

Volume 38, Number 22
Pages 1855-1920
November 15, 2013

SALUS POPULI SUPREMA LEX ESTO

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



JASON KANDER
SECRETARY OF STATE

MISSOURI
REGISTER

The *Missouri Register* is an official publication of the state of Missouri, under the authority granted to the secretary of state by sections 536.015, RSMo Supp. 2013 and 536.033, RSMo 2000. Reproduction of rules is allowed; however, no reproduction shall bear the name *Missouri Register* or "official" without the express permission of the secretary of state.

The *Missouri Register* is published semi-monthly by

SECRETARY OF STATE

JASON KANDER

Administrative Rules Division

James C. Kirkpatrick State Information Center

600 W. Main

Jefferson City, MO 65101

(573) 751-4015

DIRECTOR

WAYLENE W. HILES

•

MANAGING EDITOR

CURTIS W. TREAT

•

EDITOR

ABBIEY RIMEL

•

ASSOCIATE EDITOR

AMANDA MCKAY

•

PUBLICATION TECHNICIAN

JACQUELINE D. WHITE

•

ADMINISTRATIVE ASSISTANT

ALISHA DUDENHOEFFER

ISSN 0149-2942, USPS 320-630; periodical postage paid at Jefferson City, MO

Subscription fee: \$56.00 per year

POSTMASTER: Send change of address notices and undelivered copies to:

MISSOURI REGISTER

Office of the Secretary of State

Administrative Rules Division

PO Box 1767

Jefferson City, MO 65102

The *Missouri Register* and *Code of State Regulations* (CSR) are now available on the Internet. The Register address is <http://www.sos.mo.gov/adrules/moreg/moreg.asp> and the CSR is <http://www.sos.mo.gov/adrules/csr/csr.asp>. These websites contain rulemakings and regulations as they appear in the Registers and CSR. These websites do not contain the official copies of the Registers and CSR. The official copies remain the paper copies published by the Office of the Secretary of State pursuant to sections 536.015 and 536.031, RSMo Supp. 2013. While every attempt has been made to ensure accuracy and reliability, the Registers and CSR are presented, to the greatest extent practicable as they appear in the official publications. The Administrative Rules Division may be contacted by email at rules@sos.mo.gov.

The secretary of state's office makes every effort to provide program accessibility to all citizens without regard to disability. If you desire this publication in alternate form because of a disability, please contact the Division of Administrative Rules, PO Box 1767, Jefferson City, MO 65102, (573) 751-4015. Hearing impaired citizens should contact the director through Missouri relay, (800) 735-2966.



IN THIS ISSUE:

EXECUTIVE ORDERS	1859	SOURCE GUIDES	
PROPOSED RULES		RULE CHANGES SINCE UPDATE	1902
Department of Transportation		EMERGENCY RULES IN EFFECT	1907
Missouri Highways and Transportation Commission	1860	EXECUTIVE ORDERS	1910
Department of Labor and Industrial Relations		REGISTER INDEX	1912
Division of Employment Security	1876		
Department of Natural Resources			
Air Conservation Commission	1877		
Department of Social Services			
MO HealthNet Division	1877		
Department of Insurance, Financial Institutions and Professional Registration			
Life, Annuities and Health	1885		
ORDERS OF RULEMAKING			
Department of Economic Development			
Division of Motor Carrier and Railroad Safety	1890		
Department of Transportation			
Motor Carrier and Railroad Safety	1890		
Department of Natural Resources			
Division of Geology and Land Survey	1894		
CONTRACTOR DEBARMENT LIST	1899		
DISSOLUTIONS	1900		

Register Filing Deadlines	Register Publication Date	Code Publication Date	Code Effective Date
July 1, 2013 July 15, 2013	August 1, 2013 August 15, 2013	August 31, 2013 August 31, 2013	September 30, 2013 September 30, 2013
August 1, 2013 August 15, 2013	September 3, 2013 September 16, 2013	September 30, 2013 September 30, 2013	October 30, 2013 October 30, 2013
September 3, 2013 September 16, 2013	October 1, 2013 October 15, 2013	October 31, 2013 October 31, 2013	November 30, 2013 November 30, 2013
October 1, 2013 October 15, 2013	November 1, 2013 November 15, 2013	November 30, 2013 November 30, 2013	December 30, 2013 December 30, 2013
November 1, 2013 November 15, 2013	December 2, 2013 December 16, 2013	December 31, 2013 December 31, 2013	January 30, 2014 January 30, 2014
December 2, 2013 December 16, 2013	January 2, 2014 January 15, 2014	January 29, 2014 January 29, 2014	February 28, 2014 February 28, 2014
January 2, 2014 January 15, 2014	February 3, 2014 February 18, 2014	February 28, 2014 February 28, 2014	March 30, 2014 March 30, 2014
February 3, 2014 February 18, 2014	March 3, 2014 March 17, 2014	March 31, 2014 March 31, 2014	April 30, 2014 April 30, 2014
March 3, 2014 March 17, 2014	April 1, 2014 April 15, 2014	April 30, 2014 April 30, 2014	May 30, 2014 May 30, 2014
April 1, 2014 April 15, 2014	May 1, 2014 May 15, 2014	May 31, 2014 May 31, 2014	June 30, 2014 June 30, 2014

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>

Missouri Participating Libraries

The *Missouri Register* and the *Code of State Regulations*, as required by the Missouri Documents Law (section 181.100, RSMo Supp. 2013), are available in the listed participating libraries, as selected by the Missouri State Library:

Jefferson County Library PO Box 1486, 3021 High Ridge High Ridge, MO 63049-1486 (314) 677-8689	Learning Resources Center Mineral Area College PO Box 1000 Park Hills, MO 63601-1000 (573) 431-4593	Hearnes Learning Resources Ctr. Missouri Western State University 4525 Downs Drive St. Joseph, MO 64507-2294 (816) 271-5802	Library Missouri University of Science and Technology 1870 Miner Circle Rolla, MO 65409-0060 (573) 341-4007
Jefferson College Library 1000 Viking Drive Hillsboro, MO 63050-2441 (314) 789-3951 ext. 160	Cape Girardeau Public Library 711 N. Clark Cape Girardeau, MO 63701-4400 (573) 334-5279	Library North Central Missouri College PO Box 111, 1301 Main Street Trenton, MO 64683-0107 (660) 359-3948 ext. 325	Lebanon-Laclede County Library 915 S. Jefferson Ave. Lebanon, MO 65536-3017 (417) 532-2148
St. Louis Public Library 1301 Olive St. St. Louis, MO 63103-2389 (314) 539-0376	Kent Library Southeast Missouri State University One University Plaza Cape Girardeau, MO 63701-4799 (573) 651-2757	Spiva Library Missouri Southern State University 3950 East Newman Road Joplin, MO 64801-1595 (417) 625-9342	University Library Southwest Baptist University 1600 University Ave. Bolivar, MO 65613-2597 (417) 328-1631
St. Louis University Law Library 3700 Lindell Blvd. St. Louis, MO 63108-3478 (314) 977-2742	Riverside Regional Library PO Box 389, 1997 E. Jackson Blvd. Jackson, MO 63755-0389 (573) 243-8141	Missouri State Library 600 West Main, PO Box 387 Jefferson City, MO 65102-0387 (573) 751-3615	Barry-Lawrence Regional Library 213 6th St. Monett, MO 65708-2147 (417) 235-6646
Eden/Webster Library Eden Theological Seminary/ Webster University 475 East Lockwood Ave. St. Louis, MO 63119-3192 (314) 961-2660 ext. 7812	Rutland Library Three Rivers Community College 2080 Three Rivers Blvd. Poplar Bluff, MO 63901-2393 (573) 840-9656	Missouri State Archives 600 West Main, PO Box 778 Jefferson City, MO 65102-0778 (573) 526-6711	Lyons Memorial Library College of the Ozarks General Delivery Point Lookout, MO 65726-9999 (417) 334-6411 ext. 3551
Thomas Jefferson Library University of Missouri-St. Louis 8001 Natural Bridge Road St. Louis, MO 63121-4499 (314) 516-5084	James C. Kirkpatrick Library University of Central Missouri 142 Edwards Library Warrensburg, MO 64093-5020 (660) 543-4149	Elmer Ellis Library University of Missouri-Columbia 106 B Ellis Library Columbia, MO 65211-5149 (573) 882-0748	Garnett Library Missouri State University—West Plains 304 Cleveland West Plains, MO 65775-3414 (417) 255-7945
Washington University Law Library Washington University Campus Box 1171, Mudd Bldg., One Brookings Dr. St. Louis, MO 63130-4899 (314) 935-6443	Kansas City Public Library 14 West 10th Street Kansas City, MO 64105 (816) 701-3546	Library State Historical Society of Missouri 1020 Lowry St. Columbia, MO 65211-7298 (573) 882-9369	Springfield-Greene County Library 4653 S. Campbell Springfield, MO 65801-0760 (417) 874-8110
St. Louis County Library 1640 S. Lindbergh Blvd. St. Louis, MO 63131-3598 (314) 994-3300 ext. 247	Law Library University of Missouri-Kansas City 5100 Rockhill Road Kansas City, MO 64110-2499 (816) 235-2438	Daniel Boone Regional Library PO Box 1267, 100 West Broadway Columbia, MO 65205-1267 (573) 443-3161 ext. 359	Meyer Library Missouri State University PO Box 175, 901 S. National Springfield, MO 65804-0095 (417) 836-4533
Library Maryville University 13550 Conway Road St. Louis, MO 63141-7232 (314) 529-9494	Miller Nichols Library University of Missouri-Kansas City 5100 Rockhill Road Kansas City, MO 64110-2499 (816) 235-2438	School of Law University of Missouri-Columbia 224 Hulston Hall Columbia, MO 65211-0001 (573) 882-1125	
Pickler Memorial Library Truman State University 100 E. Normal Kirksville, MO 63501-4221 (660) 785-7416	B.D. Owens Library Northwest Missouri State University 800 University Drive Maryville, MO 64468-6001 (660) 562-1841	Smiley Memorial Library Central Methodist University 411 Central Methodist Square Fayette, MO 65248-1198 (660) 248-6279	
	St. Joseph Public Library 927 Felix Street St. Joseph, MO 64501-2799 (816) 232-8151		

HOW TO CITE RULES AND RSMo

RULES—Cite material in the *Missouri Register* by volume and page number, for example, Vol. 28, *Missouri Register*, page 27. The approved short form of citation is 28 MoReg 27.

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.

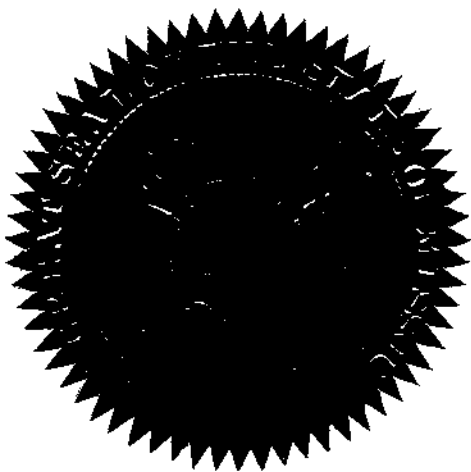
RSMo—The most recent version of the statute containing the section number and the date.

The Secretary of State shall publish all executive orders beginning January 1, 2003, pursuant to section 536.035.2, RSMo Supp. 2013.

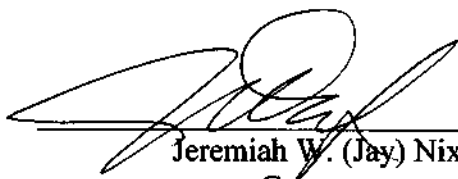
EXECUTIVE ORDER 13-13

TO ALL DEPARTMENTS AND AGENCIES:

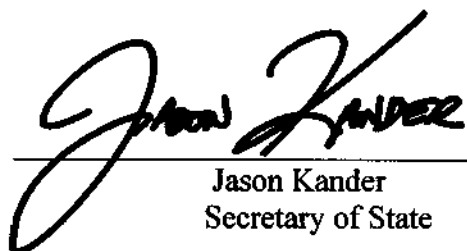
This is to advise that state offices will be closed on Friday, November 29, 2013.



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 1st day of November, 2013.


Jeremiah W. (Jay) Nixon
Governor

ATTEST:


Jason Kander
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 symbolology under the heading of proposed rule. If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission. Rules which are proposed to be amended will have new matter printed in boldface type and matter to be deleted placed in brackets.

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

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

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

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

Proposed Amendment Text Reminder:

Boldface text indicates new matter.

[Bracketed text indicates matter being deleted.]

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 6—Outdoor Advertising**

PROPOSED AMENDMENT

7 CSR 10-6.010 Public Information. The Missouri Highways and Transportation Commission is amending sections (1) and (3) and deleting sections (2) and (4).

PURPOSE: This amendment informs interested persons how they may obtain information and materials about state outdoor advertising control.

(1) General Information. Sections 226.500-226.600, RSMo regulate outdoor advertising in Missouri adjacent to the interstate and primary highway systems. The Missouri General Assembly has delegated

authority to the Missouri Highways and Transportation Commission to implement these statutes. The Missouri Highways and Transportation Commission has adopted administrative rules, 7 CSR 10-6, under these statutes to **promote highway safety**. These rules have the force and effect of law and should be read together with the statutes.

