expended;

3. Rental or leasing of office space;

4. Office decorations costing less than five hundred dollars ($500) per year;

5. Equipment and other capital expenditures;

6. Travel expenses incurred;

7. The cost of utilities, insurance, security, janitorial services, upkeep of grounds, normal repairs and alterations and the like to the extent that they keep property at an efficient operating condition, do not add to the permanent value of property or appreciably prolong the intended life and are not otherwise included in rental or other charges for space;

8. Contracted services for eligible costs acquired through a competitive bid process; and

9. Non-cash service awards which are reasonable in cost.

(B) Grant Application. Districts eligible to receive district operations grant funding shall submit a written request to the department, on forms provided by the department, that includes:

1. A completed district operations budget, containing such detail as specified by the department, that has been approved by the executive board, including an executive summary and list of tasks for the budget period;

2. Copies of any contracts in effect for district operations services;

3. If applicable, documentation of the bidding process used to procure district operations services; and

4. The grant and budget period shall cover up to a one (1)-year time period, unless otherwise approved by the department.

(4) Plan Implementation Projects.

(A) Projects. The department shall allocate plan implementation funds for projects in accordance with the following provisions:

1. Grant monies made available by this rule shall be allocated by the district for projects contained within the district's solid waste management plan or which enable the district to plan and implement activities pursuant to section 260.325, RSMo;

2. Projects shall be conducted by district staff or through a contract with the district. Contracted services must be procured through a competitive bid process;

3. Projects should benefit the counties or cities who are members of the district; and

4. A project period shall be determined that allows for the purpose of the project to be accomplished and for adequate reporting of the results of the project to determine if the project met its intended goals. Project and budget periods may allow for up to a two (2)-year time period for project completion. A maximum of one (1) six (6)-month extension may be allowed beyond the two (2) years when approved by the executive board. Any extension of the project or budget periods beyond two (2) years and six (6) months must have the prior approval of the executive board and the department.

(B) Eligible Costs. Districts may request monetary assistance in the operation of eligible plan implementation projects for the types of costs listed in paragraph (2)(D)1. of this rule. Eligible costs may also include costs associated with revising the district's solid waste management plan.

(C) Grant Application. Districts eligible to receive plan implementation grant funding shall submit a written request to the department that includes copies of all plan implementation project proposals approved by the executive board as documented in meeting minutes. At a minimum, project proposals must include:

1. An executive summary of the project objectives and the problem to be solved, referencing the district's solid waste management plan component to which it applies;

2. The location of the project, project name, and the project number assigned by the district;

3. A work plan which identifies project tasks, the key personnel and their qualifications;

4. A timetable showing anticipated dates for major planned activities and expenditures, including the submittal of quarterly reports and the final report;

5. A budget that includes an estimate of the costs for conducting the project. Estimates shall be provided for all major planned activities or purchases by category;

6. Documentation that all required proposal content has been received and reviewed by the district executive board including cost estimates, verification that all applicable federal, state and local permits, approvals, licenses or waivers necessary to implement the project are either not needed or have been obtained or applied for and will be obtained prior to an award, and demonstration of compliance with local zoning ordinances;

7. The type of waste and estimated tonnage to be diverted from landfills or other measurable outcomes;

8. A description of the evaluation procedures to be used throughout the project to measure the success or benefit of the project;

9. For projects involving awards over fifty thousand dollars ($50,000), supporting documentation must be provided to demonstrate technical feasibility, including a preliminary project design, preliminary engineering plans and specifications for any facilities and equipment required for a proposed project; and

10. If requested by the department, copies of any or all approved project proposals and supporting documents.

*[(2)]***(5)** District *[Fund]* **Subgrantee** Procedures.

[(A) Notification.

1. Notification by the department. To initiate the process of awarding funds for district solid waste management plan projects, the department annually shall notify the executive board of each district of the amount of grant funds for which the district is eligible. This notification will be provided to districts by the department no later than November 30 of each fiscal year and will stipulate the deadline by which approved project documentation must be submitted to the department by the executive board.]

*[2.]***(A)** Notification by the *[d]***D**istricts. The district executive boards shall request project proposals by giving written notification to the governing officials of each **member** county and city over five hundred (500) in population and by publishing a notice in a newspaper officially designated by the *[presiding commissioner]* **chief elected official** of each **member** county, for public notices for every **member** county and city with a population over five hundred (500) within the district. *[Notification may begin no sooner than July 1 of each fiscal year.]* **The district executive board shall provide the written notification and newspaper notice at least thirty (30) days prior to when proposals are due. If the district executive board will request project proposals more often than annually, the district executive board may issue the written notification and**

newspaper notice annually specifying when the district will be accepting project proposals for the upcoming year.

(B) Proposal Content and Supporting Documents. The districts shall, as appropriate, require the proposals to include but not be limited to the following information:

1. An executive summary of the project objectives and the problem to be solved, *[including the page numbers of the]* **referencing the district's** solid waste management plan component to which it applies*[. This should be no longer than two (2) pages]*;

2. The location of the project and name, address and phone number of the official subgrant recipient**(s)**;

3. A work plan which identifies project tasks, the key personnel and their qualifications;

4. A timetable showing anticipated dates for major planned activities and expenditures, including the submittal of quarterly reports and the final report;

5. A budget that includes an estimate of the costs for conducting the project. Estimates shall be provided for all major planned activities or purchases by category and shall be supported by documentation showing how each cost estimate was determined. If the project includes matching funds, the budget must delineate the percentages and dollar amounts of the total project costs for both district funds and applicant contributions;

6. Verification that all applicable federal, state and local permits, approvals, licenses or waivers necessary to implement the project are either not needed or have been obtained or applied for and will be obtained prior to an award;

7. Demonstration of compliance with local zoning ordinances;

8. A description of the evaluation procedures to be used throughout the project to quantitatively and qualitatively measure the success **or benefit** of the project;

9. Documentation that shows a commitment for the match, if applicable;

10. The following supporting documents for projects involving allocations over *[twenty]* **fifty** thousand dollars *[($20,000)]* **($50,000)**:

A. To demonstrate technical feasibility, a preliminary project design, **preliminary** engineering plans and specifications for any facilities and equipment required for a proposed project;

B. A financial report including:

(I) A three (3)-year business plan **for the proposed project**. For projects involving recycling and reuse technologies, the plan shall include a market analysis with information demonstrating that the applicant has secured the supply of and demand for recovered material and recycled products necessary for sustained business activity;

(II) A description of project financing, including projected revenue from the project; and

(III) A credit history; and/or up to three (3) years' previous financial statements or reports; *[and]* **or for governmental entities a bond rating;**

*[10.]***11.** Confidential business information and availability of information. Any person may assert a claim of business confidentiality covering a part or all of that information by including a letter with the information which request protection of specific information from disclosure. Confidentiality shall be determined or granted in accordance with Chapter 610, RSMo. However, if no claim accompanies the information when it is received by the department, the information may be made available to the public without further notice to the person submitting it*[.]***; and**

12. In the event that more than one (1) solid waste management district proposes to participate in a project as joint subgrantees, each participating district's responsibilities will be outlined in the subgrantee Financial Assistance Agreement. One (1) of the participating districts must be designated as project manager. The project will be administered as provided for in sections (5) and (6) of this rule.

(C) A project period shall be determined that will allow an adequate time period for the subgrantee to accomplish the purpose of the project and provide reporting of the results and accomplishments. Project and budget periods may allow for up to a two (2)-year time period for project completion. A maximum of one (1) six (6)-month extension may be allowed beyond the two (2) years when approved by the executive board. Any extension of the project or budget periods beyond two (2) years and six (6) months must have the prior approval of the executive board and the department.

*[(C)]***(D)** Proposal Review and Evaluation. The executive boards must review, rank and approve proposals as outlined in this subsection. **The executive board may appoint a committee to review and rank proposals. The executive board shall make final approval.**

1. Review for eligibility and completeness. For all proposals received by the deadline as established in their public notices to the media, the board shall determine the eligibility of the applicant, the eligibility of the proposed project, the eligibility of the costs identified in the proposal and the completeness of the proposal.

2. Notice of eligibility and completeness. If the district executive board determines that the applicant or the project is ineligible or incomplete, the board may reject the proposal and shall notify the applicant. A project may be resubmitted up to the application deadline.

3. Proposal evaluation. The executive board **or their appointed committee** shall evaluate each proposal that is determined to be eligible and complete. The board will develop a District Targeted Materials List to be used as one of the evaluation criteria. The evaluation method will include the following criteria, as appropriate per project category:

A. Conformance with the integrated waste management hierarchy as described in the *Missouri Policy on Resource Recovery*, as incorporated by reference in this rule;

B. Conformance with the District Targeted Materials List;

C. Degree to which the project contributes to community-based economic development;

D. Degree to which funding to the project will adversely affect existing private entities in the market segment;

E. Degree to which the project promotes waste reduction or recycling or results in an environmental benefit related to solid waste management through the proposed process;

F. Demonstrates cooperative efforts through a public/private partnership or among political subdivisions;

G. Compliance with federal, state or local requirements;

H. Transferability of results;

I. The need for the information;

J. Technical ability of the applicant;

K. Managerial ability of the applicant;

L. Ability to implement in a timely manner;

M. Technical feasibility;

N. Availability of feedstock;

O. Level of commitment for financing;

P. Type of contribution by applicant;

Q. Effectiveness of marketing strategy;

R. Quality of budget; and

S. Selected financial ratios.

4. The executive board shall develop minimum criteria for the approval of grant funding.

*[(3)]***(6)** *[Project]* **District** Documentation.

(A) **Subgrantee** Proposals. The following documentation *[should]* **must** be submitted **by the district** to the department *[by the deadline established by the department in the notification to the executive board]* **as part of the grant application process**:

1. A completed project request summary form provided by the department that includes, at a minimum, the following information:

*[1.]***A. Copies of** *[T]***t**he executive summaries of the eligible proposals submitted to the executive board**, or narratives prepared by the district, that describe the location of project, project objectives, tasks and general timeline of each eligible proposal**;

B. For each project approved for an award by the executive board indicate the name of the project, the project number assigned by the district and:

(I) The total amount awarded to each project, what amount is awarded from the current undisbursed allocation funding, any carryover from previous awards by the district and the source of the carryover, and any interest accrued by the district;

(II) The project budget by category;

(III) The type of waste and estimated tonnage to be diverted from landfills or other measurable outcomes;

(IV) The project start and stop dates; and

(V) Documentation that all required proposal content has been received and reviewed by the district;

2. The aggregate executive board rankings for each of the eligible proposals **or documentation that the proposals meet the minimum criteria for funding set by the executive board** using the evaluation criteria as described in paragraph *[(2)(C)3.]***(5)(D)3.**;

3. **If requested by the department,** *[C]***c**opies of **any or** all approved project proposals and supporting documents*[. The documentation must indicate if the project is considered a plan implementation or a city/county activity; and]***;**

4. A copy of the notices given to the governing bodies and published in the newspapers within the district*[.]***;**

5. A copy of the subgrantee financial assistance agreement between the district and subgrantee, any amendments made to the subgrantee financial assistance agreement indicated in subsection (7)(H) of this rule and invoice; and

6. Documentation that the executive board discussions and votes for approved subgrants took place in open session, in accordance with sections 610.010 to 610.200 of the Missouri Sunshine Law.

(B) Quarterly Reports. **On quarterly status report forms provided by the department,**

*[1. T]***t**he district shall submit **the following information** to the department*[, at]* **thirty (30) days after** the end of each state fiscal year quarter*[, a report which contains the following for each project in progress]*:

1. Project status. For each plan implementation and district subgrantee project in progress the district shall provide:

A. The details of progress*[, including the volume or weight in tons of waste diverted for each type of recovered material utilized in the project, if appropriate]* **addressing the project tasks outlined in the plan implementation application or subgrantee financial assistance agreement**;

B. Problems encountered in project execution;

C. Budget adjustments made within budget categories, with justifications; *[and]*

D. *[Other information necessary for proper evaluation of the progress of the projects.]* **The weight in tons of waste diverted for each type of recovered material utilized in the project for the most recent quarter following the implementation of the diversion activity or other measurable outcomes, as appropriate;**

E. A copy of an amended subgrantee financial assistance agreement, if appropriate; and

F. Other information necessary for proper evaluation of the progress of the projects.

2. In the event that a time period for a project is less than a full year, only quarterly information appropriate to the project time period need be included in the district report.

3. Project financial summary. For each grant (district operations, plan implementation and district subgrantee project) the district shall provide:

A. The original award amount taken from the accrued allocation held by the department;

B. Any district carryover used to fund a project or district operations;

C. Any accrued interest income used to fund a project or district operations;

D. Total grant award for that project or district operation (total of subparagraphs (6)(B)3.A., B., and C. of this rule);

E. Cumulative amount of district disbursement of funds to each subgrantee or to the district during that reporting period;

F. Balance of that project or district operations during that reporting period;

G. Any carryover funding held by the district that has not been obligated for projects or district operations; and

H. Any accrued interest income held by the district that has not been obligated for projects or district operations.

*[(C)]***4.** Final **project** *[R]***r**eports. The district shall submit to the department a final report for each **plan implementation or district subgrantee** project *[, within thirty (30) days of the project completion date as stated in the financial assistance agreement,]* that shall contain the same information as described for *[quarterly reports in subsection (4)(B)]* **project status in paragraph (6)(B)1.** of this rule, as well as a comparison of actual accomplishments to the goals established and a description as to how goals were either met, not met or were exceeded.

5. District operations status:

A. The details of progress in completing the district operations tasks outlined in the district operations application;

B. Problems encountered in district operations;

C. Required budget amendments; and

D. Other information necessary for proper evaluation of district operations.

(C) District Annual Report. The district shall submit to the department within one hundred twenty (120) days of the end of the state fiscal year a report covering the following information for the state fiscal year:

1. Goals and accomplishments. A description of the district solid waste management goals, actions taken to achieve those goals and the goals that have been set for the upcoming state fiscal year;

2. Types of projects and results, including:

A. A summary of the projects that included goals to divert solid waste tonnage from landfills, including number and costs of projects, tons diverted and average cost per ton diverted, and other measurable outcomes achieved;

B. A summary of the projects that did not have waste diversion goals, including number and costs of projects, and measurable outcomes achieved; and

C. Separate statistics for items banned by statute from landfills and items that are not banned from landfills;

3. A description of the district's grant proposal evaluation process; and

4. A list of district council and executive board members, including their affiliation(s).

*[(4)]***(7)** Executive Board Accountability.

(A) The executive board shall comply with the department's reporting requirements, pursuant to section *[(3)]***(6)** of this rule.

(B) An executive board receiving funds from the Solid Waste Management Fund for district grants shall themselves maintain, and require recipients of financial assistance to maintain, an accounting system according to **generally accepted accounting principles** that accurately reflects all fiscal transactions, incorporates appropriate controls and safeguards, and provides clear references to the project as agreed to in the Financial Assistance Agreement. Accounting records must be supported by source documentation such as cancelled checks, paid bills, payrolls, time and attendance records, contract, and agreement award documents.

(C) The executive board shall not provide funding to any nongovernmental member of the executive board or the business or institution to which the member is affiliated.

*[(C)]***(D) Payments to grant recipients shall be on a reimbursement basis.** The executive board shall retain fifteen percent (15%) of the funds from the recipient until **the project is complete. A project shall be deemed complete when the project period has ended and** the board gives approval to the **grant** recipient's final report and the final accounting of project expenditures. **The district may make payment directly to a vendor instead of reimbursing the grant recipient provided the executive board approves the direct payment, goods or services being purchased by the grant recipient have been received, and the executive board retains fifteen percent (15%) of the funds until completion of the grant project. For reimbursements or direct payments, the district may release the fifteen percent (15%) retainage prior to completion of the grant project with prior approval of the department.**

*[(D)]***(E)** Retention and Custodial Requirements for Records.

1. The executive board shall retain all records and supporting documents directly related to the funds and projects for a period of three (3) years from the date of submission of the final status report and make them available to the department for audit or examination.

2. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the three (3)-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three (3)-year period, whichever is later.

*[(E)]***(F)** All general and special terms and conditions of the department applicable to the project will be applicable to recipients of awards made available by this chapter.

*[(F)]***(G)** The executive board shall address all deficiencies identified in a district's audit to the satisfaction of the department. Districts failing to adequately address deficiencies identified in the audit may *[not be eligible to receive any further funding and]* **have funds withheld or** may be required to repay any and all disbursements of funds **in accordance with section (9) of this rule**.

*[(G)]***(H)** Funding for approved subgrants will be forwarded to the districts upon receipt of a completed, signed and dated invoice and **subgrantee** financial assistance agreement for each individual subgrant.

(I) Notwithstanding any other provision of law to the contrary, within eighteen (18) months after the effective date of this rule, the executive board shall competitively bid for administrative services, office space rental, and other district operations services costing five thousand dollars ($5,000) or more, except for employees who are directly employed by the district. Contracts shall not exceed five (5) years in duration.

(J) The executive board shall have their records audited by a certified public accountant or firm of certified public accountants pursuant to section 260.325, RSMo. Districts shall arrange to have the audit conducted and submit to the department a complete audit report prepared by the certified public accountant or firm of certified public accountants within one hundred eighty (180) days of the end of the period covered by the audit.

(K) For capital assets over five thousand dollars ($5,000) purchased in whole or in part with state funds and in which a security interest is held, the executive board must maintain property records. At a minimum these records shall include a description of the equipment, a serial number or other identification number, the source of the property, the acquisition date, cost of the property, percentage of state funds used in the cost of the property, and the location, use and condition of the property.

(L) The executive board shall insure that a physical inventory is conducted of property purchased with district funds and the results reconciled with the property records at least once every two (2) years.

(M) For capital assets over five thousand dollars ($5,000) purchased in whole or in part with state funds, by the district or subgrantee, the executive board shall ensure that insurance is procured and maintained that will cover loss or damage to the capital assets with financially sound and reputable insurance companies or through self-insurance, in such amounts and covering such risks as are usually carried by companies engaged in the same or similar business and similarly situated.

(N) Pursuant to section 260.320.3, RSMo, the executive board shall appoint one (1) or more advisory committees and ensure that the advisory committee(s) meet annually, at a minimum.

(O) Planning Requirements. Pursuant to section 260.325, RSMo, the board shall review the district's solid waste management plan at least every twenty-four (24) months for the purpose of evaluating the district's progress in meeting the requirements and goals of the plan, and shall submit plan revisions to the department and council. At a minimum, the executive board shall submit plan revisions by April 1 of each odd-numbered year that include, but are not limited to:

1. An inventory of solid waste services in the planning area on forms provided by the department. Service information shall include:

A. The solid waste collection services available to residential and commercial customers;

B. The recycling services available to residential and commercial customers;

C. The services available for management of items banned from Missouri landfills, pursuant to section 260.250, RSMo; and

D. The services available for management of household hazardous wastes;

2. Pursuant to section 260.320.3, RSMo, a list of advisory boards, members of each and documentation of meetings; and

3. A description of illegal dumping identification, public education and household hazardous waste activities and programs established by the executive board, pursuant to section 260.320.3, RSMo.

*[(5)]***(8)** Awards.

(A) District Awards. **All district grant awards are subject to the state appropriation process.** District grant awards will be *[allocated]* **disbursed** to the district as provided for in subsection *[(1)(D)]***(2)(C)** of this rule following receipt by the department of all applicable **applications and** documentation per section**s** *[(4)]***(3), (4), and (6)** of this rule, from the executive board of the district.

(B) **District Subgrantee** Project Awards.

1. All district **subgrantee** grant awards are subject to the appropriation process. *[The department cannot guarantee funding of a district-approved project more than twenty-four (24) months after the date it has been awarded. After which time it will be reallocated pursuant to section 260.335.2(4), RSMo of the Missouri Solid Waste Management Law].*

2. Before **the districts distribute** awarded funds *[are distributed]* to a subgrantee, the subgrantee shall do the following:

A. Obtain all applicable federal, state and local permits, approvals, licenses or waivers required by law and necessary to implement the project;

B. Enter into a **subgrantee** financial assistance agreement**, or an amended subgrantee financial assistance agreement if appropriate,** issued by the district which is consistent with the Solid Waste Management Law and department rules and all terms and conditions of the district's *[grant]* **financial assistance** agreement; and

C. Submit all required quarterly **and final** reports.

*[(6)]***(9) Withholding of District Funds.**

(A) The department may withhold *[or reduce]* **all or a portion of** district grant awards until the district is in compliance with the following:

*[(A)]***1**. Solid Waste Management Law **and regulations**;

*[(B)]***2**. Planning requirements pursuant to section 260.325*[.3 and .5]*, RSMo;

[(C) All applicable rules;]

*[(D)]***3.** All general and special terms and conditions of the district's *[grant]* **financial assistance** agreement; *[and]*

*[(E)]***4.** Audit requirements*[.]*;

5. Resolution of significant audit findings and questioned costs; and

6. All reporting requirements and plan revisions indicated in this rule.

(B) The department shall provide written notice of noncompliance prior to the withholding of funds, unless the severity of a significant audit finding requires the immediate withholding of funds. Such notice shall allow a minimum of thirty (30) days for the district to submit the documentation or conduct other tasks as indicated in the department's notice.

(C) If a district fails to submit to the department a complete quarterly report, annual report or plan revision by the due date indicated in the department's notice of noncompliance, the department shall withhold and reallocate funds equal to one percent (1%) of the district's most recent quarterly allocation for each day past the notice due date, unless these provisions have been met:

1. The district has requested an extension prior to the notice due date and the department has granted an extension;

2. The district has submitted a complete report by the date indicated in the department approved extension; and

3. The department shall use the postmark date as the date submitted by the district. If no postmark date is available, the department shall use the date the department receives the report.

(D) For questioned costs that the department determines to be inappropriate or unnecessary, the district shall repay the department or the department shall withhold from the district's allocation the amount of the cost, following the department's written request.

(E) For funds withheld from a district or repaid by a district, the department shall reallocate these funds to all districts that, at the time of the reallocation, are in compliance with all requirements and have addressed all deficiencies identified in a district's audit to the satisfaction of the department. The reallocation shall be made to districts in accordance with the allocation criteria pursuant to section 260.335, RSMo.

(10) Dispute Resolution. The district and the department shall attempt to resolve disagreements concerning the administration or performance of the district. If an agreement cannot be reached within ninety (90) days of the issuance of the notice of noncompliance, the department's Solid Waste Management Program director will provide a written decision. The Solid Waste Management Program director may consult with the Solid Waste Advisory Board prior to providing this decision. Such decision of the program director shall be final unless a request for review is submitted to the Division of Environmental Quality director within thirty (30) days of the receipt of the program director's decision. The division director shall provide a final decision within thirty (30) days of the receipt of the district's request. A decision by the division director shall constitute final department action. Such request shall include:

(A) A copy of the program director's written decision;

(B) A statement of the amount in dispute;

(C) A brief description of the issue(s) involved; and

(D) A concise statement of the objections to the final decision.

*AUTHORITY: sections 260.225, **RSMo 2000** and 260.335, RSMo [Supp. 1999] **Supp. 2006**. Emergency rule filed Dec. 2, 1992, effective Dec. 12, 1992, expired April 11, 1993. Original rule filed Dec. 2, 1992, effective Aug. 9, 1993. Amended: Filed Dec. 14, 1999, effective Aug. 30, 2000. Amended: Filed Jan. 5, 2007.*

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions an estimated eight thousand two hundred ninety-seven dollars ($8,297) in the aggregate.

PRIVATE COST: This proposed amendment 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 will be held on this proposed amendment at 1:00 p.m. on April 3, 2007. The public hearing will be held at the Department of Natural Resources Conference Center in the Bennett Springs Conference Room, located at 1738 East Elm Street (rear), Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested persons. Also, any interested person may submit a written statement in support of or in opposition to this proposed amendment until 5:00 p.m. May 3, 2007. Written statements should be sent to Mr. Dennis Hansen, Department of Natural Resources, Solid Waste Management Program, PO Box 176, Jefferson City MO 65102-0176.

SPECIAL NEEDS: If you have any special needs addressed by the Americans With Disabilities Act, please notify us at (573) 751-5401 at least five (5) working days prior to the hearing.

FISCAL NOTE
PUBLIC COST

I. RULE NUMBER

Title 10 – Department of Natural Resources

Division 80 – Solid Waste Management Program

Chapter 9 – Solid Waste Management Fund

Proposed Amendment – 10 CSR 80-9.050 Solid Waste Management Fund-District Grants.

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Annual Cost of Compliance
Missouri's Solid Waste Management Districts (SWMD)	$ 6,348.85
Department of Natural Resources	$ 1,948.00
Total Annual Cost of Compliance For the Life of the Rule	**$ 8,296.85**

III. WORKSHEET

The figures below represent the expense and equipment costs for Districts

CLASSIFICATION	Number of Units	Unit Cost	Number in Class	AGGREGATE COST
Paper	5	$ .005	20	$ 0.50
Printing	9	$ .0275	20	$ 4.95
Envelope	1	$ 1.00	20	$ 20.00
Postage	1	$ 1.17	20	$ 23.40
Total expense and equipment costs for Districts				**$ 48.85**

The figures below represent the personal service costs for SWMD's and the Department of Natural Resources

STAFF	AVERAGE HOURLY SALARY INCLUDING FRINGE	AVERAGE NUMBER OF HOURS NEEDED TO COMPLETE REPORT	COST PER REPORT	NUMBER IN CLASS	TOTAL COST
District Planner	$ 35.00	9	$ 315.00	20	$ 6,300.00
Department of Natural Resources Planner II	$ 24.35	4	$ 97.40	20	$ 1,948.00

IV. ASSUMPTIONS

1. Missouri's twenty Solid Waste Management Districts (SWMDs) provided an annual report for fiscal year 2006. Each SWMD is independent and therefore costs associated with salary and expenses vary from district to district.
2. Each SWMD was contacted and asked for hourly rates of employees who developed the annual report along with the number of hours spent on developing the report.

3. Each SWMD employee's hourly salary was multiplied by 38.9 percent, the current rate used by the Division of Environmental Quality for fringe benefits. Total personal service cost was based on salary plus fringe, multiplied by the number of hours required to complete the annual report. Some districts provided a total cost for development of the annual report. In these cases the cost associated with expenses and equipment such as paper, envelopes, postage and printing costs were subtracted to determine the personal service cost. Not all districts responded to the request. Therefore average costs were established based on the total cost divided by the number of districts that responded.

4. The SWMD expenses and equipment were determined by reviewing each of the annual reports. The number of sheets of paper were counted for each report as well as the number of printed pages. Costs for paper, printing, envelopes and postage were then determined for all districts that reported. Average costs were established by dividing the totals by the number of districts that responded. Average costs were then multiplied by 20 to get the aggregate costs for all districts.

5. The Solid Waste Management Program's Resource Planning Section will review and process the annual reports. Staff will perform the following duties:

Planner II – Review and process annual reports, enter annual report data into database, develop and prepare a statewide report for review. (4 hours for each annual report).

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 10—Nursing Home Program

PROPOSED AMENDMENT

13 CSR 70-10.030 Prospective Reimbursement Plan for Nonstate-Operated Facilities for ICF/MR Services. The division is adding subparagraph (4)(A)1.I.

PURPOSE: This amendment outlines how the Fiscal Year 2007 trend factor will be applied to adjust per diem rates for ICF/MRs participating in the Medicaid program.

(4) Prospective Reimbursement Rate Computation.

(A) Except in accordance with other provisions of this rule, the provisions of this section shall apply to all providers of ICF/MR services certified to participate in Missouri's Medicaid program.

1. ICF/MR facilities.

A. Except in accordance with other provisions of this rule, the Missouri Medical Assistance Program shall reimburse providers of these LTC services based on the individual Medicaid-recipient days of care multiplied by the Title XIX prospective per diem rate less any payments collected from recipients. The Title XIX prospective per diem reimbursement rate for the remainder of state Fiscal Year 1987 shall be the facility's per diem reimbursement payment rate in effect on October 31, 1986, as adjusted by updating the facility's allowable base year to its 1985 fiscal year. Each facility's per diem costs as reported on its Fiscal Year 1985 Title XIX cost report will be determined in accordance with the principles set forth in this rule. If a facility has not filed a 1985 fiscal year cost report, the most current cost report on file with the department will be used to set its per diem rate. Facilities with less than a full twelve (12)-month 1985 fiscal year will not have their base year rates updated.

B. For state FY-88 and dates of service beginning July 1, 1987, the negotiated trend factor shall be equal to two percent (2%) to be applied in the following manner: Two percent (2%) of the average per diem rate paid to both state- and nonstate-operated ICF/MR facilities on June 1, 1987, shall be added to each facility's rate.