[(2) Organization. The Missouri Highways and Transportation Commission controls and acts by and through the Missouri Department of Transportation which is directed by the director of transportation. For purposes of this rule, the state is geographically divided into seven (7) areas. Each outdoor advertising area office is headed by an outdoor advertising area permit specialist who is responsible to the outdoor advertising manager for supervising all outdoor advertising activities within that area. Counties in each area are as follows: Area No. 1 includes: Barton, Bates, Cass, Cedar, Clay, Dade, Henry, Jackson, Johnson, Lafayette, Platte, St. Clair, Vernon; Area No. 2 includes: Adair, Audrain, Chariton, Clark, Knox, Lewis, Linn, Macon, Marion, Monroe, Pike, Putnam, Ralls, Randolph, Schuyler, Scotland, Shelby, Sullivan; Area No. 3 includes: Benton, Boone, Callaway, Camden, Cole, Cooper, Gasconade, Hickory, Howard, Maries, Miller, Moniteau, Morgan, Osage, Pettis, Phelps, Pulaski, Saline; Area No. 4 includes: City of St. Louis, Crawford, Franklin, Jefferson, Lincoln, Montgomery, Perry, Ste. Genevieve, St. Charles, St. Francois, St. Louis, Warren, Washington; Area No. 5 includes: Barry, Christian, Dallas, Douglas, Greene, Jasper, Laclede, Lawrence, McDonald, Newton, Ozark, Polk, Stone, Taney, Webster, Wright; Area No. 6 includes: Bollinger, Butler, Cape Girardeau, Carter, Dent, Dunklin, Howell, Iron, Madison, Mississippi, New Madrid, Oregon, Pemiscot, Reynold, Ripley, Scott, Shannon, Stoddard, Texas, Wayne; Area No. 7 includes: Andrew, Atchison, Buchanan, Caldwell, Carroll, Clinton, Daviess, DeKalb, Gentry, Grundy, Harrison, Holt, Livingston, Mercer, Nodaway, Ray and Worth.]

[(3)](2) How to Obtain Information and Materials. Information and materials regarding outdoor advertising control, including copies of sections 226.500–226.600, RSMo, administrative rules, application forms, maps of the interstate and primary highway systems, and area maps showing the location of the outdoor advertising area offices and the counties within each outdoor advertising area, may be obtained in person, or by writing or telephoning the outdoor advertising area permit specialist, Missouri Department of Transportation: Area No. 1, 600 NE Colbern Road—PO Box 648002, Lee’s Summit, MO 64086, (816) 622-6353; Area No. 2, 1511 Missouri Boulevard, PO Box 718, Jefferson City, MO 65102, (513) 751-7187; Area No. 3, 1511 Missouri Boulevard, PO Box 718, Jefferson City, MO 65102, (573) 751-9289; Area No. 4, 1590 Woodlake Drive, Chesterfield, MO 63017, (314) 340-4327; Area No. 5, 3025 East Kearney—PO Box 868, Springfield, MO 65801, (417) 895-7648; Area No. 6, 2910 Barron Road, Poplar Bluff, MO 63901, (573) 840-9292; Area No. 7, U.S. Route 63—PO Box 8, Macon, MO 63552, (660) 385-8264] are available at http://www.modot.org/business/outdoor_advertising/.

[(4) Forms are available from the outdoor advertising permit specialist in each area.]

AUTHORITY: sections 226.500–226.600, RSMo 2000 and Supp. [2002] 2013. Original rule filed April 11, 1972, effective April 30, 1972. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Oct. 3, 2013.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Transportation, Pamela J. Harlan, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 6—Outdoor Advertising**

PROPOSED AMENDMENT

7 CSR 10-6.015 Definitions. The Missouri Highways and Transportation Commission is deleting sections (2), (5), (9), (10), (13), (14), (18), (21), (26), (29), (30), (32), (36), and (40). The commission is adding new sections (2), (8), and (26) and renumbering and/or amending all other sections.

PURPOSE: This amendment provides definitions of terms in addition to those terms defined in sections 226.510, 226.540, 226.541, and 226.580, RSMo.

(1) Animated means the display image(s) or message(s) moves or appears to have motion.

[(2) Area permit specialist means any one (1) of the Missouri Department of Transportation outdoor advertising area permit specialists.]

(2) Automatic changeable display means a display with the capability of content changes by means of mechanical or electronic input.

(3) Back-to-back sign, double-faced sign, or V-type sign is a sign with two (2) sides each of which can be read from opposite directions of the same roadway, with not more than two (2) faces to each side, and not more than two (2) display areas to each facing. The faces must be physically contiguous, *[or]* connected by the same structure or cross-bracing or located not more than fifteen feet (15') apart at their nearest point. *[The total display area for each side must not exceed eight hundred (800) square feet.]*

(4) Changed conditions mean/s/ a change in facts or local ordinance, such as but not limited to, discontinuance of a commercial or industrial activity, decrease in the limits of an urban area, reclassification of a secondary highway to interstate or federal aid primary or National Highway System (NHS) highway status, upgrading of an urban primary highway to freeway status or amendment of a comprehensive local zoning ordinance from commercial to residential or the like.

[(5) Chief engineer means the chief engineer of the Missouri Department of Transportation or his or her designated representative.]

[(6)](5) Commercial or industrial activities are defined in section 226.540(5) and (6), RSMo.

[(7)](6) Commission means the Missouri Highways and Transportation Commission.

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

(8) Digital technology means display of a message by manipulation of light projected onto a screen or otherwise produced within the screen including displays using light emitting diode (LED) technology, plasma technology, or any industry equivalent that produces the same result as these technologies.

[(9) Directional and other official signs means only official signs and notices, public utility signs, service club and religious notices, public service signs and directional signs.]

[(10) Director of transportation means the director of transportation of the Missouri Department of Transportation, appointed by the Missouri Highways and Transportation Commission under section 226.040, RSMo, or the director of transportation's authorized representative.]

[(11)](9) Display means a single graphic design which advertises goods, services, or businesses.

[(12)](10) Erect means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

[(13) Exempt billboard means a billboard erected by those organizations that are required to be permitted and are exempt from paying any fees. These organizations include religious, service, fraternal and veteran organizations.]

[(14) Federal or state law means a federal or state constitutional provision or statute or an ordinance or rule enacted or adopted by Missouri or a federal agency or a political subdivision in Missouri pursuant to a federal or state constitution or statute.]

[(15)](11) Flashing means emitting a series of sudden and transient outbursts of light.

[(16)](12) Highway means any existing highway or a roadway project for which the Missouri Highways and Transportation Commission has authorized the purchase of right-of-way.

[(17)](13) Intermittent means occurring at intervals.

[(18) Landmark signs means outdoor advertising determined by agreement between the commission and the secretary of transportation to have been lawfully in existence on October 22, 1965, and to be of historical or artistic significance under section 226.545, RSMo.]

[(19)](14) Lawful means lawfully erected and in compliance with all other legal requirements including, but not limited to, permit requirements, payment of biennial inspection fees, and in the case of nonconforming signs, the requirements of 7 CSR 10-6.060(3).

[(20)](15) Lawfully erected means erected prior to January 1, 1968 or erected after January 1, 1968, in compliance with the sizing, lighting, spacing, location, permit, and all other requirements of sections 226.500–226.600, RSMo as provided by those sections at the erection date of the sign; or erected after January 1, 1968, and before March 30, 1972, in compliance with the sizing, lighting, spacing, and location requirements in effect at the time of erection, but for which a permit was not obtained prior to March 30, 1972.

[(21)](17) *Local* means a specific district, county, township, or municipality responsible for issuing business licenses so that the owner or their assigns can engage in lawful sales or service.

[(22)](16) *Maintain* means allow to exist.

[(23)](17) *Main-traveled way* means the through traffic lanes of the highway[, exclusive of frontage roads, outer roads, auxiliary lanes, ramps and all shoulders].

[(24)](18) *Nonconforming sign or nonconforming outdoor advertising* means a sign which was lawfully erected but which does not conform to the requirements of state statutes enacted at a later date or which later fails to comply with state statutes due to changed conditions.

[(25)](19) *On-premises sign* is limited to outdoor advertising which advertises—the sale or lease of the property upon which it is located, the name of the establishment or activity located upon the premises upon which it is located, or the principal or accessory products or services offered by the establishment or activity upon the premises upon which it is located.

[(26)] *Outdoor advertising permit informal review committee consists of the director of operations, director of project development, and the right-of-way director or their designees.*

[(27)](20) *Parkland* means any publicly-owned land which is designated or used as a public park, recreation area, wildlife or waterfowl refuge, or historic site.

[(28)](21) *Premises* is limited to improvements, buildings, parking lots, landscaping, storage, or processing areas as well as any other contiguous land actually used in connection with the premises or for access.

[(29)] *Readily accessible access* means easy and convenient availability without obstruction and is maintained adjacent to an official roadway designated by a state, county, or local authority and can be traversed by a regular passenger vehicle.

[(30)] *Regular intervals* means hours of operation posted and occurring uniformly on a regular basis.

[(31)](22) *Scenic area* means any area of particular scenic beauty or historic significance as determined by the federal, state, or local officials having jurisdiction of the area and includes interests in land which have been acquired for the restoration, preservation, and enhancement of scenic beauty [(see 7 CSR 10-6.020)].

[(32)] *Secretary of transportation* means the United States Secretary of Transportation.

[(33)](23) *Sign* means outdoor advertising as defined by section 226.510(3), RSMo.

[(34)](24) *Spot zoning for outdoor advertising or strip zoning for outdoor advertising* means an amendment, variance, or exception to the comprehensive local zoning ordinance classifying or zoning a parcel of land as commercial, industrial, or suitable for outdoor advertising, out of harmony with the zoning classification or uses of surrounding land as determined by the [chief engineer] department's authorized representative.

[(35)](25) *Stacked sign* means a sign with one (1) or more displays placed one (1) above another on a single structure.

[(36)] *State* means the state of Missouri.]

(26) **Support pole(s)** means the upright support(s) to which the face is attached exclusive of bracing mechanism.

[(37)](27) *Unlawful signs or unlawful outdoor advertising* are those identified as unlawful in sections 226.580.1 and 226.580.2, RSMo, 7 CSR 10-6.040(5), and 7 CSR 10-6.080(2), and nonconforming signs which have failed to comply with the requirements of 7 CSR 10-6.060(3).

[(38)](28) *Unzoned area* means an area where there is no comprehensive zoning regulation. It does not include areas which have rural zoning classifications, land uses established by zoning variances or special exceptions under comprehensive local zoning ordinances.

[(39)](29) *Unzoned commercial or industrial areas or unzoned commercial or industrial land* is defined by sections 226.540(4) and 226.540(5), RSMo and 7 CSR 10-6.040(2)(B).

[(40)] *Urban area* is defined in section 226.510(6), RSMo.]

[(41)](30) *Visible* means capable of being seen, whether or not legible, without visual aid by a person of normal visual acuity. A person [or] of normal visual acuity is any person licensed by Missouri to operate a motor vehicle upon the highways of this state.

[(42)](31) *Zoned commercial or industrial areas* are areas which are zoned industrial, commercial, or the like per section 226.540(5), RSMo and which meet the requirements of 7 CSR 10-6.040(2)(C).

AUTHORITY: section[s] 226.150, RSMo 2000, and sections 226.500–226.600, RSMo 2000 and Supp. [2002] 2013. Original rule filed May 16, 1977, effective Oct. 15, 1977. For intervening history, please consult the Code of State Regulations. Amended: Filed Oct. 3, 2013.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Transportation, Pamela J. Harlan, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 6—Outdoor Advertising

PROPOSED AMENDMENT

7 CSR 10-6.020 Directional and Other Official Signs. The Missouri Highways and Transportation Commission is amending subsections (7)(A), (7)(D), and (7)(F).

PURPOSE: This amendment supplements the process to select, erect, and maintain directional and other official signs and notices authorized by section 226.520(1), RSMo, which are consistent with federal regulations, 23 CFR 750.151, implemented under 23 U.S.C. 131(c)(1).

(7) Standards for Directional Signs. The following standards apply only to directional signs:

(A) General. The following directional signs are prohibited: signs advertising activities that are illegal under federal or state laws or regulations in effect at the location of those signs or at the location of those activities; signs which obstruct or interfere with the driver's view of approaching, merging, or intersecting traffic; signs which move or have any animated or moving parts; signs located in rest areas, parklands, or scenic areas; and signs not lawfully existing under section 226.550.2., RSMo, or unlawful signs under section 226.580, RSMo [and 7 CSR 10-6.080(2)];

(D) Spacing. *[Each proposed location for a directional sign must be approved by the right-of-way director or designee prior to its erection.]* No directional sign may be located within two thousand feet (2,000') of an interchange or intersection at grade along the interstate system or freeway primary highway (measured along the interstate or freeway primary highway from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main traveled way). No directional sign may be located within two thousand feet (2,000') of a rest area, parkland, or scenic area; no two (2) directional signs facing the same direction of travel shall be spaced less than one (1) mile apart. Not more than three (3) directional signs facing the same direction of travel may be erected along a single route approaching the activity or attraction. Signs located adjacent to the interstate system shall be within seventy-five (75) air miles of the activity or attraction. Signs located adjacent to the primary system shall be within fifty (50) air miles of the activity or attraction;

(F) Selection Method and Criteria.

1. Criteria. Activities and attractions qualifying for directional signing shall be limited to—public places owned or operated by federal, state, or local governments or their agencies; publicly- or privately-owned natural phenomena, historic, cultural, scientific, educational, and religious sites; and areas of natural scenic beauty or naturally suited for outdoor recreation. Privately-owned activities or attractions must be deemed by the commission to be nationally or regionally known and of outstanding interest to the traveling public. *[Upon request, the applicant for a directional sign permit shall submit sufficient evidence to the right-of-way director or designee for the commission to determine whether or not the activity or attraction is nationally or regionally known and of outstanding interest to the traveling public.]*

2. Selection. **To promote highway safety, the [The] commission shall determine those public and private activities and attractions which qualify for directional signing.** After filing an application for a directional sign permit, the applicant may petition the commission to determine whether or not a specific public or private activity or attraction is eligible for directional signing. The petition may be in letter form and shall include: a statement by the owner of the activity or attraction describing the activity or attraction and evidence that the activity or attraction is nationally or regionally known and is of outstanding interest to the traveling public. In the case of any publicly-owned activity or attraction, the petition must also be accompanied by the written consent or approval of the federal, state, or local political subdivision having legal authority or control over the activity or attraction where the authority is not the applicant requesting that the activity or attraction be designated as eligible for directional signing. The commission may grant the applicant, upon request, a public hearing to aid the commission in reaching a decision of whether or not the activity or attraction qualifies for directional signing. This hearing would be informal and would not be subject to the procedural requirements of Chapter 536, RSMo. In excep-

tional cases, the commission may require review and concurrence by the **United States [s]/Secretary of [t]Transportation** before reaching a decision. Petitions and requests for public hearing must be in writing and addressed to the *[right-of-way director or designee for the county in which the activity or attraction is located (see 7 CSR 10-6.010)] department's authorized representative.*

AUTHORITY: section[s] 226.150 and sections 226.500–226.600, RSMo 2000 and Supp. [2002] 2013. Original rule filed May 16, 1977, effective Oct. 15, 1977. For intervening history, please consult the Code of State Regulations. Amended: Filed Oct. 3, 2013.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Transportation, Pamela J. Harlan, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 6—Outdoor Advertising**

PROPOSED AMENDMENT

7 CSR 10-6.030 On-Premises Signs. The Missouri Highways and Transportation Commission is amending sections (1) and (2).

PURPOSE: This amendment supplements the criteria for exempting from control on-premises signs authorized by section 226.520(2), RSMo, consistent with federal regulations, 23 CFR 750.709, implemented under 23 U.S.C. 131(c).

(1) Definitions (see 7 CSR 10-6.015). *[In particular, see 7 CSR 10-6.015(25) and (28) for definitions of on-premises sign and premises, respectively.]*

(2) Criteria. **Pursuant to section 226.520(2), RSMo, on-premises signs are exempt from the control of outdoor advertising.**

[(A) Size. There are no size limitations.

(B) Lighting. There are no lighting limitations for on-premises signs in sections 226.500–226.600, RSMo but signs which purport to be or imitate or resemble official traffic-control devices or railroad signs or signals, or which attempt to direct the movement of traffic, or which hide from view or interfere with the effectiveness of an official traffic-control device or any railroad sign or signal are prohibited by section 304.321, RSMo.

(C) Spacing. There are no spacing limitations or limitations on the number of on-premises signs per premises.]

[(D)](A) Strips. Land connected to the main portion of the premises by a thin strip of land either owned or leased by the owner of the premises or sign owner is not considered part of the premises unless the strip of land is actually used in connection with or for access to the establishment or activity being advertised. If the strip size is sufficient only for outdoor advertising or is used only for outdoor advertising, the strip does not qualify as a part of the premises.

[(E)](B) Intervening Land Use. Signs on land separated from the advertised establishment, activity, or property by an intervening land use such as a highway, another unrelated commercial activity, a residence or an agricultural activity do not qualify as on-premises signs.

[(F)](C) Rental Income. A sign which produces rental income for the owner or lessee of the premises, which consists principally of brand name or trade name advertising and which only incidentally advertises the principal or accessory products or services offered upon the premises upon which it is located does not qualify as an on-premises sign.]

[(G)](C) Products and Services Not Offered Upon Premises. A sign which advertises in a prominent manner, as determined by the [chief engineer] department's authorized representative, a product or service not offered upon the premises upon which the sign is located in addition to a product or service which is offered upon the premises upon which the sign is located, does not qualify as an on-premises sign. A sale or lease sign which also advertises any product or service not offered upon the premises and which is unrelated to the activity conducted on the premises or selling or leasing the land on which the sign is located does not qualify as an on-premises sign.

[(H)](D) Changing from On-Premises Advertising to Off-Premises Advertising.

1. An outdoor advertising sign may be converted from advertising on-premises goods and services to advertising off-premises goods and services so long as:

A. The sign meets all requirements [of law] for [legal] lawful, conforming outdoor advertising signs in effect at the time the advertising changes from advertising on-premises activities to advertising off-premises activities; and

B. The sign owner receives an outdoor advertising permit issued by the commission prior to changing the advertising from advertising on-premises activities to advertising off-premises activities.

2. For purposes of outdoor advertising control, the date of erection of the outdoor advertising is the date the sign changes from advertising on-premises goods and services to off-premises goods and services.

[(I)](E) Cessation of On-Premises Activity. [Upon] To promote highway safety, upon the cessation or termination of a business activity within the regulated area along the primary and interstate highway system, the sign owner shall have thirty (30) days to remove on-premises advertising. After thirty (30) days, the sign will no longer qualify as an on-premises sign and will be subject to the same conditions and requirements as off-premises outdoor advertising signs. The cessation or termination of a business activity does not constitute a changed condition so as to render an on-premises sign a nonconforming outdoor advertising sign.

AUTHORITY: section[s] 226.150 and sections 226.500–226.600, RSMo 2000 and Supp. [2002] 2013. Original rule filed Feb. 1, 1973, effective March 2, 1973. For intervening history, please consult the Code of State Regulations. Amended: Filed Oct. 3, 2013.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Transportation, Pamela J. Harlan, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 6—Outdoor Advertising

PROPOSED AMENDMENT

7 CSR 10-6.040 Outdoor Advertising in Zoned and Unzoned Commercial and Industrial Areas. The Missouri Highways and Transportation Commission is amending sections (1), (2), (5), and (6), deleting sections (3) and (4), and adding new sections (5), (6), and (7).

PURPOSE: This amendment eliminates duplicative requirements for erection and maintenance of outdoor advertising in zoned and unzoned commercial and industrial areas already authorized by sections 226.520(3)-(4), 226.540(4)-(7), and 226.541, RSMo. The amendment also establishes standards for: 1) digital technology use in outdoor advertising; 2) the sign reset agreement program; and 3) the reconstruction and repair of conforming out of standard signs.

(1) Definitions (see section 226.541, RSMo, and 7 CSR 10-6.015).

(2) Criteria for Determination of Zoned and Unzoned Commercial and Industrial Areas.

(A) Zoned Commercial and Industrial Areas. The following does not constitute a zoned commercial or industrial area:

1. An area or district which has been spot zoned or strip zoned for outdoor advertising;

2. An area or district which merely allows commercial or industrial activities as well as outdoor advertising as an incident to the primary land use which is other than a zoned commercial or industrial area. Examples are: agricultural, rural, unclassified, greenbelt, buffer zoning or other similar classifications which may allow specified commercial or industrial land uses including outdoor advertising; and residential and multi-family zoning classifications which may allow outdoor advertising and specified home occupations such as barber shops, beauty shops, kennels, repair shops, or professional offices;

3. An area or district which requires a special use permit, special zoning classification, or variance as a condition to the use of the area for an activity generally considered industrial or commercial; and]

[4. An area that is not within seven hundred fifty feet (750') of one or more permanent commercial or industrial activities as defined in section 226.540(6), RSMo.]

(C) Primary Use Test.

1. In General. In order for an area to qualify as an unzoned commercial or industrial area, the primary use or activity conducted on the property must be of a type customarily and generally required by local comprehensive zoning authorities in Missouri to be restricted as a primary use to areas which are zoned industrial or commercial. The fact that an activity may be conducted for profit in the area is not determinative of whether or not an area is an unzoned commercial or industrial area. Activities incidental to the primary use of the property, such as a kennel or repair shop in a building or on property which is used primarily as a residence, do not constitute commercial or industrial activities for the purpose of determining the primary use of an unzoned area even though income is derived from the activity. If, however, the activity is primary and local comprehensive zoning authorities in Missouri would customarily and generally require the use to be restricted to a commercial or industrial area, then the activity constitutes a commercial or industrial activity for purposes of determining the primary use of the property even though the owner or occupant of the land may also live on the property.

2. Visible. The purported commercial or industrial activity must be visible from the main-traveled way within the boundaries of that unzoned commercial or industrial area by a motorist of normal visual

acuity traveling at the maximum posted speed limit on the main-traveled way of the highway. *[Visibility will be determined at the time of the field inspection by the department's authorized representative.]*

3. Recognizable. The purported commercial or industrial activity must be recognizable as a commercial or industrial enterprise as viewed from both directions of travel of the adjacent interstate or primary highway. In addition, the activity must comply with each of the following:

A. Structure and grounds requirements—

(I) Area. Any structure to be used as a business or office must have an enclosed area of two hundred (200) square feet or more;

(II) Foundation. Any structure to be used as a business or office must be affixed on a slab, piers, or foundation **in accordance with minimum local building code requirements**;

(III) Access. Any structure to be used as a business or office must have approved access from a roadway and readily accessible by the motorist to a defined customer parking lot adjacent to the business building;

(IV) Utilities. Any structure to be used as a business or office must have normal utilities. Minimum utility service shall include: business telephone, electricity, **restroom**, water service, and waste water disposal, all in compliance with appropriate local, state, and county rules. *Should a state, county or local rule not exist, compliance with minimum utility service shall be determined at the time of field inspection by the department's authorized representative*;

(V) Identification. The purported enterprise must be identified as a commercial or industrial activity which may be accomplished by on-premises signing or outside visible display of product;

(VI) Use. Any structure to be used as a business or office must be used exclusively for the purported commercial or industrial activity; and

(VII) *[Limits. Limits of the business activity shall be in accordance with section 226.540(4), RSMo]* **Mobile Home or Recreational Vehicle. All wheels, axles, and springs must be removed**;

B. Activity requirements. In order to be considered a commercial or industrial activity for the purpose of outdoor advertising regulation, the following conditions must be met:

(I) An owner or employee must be on the premises for at least twenty (20) hours per week and these hours must be posted on the premises;

(II) The purported activity or enterprise shall maintain all local business licenses, occupancy permits, sales tax, and other records as may be required by applicable state, county, or local law or ordinance;

(III) A sufficient inventory of products must be maintained for immediate sale or delivery to the consumer. If the product is a service, it must be available for purchase on the premises; and

(IV) The purported activity or enterprise must be in active operation a minimum of one hundred eighty (180) days prior to the issuance of any outdoor advertising permit. The one hundred eighty-(180)-[] day time frame begins when the business activity is in compliance with all business requirements as set forth in sections 226.500 to 266.600, RSMo and this rule; and

[C. Where a mobile home or recreational vehicle is used as a business or office, the following conditions and requirements also apply:

(I) Self-propelled vehicles will not qualify for use as a business or office for the purpose of these rules:

(II) All wheels; axles and springs must be removed;

(III) The vehicle must be permanently secured on piers, pad or foundations;

(IV) The vehicle must be tied down in accordance with minimum code requirements. If no code, the vehicle must be affixed to piers, pad or foundation; and

(V) Any structure to be used as a business or office must have normal utilities. Minimum utility service shall include; business telephone, electricity, water service and waste water disposal, all in compliance with appropriate local, state and county rules. Should a state, county or local rule not exist, compliance with minimum utility service shall be determined at the time of field inspection by the department's authorized representative.

(3) *Standards for Allowed Signs.*

(A) In General. Outdoor advertising shall be permitted only when the following criteria are met:

1. The outdoor advertising structure is in compliance with the sizing, spacing, lighting and location requirements for outdoor advertising erected and maintained in zoned and unzoned commercial and industrial areas as authorized by section 226.540, RSMo;

2. The outdoor advertising structure is on the same side of the highway as the commercial or industrial activity;

3. The outdoor advertising structure is within seven hundred fifty feet (750') of the commercial or industrial activity or from any commercial or industrial structure meeting the structure and grounds requirements of subparagraph (2)(C)3.A. of this rule; and

4. In accordance with department permit requirements (see 7 CSR 10-6.070).

(B) Measurement of Distances. Distances shall be measured along the nearest edge of the pavement between points directly opposite the signs along each side of the highway and shall apply only to signs located on the same side of the highway involved. The sign measurement points shall be those which yield the shortest distance between the structures. If the signs are angled or V-shaped, the nearest points of the structures to each other are to be used.

(4) Multiple Face Structures. A back-to-back sign, double-faced sign or V-type sign is a sign with two (2) sides or outdoor advertising faces owned by the same sign owner which are physically contiguous, or connected by the same structure or cross bracing or located not more than fifteen feet (15') apart at their nearest point. New stacked structures, as defined in 7 CSR 10-6.015(35), are prohibited. Three (3) or four (4) face structures, with each face positioned to be read from a different direction along intersecting routes will be allowed provided the spacing requirements of fourteen hundred feet (1,400') are met along each route. Each side or face of this multiple sign structure shall be considered as one (1) sign for the purpose of determining whether or not it complies with the sizing, lighting, spacing and location requirements of section 226.540, RSMo provided that the total display area of each side of a multiple sign structure is limited to a total area of eight hundred (800) square feet. The total display area of each side shall be measured by the smallest square, rectangle, triangle, circle or contiguous combination of shapes which will encompass the display(s) of each side.]