C. For state FY-89 and dates of service beginning January 1, 1989, the negotiated trend factor shall be equal to one percent (1%) to be applied in the following manner: One percent (1%) of the average per diem rate paid to both state- and nonstate-operated ICF/MR facilities on June 1, 1988 shall be added to each facility's rate.

D. For state FY-91 and dates of service beginning July 1, 1990, the negotiated trend factor shall be equal to one percent (1%) to be applied in the following manner: One percent (1%) of the average per diem rate paid to both state- and nonstate-operated ICF/MR facilities on June 1, 1990, shall be added to each facility's rate.

E. FY-96 negotiated trend factor. All nonstate-operated ICF/MR facilities shall be granted an increase to their per diem rates effective for dates of service beginning January 1, 1996, of six dollars and seven cents ($6.07) per patient day for the negotiated trend factor. This adjustment is equal to four and six-tenths percent (4.6%) of the weighted average per diem rates paid to nonstate-operated ICF/MR facilities on June 1, 1995, of one hundred and thirty-one dollars and ninety-three cents ($131.93).

F. State FY-99 trend factor. All nonstate-operated ICF/MR facilities shall be granted an increase to their per diem rates effective for dates of service beginning July 1, 1998, of four dollars and forty-seven cents ($4.47) per patient day for the trend factor. This adjustment is equal to three percent (3%) of the weighted average per diem rate paid to nonstate-operated ICF/MR facilities on June 30, 1998, of one hundred forty-eight dollars and ninety-nine cents ($148.99).

G. State FY-2000 trend factor. All nonstate-operated ICF/MR facilities shall be granted an increase to their per diem rates effective for dates of service beginning July 1, 1999, of four dollars and sixty-three cents ($4.63) per patient day for the trend factor. This adjustment is equal to three percent (3%) of the weighted average per diem rate paid to nonstate-operated ICF/MR facilities on April 30, 1999, of one hundred fifty-four dollars and forty-three cents ($154.43). This increase shall only be used for increases for the salaries and fringe benefits for direct care staff and their immediate supervisors.

H. State FY-2001 trend factor. All nonstate-operated ICF/MR facilities shall be granted an increase to their per diem rates effective for dates of service beginning July 1, 2000, of four dollars and eighty-one cents ($4.81) per patient day for the trend factor. This adjustment is equal to three percent (3%) of the weighted average per diem rate paid to nonstate-operated ICF/MR facilities on April 30, 2000, of one hundred sixty dollars and twenty-three cents ($160.23). This increase shall only be used for increases for salaries and fringe benefits for direct care staff and their immediate supervisors.

I. State FY-2007 trend factor. All nonstate-operated ICF/MR facilities shall be granted an increase of seven percent (7%) to their per diem rates effective for dates of service billed for state Fiscal Year 2007. This adjustment is equal to seven percent (7%) of the per diem rate paid to nonstate-operated ICF/MR facilities on June 30, 2006.

2. Adjustments to rates. The prospectively determined reimbursement rate may be adjusted only under the following conditions:

A. When information contained in a facility's cost report is found to be fraudulent, misrepresented or inaccurate, the facility's reimbursement rate may be reduced, both retroactively and prospectively, if the fraudulent, misrepresented or inaccurate information as originally reported resulted in establishment of a higher reimbursement rate than the facility would have received in the absence of this information. No decision by the Medicaid agency to impose a rate adjustment in the case of fraudulent, misrepresented or inaccurate information in any way shall affect the Medicaid agency's ability to impose any sanctions authorized by statute or rule. The fact that fraudulent, misrepresented or inaccurate information reported did not result in establishment of a higher reimbursement rate than the facility would have received in the absence of the information also does not affect the Medicaid agency's ability to impose any sanctions authorized by statute or rules;

B. In accordance with subsection (6)(B) of this rule, a newly constructed facility's initial reimbursement rate may be reduced if the facility's actual allowable per-diem cost for its first twelve (12) months of operation is less than its initial rate;

C. When a facility's Medicaid reimbursement rate is higher than either its private pay rate or its Medicare rate, the Medicaid rate will be reduced in accordance with subsection (2)(B) of this rule;

D. When the provider can show that it incurred higher cost due to circumstances beyond its control and the circumstances are not experienced by the nursing home or ICF/MR industry in general, the request must have a substantial cost effect. These circumstances include, but are not limited to:

(I) Acts of nature, such as fire, earthquakes and flood, that are not covered by insurance;

(II) Vandalism, civil disorder, or both; or

(III) Replacement of capital depreciable items not built into existing rates that are the result of circumstances not related to normal wear and tear or upgrading of existing system;

E. When an adjustment to a facility's rate is made in accordance with the provisions of section (6) of this rule; or

F. When an adjustment is based on an Administrative Hearing Commission or court decision.

AUTHORITY: sections 208.153, 208.159 and 208.201, RSMo 2000. This rule was previously filed as 13 CSR 40-81.083. Original rule filed Aug. 13, 1982, effective Nov. 11, 1982. For intervening history please consult the ***Code of State Regulations****. Emergency amendment filed Jan. 24, 2007, effective Feb. 3, 2007, expires Aug. 1, 2007. Amended: Filed Jan. 16, 2007.*

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions approximately three hundred eighty-nine thousand four hundred eighty-five dollars ($389,485) for SFY 2007.

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 Social Services, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. If to be hand-delivered, comments must be brought to the Division of Medical Services at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.*

FISCAL NOTE

PUBLIC COST

I. RULE NUMBER

Rule Number and Name:	13 CSR 70-10.030 Prospective Reimbursement Plan for Nonstate-Operated Facilities for ICF/MR Services
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
DSS/DMS	Annual estimated cost: SFY 2007 = $389,485

III. WORKSHEET

SFY 2007:

Estimated Paid Days: SFY 2007	31,308
x Average Rate Increase	$12.44*
Total Estimated Impact: SFY 2007	$389,485

IV. ASSUMPTIONS

Effective for dates of service billed for state fiscal year 2007, ICF/MR facilities Medicaid per-diem rates will be increased by seven percent (7%). The adjustment for each facility is calculated by multiplying seven percent (7%) by the per diem rate paid on June 30, 2006.

* The average rate increase was computed. The estimated impact was determined by adding the impact for each facility which was determined by multiplying the estimated days for each facility by each facility's specific rate increase that reflected a seven percent (7%) increase.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 20—Pharmacy Program

PROPOSED AMENDMENT

13 CSR 70-20.031 List of Excludable Drugs for Which Prior Authorization is Required. The division is amending section (3).

PURPOSE: This amendment updates the Division of Medical Services website address and the incorporated material.

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. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(3) List of drugs or categories of excludable drugs which are restricted to require prior authorization for certain specified indications shall be made available through the Department of Social Services, Division of Medical Services website at *[www.dss.state.mo.us/dms]* **www.dss.mo.gov/dms**, provider bulletins, and *[upates]* **updates** to the provider manual **which are incorporated by reference and made a part of this rule as published by the Department of Social Services, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65109, at its website, February 15, 2007. This rule does not incorporate any subsequent amendments or additions. The division reserves the right to affect changes in the list of excludable drugs for which prior authorization is required by amending this rule**.

AUTHORITY: sections 208.153 and 208.201, RSMo 2000. Original rule filed Dec. 13, 1991, effective Aug. 6, 1992. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed Jan. 16, 2007.*

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 Social Services, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. If to be hand-delivered, comments must be brought to the Division of Medical Services at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 20—Pharmacy Program

PROPOSED AMENDMENT

13 CSR 70-20.032 List of Drugs Excluded From Coverage Under the Missouri Medicaid Pharmacy Program. The division is amending section (2).

PURPOSE: This amendment updates the Division of Medical Services website address and the incorporated material.

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. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(2) List of drugs or classes which are excluded from reimbursement through the Missouri Medicaid Pharmacy Program shall be made available through the Department of Social Services, Division of Medical Services website at *[www.dss.state.mo.us/dms]* **www.dss.mo.gov/dms**, provider bulletins, and *[upates]* **updates** to the provider manual **which are incorporated by reference and made a part of this rule as published by the Department of Social Services, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65109, at its website, February 15, 2007. This rule does not incorporate any subsequent amendments or additions. The division reserves the right to affect changes in the list of excluded drugs by amending this rule**.

AUTHORITY: sections 208.153 and 208.201, RSMo 2000. Original rule filed Dec. 13, 1991, effective Aug. 6, 1992. Amended: Filed June 30, 2000, effective Feb. 28, 2001. Emergency amendment filed June 7, 2002, effective July 1, 2002, expired Dec. 27, 2002. Amended: Filed June 11, 2002, effective Jan. 30, 2003. Amended: Filed Jan. 16, 2007.

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 Social Services, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. If to be hand-delivered, comments must be brought to the Division of Medical Services at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 20—Pharmacy Program

PROPOSED AMENDMENT

13 CSR 70-20.034 List of Non-Excludable Drugs for Which Prior Authorization Is Required. The division is amending section (2).

PURPOSE: This amendment updates the Division of Medical Services website address and the incorporated material.

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. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more

than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(2) List of drugs or categories of drugs which are restricted to require prior authorization for certain specified indications shall be made available through the Department of Social Services, Division of Medical Services website at *[www.dss.state.mo.us/dms]* **www.dss.mo.gov/dms**, provider bulletins, and *[upates]* **updates** to the provider manual **which are incorporated by reference and made a part of this rule as published by the Department of Social Services, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65109, at its website, February 15, 2007. This rule does not incorporate any subsequent amendments or additions. The division reserves the right to affect changes in prior authorization of non-excludable drugs by amending this rule**.

AUTHORITY: sections 208.152, ***RSMo Supp. 2006*** *208.153 and 208.201, RSMo 2000. Emergency rule filed Nov. 21, 2000, effective Dec. 1, 2000, expired May 29, 2001. Original rule filed June 29, 2000, effective Feb. 28, 2001. Emergency amendment filed June 7, 2002, effective July 1, 2002, expired Dec. 27, 2002. Amended: Filed June 11, 2002, effective Jan. 30, 2003. Amended: Filed Jan. 16, 2007.*

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 Social Services, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. If to be hand-delivered, comments must be brought to the Division of Medical Services at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.*

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 20—Division of Regulation and Licensure
Chapter 20—Hospitals

PROPOSED RULE

19 CSR 30-20.001 Anesthesiologist Assistants in Hospitals

PURPOSE: This rule allows the use of anesthesiologist assistants in hospitals.

(1) Anesthesiologist assistant—A person who meets each of the following conditions:

(A) Has graduated from an anesthesiologist assistant program accredited by the American Medical Association's Committee on Allied Health Education and Accreditation or by its successor agency;

(B) Has passed the certifying examination administered by the National Commission on Certification of Anesthesiologist Assistants;

(C) Has active certification by the National Commission on Certification of Anesthesiologist Assistants;

(D) Is currently licensed as an anesthesiologist assistant in the state of Missouri; and

(E) Provides health care services delegated by a licensed anesthesiologist.

(2) Notwithstanding any other rule in this chapter, anesthesia in hospitals shall be administered only by qualified anesthesiologists, physicians or dentists trained in anesthesia, certified nurse anesthetists, anesthesiologist assistants or supervised students in an approved educational program. Notwithstanding the provisions of sections 334.400 to 334.430, RSMo, or the rules of the Missouri State Board of Registration for the Healing Arts, the governing body of every hospital shall have full authority to limit the functions and activities that an anesthesiologist assistant performs in such hospital. Nothing in this section shall be construed to require any hospital to hire an anesthesiologist who is not already employed as a physician prior to August 28, 2003.

AUTHORITY: sections 192.006 and 197.080, RSMo 2000. Original rule filed Jan. 16, 2007.

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, Division of Regulation and Licensure, David S. Durbin, Director, PO Box 570, Jefferson City, MO 65102-0570. 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 30—Division of Regulation and Licensure
Chapter 30—Ambulatory Surgical Centers

PROPOSED AMENDMENT

19 CSR 30-30.010 Definitions and Procedures for Licensing Ambulatory Surgical Centers. The department is amending the Purpose, adding subsection (1)(D) and amending subsection (1)(Q) and relettering for consistency.

PURPOSE: The amendment updates agency names in the purpose of the rule, adds a definition for anesthesiologist assistant, and adds anesthesiologist assistant to the list of qualified anesthesia personnel (1)(R), and reletters for consistency.

PURPOSE: The Division of [Health Resources] ***Regulation and Licensure****, Department of Health* ***and Senior Services*** *has the authority to establish rules for ambulatory surgical centers. This rule defines specific terms and presents procedures to follow in making application for a license.*

(1) Definitions.

(D) Anesthesiologist assistant. A person who meets each of the following conditions:

1. Has graduated from an anesthesiologist assistant program accredited by the American Medical Association's Committee on Allied Health Education and Accreditation or by its successor agency;

2. Has passed the certifying examination administered by the National Commission on Certification of Anesthesiologist Assistants;

3. Has active certification by the National Commission on Certification of Anesthesiologist Assistants;

4. Is currently licensed as an anesthesiologist assistant in the state of Missouri; and

5. Provides health care services delegated by a licensed anesthesiologist.

[(D)] **(E)** Certified nurse anesthetist. A registered nurse licensed under Chapter 335, RSMo, who has been graduated from a school of nurse anesthesia accredited by the Council on Accreditation of Educational Programs of Nurse Anesthesia or its predecessor, and is certified or is eligible for certification as a nurse anesthetist by the Council on Certification of Nurse Anesthetists.

[(E)] **(F)** Dentist means a person licensed to practice dentistry pursuant to Chapter 332, RSMo.

[(F)] **(G)** Department means the Department of Health and Senior Services.

[(G)] **(H)** Governing body means an individual owner, partnership, corporation or other legally established authority in whom the ultimate authority and responsibility for management of the ambulatory surgical center is vested.

[(H)] **(I)** Governmental unit means any city, county or other political subdivision of this state, or any department, division, board or other agency of any political subdivision of this state.

[(I)] **(J)** Infection control officer. An individual who is a licensed physician, licensed registered nurse, has a bachelor's degree in laboratory science, or has similar qualifications and has additional training or educational preparation in infection control, infectious diseases, epidemiology and principles of quality improvement.

[(J)] **(K)** Licensed practical nurse (LPN). A person who holds a valid license issued by the State Board of Nursing pursuant to Chapter 335, RSMo.