[(5)](3) Permits (see 7 CSR 10-6.070 for state permit requirements).

*[(6)](4) A permit may be granted for an automatic changeable display or [a projected image display provided:] **digital technology. To promote highway safety, automatic changeable displays and digital technology shall meet the following conditions:***

*(A) The static display time for each message is a minimum of [eight (8)] **ten (10)** seconds;*

*(B) The time to completely change from one message to the next **for an automatic changeable display** is a maximum of two (2) seconds, and the time to completely change from one message to the*

next for digital technology shall be instantaneous with no discernible time gaps between displays;

(C) The change of message must occur simultaneously for the entire sign face;

(D) The outdoor advertising structure meets all other requirements in sections 226.500 to 226.600, RSMo and this rule. Any such sign shall be designed such that the sign will freeze in one position if a malfunction occurs;

(E) The image does not flas/k/h or flicker in accordance with section 226.540(1)(A), RSMo;

(F) The image is projected onto a securely fixed, substantial structure and in accordance with the provisions in sections 226.500 to 226.600, RSMo; *[and]*

(G) No projected image(s) or message(s) shall appear to move or be animated./;

(H) The sign luminance shall not exceed three hundred (300) candelas per square meter in full white mode between the periods of sunset to sunrise as calculated by the United States Naval Observatory; and

(I) In accordance with section 226.541, RSMo, if allowed by local regulations, a conforming out of standard sign may be upgraded with digital technology provided—

1. Up to twenty percent (20%) of the sign face, not to exceed one hundred sixty (160) square feet of area may be upgraded with digital technology for displaying text or numbers; or

2. More than twenty percent (20%) of the sign face may be upgraded with digital technology only if it maintains a distance of at least one thousand four hundred feet (1,400') from any other such digital technology display sign in which more than twenty percent (20%) of the sign face contains digital technology. Permit owners shall submit a written request to upgrade more than twenty percent (20%) of the sign face with digital technology and obtain approval prior to making any changes to the sign. Written upgrade requests will be time and date stamped upon their receipt and priority in contested areas will be assigned in chronological order. If granted, the approval to upgrade to digital technology will expire twelve (12) months from the date it is issued.

(5) Reconstruction or Repair of Conforming out of Standard Signs. Conforming out of standard signs shall not be substantially rebuilt as provided in section 226.541, RSMo. A conforming out of standard sign that is substantially rebuilt shall be considered unlawful and any permit issued by the commission for the sign shall be voided and the fee shall be retained by the commission.

(6) Moratorium of New Outdoor Advertising Permits.

(A) A moratorium of new outdoor advertising permits will be imposed within the outdoor advertising control area for that section of highway scheduled for construction where funding for right-of-way acquisition is approved by the commission under the Statewide Transportation Improvement Program;

(B) For purposes of the moratorium, completion of construction as used in section 226.541, RSMo, shall mean when a final inspection is performed by the commission and all construction is determined to be completed to the satisfaction of the commission without any requested changes or corrections.

(C) New applications for permit to erect and/or maintain outdoor advertising will not be accepted for any phase or portion of construction or reconstruction of any street or highway imposed by a moratorium until said moratorium is lifted.

(7) Sign Reset Agreement Program. For the purposes of implementing the sign reset agreement program pursuant to section 226.541, RSMo, the following shall apply:

(A) A sign permit amendment shall be issued only to qualifying signs that are displaced within the construction limits of any phase or portion of construction of any street or highway where

funding for right-of-way acquisition is approved by the commission under the Statewide Transportation Improvement Program;

(B) Reset signs must be reconstructed of the same type materials and may not exceed the square footage of the original sign structure as it existed on the date of the Notice of the Intended Acquisition.

AUTHORITY: section[s] 226.150 and sections 226.500–226.600, RSMo 2000 and Supp. [2002] 2013. Original rule filed Feb. 6, 1974, effective March 8, 1974. For intervening history, please consult the Code of State Regulations. Amended: Filed Oct. 3, 2013.

PUBLIC COST: This proposed amendment will save the Missouri Department of Transportation and the Missouri Highways and Transportation Commission two hundred fifty thousand dollars (\$250,000) in the aggregate.

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Transportation, Pamela J. Harlan, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**FISCAL NOTE
PUBLIC COST**

- I. Department Title:** 7 - Department of Highway and Transportation
Division Title: 10 - Missouri Highways and Transportation Commission
Chapter Title: 6 - Outdoor Advertising

Rule Number and Name:	7 CSR 10-6.040 Outdoor Advertising in Zoned and Unzoned Commercial and Industrial Areas
Type of Rulemaking:	Amended Rule

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Missouri Highways and Transportation Commission / Missouri Department of Transportation	\$250,000 net savings per year

III. WORKSHEET

Potential Net Savings

Estimated number of billboards impacted by reset under the 2012 to 2016 Statewide Transportation Improvement Program (STIP)	20
Average value of a billboard	\$150,000
Average cost to reset a billboard	$\$150,000 \times 25\% = \$37,500$
Estimated cost to reset billboards under the STIP	$20 \times \$37,500 = \$750,000$
Estimated cost of traditional method of acquisition / salvage under the STIP	$(\$150,000 - \$37,500) \times 20 = \$2,250,000$
Estimated net savings of cost to reset versus traditional cost under the STIP	$\$2,250,000 - \$750,000 = \$1,500,000$
Estimated net savings per fiscal year under the STIP	$\$1,500,000 / 5 = \$300,000$

Potential Cost

Estimated conforming out of standard billboards in Missouri	3,450
---	-------

Conforming out of standard billboards likely to request full digital upgrade	132
Estimated digital upgrade requests in relation to the total number of conforming out of standard billboards in Missouri	$132 / 3,450 = 4\%$
Estimated number of billboards to be impacted by acquisition under the 2012 to 2016 STIP	1
Estimated digital upgrade request candidates impacted by the STIP	$1 \times 4\% = .04$ (round up to 1)
Estimated additional cost to purchase a billboard that has been upgraded with full digital technology	\$250,000
Estimated costs per Fiscal Year under the STIP	$\$250,000 / 5 = \$50,000$
Total Potential Net Savings	$\$300,000 - \$50,000 = \$250,000$

IV. ASSUMPTIONS

Potential Net Savings

Truly Agreed and Finally Passed (TAFP) House Bill 1402 establishes a sign reset agreement program for conforming out of standard signs. Since MoDOT has not relocated or reset billboards, there is no statistical data readily available to estimate the reset cost. Thus the assumption is made with input from an industry representative that it would cost approximately 25% of the billboards value to reset the billboard in actual costs.

While it is highly unlikely, but for the purposes of this fiscal note, it is assumed that no condemnation action will be necessary to acquire billboards when using the traditional method of acquisition.

The logic and methodology of estimating the fiscal impact to the department is as follows: Using the 2012 to 2016 Statewide Transportation Improvement Program (STIP) as a foundation, projects that have right of way dollars programmed were analyzed to determine whether there are currently billboard structures within the estimated project limits. In the STIP, there were estimated to be 20 billboard structures impacted. An assumption will be made that the estimated 20 billboards impacted will all be reset under the sign reset agreement program.

It is estimated that the average value of a billboard structure is \$150,000. Using the industry estimate of 25% of the value as an actual cost to reset, the average cost per billboard to reset would be \$37,500.

It must be noted that the traditional method of purchase allows for salvage of the structure. Salvage values vary by structure; however, using the industry's estimate, the

average salvage values amount to approximately 50% of the billboards value. Salvage values are typically negotiated and often result in a reduction in salvage value thus a salvage value for the purpose of this exercise will be applied at 25%. An assumption will be made that all billboards acquired using the traditional method will be salvaged by the billboard owner.

These calculations indicate that an estimated \$1,500,000 could be saved during Fiscal Year 2012 to 2016 of the current approved STIP.

Potential Cost

TAFP House Bill 1402 establishes conforming out of standard as a new category of outdoor advertising signs and states that these signs shall be treated as conforming signs. A conforming out of standard sign owner could upgrade the structure by enlarging it, adding digital technology, etc., which could result in higher acquisition / condemnation costs to the Missouri Highways and Transportation Commission (MHTC).

When the original fiscal note was developed, the Missouri Department of Transportation estimated that 20 billboards would be impacted by the 2012 to 2016 STIP. Currently, there are approximately 8,800 billboards in Missouri with 6,900 of the billboards nonconforming and 1,900 of the billboards conforming. MoDOT estimates that approximately 50% (3,450) of the 6,900 nonconforming billboards became conforming out of standard billboards. MoDOT is also making the assumption that other factors may come into play that would prohibit a conforming out of standard billboard from being reset. Some of these factors may include: city regulations being stricter than the state law; inability for the billboard owner to secure a lease agreement with the adjoining property owner; and unacceptable grade of adjoining property that would prohibit the effective use of the billboard. In these cases, the MHTC would have to purchase the conforming out of standard billboard. However, because of its conforming out of standard status, the billboard could have been upgraded with digital technology – thereby resulting in a higher acquisition cost for the MHTC. Our assumption is that one billboard will be impacted by acquisition under the 2012 to 2016 STIP.

One hundred and thirty two (132) conforming out of standard billboards were identified by billboard owners as digital upgrade candidates. If all 132 billboards were upgraded, 4% of the total conforming out of standard billboards (3,450) would be upgraded. Applying this 4% to the billboard impacted by acquisition, 0.04 billboards in a 5 year period would be upgraded with digital technology and purchased by the MHTC. Since MoDOT cannot purchase 0.04 of a billboard, MoDOT will assume that one conforming out of standard billboard will be upgraded to full digital technology and purchased by the MHTC under the 2012 to 2016 STIP

The average estimated cost of acquiring a billboard is \$150,000. Estimates provided by the industry state that it costs approximately \$150,000 to \$250,000 to upgrade a billboard with full digital technology. As a worst case scenario, the MHTC could spend an additional \$250,000 under the 2012 to 2016 STIP.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 6—Outdoor Advertising**

PROPOSED AMENDMENT

7 CSR 10-6.050 Outdoor Advertising Beyond Six Hundred Sixty Feet (660') of the Right-of-Way. The Missouri Highways and Transportation Commission is amending sections (2) and (3).

PURPOSE: This amendment eliminates the need to view urban area maps at a specific physical office location.

(2) Determination of Urban Areas. The term urban area is defined by section 226.510(6), RSMo. *[Maps depicting urban areas may be viewed at the appropriate outdoor advertising area office (see 7 CSR 10-6.010).]*

(3) Determination of Purpose. The *[chief engineer]* department's **authorized representative** shall determine under section 226.527, RSMo, when a sign is erected with the purpose of its message being read from the main-traveled way of an interstate or primary highway.

(B) Multiple Highways. A sign may be visible or erected, or both, with the purpose of its message being read from two (2) or more interstate or primary highways. These signs must comply with the sizing, lighting, spacing, location, and permit requirements applicable to each interstate or primary highway. *[Where]* **To promote highway safety, where** there is a conflict between sizing, lighting, spacing, or location requirements of sections 226.500–226.600, RSMo, the most restrictive requirements shall prevail.

AUTHORITY: section[s] 226.150, RSMo 2000, and sections 226.500–226.600, RSMo 2000 and Supp. [2002] 2013. Original rule filed May 16, 1977, effective Oct. 15, 1977. For intervening history, please consult the Code of State Regulations. Amended: Filed Oct. 3, 2013.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Transportation, Pamela J. Harlan, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 6—Outdoor Advertising**

PROPOSED AMENDMENT

7 CSR 10-6.060 Nonconforming Signs. The Missouri Highways and Transportation Commission is amending sections (2) and (3).

PURPOSE: This amendment removes the measurement equation for cutouts and extensions on outdoor advertising; changes when a nonconforming sign becomes deteriorated or damaged; and removes the

option for the permittee to contact department staff prior to making changes to existing nonconforming signs.

(2) Categories of Nonconforming Signs. Unless these signs are unlawful signs under section 226.580, RSMo *[and 7 CSR 10-6.080(2)]*, the following nonconforming signs, subsections (2)(A)–(D) of this rule, may be maintained under the specified conditions **to promote highway safety**:

(D) Landmark Signs. Any signs lawfully erected on or before October 22, 1965, including signs on farm structures or natural surfaces regardless of their advertising message at the date of erection, which are determined by the commission with the approval of the **United States [secretary] Secretary of [transportation] Transportation** to have been of historical or artistic significance on August 13, 1976, but which under state statutes enacted after these signs were erected or because of changed conditions fail to meet the sizing, spacing, lighting, or location requirements of sections 226.500–226.600, RSMo, or 7 CSR 10-6.020 are nonconforming signs. Landmark signs may be located either within six hundred sixty feet (660') of the nearest edge of the right-of-way and visible from the main-traveled way of any highway which is a part of the interstate or primary system or beyond six hundred sixty feet (660') of the right-of-way, visible from the main-traveled way of the interstate or primary system and erected with the purpose of its message being read from the traveled way. These landmark signs may be maintained subject to the criteria for maintenance of nonconforming signs in section (3).