[(K)] **(L)** Medical staff. A formal organization of physicians which may include dentists and podiatrists who are appointed by the governing body to attend patients within the ambulatory surgical center.

[(L)] **(M)** Patient. A person admitted to the ambulatory surgical center by and upon the order of a physician, or dentist, or podiatrist in accordance with the orders of a physician.

[(M)] **(N)** Person. Any individual, firm, partnership, corporation, company or association, or the legal successors of any of them.

[(N)] **(O)** Physician means a person licensed to practice medicine pursuant to Chapter 334, RSMo and who has active or associate staff membership and privileges in a licensed hospital in the community.

[(O)] **(P)** Physician with training or experience in the administration of anesthetics. A person licensed to practice medicine under Chapter 334, RSMo whose training and experience (credentials) have been evaluated by the medical staff and privileges granted to direct the anesthesia service or to administer anesthetics or both.

[(P)] **(Q)** Podiatrist means a person licensed to practice podiatry pursuant to Chapter 330, RSMo.

[(Q)] **(R)** Qualified anesthesia personnel. An anesthesiologist who is a physician with training or experience in the administering of anesthetics**,** *[or]* a certified registered nurse anesthetist **or an anesthesiologist assistant**.

[(R)] **(S)** Registered nurse (RN). A person who holds a valid license issued by the State Board of Nursing pursuant to Chapter 335, RSMo.

[(S)] **(T)** Root cause analysis. A process for identifying the basic or causal factor(s) that underlie variation in performance, including the occurrence or possible occurrence of a sentinel event.

[(T)] **(U)** Sentinel event. An unexpected occurrence involving death or serious physical or psychological injury, or the risk thereof. Serious injury specifically includes loss of limb or function. The phrase "or the risk thereof" includes any process variation for which a reoccurrence would carry a significant chance of a serious adverse outcome.

*AUTHORITY: section 197.225, RSMo 2000 and 197.154, RSMo Supp. [2005] **2006**. This rule was previously filed as 13 CSR 50-30.010. Original rule filed Dec. 2, 1975, effective Feb. 1, 1976. Amended: Filed Jan. 3, 1990, effective April 12, 1990. Amended: Filed Sept. 20, 2005, effective April 30, 2006. Amended: Filed Jan. 16, 2007.*

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 Health and Senior Services, Division of Regulation and Licensure, David S. Durbin, Director, PO Box 570, Jefferson City, MO 65102-0570. 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 30—Division of Regulation and Licensure
Chapter 30—Ambulatory Surgical Centers

PROPOSED AMENDMENT

19 CSR 30-30.020 Administration Standards for Ambulatory Surgical Centers. The department proposes to amend the purpose and paragraph (1)(E)6.

PURPOSE: This amendment updates agency names in the purpose of the rule and sets forth requirements regarding administration of anesthesia by anesthesiologist assistants.

*PURPOSE: The Division of [Health Resources] **Regulation and Licensure**, Department of Health **and Senior Services** has the authority to establish standards for the operation of ambulatory surgical centers. This rule provides standards for the administration, medical staff, nursing staff and supporting services to ensure high quality services to users of ambulatory surgical centers.*

(1) Organization, Administration, Medical Staff, Nursing Staff and Supporting Services.

(E) Anesthesia Service.

1. The anesthesia service shall be under the direction of an anesthesiologist or a physician with training or experience in the administration of anesthetics. The clinical privileges of qualified anesthesia personnel shall be reviewed by the director of anesthesia service and the medical staff and approved by the governing body.

2. An anesthesiologist or physician with training or experience in the administration of anesthetics shall be on the premises and readily accessible during the administration of anesthetics—whether local, general or intravenous sedation—and the postanesthetic recovery period until all patients are alert or medically discharged. Qualified anesthesia personnel shall be present in the room throughout the conduct of all general anesthetics, regional anesthetics and monitored anesthesia care and shall continually evaluate the patient's oxygenation, ventilation, circulation and temperature. Oxygen analyzers, pulse oximeter and electrocardiography equipment shall be available.

3. Policies and procedures on the administration of anesthetics and drugs which produce conscious and deep sedation shall be developed by the medical staff in consultation with at least one (1) anesthesiologist and approved by the governing body.

4. Prior to undergoing general anesthesia, patients shall have a history and physical examination by a physician on the patient's record including the results of any necessary laboratory examinations. Each administration of a regional, general or intravenous sedation anesthetic shall be ordered by an anesthesiologist or a physician with training and experience in the administration of anesthetics. The patient records shall contain a preanesthetic evaluation and a postanesthetic note by qualified anesthesia personnel.

5. Periodic inspections shall be made of all areas where flammable anesthetics are administered or stored to insure safeguards are being observed by personnel and equipment meets safety standards. A written record of inspections shall be kept. If the administration of the facility provides written assurance to the Department of Health and Senior Services that no flammable anesthetics will be administered and the area is posted to that effect, safety inspections will not be required.

6. All anesthetics shall be administered by anesthesiologists, physicians with training or experience in the administration of anesthetics, *[or]* certified registered nurse anesthetists **or anesthesiologist assistants**, except for local anesthetic agents which may be administered by the attending physician, dentist or podiatrist. **Notwithstanding the provisions of sections 334.400 to 334.430, RSMo, or the rules of the Missouri State Board of Registration for the Healing Arts, the governing body of every ambulatory surgical center shall have full authority to limit the functions and activities that an anesthesiologist assistant performs in such ambulatory surgical center. Nothing in this paragraph shall be construed to require any ambulatory surgical center to hire an anesthesiologist who is not already employed as a physician prior to August 28, 2003.**

7. Written procedures and criteria for discharge from the recovery service shall be approved by the medical staff.

8. There shall be a mechanism for the review and evaluation on a regular basis of the quality and scope of anesthesia services.

*AUTHORITY: section 197.225, RSMo 2000 and 197.154, RSMo Supp. [2005] **2006**. This rule was previously filed as 13 CSR 50-30.020. Original rule filed Dec. 2, 1975, effective Feb. 1, 1976. Amended: Filed June 14, 1988, effective Oct. 13, 1988. Amended: Filed Jan. 3, 1990, effective April 12, 1990. Amended: Filed Sept. 20, 2005, effective April 30, 2006. Amended: Filed Jan. 16, 2007.*

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 Health and Senior Services, Division of Regulation and Licensure, David S. Durbin, Director, PO Box 570, Jefferson City, MO 65102-0570. 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 30—Division of *[Health Standards] Regulation and Licensure*
Chapter 40—Comprehensive Emergency Medical Services Systems Regulations

PROPOSED AMENDMENT

19 CSR 30-40.410 Definitions and Abbreviations Relating to Trauma Centers. The division is adding subsection (1)(B) and relettering for consistency.

PURPOSE: This amendment adds a definition for anesthesiologist assistant.

(1) The following definitions and abbreviations shall be used in the interpretation of the rules in 19 CSR 30-40.400 to 19 CSR 30-40.450:

(B) Anesthesiologist assistant (AA) means a person who meets each of the following conditions:

1. Has graduated from an anesthesiologist assistant program accredited by the American Medical Association's Committee on Allied Health Education and Accreditation or by its successor agency;

2. Has passed the certifying examination administered by the National Commission on Certification of Anesthesiologist Assistants;

3. Has active certification by the National Commission on Certification of Anesthesiologist Assistants;

4. Is currently licensed as an anesthesiologist assistant in the state of Missouri; and

5. Provides health care services delegated by a licensed anesthesiologist.

[(B)] **(C)** ATLS course means the advanced trauma life support course approved by the American College of Surgeons when required, certification shall be maintained;

[(C)] **(D)** Bureau of EMS means the Missouri Department of Health*['s]* **and Senior Services'** Bureau of Emergency Medical Services;

[(D)] **(E)** Board-admissible means that a physician has applied to a specialty board and has received a ruling that s/he has fulfilled the requirements to take the examinations. Board certification must be obtained within five (5) years of the first appointment;

[(E)] **(F)** Board-certified means that a physician has fulfilled all requirements, has satisfactorily completed the written and oral examinations, and has been awarded a board diploma in a specialty field;

[(F)] **(G)** Certified registered nurse anesthetist (CRNA) means a registered nurse who has graduated from a school of nurse anesthesia accredited by the Council on Accreditation of Educational Programs of Nurse Anesthesia or its predecessor and who has been certified as a nurse anesthetist by the Council on Certification of Nurse Anesthetists;

[(G)] **(H)** CME means continuing medical education and refers to the highest level of continuing education approved by the Missouri State Medical Association, the Missouri Association of Osteopathic Physicians and Surgeons, The American Osteopathic Association or the Accreditation Council for Continuing Medical Education;

[(H)] **(I)** Continuing nursing education means education approved or recognized by a national nurses' organization and/or trauma medical director;

[(I)] **(J)** Credentialed or credentialing is a hospital-specific system of documenting and recognizing the qualifications of medical staff and nurses and authorizing the performance of certain procedures in the hospital setting;

[(J)] **(K)** Glasgow coma scale is a scoring system for assessing a patient's level of consciousness utilizing a point system which measures eye opening, verbal response and motor response. The higher the total score, the better the patient's neurological status;

[(K)] **(L)** Immediately available (IA) means being present at the time of the patient's arrival at the hospital when prior notification is possible and no more than twenty (20) minutes from the hospital under normal driving and weather conditions;

[(L)] **(M)** In-house (IH) means being on the hospital premises twenty-four (24) hours a day;

[(M)] **(N)** Major pediatric trauma case means a patient fifteen (15) years of age or under with a revised trauma score of 11 or less;

[(N)] **(O)** Major trauma case is a patient with an injury severity score of more than fifteen (15), using the scoring method described in the article "The Injury Severity Score," pages 187–196 of *The Journal of Trauma*, Vol. 14, No. 3, 1974;

[(O)] **(P)** Major trauma patient means a trauma patient with cardiopulmonary arrest, unstable blunt or penetrating chest or abdominal injury, airway compromise, systolic blood pressure less than ninety (90) millimeters of mercury, pulse less than sixty (60) or greater than one hundred (100) per minute with clinical signs of shock, severe neurological injuries or signs of deteriorating neurological status, or prolonged loss of consciousness;

[(P)] **(Q)** Missouri trauma registry is a statewide data collection system to compile and maintain statistics on mortality and morbidity of trauma victims, using a reporting form provided by the Missouri Department of Health **and Senior Services**;

[(Q)] **(R)** Multidisciplinary trauma conference means a meeting of members of the trauma team and other appropriate hospital personnel to review the care of trauma patients at the hospital;

[(R)] **(S)** PALS means pediatric advanced life support, a course of training available through the American Heart Association when required, certification shall be maintained;

[(S)] **(T)** Physician advisory group is two (2) or more physicians who collectively assume the role of a medical advisor;

[(T)] **(U)** Promptly available (PA) means arrival at the hospital within thirty (30) minutes after notification of a patient's arrival at the hospital;

[(U)] **(V)** R is a symbol to indicate that a standard is a requirement for trauma center designation at a particular level;

[(V)] **(W)** Revised trauma score (RTS) is a numerical methodology for categorizing the physiological status of trauma patients;

[(W)] **(X)** Review is the inspection of hospitals to determine compliance with the rules of this chapter. There are four (4) types of reviews: the initial review of hospitals never before designated as trauma centers or hospitals never before reviewed for compliance with the rules of this chapter or hospitals applying for a new level of trauma center designation; the verification review to evaluate the correction of any deficiencies noted in a previous review; and the validation review, which shall occur every five (5) years to assure continued compliance with the rules of this chapter, and a focus review to allow review of substantial deficiencies by a review team;

[(X)] **(Y)** Senior resident is a physician in at least the third postgraduate year of study;

[(Y)] **(Z)** Severely injured patient is an injured patient with a glasgow coma score less than thirteen (13) or a systolic blood pressure less than ninety (90) millimeters of mercury or respirations less than ten (10) per minute or more than twenty-nine (29) per minute;

[(Z)] **(AA)** Surgical trauma call roster is a hospital-specific list of surgeons assigned to trauma care, including date(s) of coverage and back-up surgeons;

[(AA)] **(BB)** Trauma center is a hospital that has been designated in accordance with the rules in this chapter to provide systematized medical and nursing care to trauma patients. Level I is the highest level of designation, usually representing a large urban hospital with a university affiliation. Level II is the next highest level of designation and is usually a large community hospital dealing with large volumes of serious trauma in a geographic area lacking a hospital with resources of Level I. Level III is the next level and usually represents a small rural hospital with a commitment to trauma care that is commensurate with limited resources;

[(BB)] **(CC)** Trauma medical director is a surgeon designated by the hospital who is responsible for the trauma service and quality assurance programs related to trauma care;

[(CC)] **(DD)** Trauma nurse coordinator is a registered nurse designated by the hospital with responsibility for monitoring and evaluating the nursing care of trauma patients and the coordination of quality assurance programs for the trauma center;

[(DD)] **(EE)** Trauma nursing course is an education program in nursing care of trauma patients;

[(EE)] **(FF)** Trauma service is an organizational component of the hospital specializing in the care of injured patients;

[(FF)] **(GG)** Trauma team is a team consisting of the emergency physician, physicians on the surgical trauma call roster, appropriate anesthesiology staff, nursing and other support staff as needed;

[(GG)] **(HH)** Trauma team activation protocol is a hospital document outlining the criteria used to identify major trauma patients and the procedures for notification of trauma team members and indicating surgical and non-surgical specialty response times acceptable for treating major trauma patients; and

[(HH)] **(II)** Trauma triage is an estimation of injury severity at the scene of an accident.

*AUTHORITY: sections 190.185, **RSMo Supp. 2006** and 190.241, RSMo [Supp. 1998] **2000**. Emergency rule filed Aug. 28, 1998, effective Sept. 7, 1998, expired March 5, 1999. Original rule filed Sept. 1, 1998, effective Feb. 28, 1999. Amended: Filed Jan. 16, 2007.*

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 Health and Senior Services, Division of Regulation and Licensure, David S. Durbin, Director, PO Box 570, Jefferson City, MO 65102-0570. 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 30—Division of *[Health Standards] Regulation and Licensure*
Chapter 40—Comprehensive Emergency Medical Services Systems Regulations

PROPOSED AMENDMENT

19 CSR 30-40.430 Standards for Trauma Center Designation. The division is amending subsection (2)(D).

PURPOSE: This amendment sets forth requirements regarding the administration of anesthesia by anesthesiologist assistants in trauma centers.