(3) Criteria for Maintenance of Nonconforming Signs. Reasonable maintenance and repair of nonconforming signs is permissible, however, violation of any one (1) or more of the following subsections (3)(A)–(E)/(F) of this rule disqualifies any sign from being maintained as a nonconforming sign and subjects it to removal by the commission without the payment of just compensation:

(A) Message Content. Changes of advertising message content are permissible subject to the following:

1. Landmark signs. In order to continue to qualify as a landmark sign after August 13, 1976, the sign's advertising message shall not be substantially changed, except that a change in mileage, address, routing, course, or direction is permissible;

2. On-premises signs. Switching advertising from on-premises activities to off-premises activities does not constitute a changed condition so as to render the sign as *[nonconforming]* **nonconforming**. A sign that switches from advertising on-premises goods and services to off-premises goods and services must meet all requirements of the law in effect at the time the advertising is changed from on-premises to off-premises activities;

(C) Size. The size or area of a sign shall not be increased after the date the sign becomes a nonconforming sign. A net decrease in the face of the sign will be permitted.

1. Temporary cutouts and extensions will not be considered a substantial increase in size provided the cutout or extension meets the following criteria:

A. The cutout or extension area is thirty-three percent (33%) or less of the total display area for each side of the sign, prior to the cutout or extension addition. *[For the purpose of determining the percentage of a temporary cutout or extension, the area of the smallest square, rectangle, triangle, circle, or contiguous combination of shapes that will encompass the cutout or extension will be calculated and divided by the area of the smallest square, rectangle, triangle, circle or contiguous combination of shapes that will encompass the permanent display area of the outdoor advertising structure]* **The commission shall determine the method used in calculating the percentage of the temporary cutout or extension; and**

B. A cutout or extension may be added to either side of a structure for a period of time of no more than three (3) years for each side or the term of the display contract, whichever is the shortest.

After a side of an outdoor advertising structure has had a cutout or extension for that time period, a cutout or extension cannot be placed on that side of the structure for a period of six (6) months[;].

[C. Proof regarding the dates the cutouts or extensions were installed and will be removed shall be provided to Missouri Department of Transportation (MoDOT), upon request;]

(D) Relocation or Repair of Nonconforming Signs. Relocation of a nonconforming sign or repair of a deteriorated or damaged nonconforming sign is a new erection as of the date the relocation or repair is completed and these signs must then comply with the then effective sizing, lighting, spacing, location, and permit requirements of sections 226.500–226.600, RSMo. Relocation of a nonconforming sign or repair of a deteriorated or damaged nonconforming sign voids any permit issued by the commission for the sign and the fee shall be retained by the commission.

1. Repair of any deteriorated or damaged nonconforming sign after the date the sign becomes a nonconforming sign is prohibited. A deteriorated or damaged nonconforming sign is a sign upon which **more than fifty percent (50%) [or more]** of the **support pole(s) [or vertical support(s)]** have been damaged or replaced within a twelve- (12-)/- month period. **A deteriorated or damaged nonconforming sign shall be considered unlawful and any permit issued by the commission for the sign shall be voided and the fee shall be retained by the commission.** A nonconforming sign which has only a deteriorated or damaged face shall not constitute a deteriorated or damaged nonconforming sign but shall remain subject to section 226.580.1(4), RSMo. A nonconforming sign damaged by vandalism may be repaired without being in violation of this section. The sign owner has the burden to prove that the nonconforming sign was damaged by vandalism. Proof of vandalism can be timely reports or complaints to sheriff or proper police departments. Vandalism for purposes of this rule is the willful destruction of a nonconforming sign by a party other than the sign owner, property owner, or lessor of the sign or business which is advertised on the sign. Any damage to the nonconforming sign due to carelessness or negligence of any party shall not constitute vandalism.

A. For monopole signs *[less than]* **no more than fifty percent (50%)** of the single support pole may be repaired or replaced within a twelve- (12-)/- month period.

B. The fifty percent (50%) *[or more]* rule applies to the height of the **support pole(s) [or vertical support(s)]** above ground.

2. Any movement of a sign structure shall be considered a relocation;

(G) Notice to Terminate Nonconforming Signs. When a sign is maintained in violation of any one (1) or more of subsections (3)(A)–(F), the *[right-of-way director or designee]* **department’s authorized representative** shall issue a notice to terminate nonconforming sign to the sign owner and the owner or occupant of the real property on which the sign is located. The notice to terminate the nonconforming sign shall identify the violation of the criteria for maintenance of the nonconforming sign and the available remedial action to correct the violation which may include removal of the sign. The notice to terminate the nonconforming sign shall also establish the length of time with a maximum time of sixty (60) days for remedial action or removal of the sign (if a remedial action other than removal of the sign is not available). The notice to terminate the nonconforming sign may designate a time of less than sixty (60) days for remedial action. Any time which is stated in a notice to terminate the nonconforming sign for taking remedial action shall not change the time period to request an administrative hearing. Any person given a notice to terminate the nonconforming sign by the department’s *[right-of-way director or designee]* **authorized representative** shall be entitled to an administrative hearing pursuant to the provisions of sections 536.067–536.090, RSMo by filing a written request for hearing with the Secretary of the Missouri Highways and Transportation Commission, PO Box 270, Jefferson City, MO

65102. The request for hearing must be received by the commission secretary within thirty (30) days after receipt of the notice to terminate the nonconforming sign by the applicant. The request for hearing must be sufficient to identify the applicant requesting the hearing and each outdoor advertising structure for which a hearing is requested. The act of mailing the request for hearing does not constitute receipt by the commission secretary. No answer or other response by the commission is necessary. An applicant will not be entitled to a hearing if the applicant fails to request a hearing within thirty (30) days after receipt of the notice to terminate the nonconforming sign. Upon receipt of a request for hearing, the commission secretary shall forward the request to the hearing examiner for the commission and notify the *[outdoor advertising manager]* **department’s authorized representative**. Hearings for notices to terminate the nonconforming sign shall be conducted pursuant to 7 CSR 10-6.090. The permit for any nonconforming *[signs]* **sign** as defined in 7 CSR 10-6.060 shall be surrendered upon removal of the sign; *and*].

[(H) All permit holders should contact the outdoor advertising area permit specialist for the outdoor advertising area in which the permitted outdoor advertising structure is located in writing prior to making any changes to that structure. If they do not make this contact with the specialist before making such changes, the department shall not be liable for any loss due to the removal of and loss of the permit for the outdoor advertising structure.]

AUTHORITY: section 226.150 and sections 226.500–226.600, RSMo 2000 and Supp. [2007] 2013. Original rule filed May 16, 1977, effective Oct. 15, 1977. For intervening history, please consult the Code of State Regulations. Amended: Filed Oct. 3, 2013.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Transportation, Pamela J. Harlan, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 6—Outdoor Advertising**

PROPOSED AMENDMENT

7 CSR 10-6.070 Permits for Outdoor Advertising. The Missouri Highways and Transportation Commission is amending sections (1) through (8).

PURPOSE: This amendment adds conforming out of standard signs to the types of signs for which sign owners shall maintain permits issued by the Missouri Highways and Transportation Commission for outdoor advertising specified by sections 226.500 to 226.600, RSMo, and authorizes voiding of permits without compensation. This amendment also eliminates duplicative statutory requirements for biennial inspection fees already authorized by section 226.550, RSMo.

(1) Definitions (see **section 226.541, RSMo, and 7 CSR 10-6.015**).

(2) Outdoor Advertising Subject to Permit [Requirement] Requirements.

(A) [Permits] Permit Required. [Sign owners] To promote highway safety, a sign owner or the [owners] owner of the land on which [these signs are] the sign is located, regardless of when the sign was erected, must obtain a [permits] permit from the commission for the following outdoor advertising erected or maintained within six hundred sixty feet (660') of the nearest edge of the right-of-way and visible from the main-traveled way of any highway which is a part of the interstate or primary system:

1. Directional and other official signs. (see sections 226.550.1 and .2 and 226.520(1), RSMo and 7 CSR 10-6.020). Only one (1) permit will be issued for sign structures with multiple displays;

2. Signs located in areas zoned commercial and industrial **except on-premises signs** (see sections 226.550.1 and .2, RSMo, and 7 CSR 10-6.040(2)(A));

3. Signs located in unzoned commercial or industrial areas except on-premises signs (see sections 226.520(4), 226.540(4) and 226.550.1 and .2, RSMo, and 7 CSR 10-6.040(2)(B)). Only one (1) permit will be issued for multiple sign structures as back-to-back signs, double-faced signs, and V-type signs; *[and]*

4. Conforming out of standard signs wherever located except on-premises signs (see sections 226.541, RSMo, and 7 CSR 10-6.040); and

[4.]5. Nonconforming signs wherever located except on-premises signs (see sections 226.550.1 and .2, RSMo, and 7 CSR 10-6.060).

[(C) Size. Size limitations and requirements are listed in section 226.540, RSMo. An addition of a temporary cut-out or extension up to thirty-three percent (33%) of the sign size will be allowed. A copy of the display contract or a letter outlining the beginning and ending dates of the display shall be furnished before the cut-out or extension is added.]

(3) Outdoor Advertising Not Eligible for Permits. Unlawful signs are not eligible for permits from the commission. *[Applications and fees for permits from the sign owners or the owners of the land on which these signs are located shall be rejected and returned with any fee submitted to the applicant by the right-of-way director or designee.]*

(4) Permit Applications and Fees.

[(A) Information. Any person may obtain permit application information, including copies of sections 226.500–226.600, RSMo, 7 CSR 10-6.010–7 CSR 10-6.100, application forms, maps of the interstate and primary highway systems, and area maps showing the location of area offices and the counties within each area, in person, or by writing or telephoning the right-of-way director or designee at any area office. It is most efficient to contact the area permit specialist for the county in which the outdoor advertising is located (see 7 CSR 10-6.010 for a list of the counties and how to obtain information and materials).]

[(B)](A) Filing of Permit Applications and Permit Fees. Sign owners or owners of the land on which outdoor advertising is located must apply for permits from the commission for outdoor advertising specified by section 226.550, RSMo, (see 7 CSR 10-6.070(2)). Permit applications must be:

1. Timely submitted. For new outdoor advertising to be erected, the application for permit and the permit application fee of two hundred dollars (\$200) shall be submitted before erecting or starting construction of any sign requiring a permit from the commission. *[The area permit specialist will perform a field inspection of the proposed location to determine whether or not the site complies with the requirements of sections 226.500–226.600, RSMo.]* For all nonconforming outdoor advertising requiring a permit from the commission and for any other existing outdoor advertising lawfully erected, but for failure to obtain a permit prior to its

erection from the commission, the application for permit must be submitted to and received by the *[right-of-way director or designee] department's authorized representative* within thirty (30) days of receipt by the applicant of a notice to remove outdoor advertising under section 226.580, RSMo, from the commission specifying the failure to obtain or maintain a permit for a sign for which a permit and biennial inspection is required by section 226.550, RSMo. Failure of the applicant to timely submit an application for permit shall be cause for the *[right-of-way director or designee] department's authorized representative* to reject and return the application for permit;

[2. Submitted to the right-of-way director or designee for the county in which the outdoor advertising is located (see 7 CSR 10-6.010), along with the required permit application fee;

3. Submitted upon forms supplied by the department. These forms will be supplied by the right-of-way director or designee upon request. The applicant shall provide a completed application with a copy of a lease or a letter from the property owner granting permission to erect or maintain a sign on his/her property; a sketch of the proposed location and, if zoned, a letter outlining the zoning classification from the zoning authority; and copies of all local business licenses for the qualifying business. Incomplete or incorrectly completed permit application forms shall be rejected and returned by the right-of-way director or designee to the applicant; and

[4.]2. [Biennial inspection fees due after August 28, 2002, and prior to August 28, 2003, shall be fifty dollars (\$50). Biennial inspection fees due on or after August 28, 2003, and prior to August 28, 2004, shall be seventy-five dollars (\$75).] Biennial inspection fees [due on or after August 28, 2004, shall be one hundred dollars (\$100).] are due in accordance with section 226.550.4, RSMo. Religious organizations, service organizations, veteran organizations, and fraternal organizations, as defined in section 313.005, RSMo, upon submission of a copy of their certification of Internal Revenue Service tax exempt status, may be granted a fee exempt permit provided the display area of the sign is less than seventy-six (76) square feet.

[A.]3. Payment Failure. Failure to submit the correct amount of fee by check, draft, or money order payable to "Director of Revenue—Credit State Road Fund" shall be cause for the *[right-of-way director or designee] department's authorized representative* to reject and return the application for permit. *[If assistance is needed in calculating the correct permit fee, contact the right-of-way director or designee for the county in which the sign is located before filing the application (see 7 CSR 10-6.010).]*

[B.]4. Documentation and assistance required upon request. Any applicant must submit to the *[right-of-way director or designee] department's authorized representative* upon written request, written information or documentation, as specified in the request, sufficient for the *[right-of-way director or designee] department's authorized representative* to determine whether or not a permit should be issued under section 226.550, RSMo. Also, any applicant may be asked to assist the *[right-of-way director or designee] department's authorized representative* in locating the sign location described in an application for permit. Refusal by or failure of an applicant to comply with a request for information, documentation, or assistance shall be grounds for the *[right-of-way director or designee] department's authorized representative* to reject and return the application for permit.

[C.]5. Misrepresentation of fact. Any misrepresentation of material fact by an applicant on any application for permit shall be grounds for the *[right-of-way director or designee] department's authorized representative* to reject and return the application for permit.