*[PUBLISHER'S] **EDITOR'S** NOTE: I-R, II-R or III-R after a standard indicates a requirement for level I, II or III trauma center[s] respectively. I-IH, II-IH or III-IH after a standard indicates an in-house requirement for level I, II or III trauma center[s] respectively. I-IA, II-IA or III-IA indicates an immediately available requirement for level I, II or III trauma center[s] respectively. I-PA, II-PA or III-PA indicates a promptly available requirement for level I, II or III trauma center[s] respectively.*

(2) Hospital Organization Standards for Trauma Center Designation.

(D) The following specialists who are credentialed by the hospital for trauma care shall be available to the patient as indicated:

1. General surgery—I-IH, II-IA, III-PA.

A. The general surgery staffing requirement may be fulfilled by senior residents credentialed in general surgery, including trauma care, and capable of assessing emergent situations in general surgery.

B. The trauma surgeon shall be immediately available and be in attendance with the patient when a senior surgical resident is fulfilling availability requirements;

2. Neurologic surgery—I-IH, II-IA.

A. The neurologic surgery staffing requirement may be fulfilled by a surgeon who has been approved by the chief of neurosurgery for care of patients with neural trauma.

B. The surgeon shall be capable of initiating measures toward stabilizing the patient and performing diagnostic procedures.

3. Cardiac surgery—I-PA;
4. Obstetric-gynecologic surgery—I-PA, II-PA;
5. Ophthalmic surgery—I-PA, II-PA;
6. Orthopedic surgery—I-PA, II-PA;
7. Otorhinolaryngologic surgery—I-PA, II-PA;
8. Pediatric surgery—I-PA;
9. Plastic and maxillofacial surgery—I-PA, II-PA;
10. Thoracic surgery—I-PA, II-PA;
11. Urologic surgery—I-PA, II-PA;
12. Emergency medicine—I-IH, II-IH, III-IH;
13. Anesthesiology—I-IH, II-IA, III-PA.

A. In a level I or II trauma center, anesthesiology staffing requirements may be fulfilled by anesthesiology residents **or anesthesiologist assistants (AA)** capable of assessing emergent situations in trauma patients and of providing any indicated treatment. When **either** anesthesiology residents **or anesthesiologist assistants** are used to fulfill availability requirements, the staff anesthesiologist on call will be advised and promptly available.

B. In a level II trauma center, anesthesiology staffing requirements may be fulfilled when the staff anesthesiologist is promptly available and **either** an in-house certified registered nurse anesthetist (CRNA) **or an anesthesiologist assistant is available. In addition, the CRNA or the AA must be** capable of assessing emergent situations in trauma patients and of initiating and providing any indicated treatment *[is available]*.

C. In a level III trauma center, anesthesiology requirements may be fulfilled by **either** a CRNA with physician supervision **or an anesthesiologist assistant with anesthesiologist supervision**;

14. Cardiology—I-PA, II-PA;
15. Chest medicine—I-PA;
16. Gastroenterology—I-PA;
17. Hematology—I-PA, II-PA;
18. Infectious diseases—I-PA;
19. Internal medicine—I-PA, II-PA, III-PA;
20. Nephrology—I-PA, II-PA;
21. Pathology—I-PA, II-PA;
22. Pediatrics—I-PA, II-PA;
23. Psychiatry—I-PA, II-PA; and
24. Radiology—I-PA, II-PA.

*AUTHORITY: sections 190.185, **RSMo Supp. 2006** and 190.241, RSMo [Supp. 1998] **2000**. Emergency rule filed Aug. 28, 1998, effective Sept. 7, 1998, expired March 5, 1999. Original rule filed Sept. 1, 1998, effective Feb. 28, 1999. Amended: Filed Jan. 16, 2007.*

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 Health and Senior Services, Division of Regulation and Licensure, David S. Durbin, Director, PO Box 570, Jefferson City, MO 65102-0570. 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.*

This section will contain the final text of the rules proposed by agencies. The order of rulemaking is required to contain a citation to the legal authority upon which the order of rulemaking is based; reference to the date and page or pages where the notice of proposed rulemaking was published in the *Missouri Register*; an explanation of any change between the text of the rule as contained in the notice of proposed rulemaking and the text of the rule as finally adopted, together with the reason for any such change; and the full text of any section or subsection of the rule as adopted which has been changed from that contained in the notice of proposed rulemaking. The effective date of the rule shall be not less than thirty (30) days after the date of publication of the revision to the *Code of State Regulations*.

The agency is also required to make a brief summary of the general nature and extent of comments submitted in support of or opposition to the proposed rule and a concise summary of the testimony presented at the hearing, if any, held in connection with the rulemaking, together with a concise summary of the agency's findings with respect to the merits of any such testimony or comments which are opposed in whole or in part to the proposed rule. The ninety (90)-day period during which an agency shall file its order of rulemaking for publication in the *Missouri Register* begins either: 1) after the hearing on the proposed rulemaking is held; or 2) at the end of the time for submission of comments to the agency. During this period, the agency shall file with the secretary of state the order of rulemaking, either putting the proposed rule into effect, with or without further changes, or withdrawing the proposed rule.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 37—Number Pooling and Number Conservation Efforts

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.210.2, RSMo Supp. 2006 and 386.250(2), RSMo 2000, the commission adopts a rule as follows:

4 CSR 240-37.010 General Provisions **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on November 1, 2006 (31 MoReg 1758). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The written public comment period ended December 4, 2006 as the commission held the record open until the conclusion of the public hearing, and the commission held a public hearing on this proposed rule on December 4, 2006. Natelle Dietrich of the commission's staff filed comments and testified at the public hearing generally in support of the rule. Counsel from the Office of the Public Counsel filed comments and testified at the public hearing generally in support of the rule.

RESPONSE: No changes have been made to the rule as a result of the general comments.

COMMENT: The Small Telephone Company Group, through counsel, filed comments and testified at the public hearing recommending that the commission add language to both sections of the proposed rule to clarify that small rural carriers that have not yet received requests for local number portability are exempt from the provisions of this rule.

RESPONSE: The commission will not modify the proposed rule. The commission acknowledges the exemption applies to small rural carriers that have not yet received requests for local number portability, but addresses this exemption by making a modification to proposed rule 4 CSR 240-37.020(6).

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 37—Number Pooling and Number Conservation Efforts

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.210.2, RSMo Supp. 2006 and 386.250(2), RSMo 2000, the commission adopts a rule as follows:

4 CSR 240-37.020 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on November 1, 2006 (31 MoReg 1758–1759). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The written public comment period ended December 4, 2006 as the commission held the record open until the conclusion of the public hearing, and the commission held a public hearing on this proposed rule on December 4, 2006. The commission received six (6) written comments pertaining to this rule and several of those commenters testified at the public hearing. Natelle Dietrich of the commission's staff filed comments and testified at the public hearing generally in support of the rule. Counsel from the Office of the Public Counsel filed comments and testified at the public hearing generally in support of the rule. Craig Johnson on behalf of the Missouri Independent Telephone Group filed comments generally opposed to the rule because until competition exists in MITG exchanges, number conservation methods cannot be utilized. Wireless carriers T-Mobile Central LLC d/b/a T-Mobile, Verizon Wireless, Cingular Wireless and Sprint Nextel Corporation filed comments generally opposed to the rule because the commission lacks jurisdiction to adopt the proposed rules and the proposed rules conflict with the federal regulatory framework or impose unnecessary and problematic obligations that interfere with the commission's goals.

RESPONSE: No changes have been made to the rule as a result of the general comments. The commission's authority to promulgate the rule, in addition to its general authority under section 386.250(2), RSMo 2000 to supervise telecommunications companies, is supported by a series of decisions by the Federal Communications Commission (FCC) granting to the Missouri Public Service Commission the authority to implement mandatory thousands-block number pooling and other number conservation efforts in all parts of the state. In its Order in CC Docket 99-200 adopted July 20, 2000, the Federal Communications Commission stated that "[n]umbering resource optimization measures are necessary to address the considerable burdens imposed on society by the inefficient use of numbers; thus, we have enlisted the state regulatory commissions to assist the FCC in these efforts by delegating significant authority to them to

implement certain measures within their local jurisdictions." Order at 7, para. 10. The delegations of authority include most recently the Order and Fifth Further Notice of Proposed Rulemaking adopted February 17, 2006 in In the Matter of Numbering Resource Optimization and Petition of the Missouri Public Service Commission for Additional Delegated Authority to Implement Number Conservation Measures, CC Docket No. 99-200 (FCC 06-14), where the FCC granted this commission authority to implement mandatory thousands-block number pooling in the 417, 573, 636 and 660 NPAs. The Federal Communications Commission had previously delegated similar authority to this commission for the other area codes in Missouri. Section 386.210(2) provides that the commission may "act as an agent or licensee for the United States of America, or any official, agency or instrumentality thereof," and thus the commission has additional authority under this statutory section to carry out the FCC's directives.

COMMENT: Wireless carriers T-Mobile Central LLC d/b/a T-Mobile, Verizon Wireless, Cingular Wireless and Sprint Nextel Corporation through counsel filed comments requesting that the commission modify the definition of "carrier" at section 4 CSR 240-37.020(2) to clarify what entities are subject to the rule.

RESPONSE: This modification was made before the initial proposed rule was submitted, and it appears the comment pertains to an earlier draft. As the comment has already been addressed, the commission will not modify the definition.

COMMENT: Michael Dandino on behalf of the Office of Public Counsel, Craig Johnson on behalf of the Missouri Independent Telephone Group, W.R. England III and Brian McCartney on behalf of the Small Telephone Company Group, and Natelle Dietrich on behalf of the staff of the commission all filed written comments and testified at the public hearing regarding a modification of the definition of "exempt carrier" at section 4 CSR 240-37.020(6). The Missouri Independent Telephone Group and the Small Telephone Company Group recommended that the commission modify the definition to include or mirror the definition of exempt carrier created by the Federal Communications Commission. The Public Counsel also expressed concern that the rule as proposed could subject telephone customers in areas with no competition to fund Local Number Portability or number pooling that may be unneeded in the absence of competition. Ms. Dietrich on behalf of the commission's staff stated that the Federal Communications Commission draws a distinction between exemptions for LNP and exemptions for pooling. Ms. Dietrich agreed that the Federal Communications Commission does not expect telecommunications carriers that are not capable of providing local number portability to provide local number portability solely to accommodate number pooling. She indicated that the Federal Communications Commission determined that it is reasonable to require local number portability only in areas where competition dictates its demand. In an effort to not impede competition, Ms. Dietrich recommended that carriers with both hardware and software technical capability be required to implement number pooling. At the public hearing, commenters extensively discussed compensation for transporting calls, and Ms. Dietrich testified that compensation for transporting calls from a rural carrier to a wireless switch remains an issue regardless of whether pooling is required as a result of the commission's proposed rule or local number portability obligations resulting from a bona fide request. Mr. England on behalf of the Small Telephone Company Group expressed concerns over potential loss of waiver or suspension rights.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with its staff that competition should not be impeded but does not want to require rural carriers to participate in number pooling if the numbers to be pooled will not be utilized by another carrier in the near future. The commission will modify the definition to require carriers to implement number pooling in the same time frame as the Federal Communications Commission's local number portability requirements. The commission will also add a definition of Tier III CMRS provider to clarify a term used in the revised definition of "exempt carrier." The commission clarifies that rural carriers will not be required to pay transport for any numbers assigned from their rate center pool until such time as an interconnection agreement or some sort of compensation arrangement is in place. Nothing in this rule prevents carriers from seeking waivers or suspensions.

COMMENT: Robert Gryzmala on behalf of AT&T Missouri filed comments and testified at hearing requesting that the commission modify the definition of 'FCC Form U1' at section 4 CSR 240-37.020(8) to substitute the word "reported" in lieu of the word "current" to more accurately reflect the nature of the forms. At the public hearing, Larry Dority on behalf of CenturyTel joined in AT&T Missouri's comments and the commission staff agreed as well.

RESPONSE AND EXPLANATION OF CHANGE: AT&T Missouri's request is reasonable and in keeping with Federal Communications Rule pertaining to the form, and the commission will modify the definition.

COMMENT: Robert Gryzmala on behalf of AT&T Missouri filed comments and testified at hearing requesting that the commission modify the definition of "North American Numbering Plan Administrator" at section 4 CSR 240-37.020(14) to substitute the word "plan" for the word "plans" because there is only one North American Numbering dialing plan. At the public hearing, Larry Dority on behalf of CenturyTel joined in AT&T Missouri's comments, and the commission staff agreed as well.

RESPONSE AND EXPLANATION OF CHANGE: AT&T Missouri's request is reasonable and accurate, and the commission will modify the definition.

4 CSR 240-37.020 Definitions

(6) Exempt carriers are rural telephone companies and Tier III CMRS providers that have not received a specific request for the provision of local number portability from another carrier. A carrier is no longer an exempt carrier once it has received a bona fide request and the specified federal guidelines of either thirty (30), sixty (60), or one hundred eighty (180) days have elapsed.

(8) FCC Form U1 of Form 502 indicates a carrier's reported numbering resource utilization level.

(14) North American Numbering Plan Administrator is responsible for coordination and administration of the North American Numbering dialing plan.

(24) Tier III CMRS provider is a non-nationwide Commercial Mobile Radio Service provider with no more than five hundred thousand (500,000) subscribers as of the end of 2001.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 37—Number Pooling and Number Conservation Efforts

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.210.2, RSMo Supp. 2006 and 386.250(2), RSMo 2000, the commission adopts a rule as follows:

4 CSR 240-37.030 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on November 1, 2006 (31 MoReg 1759–1762). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The written public comment period ended December 4, 2006 as the commission held the record open until the conclusion of the public hearing, and the commission held a public hearing on this proposed rule on December 4, 2006. The commission received written comments pertaining to this rule and several of those commenters testified at the public hearing. Natelle Dietrich of the commission's staff filed comments and testified at the public hearing generally in support of the rule. Counsel from the Office of the Public Counsel filed comments and testified at the public hearing generally in support of the rule. Craig Johnson on behalf of the Missouri Independent Telephone Group filed comments generally opposed to the rule because until competition exists in MITG exchanges, number conservation methods cannot be utilized. Wireless carriers T-Mobile Central LLC d/b/a T-Mobile, Verizon Wireless, Cingular Wireless and Sprint Nextel Corporation through counsel filed comments generally opposed to the rule because the commission lacks jurisdiction to adopt the proposed rules and the proposed rules conflict with the federal regulatory framework or impose unnecessary and problematic obligations that interfere with the commission's goals.
RESPONSE: No changes have been made to the rule as a result of the general comments. The commission's authority to promulgate the rule, in addition to its general authority under section 386.250(2), RSMo 2000 to supervise telecommunications companies, is supported by a series of decisions by the Federal Communications Commission (FCC) granting to the Missouri Public Service Commission the authority to implement mandatory thousands-block number pooling and other number conservation efforts in all parts of the state. In its Order in CC Docket 99-200 adopted July 20, 2000, the Federal Communications Commission stated that "[n]umbering resource optimization measures are necessary to address the considerable burdens imposed on society by the inefficient use of numbers; thus, we have enlisted the state regulatory commissions to assist the FCC in these efforts by delegating significant authority to them to implement certain measures within their local jurisdictions." Order at 7, para. 10. The delegations of authority include most recently the Order and Fifth Further Notice of Proposed Rulemaking adopted February 17, 2006 in In the Matter of Numbering Resource Optimization and Petition of the Missouri Public Service Commission for Additional Delegated Authority to Implement Number Conservation Measures, CC Docket No. 99-200 (FCC 06-14), where the FCC granted this commission authority to implement mandatory thousands-block number pooling in the 417, 573, 636 and 660 three-digit Numbering Plan Area (NPAs) codes. The Federal Communications Commission had previously delegated similar authority to this commission for the other area codes in Missouri. Section 386.210(2), RSMo provides that the commission may "act as an agent or licensee for the United States of America, or any official, agency or instrumentality thereof," and thus the commission has additional authority under this statutory section to carry out the FCC's directives.

COMMENT: The Missouri Independent Telephone Group submitted comments and testified at the public hearing that as proposed, section 4 CSR 240-37.030(1) required all carriers except "exempt" carriers to implement pooling immediately. Because thousands blocks cannot be assigned outside their rate centers, if blocks with assigned numbers are pooled, companies will have to implement local number portability to accommodate those customers even though they are otherwise exempt from doing so. Thus, the Missouri Independent Telephone Group requested that the commission clarify that rural telecommunications companies have no obligation to pool or implement local number portability in advance of actual competition. The Small Telephone Company Group submitted comments and testified at the public hearing that the rule as proposed would require its members to return both contaminated and uncontaminated thousands blocks even though they could not be used in other rate centers, and local number portability would be necessary to maintain service to existing customers even as the Federal Communications Commission has said that its members are exempt from local number portability requirements until they receive a bona fide request to port numbers. Natelle Dietrich on behalf of the staff of the commission submitted comments and testified at the public hearing that the commission should modify the rule as proposed to indicate that small rural Incumbent Local Exchange Companies (ILECs) that have the technical capability to provide local number portability should only donate back uncontaminated thousands-blocks. She believes this proposal will eliminate most, if not all, costs associated with the fiscal impact of the rule and addresses the concerns raised by the Missouri Independent Telephone Group and the Small Telephone Company Group. At the public hearing, W.R. England III on behalf of the Small Telephone Company Group and Ms. Dietrich discussed the time frames required to implement local number portability and the differences between those time frames and the time frames for number pooling implementation. Ms. Dietrich indicated that local number portability could be required to be implemented in as little as thirty (30) days, while pooling implementation could take as much as six (6) months. Mr. England on behalf of the Small Telephone Company Group expressed concerns over potential loss of waiver or suspension rights.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with its staff that competition should not be impeded but does not want to require rural carriers to participate in number pooling if the numbers to be pooled will not be utilized by another carrier in the near future. The commission will modify section 4 CSR 240-37.030(1) to require exempt carriers to implement number pooling in the same time frame as the Federal Communications Commission's local number portability requirements. The commission clarifies that rural carriers will not be required to pay transport for any numbers assigned from their rate center pool until such time as an interconnection agreement or some sort of compensation arrangement is in place. Nothing in this rule prevents carriers from seeking waivers or suspensions. Carriers are encouraged to place an intercept message on the switch to notify customers that calls to numbers that have been pooled may be a toll call until such time as those calls can be completed on a local basis.

COMMENT: Robert Gryzmala on behalf of AT&T Missouri, and wireless carriers T-Mobile Central LLC d/b/a T-Mobile, Verizon Wireless, Cingular Wireless and Sprint Nextel Corporation through counsel, filed comments and Mr. Gryzmala testified at hearing regarding the reporting requirements in subsection 4 CSR 240-37.030(4)(A) that require a carrier opening an uncontaminated thousands-block prior to assigning all available telephone numbers in an opened thousands-block to file a report with the commission. AT&T Missouri indicated that this requirement exceeds the commission's delegated authority because a carrier must merely be prepared to demonstrate two (2) of the three (3) items called for by the commission's rule. AT&T Missouri stated that the company already had safeguards in place to limit assigning numbers from contaminated blocks before assigning numbers from uncontaminated blocks. AT&T Missouri also stated that that information would be voluminous. The wireless carriers indicated that this reporting requirement was unlike any required by the Federal Communications Commission and that the commission could monitor compliance by using FCC Form 502. Natelle Dietrich on behalf of the commission's staff responded that federal rules require companies that open uncontaminated blocks prior to assigning all available telephone numbers within an opened thousands-block shall submit a report to the commission explaining their reasons for that action, including a demonstration that the carrier has a verifiable need for the numbers and has exhausted all other available remedies. Ms. Dietrich recommended

that the commission modify the proposed rule to coordinate the language in section 4 CSR 240-37.030(4) and section 4 CSR 240-37.030(4)(A). At the public hearing, AT&T Missouri agreed with the commission's staff's proposed changes but recommended additional language to indicate that assignments should be made consistent with customer needs. At the public hearing, Larry Dority on behalf of CenturyTel joined in AT&T Missouri's comments.

RESPONSE AND EXPLANATION OF CHANGE: The Federal Communications Commission has directed the commission to make a finding as to whether a service provider has inappropriately assigned numbers if they are assigned from uncontaminated blocks prior to assigning all available telephone numbers within an opened thousands-block. The commission initially proposed this rule to implement this requirement. The commission will modify the rule to incorporate changes proposed by the commission's staff to clarify the reporting requirements and information the commission will consider in determining whether the assignment was inappropriate. The commission declines to add the additional language proposed by AT&T Missouri because it implies that any customer need is a justifiable reason for opening an uncontaminated thousands-block. Consistent with the Federal Communications Commission's Report and Order and Further Notice of Proposed Rulemaking (*In the Matter of Numbering Resources Optimization*, CC Docket No 99-200, released March 31, 2000), carriers are required to protect blocks of telephone numbers from contamination unless the carrier does not have an adequate supply of numbers in its inventory to meet customer needs. As the Federal Communications Commission notes, meeting a "customer need" does not include meeting requests for a specific or "vanity" number.

COMMENT: John Idoux on behalf of Embarq Missouri, Inc. submitted comments requesting that the commission state in section 4 CSR 240-37.030 that thousands-block pooling will be conducted according to guidelines established by the Alliance for Telecommunications Industry Solutions and the Industry Numbering Committee. These guidelines are documented by these administrators on the Internet.

RESPONSE: The commission agrees with the recommendation that thousands-block pooling be conducted according to these industry guidelines. However, section 536.031.4, RSMo Supp. 2005 permits an agency to incorporate by reference rules, regulations, standards and guidelines of an agency of the United States or a nationally or state-recognized organization or association without publishing the material in full only if the reference fully identifies the publisher, address, and date of the material, and states that the referenced rule, regulation, standard or guideline does not include any later amendments or additions. The industry guidelines in this case are very dynamic documents and change on a regular basis, and the commission expects that companies will follow them regardless of whether the commission requires them to do so in a rule. As the commission cannot comply with section 536.031.4 by referring to these guidelines in their most current form, the commission will not incorporate this reference.

4 CSR 240-37.030 Thousands-Block Number Pooling

(1) Thousands-block number pooling for all carriers except exempt carriers shall be implemented in each Missouri rate center within thirty (30) days after the effective date of this rule unless otherwise determined by the Thousands-Block Pooling Administrator. An exempt carrier shall implement pooling no later than the implementation of local number portability implemented pursuant to the bona fide request federal guidelines of either thirty (30), sixty (60), or one hundred eighty (180) days.

(4) Unless otherwise provided by federal law, all carriers shall assign all available telephone numbers within an opened thousands-block before assigning telephone numbers from an uncontaminated thousands-block (for purposes of section (4) "assignment"). This requirement shall apply to a carrier's existing numbering resources as well as any new numbering resources it obtains in the future. If a carrier is not able to assign all available numbers within an opened thousands-block before assigning telephone numbers from an uncontaminated thousands-block, the following reporting conditions apply:

(A) If the carrier opens the uncontaminated thousands-block to meet the needs of a customer that has requested multiple telephone numbers and the quantity of remaining numbers within the contaminated thousands-block is not sufficient to meet the request, no commission reporting under this section is required.

(B) If the assignment was previously approved pursuant to 4 CSR 240-37.040, no commission reporting under this section is required.

(C) If the carrier opens an uncontaminated thousands-block prior to assigning all available telephone numbers within an opened thousands-block for any purpose other than those listed in subsections (A) and (B) above, the carrier shall, within ten (10) days of opening the uncontaminated thousands-block, submit a report via the commission's Electronic Filing and Information System (EFIS). The report shall demonstrate that the assignment is reasonable, the carrier has a verifiable need for the assignment, and the carrier has exhausted all other available remedies designed to avoid wasting numbering resources (examples shall include but are not limited to a copy of the customer request detailing the specific need for telephone numbers and the reason the carrier cannot meet the specific customer request).

REVISED PRIVATE COST: This proposed rule will not cost private entities more than one hundred twenty-one thousand eight hundred dollars ($121,800) in the aggregate. See attached.

FISCAL NOTE
PRIVATE ENTITY COST (Revised)

I. RULE NUMBER

Title: Missouri Department of Economic Development
Division: Missouri Public Service Commission
Chapter: Number Pooling and Number Conservation Efforts
Type of Rulemaking: Proposed
Rule Number and Name: 4 CSR 240-37.030 Thousands-block Number Pooling

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 first year cost of compliance with the rule by the affected entities:	Estimate in the aggregate as to the first year cost of compliance with the rule by the affected entities (years 2-5):
4	Class A Local Telephone Companies	$55,000	$0
24	Class B Local Telephone Companies	$0 See IV.6 below	$0 See IV. 6 below
62	Class C Local Telephone Companies	$14,960 See IV.6 below	$51,840 See IV. 6 below
0	Class Interexchange Companies	$0	$0
	Class Other	$0	$0
	All entities	$69,960	$51,840

* Class A Telephone Companies are incumbent local telephone companies with more than $100,000,000 annual revenues system wide; Class B Telephone Companies are incumbent local telephone companies with $100,000,000 annual revenues or less system wide; Class C Local Telephone Companies are competitively classified telecommunications companies, Class Interexchange Companies are long distance providers, Class Other are any other companies receiving numbering resources from the North American Numbering Plan Administrator and the Pooling Administrator.

III. WORKSHEET

1. The proposed rule applies to all carriers operating in Missouri that have been assigned or have requested numbering resources from the North American Numbering Plan Administrator or the Thousands-block Pooling Administrator except those companies or providers that meet the definition of an exempt carrier in 4 CSR 240-37.020.

IV. ASSUMPTIONS

1. The life of the rule is estimated to be five years.

2. Fiscal year 2006 dollars were used to estimate costs. No adjustment for inflation is applied.

3. Estimates assume no sudden change in technology that would influence costs.

4. Affected entities are assumed to be in compliance with all other Missouri Public Service Commission and Federal Communications Commission rules and regulations.

5. Estimates are based on input from entities affected by the proposed rule.

6. Thirty-eight Class B and Class C entities estimated a one-time implementation cost of approximately $1,300,000 if not exempted from the proposed rule.

- These amounts are based on information the affected entities submitted to the Federal Communications Commission (FCC) and the Missouri Public Service Commission (MoPSC) in response to a related federal requirement.
- In response to the information submitted to the FCC by the affected entities, the MoPSC informed the FCC that based on the same estimates, as provided to the MoPSC, the average one-time cost should have been approximately $76,000, not $1.3 million. The amount supported by MoPSC evidence was used to complete the fiscal analysis.
- It was determined that all Class B entities would be exempt from the proposed rulemaking until such time as the carriers were required to participate in local number portability requirements pursuant to federal regulations. The costs discussed in this assumption will then be attributable to federal local number portability requirements, not this rulemaking.

7. One Class A entity indicated that the reporting requirements of the rule would impose labor costs of approximately $100 per hour. Since it is not known how often the reporting requirements would be invoked it is not possible to estimate a fiscal impact.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 37—Number Pooling and Number Conservation Efforts

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.210.2, RSMo Supp. 2006 and 386.250(2), RSMo 2000, the commission adopts a rule as follows:

4 CSR 240-37.040 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on November 1, 2006 (31 MoReg 1763). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The written public comment period ended December 4, 2006 as the commission held the record open until the conclusion of the public hearing, and the commission held a public hearing on this proposed rule on December 4, 2006. The commission received written comments pertaining to this rule and several of those commenters testified at the public hearing. Natelle Dietrich of the commission's staff filed comments and testified at the public hearing generally in support of the rule. Counsel from the Office of the Public Counsel filed comments and testified at the public hearing generally in support of the rule.
RESPONSE: No changes have been made to the rule as a result of the general comments.

COMMENT: Robert Gryzmala on behalf of AT&T Missouri testified in hearing that the reporting requirement in subparagraph 4 CSR 240-37.040(1)(A)7. exceeds the scope of the commission's authority to seek information from carriers. Mr. Gryzmala also indicated that the language indicating companies should demonstrate the carrier has a verifiable need for the assignment and has exhausted all other remedies is vague and unclear. At the public hearing, Larry Dority on behalf of CenturyTel joined in AT&T Missouri's comments.
RESPONSE AND EXPLANATION OF CHANGE: The Federal Communications Commission (FCC) has directed the commission to make a finding as to whether a service provider has inappropriately assigned numbers if they are assigned from uncontaminated blocks prior to assigning all available telephone numbers within an opened thousands-block. The commission initially proposed this rule to implement this requirement. The commission will modify the rule to incorporate changes proposed by the commission's staff to clarify the reporting requirements and information the commission will consider in determining whether the assignment was inappropriate.