[D.]6. All fees must be paid. No permit shall be granted to any applicant who is delinquent in the payment of any outdoor advertising fees to the commission, including any removal costs or biennial inspection fees associated with any sign.

(5) Informal Hearing on Denial of Permit.

(A) Request for Informal Hearing. If denied a permit, the applicant *[may]* shall have twenty (20) working days to request an informal hearing *[by the Outdoor Advertising Permit Review Committee]* for the purpose of appealing the denial. The applicant shall submit its request for an informal hearing to the Outdoor Advertising Manager, Missouri Department of Transportation, PO Box 270, Jefferson City, MO 65102.

(B) Procedure. If the applicant requests an informal hearing, the *[outdoor advertising manager]* department's authorized representative shall advise the applicant of the time, date, and place. This is not a contested case under Chapter 536, RSMo. The rules of evidence shall not apply at the hearing.

(6) Permits.

(A) Issuance of the Permit. Upon proper application and payment of fee for any sign eligible for a permit, the *[outdoor advertising permit specialist]* department's authorized representative shall issue a permit. The permit owner must erect the sign, if not already in existence within two (2) years of the date the permit was issued by the commission and the erected outdoor advertising structure must comply with all current sections of 226.500 through 226.600, RSMo, and 7 CSR 10-6.010 through 7 CSR 10-6.100. This permit is for the erection of a *[legal]* lawful conforming outdoor advertising structure.

(B) Transfer of Permit. When a sign owner transfers ownership of a sign for which a permit is required by section 226.550, RSMo, the new sign owner shall notify the commission by filing an application for transfer, along with a ten dollar (\$10) fee on a form supplied by the *[outdoor advertising permit specialist]* department's authorized representative. Applications must be completed in full. Incomplete or incorrectly completed application forms may be rejected or returned by the *[outdoor advertising permit specialist]* department's authorized representative to the applicant.

(C) Voiding of Permits Without Compensation. Permits may be voided without compensation to be paid to the permit holder under the following conditions:

1. When there has been any misrepresentation of a material fact by the applicant on a permit application and the sign is removed under section 226.580, RSMo;

2. The permit for any unbuild structure shall be voided if the sign, complete with message, is not in existence within two (2) years of the date the permit was issued by the commission;

3. When the commission determines that a change has been made to a conforming sign by the sign owner and the sign has been removed under section 226.580, RSMo, **or that a conforming out of standard sign has been substantially rebuilt under section 226.541, RSMo;** or

4. When the commission determines that a substantial change has been made to a nonconforming sign by the sign owner such that the sign's nonconforming status was terminated and the sign was removed under the commission's administrative rules for maintenance of nonconforming signs.

(7) Biennial Inspection Fee. A biennial inspection fee shall be collected every two (2) years as set forth in section *[226.540]* **226.550**, RSMo. The biennial inspection fee must be received by the due date on the statement issued from the Missouri Department of Transportation and will be considered delinquent if not paid within sixty (60) days after the due date on the statement. Fees received from any sign owner that owes delinquent fees to the department will be credited to the past due accounts before applying the remainder,

if any, toward issuance of a new permit for: outdoor advertising, vegetation cutting and trimming, or transfer of ownership of an outdoor advertising permit.

(8) Relocation. Relocation of any sign for any reason whatsoever is a new erection as of the date the relocation is completed and these signs must then comply with the then effective sizing, lighting, spacing, location, and permit requirements of sections 226.500–226.600, RSMo. Relocation of any sign voids any permit issued by the commission for that sign and the fee shall be retained by the commission. The *[right-of-way director or designee]* department's authorized representative shall issue a notice to remove outdoor advertising under section 226.580, RSMo. A new application for permit must be filed with the *[right-of-way director or designee]* department's authorized representative and the sign can only be relocated in compliance with the sizing, lighting, spacing, and location requirements of sections 226.500–226.600, RSMo.

AUTHORITY: sections 226.150 and 226.530, RSMo 2000. Original rule filed May 16, 1977, effective Oct. 15, 1977. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Oct. 3, 2013.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Transportation, Pamela J. Harlan, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 6—Outdoor Advertising**

PROPOSED AMENDMENT

7 CSR 10-6.080 Removal of Outdoor Advertising Without Compensation. The Missouri Highways and Transportation Commission is amending sections (2), (3), (4), and (6).

PURPOSE: This amendment adds the process for the removal of conforming out of standard signs; and eliminates duplicative statutory requirements related to the removal of unlawful outdoor advertising already authorized by section 226.580, RSMo.

(2) Removal of Unlawful Signs. The *[right-of-way director or designee]* department's authorized representative shall serve a notice to remove outdoor advertising under section 226.580*[.3.]*, RSMo, *[for the following signs which are unlawful because they have been determined by the outdoor advertising manager to be:]* **and for conforming out of standard signs that have been substantially rebuilt pursuant to section 226.541, RSMo and 7 CSR 10-6.040(5).**

[(A) Signs erected after March 30, 1972, contrary to the provisions of sections 226.500–226.600, RSMo, that is all signs erected, relocated or reconstructed after March 30, 1972, in violation of the then effective sizing, lighting, spacing and location requirements of sections 226.500–226.600,

RSMo. Relocation of any sign or repair of any deteriorated or damaged nonconforming sign for any reason, is a new erection as of the date the relocation or reconstruction is completed and these signs must then comply with the then effective sizing, lighting, spacing, location and permit requirements of sections 226.500–226.600, RSMo or they shall then be subject to removal without compensation by the commission under section 226.580.1(1), RSMo;

(B) Signs for which a permit is not obtained as prescribed in sections 226.500–226.600, RSMo (see 7 CSR 10-6.070);

(C) Signs for which biennial inspection fees are past due for a period of twelve (12) months or more (see section 226.580.1(2), RSMo);

(D) Signs which are obsolete, that is signs that for a continuous period of one (1) year or longer have advertised services or products no longer available to the traveling public because the services or products have been discontinued or cannot be obtained at the destination or by the directions indicated on the signs. A legal conforming sign shall not be considered obsolete solely because it does not carry an advertising message for a period of less than one (1) year;

(E) Signs that are not in good repair, that is signs with poles, frames, braces, panels or facings which are broken or damaged or not securely affixed to a substantial structure or which are faded, blistered, cracked, peeled, chipped, or torn to the extent the total message is not discernable by a motorist of normal visual acuity traveling at the maximum speed limit posted on the main traveled way of the adjacent interstate or primary highway. A motorist of normal visual acuity means any person licensed by Missouri to operate a motor vehicle upon the highways of this state;

(F) Signs which attempt or appear to attempt to regulate, warn or direct the movement of traffic or which interfere with, imitate or resemble any official traffic sign, signal or device. These signs include, but are not limited to, signs which display flashing amber or red lights, stop signs or yield signs or highway designation markers, such as an interstate shield;

(G) Signs which are erected or maintained upon trees or painted or drawn upon rocks or other natural features, except landmark signs under section 226.545, RSMo;

(H) Signs erected after August 13, 1976, beyond six hundred and sixty feet (660') of the right-of-way outside of urban areas, visible from the main-traveled way of the interstate or primary system and erected with the purpose of their message being read from the traveled way, except directional and official signs under section 226.520(1), RSMo and on-premises signs under section 226.520(2), RSMo; and

(I) Signs erected before March 30, 1972 but on or after January 1, 1968 contrary to sections 226.500–226.600, RSMo.]

(3) Removal of Nonconforming Signs. The *[right-of-way director or designee] department's authorized representative* shall issue a notice to terminate a nonconforming sign pursuant to 7 CSR 10-6.060(3)(G).

(4) Authority to Withdraw Notices. The *[chief engineer] department's authorized representative* is authorized to withdraw any notice to remove outdoor advertising issued by the *[right-of-way director or designee] department* under section 226.580, RSMo, or any notice to terminate a nonconforming sign issued by the *[right-of-way director or designee] department* under 7 CSR 10-6.060(3)(G) for any one (1) of the following reasons: where the notice to remove was improperly issued by the *[right-of-way director or designee] department* because of a mistake of law or fact,

where the sign has been removed or the basis of unlawfulness has been corrected or has ceased to exist, or where it is finally adjudicated that the notice to remove was not authorized by sections 226.500–226.600, RSMo. If a timely request for administrative review of notice to remove outdoor advertising or a notice to terminate nonconforming sign has been made, the *[right-of-way director or designee] department's authorized representative* shall advise the hearing examiner of any withdrawal of a notice to remove outdoor advertising or a notice to terminate nonconforming sign.

(6) Remedial Action. Any notice to remove outdoor advertising which is issued by the *[right-of-way director or designee] department's authorized representative* shall specify any available remedial action to correct the violation. The notice to remove outdoor advertising shall also establish the length of time which is available to take the remedial action. Any length of time specified for taking remedial action shall not lengthen the time available for requesting an administrative hearing. The remedial action which is specified in the notice to remove outdoor advertising may include the removal of the violating sign.

AUTHORITY: section[s] 226.150 and sections 226.500–226.600, RSMo 2000 and Supp. [2002] 2013. Original rule filed May 16, 1977, effective Oct. 15, 1977. For intervening history, please consult the Code of State Regulations. Amended: Filed Oct. 3, 2013.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Transportation, Pamela J. Harlan, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 7—DEPARTMENT OF TRANSPORTATION Division 10—Missouri Highways and Transportation Commission Chapter 6—Outdoor Advertising

PROPOSED AMENDMENT

7 CSR 10-6.085 Cutting and Trimming of Vegetation on Right-of-Way. The Missouri Highways and Transportation Commission is amending sections (1), (2), (3), and (4).

PURPOSE: This amendment modifies the vegetation process and adds an informal hearing process relating to the denial of permits to cut or trim vegetation.

(1) Permits. *[A] To promote highway safety, a permit issued by the department's authorized representative* is required to cut or trim any vegetation in front of any lawful sign. *[A separate permit is required for each sign structure.]* Permits to cut vegetation will be issued only for lawful signs which are at least five (5) years old. Permits to trim trees will be issued only after a lawful sign is at least two (2) years old. A vegetation permit may be denied or limited if the plan is deemed to be detrimental to the stability of the state right-of-way as determined by the *[roadside enhancement manager] department's authorized representative*.

[(A) Application. A permit application to do cutting and trimming shall be obtained from the area office (see 7 CSR 10-6.010). Applicants shall serve a copy of their permit application upon adjacent property owners and shall provide proof of service at the time the application is filed in the area office. Proof of service may be a copy of a certified return mail receipt. Objections by adjacent property owners may serve to limit the scope of the permit as prescribed in subsection (1)(C) of this rule.]

[(B)](A) Fee. The cost of a permit for trimming and cutting is determined [by] on the basis of the vegetation to be removed. All diameter measurements contained in this rule shall be measured at four and one-half feet (4 1/2') above ground level. There is no fee to trim trees [in accordance with subsection (3)(F) of this rule] or remove brush and trees with a diameter of less than six inches (6"), but a permit will still be required. The fee to remove each tree with a diameter equal to or greater than six inches (6") is one hundred dollars (\$100) plus an additional one hundred dollars (\$100) for every inch of diameter greater than six inches (6"). [Measurements for diameter will be rounded down to the nearest inch. For example, the fee for trimming or removing a tree six and three-fourths inches (6 3/4") in diameter would be one hundred dollars (\$100); the fee for a tree ten and one-half inches (10 1/2") in diameter would be five hundred dollars (\$500).] A performance bond in an amount up to one thousand dollars (\$1,000) shall be required to ensure restoration of highway right-of-way. [Fees will be placed in a roadside enhancement fund and utilized by the department to plant trees and do other landscaping on highway right-of-way. A cash bond equal to the amount of vegetation to be removed must be filed with the department prior to any work on the right-of-way.] All fees must be paid prior to the commencement of any tree trimming.

[(C)](B) Scope. Permits will only allow the cutting of vegetation necessary to clear the sign's visibility zone as determined by the [permit inspector] department's authorized representative and the applicant at the time the permit is issued. This visibility zone is an area on the right-of-way four hundred fifty feet (450') on interstate and freeway and nonfreeway primary highways. The length is from the edge of the sign face closest to the highway pavement in a direction parallel to the pavement.

[(D)](C) Duration. All permits shall expire after one hundred twenty (120) days.