COMMENT: Natelle Dietrich on behalf of the staff of the commission filed comments and testified at hearing that the commission's staff supported the rule but recommended adding subsection (1)(B) to the rule to clarify that if a carrier fails to provide the information required by the rule or fails to demonstrate a verifiable need for additional number resources and that all other remedies have been exhausted, then the commission will deny the numbering request.
RESPONSE AND EXPLANATION OF CHANGE: The commission finds that the rule should be modified to incorporate its staff's suggestion because federal rules clearly require the commission to make this finding before overriding decisions of the North American Numbering Plan Administrator.

4 CSR 240-37.040 Requests for Review of the Decisions of the North American Numbering Plan Administrator or Thousands-Block Pooling Administrator

(1) A carrier that requests the commission overturn a decision of the North American Numbering Plan Administrator (NANPA) or the Thousands-Block Pooling Administrator (PA) to deny a carrier's request for additional numbering resources shall file an application with the commission.

(A) The burden is on the carrier requesting review to demonstrate that deviation from the growth numbering resource requirements is warranted; therefore, applications for growth numbering resources shall include, but not be limited to, the following:

1. A Months-to-Exhaust Worksheet that provides utilization by rate center for the preceding six (6) months and projected monthly utilization for the next twelve (12) months;

2. The carrier's current numbering resource utilization level, FCC Form U1 of Form 502, for the rate center in which it is seeking growth numbering resources;

3. A copy of the carrier's original request to NANPA or the PA, a copy of the carrier's Part 1a, a copy of the NANPA or PA response/confirmation Part 3; and

4. A demonstration that the carrier has a verifiable need for numbering resources and has exhausted all other available remedies designed to conserve numbering resources (examples include but are not limited to a copy of the customer request detailing the specific need for telephone numbers and the reason the carrier cannot meet the specific customer request).

(B) A carrier that fails to provide any items in subsection (1)(A) above or fails to demonstrate a verifiable need and exhaust all other available remedies as required by paragraph (1)(A)4. above shall be denied numbering resources.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 37—Number Pooling and Number Conservation Efforts

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.210.2, RSMo Supp. 2006 and 386.250(2), RSMo 2000, the commission adopts a rule as follows:

4 CSR 240-37.050 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on November 1, 2006 (31 MoReg 1763–1764). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The written public comment period ended December 4, 2006 as the commission held the record open until the conclusion of the public hearing, and the commission held a public hearing on this proposed rule on December 4, 2006. The commission received written comments pertaining to this rule and several of those commenters testified at the public hearing. Natelle Dietrich of the commission's staff filed comments and testified at the public hearing generally in support of the rule. Counsel from the Office of the Public Counsel filed comments and testified at the public hearing generally in support of the rule. Wireless carriers T-Mobile Central LLC d/b/a T-Mobile, Verizon Wireless, Cingular Wireless and Sprint Nextel Corporation through counsel filed comments generally opposed to the rule because the commission lacks jurisdiction to adopt the proposed rules and the proposed rules conflict with the federal regulatory framework or impose unnecessary and problematic obligations that interfere with the commission's goals.
RESPONSE: No changes have been made to the rule as a result of

the general comments. The commission's authority to promulgate the rule, in addition to its general authority under section 386.250(2), RSMo 2000 to supervise telecommunications companies, is supported by a series of decisions by the Federal Communications Commission (FCC) granting to the Missouri Public Service Commission the authority to implement mandatory thousands-block number pooling and other number conservation efforts in all parts of the state. In its Order in CC Docket 99-200 adopted July 20, 2000, the Federal Communications Commission stated that "[n]umbering resource optimization measures are necessary to address the considerable burdens imposed on society by the inefficient use of numbers; thus, we have enlisted the state regulatory commissions to assist the FCC in these efforts by delegating significant authority to them to implement certain measures within their local jurisdictions." Order at 7, para. 10. The delegations of authority include most recently the Order and Fifth Further Notice of Proposed Rulemaking adopted February 17, 2006 in In the Matter of Numbering Resource Optimization and Petition of the Missouri Public Service Commission for Additional Delegated Authority to Implement Number Conservation Measures, CC Docket No. 99-200 (FCC 06-14), where the FCC granted this commission authority to implement mandatory thousands-block number pooling in the 417, 573, 636 and 660 three digit Numbering Plan Area (NPAs) codes. The Federal Communications Commission had previously delegated similar authority to this commission for the other area codes in Missouri. Section 386.210(2), RSMo provides that the commission may "act as an agent or licensee for the United States of America, or any official, agency or instrumentality thereof," and thus the commission has additional authority under this statutory section to carry out the FCC's directives.

COMMENT: The Missouri Independent Telephone Group submitted comments and testified at the public hearing that as proposed, section 4 CSR 240-37.030(1) required all carriers except "exempt" carriers to implement pooling immediately. Similar concerns apply to the requirements of this section. Because thousands-blocks cannot be assigned outside their rate centers, if blocks with assigned numbers are pooled, companies will have to implement local number portability even though they are otherwise exempt to accommodate those customers. Thus, the Missouri Independent Telephone Group requested that the commission clarify that rural telecommunications companies have no obligation to pool or implement local number portability in advance of actual competition. The Small Telephone Company Group submitted comments and testified at the public hearing that the rule as proposed would require its members to return both contaminated and uncontaminated thousands-blocks even though they could not be used in other rate centers, and local number portability would be necessary to maintain service to existing customers even as the Federal Communications Commission has said that its members are exempt from local number portability requirements until they receive a bona fide request to port numbers. Natelle Dietrich on behalf of the staff of the commission submitted comments and testified at the public hearing that the commission should modify the rule as proposed to indicate that small rural Incumbent Local Exchange Companies (ILECs) that have the technical capability to provide local number portability should only donate back uncontaminated thousands-blocks. She believes this proposal addresses the concerns raised by the Missouri Independent Telephone Group and the Small Telephone Group.
RESPONSE: The commission does not need to make this change because the concerns raised by the commenters have been addressed by the commission in changes to 4 CSR 240-37.020 and 4 CSR 240-37.030.

COMMENT: Wireless carriers T-Mobile Central LLC d/b/a T-Mobile, Verizon Wireless, Cingular Wireless and Sprint Nextel Corporation through counsel filed comments requesting that the commission track the Federal Communications Commission's rule more closely in section 4 CSR 240-37.050(2).
RESPONSE AND EXPLANATION OF CHANGE: The commission finds that it is appropriate to modify the proposed rule to incorporate the wireless carriers' comment.

4 CSR 240-37.050 Reclamation

(2) All carriers, except exempt carriers, shall donate thousands-blocks with ten percent (10%) or less contamination to the thousands-block number pool for the rate center within which the numbering resources are assigned unless the following conditions exist:

(A) Carriers shall be allowed to retain at least one (1) thousands-block per rate center, even if the thousands-block is ten percent (10%) or less contaminated; and

(B) All carriers, except exempt carriers, shall maintain no more than a six (6)-month inventory of telephone numbers in each rate center or service area in which it provides telecommunications service.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 37—Number Pooling and Number Conservation Efforts

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.210.2, RSMo Supp. 2006 and 386.250(2), RSMo 2000, the commission adopts a rule as follows:

4 CSR 240-37.060 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on November 1, 2006 (31 MoReg 1764). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The written public comment period ended December 4, 2006 as the commission held the record open until the conclusion of the public hearing, and the commission held a public hearing on this proposed rule on December 4, 2006. The commission received written comments pertaining to this rule and several of those commenters testified at the public hearing. Natelle Dietrich of the commission's staff filed comments and testified at the public hearing generally in support of the rule. Counsel from the Office of the Public Counsel filed comments and testified at the public hearing generally in support of the rule. Wireless carriers T-Mobile Central LLC d/b/a T-Mobile, Verizon Wireless, Cingular Wireless and Sprint Nextel Corporation through counsel filed comments generally opposed to the rule because the commission lacks jurisdiction to adopt the proposed rules and the proposed rules conflict with the federal regulatory framework or impose unnecessary and problematic obligations that interfere with the commission's goals.
RESPONSE: No changes have been made to the rule as a result of the general comments. The commission's authority to promulgate the rule, in addition to its general authority under section 386.250(2), RSMo 2000 to supervise telecommunications companies, is supported by a series of decisions by the Federal Communications Commission (FCC) granting to the Missouri Public Service Commission the authority to implement mandatory thousands-block number pooling and other number conservation efforts in all parts of the state. In its Order in CC Docket 99-200 adopted July 20, 2000, the Federal Communications Commission stated that "[n]umbering resource optimization measures are necessary to address the considerable burdens imposed on society by the inefficient use of numbers; thus, we have enlisted the state regulatory commissions to assist the FCC in these efforts by delegating significant

authority to them to implement certain measures within their local jurisdictions." Order at 7, para. 10. The delegations of authority include most recently the Order and Fifth Further Notice of Proposed Rulemaking adopted February 17, 2006 in In the Matter of Numbering Resource Optimization and Petition of the Missouri Public Service Commission for Additional Delegated Authority to Implement Number Conservation Measures, CC Docket No. 99-200 (FCC 06-14), where the FCC granted this commission authority to implement mandatory thousands-block number pooling in the 417, 573, 636 and 660 three-digit Numbering Plan Area (NPAs) codes. The Federal Communications Commission had previously delegated similar authority to this commission for the other area codes in Missouri. Section 386.210(2), RSMo provides that the commission may "act as an agent or licensee for the United States of America, or any official, agency or instrumentality thereof," and thus the commission has additional authority under this statutory section to carry out the FCC's directives.

COMMENT: Robert Gryzmala on behalf of AT&T Missouri, John Idoux on behalf of Embarq Missouri, Inc., and wireless carriers T-Mobile Central LLC d/b/a T-Mobile, Verizon Wireless, Cingular Wireless and Sprint Nextel Corporation through counsel filed comments and Mr. Gryzmala testified at hearing in opposition to the proposed requirement at section 4 CSR 240-37.060(1) for carriers to notify the commission when numbering resources are assigned to indirect carriers. At the public hearing, Larry Dority on behalf of CenturyTel joined in Mr. Gryzmala's comments. All of these commenters requested that the commission not adopt this subsection because it exceeds the Federal Communications Commission's reporting requirements and provides no additional useful information. Embarq Missouri, Inc. also indicated that the commission also has access to this information already via the North American Numbering Plan Administrator, and the wireless carriers indicated the commission has access to similar information through FCC Form 502. AT&T Missouri also stated that it does not currently identify whether a customer is an indirect carrier when obtaining numbering resources. AT&T Missouri also indicated that the proposed reporting requirement would be unique to Missouri. AT&T Missouri indicated that AT&T Missouri already semiannually provides the information the proposed rule requires in the Numbering Resource Utilization Forecast report that are made available to the commission. Natelle Dietrich on behalf of the commission's staff filed comments and testified at the public hearing that current reporting requires carriers to indicate when numbers have been assigned to a "customer." She indicated that the commission does receive Numbering Resource Utilization Forecast reports, but the information is untimely and often incomplete or incorrect. The commission's proposed rule will allow the commission to develop much broader awareness of demand for numbering resources, and the information received under the proposed rule could provide the commission with support to petition the Federal Communications Commission to expand numbering authority to carriers that do not receive numbering resources directly from Neustar. Ms. Dietrich testified that this proposed rule will allow the commission to effectively monitor the use of numbering resources in Missouri.

RESPONSE AND EXPLANATION OF CHANGE: The commission finds that the proposed rule should be modified to clarify that the reporting requirements are an exercise of the commission's auditing authority delegated by the Federal Communications Commission. The commission already receives some of the information required in the proposed rule from some carriers, so carriers will only be required to provide information not currently available to the commission in the Numbering Resource Utilization Forecast reports. The commission encourages carriers who do not provide the information required by the proposed rule to include it in their Numbering Resource Utilization Forecast reports to limit their submissions under this rule. As the commission receives the report containing the information semiannually, the commission will modify the submission requirement from thirty (30) days to semiannually.

COMMENT: Robert Gryzmala on behalf of AT&T Missouri, and wireless carriers T-Mobile Central LLC d/b/a T-Mobile, Verizon Wireless, Cingular Wireless and Sprint Nextel Corporation through counsel filed comments and Mr. Gryzmala testified at hearing in opposition to the proposed requirement at section 4 CSR 240-37.060(2) to provide, upon request of the commission staff, information to ensure compliance with commission and Federal Communications Commission numbering rules. The wireless carriers and AT&T Missouri requested that the commission not adopt this subsection because it is beyond the commission's federally delegated authority and are duplicative and burdensome. Natelle Dietrich on behalf of the commission's staff filed comments and testified at the public hearing that the Federal Communications Commission has delegated authority to state commissions to conduct "random" numbering audits, referring to 47 CFR 52.15(k) and the Third Report and Order in CC Docket No. 96-98, para. 101. The proposed rule outlines documentation to be submitted to the commission's staff upon request in the event of an audit.
RESPONSE: The commission declines to modify this rule. The delegation of authority from the Federal Communications Commission is clear as cited by staff and requires companies to submit information not available through another source such as Numbering Resource Utilization Forecast reports.

4 CSR 240-37.060 Reporting Requirements

PURPOSE: This rule includes standards for providing documentation to assist the commission in effectuating its delegated audit authority.

(1) Consistent with the commission's federal audit authority, a carrier that assigns or transfers a thousands-block to an indirect carrier shall submit a notice via the commission's Electronic Filing and Information System (EFIS). The carrier's submission need not be filed if this information is contained in a numbering resources utilization forecast report. The notice shall be submitted on a semiannual basis coinciding with the submission of a numbering resources utilization forecast report. The notice shall include:

(A) The NPA/NXX of the thousands-block(s) assigned or transferred; and

(B) The name of the indirect carrier receiving the thousands-block(s).

Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 30—Division of Administrative and Financial Services
Chapter 345—Missouri School Improvement Program

ORDER OF RULEMAKING

By the authority vested in the State Board of Education under section 161.092, RSMo Supp. 2006, the board rescinds a rule as follows:

5 CSR 30-345.010 General Provisions **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on September 15, 2006 (31 MoReg 1417). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 70—Special Education
Chapter 742—Special Education

ORDER OF RULEMAKING

By the authority vested in the State Board of Education under sections 160.900–160.925 and 161.092, RSMo Supp. 2006, the board hereby amends a rule as follows:

5 CSR 70-742.141 is amended.

A notice of proposed rulemaking was not published because state program plans required under federal education acts or regulations are specifically exempt under section 536.021, RSMo. Public hearings were held on September 5 and 14, 2006, in St. Louis and Jefferson City.

This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*. This rule describes Missouri's services for infants and toddlers with disabilities, in accordance with Part C of the Individuals with Disabilities Education Act (IDEA), Public Law 105-17.

5 CSR 70-742.141 Individuals with Disabilities Education Act, Part C. This order of rulemaking makes changes to section (2) and amends the incorporated by reference material, *Regulations Implementing Part C of the Individuals with Disabilities Education Act*.

(2) The Missouri state plan for the Individuals with Disabilities Education Act (IDEA), Part C contains the administrative provisions for the delivery of the state's federally assisted early intervention system. The Missouri state plan for the IDEA, Part C is hereby incorporated by reference and made a part of this rule. A copy of the IDEA, Part C (revised November 2006) is published by and can be obtained from the Department of Elementary and Secondary Education, Special Education Compliance Section, 205 Jefferson Street, PO Box 480, Jefferson City, MO 65102-0480. This rule does not incorporate any subsequent amendments or additions.

AUTHORITY: sections 160.900–160.925 and 161.092, RSMo Supp. 2006, Executive Order 94-22 of the Governor, Individuals with Disabilities Education Act 20 U.S.C. Section 1431, et seq. Original rule filed Dec. 29, 1997, effective March 30, 1998. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed Jan. 5, 2007.*

PUBLIC COST: This order of rulemaking will cost state agencies or political subdivisions $28,086,184 in the aggregate for Fiscal Year 2007 assuming the life of the rule is for two (2) fiscal years based on the one (1)-year extension by the federal government to submit a new state plan.

FISCAL NOTE
PUBLIC COST

I. RULE NUMBER

Title:	5 Department of Elementary and Secondary Education
Division:	70 Division of Special Education
Chapter:	742 Special Education
Type of Rulemaking:	Order of Rulemaking
Rule Number and Name:	5 CSR 70-742.141 Individuals with Disabilities Education Act, Part C

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Elementary and Secondary Education	$28,086,184

III. WORKSHEET

Cost estimates are based on projected expenditures from all sources during Fiscal Year 2007. Expenditures support early intervention services, training, technical assistance, and administrative costs for the First Steps system.

IV. ASSUMPTIONS

Fund 0101 Appropriation 4112	$14,650,703
Fund 0105 Appropriation 4580	$ 7,761,583
Fund 0859 Appropriation 3180	$ 578,644
Fund 0788 Appropriation 2259	$ 2,350,000
Fund 0788 Appropriation 2258	$ 2,745,254
	$28,086,184

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 23—Division of Geology and Land Survey
Chapter 1—Definitions and Organizational Structure

ORDER OF RULEMAKING

By the authority vested in the Department's Well Installation Board, under section 256.606, RSMo 2000, the board amends a rule as follows:

10 CSR 23-1.075 Disciplinary Action and Appeals Procedures **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 16, 2006 (31 MoReg 1644–1645). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations.*

SUMMARY OF COMMENTS: No comments were received.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 35—Children's Division
Chapter 100—Tax Credits

ORDER OF RULEMAKING

By the authority vested in the Children's Division under section 135.1150, RSMo Supp. 2006, the director adopts a rule as follows:

13 CSR 35-100.010 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on October 16, 2006 (31 MoReg 1648–1653). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Department of Social Services, Children's Division received no comments. However, the statute was codified at 135.1150, RSMo Supp. 2006 instead of 135.1142 as stated in SB 614, 93rd General Assembly, Second Regular Session 2006. Therefore all references to the statute must be amended in the purpose statement and section (2).

13 CSR 35-100.010 Residential Treatment Agency Tax Credit

PURPOSE: This rule describes the procedures for the implementation of section 135.1150, RSMo Supp. 2006 Residential Treatment Agency Tax Credit Act to reflect the requirements of SB 614 (2006).

(2) Definition of terms:

(A) "Certificate," a tax credit certificate issued to a taxpayer who makes an eligible monetary donation to a qualified residential treatment agency as described under section 135.1150, RSMo;

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 35—Children's Division
Chapter 100—Tax Credits

ORDER OF RULEMAKING

By the authority vested in the Children's Division under section 135.630, RSMo Supp. 2006, the director adopts a rule as follows:

13 CSR 35-100.020 Pregnancy Resource Center Tax Credit **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on October 16, 2006 (31 MoReg 1653–1660). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Department of Social Services, Children's Division received no comments.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 40—Family Support Division
Chapter 79—Domestic Violence Shelter Tax Credit

ORDER OF RULEMAKING

By the authority vested in the Family Support Division under section 135.550, RSMo Supp. 2006, the director adopts a rule as follows:

13 CSR 40-79.010 Domestic Violence Shelter Tax Credit **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on October 16, 2006 (31 MoReg 1662–1669). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Department of Social Services, Family Support Division received no comments.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 60—Missouri Health Facilities Review Committee
Chapter 50—Certificate of Need Program

ORDER OF RULEMAKING

By the authority vested in the Missouri Health Facilities Review Committee (committee) under section 197.320, RSMo 2000, the committee amends a rule as follows:

19 CSR 60-50.300 Definitions for the Certificate of Need Process **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2006 (31 MoReg 1430). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed amendment was held October 16, 2006. The committee received no comments on this rule.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 60—Missouri Health Facilities Review Committee
Chapter 50—Certificate of Need Program

ORDER OF RULEMAKING

By the authority vested in the Missouri Health Facilities Review Committee (committee) under section 197.320, RSMo 2000, the committee amends a rule as follows:

19 CSR 60-50.400 Letter of Intent Process **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2006 (31 MoReg 1430–1431). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed amendment was held October 16, 2006. The committee received no comments on this rule.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 60—Missouri Health Facilities Review Committee
Chapter 50—Certificate of Need Program

ORDER OF RULEMAKING

By the authority vested in the Missouri Health Facilities Review Committee (committee) under section 197.320, RSMo 2000, the committee amends a rule as follows:

19 CSR 60-50.410 Letter of Intent Package **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2006 (31 MoReg 1431). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed amendment was held October 16, 2006. The committee received no comments on this rule.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 60—Missouri Health Facilities Review Committee
Chapter 50—Certificate of Need Program

ORDER OF RULEMAKING

By the authority vested in the Missouri Health Facilities Review Committee (committee) under section 197.320, RSMo 2000, the committee amends a rule as follows:

19 CSR 60-50.430 Application Package **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2006 (31 MoReg 1431–1432). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed amendment was held October 16, 2006. The committee received no comments on this rule.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 60—Missouri Health Facilities Review Committee
Chapter 50—Certificate of Need Program

ORDER OF RULEMAKING

By the authority vested in the Missouri Health Facilities Review Committee (committee) under section 197.320, RSMo 2000, the committee amends a rule as follows:

19 CSR 60-50.450 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2006 (31 MoReg 1432–1433). The section with changes is reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed amendment was held October 16, 2006. The committee received one (1) comment on this rule.

COMMENT: Thomas R. Piper, representing the Missouri Certificate of Need Program staff, commented that, in section 19 CSR 60-50.450(2), the title of the long-term care occupancy report *Quarterly Survey of Hospital and Nursing Home (or Residential Care Facility and Assisted Living) Bed Utilization* should be changed to *"Six-Quarter Occupancy of Hospital and Nursing Home (or Residential Care and Assisted Living Facility) Licensed and Available Beds"*; in section 19 CSR 60-50.450(2)(A), the title of this report *(Inventory of Hospital and Nursing Home Beds)* should be changed to *"Six-Quarter Occupancy of Hospital and Nursing Home Licensed and Available Beds"*; and in subsection 19 CSR 60-50.450(2)(B), the title of the report *(Inventory of Residential Care and Assisted Living Facility Beds)* should be changed to *"Six-Quarter Occupancy of Residential Care and Assisted Living Facility Licensed and Available Beds."* This correction would recognize the current names of the reports actually in use.
RESPONSE AND EXPLANATION OF CHANGE: This section was modified accordingly.

19 CSR 60-50.450 Criteria and Standards for Long-Term Care

(2) The MOR for additional LTC beds pursuant to section 197.318.1, RSMo, shall be met if the average occupancy for all licensed and available LTC beds located within the county and within fifteen (15) miles of the proposed site exceeded ninety percent (90%) during at least each of the most recent four (4) consecutive calendar quarters at the time of application filing as reported in the Division of Regulation and Licensure (DRL), Department of Health and Senior Services, Six-Quarter Occupancy of Hospital and Nursing Home (or Residential Care and Assisted Living Facility) Licensed and Available Beds Utilization and certified through a written finding by the DRL, in which case the following population-based long-term care bed need methodology for the fifteen (15)-mile radius shall be used to determine the maximum size of the need:

(A) Approval of additional intermediate care facility/skilled nursing facility (ICF/SNF) beds will be based on a service area need determined to be fifty-three (53) beds per one thousand (1,000) population age sixty-five (65) and older minus the current supply of ICF/SNF beds shown in the Six-Quarter Occupancy of Hospital and Nursing Home Licensed and Available Beds as provided by the Certificate of Need Program (CONP) which includes licensed and Certificate of Need (CON)-approved beds; and

(B) Approval of additional RCF/ALF beds will be based on a service area need determined to be sixteen (16) beds per one thousand (1,000) population age sixty-five (65) and older minus the current supply of RCF/ALF beds shown in the Six-Quarter Occupancy of Residential Care and Assisted Living Facility Licensed and Available

Beds as provided by the CONP which includes licensed and CON-approved beds.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 60—Missouri Health Facilities Review Committee
Chapter 50—Certificate of Need Program

ORDER OF RULEMAKING

By the authority vested in the Missouri Health Facilities Review Committee (committee) under section 197.320, RSMo 2000, the committee amends a rule as follows:

19 CSR 60-50.470 Criteria and Standards for Financial Feasibility **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2006 (31 MoReg 1433). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed amendment was held October 16, 2006. The committee received no comments on this rule.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 60—Missouri Health Facilities Review Committee
Chapter 50—Certificate of Need Program

ORDER OF RULEMAKING

By the authority vested in the Missouri Health Facilities Review Committee (committee) under section 197.320, RSMo 2000, the committee amends a rule as follows:

19 CSR 60-50.600 Certificate of Need Decisions **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2006 (31 MoReg 1433–1434). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed amendment was held October 16, 2006. The committee received no comments on this rule.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 60—Missouri Health Facilities Review Committee
Chapter 50—Certificate of Need Program

ORDER OF RULEMAKING

By the authority vested in the Missouri Health Facilities Review Committee (committee) under section 197.320, RSMo 2000, the committee amends a rule as follows:

19 CSR 60-50.700 Post-Decision Activity **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2006 (31 MoReg 1434). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed amendment was held October 16, 2006. The committee received no comments on this rule.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 60—Missouri Health Facilities Review Committee
Chapter 50—Certificate of Need Program

ORDER OF RULEMAKING

By the authority vested in the Missouri Health Facilities Review Committee (committee) under section 197.320, RSMo 2000, the committee amends a rule as follows:

19 CSR 60-50.800 Meeting Procedures **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2006 (31 MoReg 1434). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed amendment was held October 16, 2006. The committee received no comments on this rule.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 60—Missouri Health Facilities Review Committee
Chapter 50—Certificate of Need Program

ORDER OF RULEMAKING

By the authority vested in the Missouri Health Facilities Review Committee (committee) under section 197.320, RSMo 2000, the committee amends a rule as follows:

19 CSR 60-50.900 Administration **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2006 (31 MoReg 1434–1435). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed amendment was held October 16, 2006. The committee received no comments on this rule.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2150—State Board of Registration for the Healing Arts
Chapter 5—General Rules

ORDER OF RULEMAKING

By the authority vested in the State Board of Registration for the Healing Arts under sections 334.104.3, RSMo Supp. 2006 and 335.036, RSMo 2000, the board withdraws a proposed amendment as follows:

20 CSR 2150-5.100 Collaborative Practice **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2006 (31 MoReg 1399–1400). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: One (1) comment was received.

COMMENT: The board received one (1) comment from Richard D. Watters, Lashly & Baer, P.C.—submitted a comment regarding proposed amendment to subsection (4)(C) stating that the Board of Nursing does not have the authority to adopt regulations impacting, affecting or including physician assistants; nor does the Board of Nursing have the authority to include physician assistants in regulations adopted pursuant to section 334.104, RSMo. The proposed regulation is not limited to one (1) of the three (3) areas for which the legislature had authorized the Board of Nursing and the Board of Healing Arts to jointly promulgate rules; and the proposed regulation is arbitrary, capricious and unreasonable because it wrongly equates the scope of practice of advanced practice nurses to the scope of practice of physician assistants.
RESPONSE: The board voted to withdraw the proposed amendment.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2150—State Board of Registration for the Healing Arts
Chapter 7—Licensing of Physician Assistants

ORDER OF RULEMAKING

By the authority vested in the State Board of Registration for the Healing Arts under section 334.735, RSMo Supp. 2006, the board withdraws a proposed amendment as follows:

20 CSR 2150-7.135 Physician Assistant Supervision Agreements **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2006 (31 MoReg 1400–1401). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2200—State Board of Nursing
Chapter 4—General Rules

ORDER OF RULEMAKING

By the authority vested in the State Board of Nursing under sections 334.104.3, RSMo Supp. 2006 and 335.036, RSMo 2000, the board withdraws a proposed amendment as follows:

20 CSR 2200-4.200 Collaborative Practice **is withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2006 (31 MoReg 1401–1402). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: One (1) comment was received.

COMMENT: The board received one (1) comment from Richard D. Watters, Lashly & Baer, P.C.—submitted a comment regarding proposed amendment to subsection (4)(C) stating that the Board of Nursing does not have the authority to adopt regulations impacting, affecting or including physician assistants; nor does the Board of Nursing have the authority to include physician assistants in regulations adopted pursuant to section 334.104, RSMo. The proposed regulation is not limited to one (1) of the three (3) areas for which the legislature had authorized the Board of Nursing and the Board of Healing Arts to jointly promulgate rules; and the proposed regulation is arbitrary, capricious and unreasonable because it wrongly equates the scope of practice of advanced practice nurses to the scope of practice of physician assistants.
RESPONSE: The board voted to withdraw the proposed amendment.