(2) Access. *[Access] To promote highway safety, access to the cutting or trimming area shall be from private property or outer roadways and cannot be made from the through traffic roadway of any highway maintained by the department without written permission from the department. Parking of equipment or placement of materials on the traffic lanes or shoulders is strictly prohibited.*

(3) Conditions. *[The] To promote highway safety, the following conditions shall apply to trimming and cutting of vegetation on highway right-of-way:*

[(C) Liability Insurance. The applicant shall carry liability insurance with a limit of at least one (1) million dollars per occurrence;]

[(D)](C) Herbicides. Only herbicides approved by the [district roadside enhancement manager] department's authorized representative may be used to trim or remove vegetation. [Only general use nonrestricted herbicides may be used. All herbicides must be used in strict accord with the manufacturer's instructions on the label. Restricted use herbicides may not be used on right-of-way. The applicator must be a certified commercial applicator or under the supervision of a certified commercial applicator. The district roadside enhancement manager or their authorized representative will approve the area to be sprayed before a permit is issued. The applicant must avoid desirable vegetation. Holder of the permit is liable for all damages or damage claims resulting from the herbi-

cide application.] The applicant must comply with the Missouri Pesticide Use Act, sections 281.005 through 281.115, RSMo. [In U.S. Forest Service areas, permit applicants must obtain written permission for use of herbicides from the district roadside enhancement manager. The fee for controlling the growth of a tree, with herbicides, is determined in the same manner as tree removal under subsection (1)(B). All trees controlled with herbicides, requiring a fee, shall be cut down and removed within sixty (60) days of treatment;

(E) Indemnity. Applicants shall agree to indemnify and hold harmless the commission against any damage or harm to persons, including commission employees, or property which may occur as a result of or in the course of its cutting or trimming of vegetation and use of herbicides;

(F) Trimming of Trees. Trees of any size may be trimmed in accordance with the following guidelines:

- 1. Trimming is permitted any time of year;*
- 2. A tree may not have more than one-third (1/3) of its canopy removed in a single pruning operation. For pruning operations, the "National Arborist Association Standards" shall be used as a guideline to insure trees are being pruned properly and all pruning must be done in accordance with "National Arborist Association Standards." Pruning cuts should be made so that the tree may close the resulting wound as easily as possible. Generally, remove parts of a twig or branch at their origin. Remove tips of branches back to a good bud or to the next larger branch. The final pruning cut should be made along the natural branch collar and not flush with the trunk. Any additional pruning of this magnitude cannot be repeated for three (3) full years (thirty-six (36) months) on hardwood species. A "Tree Pruning Chart" developed by MoDOT is used to determine the maximum amount of canopy that can be removed in a single pruning operation. A copy of the chart may be obtained by contacting the area permit specialist; and*

3. In situations where pruning is to be done on a stand of trees and it is not practical to distinguish individual trees from the stand, the stand of trees should be judged by the canopy height of the stand. The amount of tree height to be removed should be determined from the "Tree Pruning Chart" according to the canopy height of the stand of trees. Proper tree pruning practices are to be observed in reducing the height of the stand of trees, just as it would be for an individual tree. Brush over six feet (6') that is approved for removal should be cut first and the stump(s) treated with herbicides. Illustrations are available to assist in proper pruning. A copy may be obtained by contacting the area permit specialist; and]

[(G)](D) Destruction of Vegetation. A vegetation permit will be revoked if an applicant destroys desired vegetation due to excessive cutting, trimming, or inappropriate use of herbicides on vegetation. If the permit is revoked due to excessive cutting, trimming, or inappropriate use of herbicides, the department will retain and collect against any bonds filed.

(4) **Informal Hearing on [Appeal for] Denial of Permit to Cut or Trim.**

(A) **Request for Informal Hearing.** If denied a permit to cut or trim [vegetation] vegetation, the applicant [has] shall have twenty (20) working days to [submit a written appeal] request an informal hearing for the purpose of appealing the denial. The applicant shall submit its request for an informal hearing to the [Right-of-Way Director] **Outdoor Advertising Manager**, Missouri Department of Transportation, PO Box 270, Jefferson City, MO 65102.

(B) **Procedure.** If the applicant requests an informal hearing, the department's authorized representative shall advise the applicant of the time, date, and place. This is not a contested case under Chapter 536, RSMo. The rules of evidence shall not apply

at the hearing.

AUTHORITY: section[s] 226.150 and sections 226.500–226.600, RSMo 2000 and Supp. [2002] 2013. Original rule filed June 15, 1993, effective Jan. 31, 1994. Amended: Filed Aug. 31, 1999, effective March 30, 2000. Amended: Filed April 15, 2003, effective Nov. 30, 2003. Amended: Filed Oct. 3, 2013.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Transportation, Pamela J. Harlan, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 6—Outdoor Advertising**

PROPOSED AMENDMENT

7 CSR 10-6.090 Administrative Review of Notices to Remove Outdoor Advertising and to Terminate Nonconforming Signs. The Missouri Highways and Transportation Commission is amending sections (1), (4), (9), and (12).

PURPOSE: This amendment clarifies the hearing procedure for administrative review of department notices to remove outdoor advertising under section 226.580, RSMo.

(1) Request for Administrative Review. Any person given a notice to remove outdoor advertising under section 226.580, RSMo, [and 7 CSR 10-6.080(2)] by the [right-of-way director or designee] department's authorized representative shall be entitled to an administrative hearing under Chapter 536, RSMo, by filing a written request for hearing with the Secretary of the Missouri Highways and Transportation Commission, PO Box 270, Jefferson City, MO 65102. This request for hearing must be received by the commission secretary within thirty (30) days after receipt of the notice to remove outdoor advertising by the applicant. The request for hearing must be sufficient to identify the person(s) requesting the hearing and the outdoor advertising structure for which the hearing is requested. No answer or other response by the commission is necessary. Upon receipt of the request for hearing, the commission secretary shall forward the request to the hearing examiner for the commission.

(4) Notice of Hearing. The hearing examiner shall give written notice of hearing to the applicant and [right-of-way director or designee] department's authorized representative fixing a time and place for a hearing, at which time the applicant and [right-of-way director or designee] department's authorized representative may appear and present evidence. The hearing examiner shall issue this notice not less than fifteen (15) days prior to the date fixed for hearing. In instances where more than one (1) request for hearing is received from the same person, the hearing examiner may consolidate those hearings in the interest of economy.

(9) Evidence, Argument, and Briefs. The sole issue in a hearing is whether or not a particular sign is an unlawful sign under section 226.580, RSMo [and 7 CSR 10-6.080(2)] or is being maintained in violation of the rules for maintenance of nonconforming signs under 7 CSR 10-6.060. The [commission] department shall present its evidence first at the hearing in support of its notice to remove outdoor advertising or notice to terminate nonconforming sign which must specify the reason the [commission] department deems the outdoor advertising to be unlawful. After the [commission] department presents its evidence, the applicant may present evidence. Any party shall have the right of cross-examination. Oral or written evidence must be received in the record to be considered by the commission in reaching its final decision. Any party shall be entitled to present oral argument at the hearing. If oral argument is presented, it shall be preserved and transcribed in the record for the use of the commission in reaching a final decision. Any party may file a written brief or the hearing examiner may require written briefs to be filed within the time set by the hearing examiner for the use of the commission in reaching a final decision. The hearing examiner may rule on all objections and motions to facilitate submission of the case to the commission for its final decision.

(12) Final Decision. [As soon as practical after receipt of the suggested report and order, the] The members of the commission shall [read the full record and] render a final decision. If briefs or oral arguments are submitted, the members of the commission, in lieu of reading the entire record, may consider those portions of the record cited or referred to in the arguments or briefs to arrive at a final decision. The commission shall render its final decision in writing which shall be supported by competent and substantial evidence upon the whole record and which shall be subject to judicial review under section 536.100, RSMo.

AUTHORITY: section[s] 226.150 and sections 226.500–226.600, RSMo 2000 and Supp. [2002] 2013. Original rule filed May 16, 1977, effective Oct. 15, 1977. Amended: Filed Jan. 16, 1990, effective June 11, 1990. Amended: Filed June 15, 1993, effective Jan. 31, 1994. Amended: Filed April 15, 2003, effective Nov. 30, 2003. Amended: Filed Oct. 3, 2013.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Transportation, Pamela J. Harlan, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 8—DEPARTMENT OF LABOR AND
INDUSTRIAL RELATIONS
Division 10—Division of Employment Security
Chapter 3—Unemployment Insurance**

PROPOSED AMENDMENT

8 CSR 10-3.085 Charging of Benefits to Reimbursable Employers. The division is amending section (1).

PURPOSE: This amendment amends the rule informing reimbursable employers of their responsibility for unemployment benefits paid to

their employees to include unemployment benefits paid to employees discharged for a reason set forth in subsection 13 of section 660.315, RSMo, and employees placed on a disqualification registry maintained by the Department of Mental Health.

(1) Any employer that elects to make payments in lieu of unemployment contributions shall be liable for all unemployment benefits based on wages paid by the employer for services in employment. A reimbursable employer shall not have charges relieved pursuant to section 288.100, RSMo. A reimbursable employer shall, therefore, not be relieved of charges under any of the following circumstances:

(D) The claimant worked less than twenty eight (28) days or earned less than four hundred dollars (\$400) gross wages from the employer; [or]

(E) The claimant was [placed on a disqualification list maintained by the Department of Health and Senior Services.] discharged by the employer for a reason set forth in subsection 13 of section 660.315, RSMo; or

(F) The claimant was placed on a disqualification registry maintained by the Department of Mental Health.

AUTHORITY: section 288.220, RSMo 2000. Original rule filed Sept. 2, 2003, effective Feb. 29, 2004. Amended: Filed Oct. 4, 2013.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Employment Security; Attn: Ken Jacob, Director, PO Box 59, Jefferson City, MO 65104-0059. 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 10-5.240 Additional Air Quality Control Measures May be Required When Sources Are Clustered in a Small Land Area. This rule rescission is an administrative cleanup of an outdated state air rule that is no longer necessary given that section 643.050, RSMo, provides the commission authority to promulgate regulations necessary to enforce the provisions of the Clean Air Act. If the commission adopts this rule action, it will be the department's intention to submit this rule rescission to the U.S. Environmental Protection Agency for removal from 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 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/index.html.

PURPOSE: This rule provided that more restrictive air quality control requirements may be prescribed for areas in which the sum of particulate and/or sulfur dioxide emissions from existing and proposed sources exceed specified limits. This rule rescission is an

administrative cleanup of an outdated state air rule that is no longer necessary given that section 643.050, RSMo provides the commission authority to promulgate regulations necessary to enforce the provisions of the Clean Air Act. The evidence supporting the need for this proposed rulemaking, per 536.016, RSMo, is the public hearing testimony for this rulemaking.

AUTHORITY: section 643.050, RSMo 1994. Original rule filed March 14, 1967, effective March 24, 1967. Rescinded: Filed Oct. 9, 2013.

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., January 30, 2014. The public hearing will be held at the Elm Street Conference Center, 1730 East Elm Street, Lower Level, Bennett Springs Conference Room, Jefferson City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Interested persons, whether or not heard, may submit a written or email statement of their views until 5:00 p.m., February 6, 2014. Written comments shall be sent to Chief, Air Quality Planning Section, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to apcprulespn@dnr.mo.gov.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 3—Conditions of Provider Participation,
Reimbursement and Procedure of General
Applicability

PROPOSED AMENDMENT

13 CSR 70-3.200 Ambulance Service Reimbursement Allowance. The division is amending sections (1) and (2).

PURPOSE: This amendment provides updates to Ambulance Service Reimbursement Allowance rules regarding gross receipts. This amendment is the result of CMS approval of the Ambulance Service Reimbursement Allowance.

(1) Ambulance Service Reimbursement Allowance shall be assessed as described in this section.

(B) Beginning [July 1, 2009] **October 1, 2013**, each ground emergency ambulance services provider in this state, except for any ambulance service owned and operated by an entity owned and operated by the state of Missouri, including but not limited to any hospital owned or operated by the board of curators, as defined in Chapter 172, RSMo, or any department of the state, shall, in addition to all other fees and taxes now required or paid, pay an ambulance service reimbursement allowance for the privilege of engaging in the business of providing ambulance services as defined in section 190.100, RSMo. Gross receipts shall be obtained by the division from a survey conducted six (6) months after calendar year end (i.e., calendar year [2009 revenue] **2012 gross receipts** will be obtained through survey sent out by the state in [June 2010] **2013**). [Collection of the ambulance service reimbursement allowance shall begin in state fiscal years 2010 and 2011 based on gross receipts collected in calendar year 2008. Collection of the ambulance service reimbursement allowance beginning with state fiscal year (SFY) 2012 and

thereafter shall be based on gross receipts collected in a third prior calendar year (i.e., state fiscal year 2012 shall be based on gross receipts collected in calendar year 2009).] **Collection of the ambulance service reimbursement allowance beginning October 1, 2013, and thereafter each October 1, shall be based on gross receipts collected in the prior calendar year. (i.e. October 1, 2013 shall be based on gross receipts collected in calendar year 2012).**

1. The ambulance service reimbursement allowance owed for currently licensed emergency ambulance providers as defined in section 190.100, RSMo, shall be calculated by multiplying the ambulance service reimbursement allowance tax rate by the gross receipts, as defined above in paragraph (1)(A)5.

A. Exceptions.

(I) For emergency ambulance providers without reported survey data, the gross receipts used to determine the ambulance service reimbursement allowance shall be estimated as follows:

(a) Emergency ambulance providers shall be divided into quartiles based on total emergency ambulance transports;

(b) Gross receipts shall be individually summed and divided by the total emergency ambulance transports in the quartile to yield an average gross receipt per emergency ambulance transport; and

(c) The number of emergency ambulance transports as reported to the Department of Health and Senior Services (Bureau of Emergency Medical Services (BEMS) data) as required by 19 CSR 30-40.375(3) for the emergency ambulance provider without reported survey data shall be multiplied by the average gross receipts per emergency ambulance transport.

(2) Ambulance Service Reimbursement Allowance Rate *[for SFY 2010 and SFY 2011]* **beginning October 1, 2013.** The ambulance service reimbursement allowance rate *[for SFY 2010 and SFY 2011]* **beginning October 1, 2013** determined by the division, as set forth in subsection (1)(B) above, is as follows:

(A) The ambulance service reimbursement allowance rate shall be *[four and four hundred seventeen thousandths percent (4.417%)]* **three and seventy-four hundredths percent (3.74%)** of gross receipts as determined in paragraph (1)(A)5. above with an aggregate annual adjustment, by the MO HealthNet Division, not to exceed five-tenths percent (0.5%) based on the ambulance services total gross receipts. No ambulance service reimbursement allowance shall be collected by the Department of Social Services if the federal Centers for Medicare and Medicaid Services (CMS) determines that such reimbursement allowance is not authorized under Title XIX of the Social Security Act.

AUTHORITY: sections 190.836 and 208.201, RSMo Supp. [2009] 2013. Original rule filed March 19, 2010, effective Nov. 30, 2010. Amended: Filed Oct. 10, 2013.

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

PRIVATE COST: The estimated cost to ambulance providers is eight million one hundred thousand (8.1 million) dollars in SFY 2014 and annually for the life of the rule.

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, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be delivered by regular mail, express or overnight mail, in person, or by courier within thirty (30) days after publication of this notice in the Missouri Register. If to be hand-delivered, comments must be brought to the MO HealthNet Division at

615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.

**FISCAL NOTE
PRIVATE COST**

- I. Department Title:** Department of Social Services
Division Title: MO HealthNet Division
Chapter Title: Conditions of Provider Participation, Reimbursement and Procedure of General Applicability

Rule Number and Title:	13 CSR 70-3.200 Ambulance Service Reimbursement Allowance
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the 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:
214	Emergency Ambulance Providers	Estimated cost for SFY 2014 \$ 8,141,660 (3 months \$2,033,808 and 9 months \$6,107,852)

III. WORKSHEET

The fiscal note is based on establishing the Ambulance Service Reimbursement Allowance assessment rate at 3.74% effective for October 1, 2013 to September 30, 2014. The assessment rate is applied to provider gross receipts from calendar year 2012.

Description	2012 Gross Receipts	Assessment Rate	Total Impact
Emergency Ambulance Providers	\$217,748,691	3.74%	\$8,143,802

IV. ASSUMPTIONS

The Ambulance Service Reimbursement Allowance assessment rate of 3.74% is levied upon Emergency Ambulance Providers' gross receipts of \$217,748,691 for the period October 1, 2013 to September 30, 2014.

Gross receipts is emergency ambulance revenue from Medicare, Medicaid, insurance, and private payments from CPT Code A0427/A0425 Ambulance service, advanced life support, emergency transport, level 1 (ALS1- emergency) and associated ground mileage; CPT code A0429/A0425 Ambulance services, basic life support, emergency transport (BLS – emergency) and associated ground mileage; and CPT Code A0433/A0425 Advanced life support, Level 2 (ALS2) and associated ground mileage.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 25—Physician Program

PROPOSED RULE

13 CSR 70-25.120 MO HealthNet (Medicaid) Payment for Certain Services Furnished by Certain Physicians in Calendar Years 2013 and 2014

PURPOSE: This rule sets forth the criteria to be used by the MO HealthNet Division in establishing certain payment rate increases for certain primary care services provided in calendar years 2013 and 2014. Federal law requires certain payment rates by state Medicaid agencies of the Medicare Part B rates in effect in calendar years (CY) 2013 and 2014 or, if higher, the rate that would be applicable using the CY 2009 Medicare conversion factor (CF), for certain primary care services furnished by a physician with the specialty designation of family medicine, general internal medicine, or pediatric medicine. The proposed rule is to encourage physicians to participate in MO HealthNet (Medicaid), and thereby promote access to primary care services for current and new MO HealthNet participants.

(1) Definitions. Primary care services are defined as procedure codes for services in the category designated primary care Evaluation and Management (E/M) codes 99201-99499 or their successor codes in the Healthcare Common Procedure Coding System (HCPCS) and services related to immunization administration for vaccines and toxoids for which Current Procedural Terminology (CPT) codes 90465, 90466, 90467, 90468, 90471, 90472, 90473, 90474, or their successor codes apply under such system.

(2) Condition of Eligibility to Receive Payment Rate Increase. Physicians with certain specialty and sub-specialty designations (family medicine, general internal medicine, or pediatric medicine) are eligible to receive increases in payment rates when delivering primary care services as defined in section (1).

(A) Sub-specialists within the specialty designations of family medicine, general internal medicine, and pediatric medicine as recognized by the American Board of Medical Specialties, the American Board of Physician Specialties, the American Osteopathic Association, or any other enrolled provider providing primary care services defined by the Centers for Medicare and Medicaid Services (CMS) as eligible for federal financial participation at the one hundred percent (100%) rate may also be eligible for increased payment. To be eligible—

1. The provider may be board certified; or
2. If not board certified, at least sixty percent (60%) of the services billed to MO HealthNet by the physician for CY 2012 must be for primary care E/M codes 99201-99499 or their successor codes and vaccine administration codes 90465, 90466, 90467, 90468, 90471, 90472, 90473, 90474 or their successor codes. Claims data review will be done to ensure the sixty percent (60%) threshold is met.
3. For newly enrolled non-board certified physicians, a year end review will be done to ensure eligibility criteria are met.
4. If the condition of eligibility to receive the payment rate increase is not met the payment will no longer be made.

(3) Reimbursement. MO HealthNet reimbursement rates for primary care services and services related to immunization administration for vaccines and toxoids will be the lower of the provider's usual and customary charges to the general public or the MO HealthNet allowable amount based upon the Medicare Part B rates for office site of service using the mean values over all counties. An additional payment for vaccine administration will be made to bring the reimbursement amount up to Missouri's regional maximum fee of twenty-one dollars and fifty-three cents (\$21.53). The reimbursement amount may be referenced at <http://dss.mo.gov/mhd/index.htm> under Alerts & Notifications.

(4) The fee-for-service and managed care payment rate increase applies to certain primary care services defined in section (1) provided in CY 2013 and 2014 only.

(5) The Federal Medical Assistance Percentage (FMAP) rate is one hundred percent (100%) of the difference between the Medicaid State Plan rate in effect on July 1, 2009, and the amount required to be paid under section 1902(a)(13)(C) of the Social Security Act. The state will be fully reimbursed for these increased payments for primary care services by the federal government.

(6) Primary care services performed by a non-physician practitioner will be paid at the higher rates if properly billed under the provider number of a physician who is enrolled as one of the specified primary care specialists or subspecialists when provided under the physician's personal supervision as services of the supervising physician. There is no increase in payment rate for independently practicing non-physician practitioners.

(7) The increased payments are available for services claimed under the physician services benefit. Increased payments are not available for federally qualified health centers (FQHCs) or rural health clinics (RHCs).

AUTHORITY: sections 208.152, 208.153, and 208.201, RSMo Supp. 2013. Original rule filed Oct. 10, 2013.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions \$103,281,050 between January 1, 2013 and December 31, 2014.

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 Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be delivered by regular mail, express or overnight mail, in person, or by courier within thirty (30) days after publication of this notice in the Missouri Register. If to be hand delivered, comments must be brought to the MO HealthNet Division at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.

**FISCAL NOTE
PUBLIC COST**

- I. Department Title:** Title 13 - Department of Social Services
Division Title: Division 70 - MO HealthNet Division
Chapter Title: Chapter 25 – Physician Program

Rule Number and Name:	13 CSR 70-25.120
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Social Services, MO HealthNet Division	January 1, 2013 through December 31, 2014: Total Federal Cost = \$103,281,050; State Share \$0

III. WORKSHEET

Fee for Service and Managed Care: Cost to increase evaluation and management codes from the 7/1/09 Medicaid Rate to the Medicare Rate January 1, 2013 through December 31, 2014. \$103,281,050

Total Cost: \$103,281,050

IV. ASSUMPTIONS

Estimate is based on SFY 2010 claims data trended 3.6% annually.

Cost to increase rates from the 7/1/09 Medicaid rate to the Medicare rate is 100% federal funds.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 40—Optical Program

PROPOSED AMENDMENT

13 CSR 70-40.010 Optical Benefits and Limitations—MO HealthNet Program. The division is amending the purpose statement and the following sections: (1), (3), (4), (6), (7), and (8).

PURPOSE: This amendment updates the purpose statement, the reference date in section (1) and the terminology and information in sections (3), (4), (6), (7), and (8) to reflect current program requirements.

PURPOSE: This rule establishes the basis for administering the Optical [Care] Program under the MO HealthNet program, including the designation of professional persons who may perform optical [care] services; services which are covered, noncovered, and limitations within the program; and the method of reimbursement.

(1) Administration. The Optical Program shall be administered by the Department of Social Services, MO HealthNet Division. The optical services covered and not covered, the program limitations, and the maximum allowable fees for all covered services shall be determined by the Department of Social Services, MO HealthNet Division and shall be included in the Optical provider manual and provider bulletins, which are incorporated by reference and made a part of this rule as published by the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109, at its website at [www.dss.mo.gov/mhd, September 15, 2009] <http://dss.mo.gov/mhd/index.htm> November 15, 2013. This rule does not incorporate any subsequent amendment or additions. Services covered shall include only those which are clearly shown to be medically necessary.

(3) Provider Participation. To be eligible for participation in the MO HealthNet Optical Program, a provider must meet the criteria specified for his/her profession as follows:

(C) *[An optometric]* A clinic can participate in the Optical Program if it has a current MO HealthNet Program *[optometric]* clinic number. In addition to the clinic number, each of the performing optometrists must have an effective participation agreement and MO HealthNet program provider number. Reimbursement can be made to the clinic for all covered services provided at the clinic; and

(4) Types of Service Reimbursed by the MO HealthNet Program for Each Profession.

(A) Optometrist or *[Optometric]* Clinic.

1. Eye examinations.
2. Refractions.
3. Eyeglasses.
4. Artificial eyes.
5. Special ophthalmological services.

(6) Covered Services.

(A) Complete or limited eye examination *[with refraction]*.

(B) Eye refraction *[(Medicare-MO HealthNet participant only)]*.

(M) Special lenses.

(T) Photochromatic lenses.

(7) Program Limitations.

(A) One (1) comprehensive or one (1) limited eye examination is allowed per two (2) years (within a twenty-four (24)-month period of time) under the MO HealthNet program. Eligible children, pregnant women, **individuals residing in a nursing home**, and blind persons are allowed one (1) comprehensive or one (1) limited eye examina-

tion per year (within a twelve- (12-)/- month period of time) under the MO HealthNet program. Payment for a comprehensive eye examination will be made only if six (6) or more of the following procedures have been performed:

1. Refraction far point and near point;
2. Case history;
3. Visual acuity testing;
4. External eye examination;
5. Pupillary reflexes;
6. Ophthalmoscopy;
7. Ocular motility testing;
8. Binocular coordination;
9. Vision fields;
10. Biomicroscopy (slit lamp);
11. Tonometry;
12. Color vision; and
13. Depth perception.

(B) If fewer than six (6) of these *[procedures]* are performed, a limited examination must be billed.

(C) Eligible children, pregnant women, **individuals residing in a nursing home**, and blind persons may be allowed additional eye examinations during the year (within a twelve- (12-)/- month period of time) if medically necessary (that is, cataract examination, prescription change of 0.50 diopters or greater).

(F) The original eyeglass prescription and laboratory invoices listing costs for optical materials, lenses, and/or frames provided; and the charge for grinding, edging, or assembling of glasses must be kept on file by the provider for five (5) years and furnished to the MO HealthNet Division **or its representative** upon request.

(G) Special frames are covered under the MO HealthNet program if they are required for medical reasons and are *[prior authorized]* **pre-certified** by MO HealthNet Division. Special frames may be authorized if the patient requires special lenses (*[over]* **plus or minus** 4.00 diopters for one (1) eye or *[over]* **plus or minus** 4.00 diopters for each eye and are extra thick or heavy), the structure of the patient's face requires special frames (a very large face, wide-set eyes), or the patient needs glasses with pads because of nose surgery.

(H) Special lenses are covered under the MO HealthNet program if they are medically justified and the prescription is plus or minus 4.00 diopters for one (1) eye or **plus or minus** 4.00 diopters for each eye, cataract lenses, or special bifocal lenses (for example, plastic Executive lenses).

(O) An eye refraction *[is included in the reimbursement for]* **may be reimbursed in addition to** a comprehensive or limited eye examination. Because *[the]* an eye refraction is not covered by Medicare but is covered by MO HealthNet, providers may bill MO HealthNet for an eye refraction when the patient has Medicare and MO HealthNet coverage.

(S) Optometrists may be reimbursed for visual therapy training when there is a prognosis for substantial improvement or correction of an ocular or vision condition. These conditions include amblyopia, eccentric (nonfoveal) monocular fixation, suppression, inadequate motor or sensory fusion, and strabismus (squint). *[Orthoptic and pleoptic training must be prior authorized by the MO HealthNet Division Optometric Consultant]*. The number of training sessions is limited to one (1) per day, two (2) per week, and a maximum of twenty (20) sessions *[may be requested on the Prior Authorization Request Form]*. If the patient shows significant improvement after the initial twenty (20) sessions and the optometrist feels that further progress could be made, *[MO HealthNet Division may grant prior authorization for]* additional training sessions not to exceed a total of forty (40) sessions **may be provided**.

(U) Visual field examination with optometric diagnosis evaluation, tangent screen, Autoplot, or equivalent is covered when performed by an optometrist and *[prior authorized]* **pre-certified by the MO HealthNet Division**. *[The following criteria will be considered in granting prior authorization:*

1. *Elevated intraocular pressure;*
2. *Best corrected visual acuity of 20/40 or less in either eye;*
3. *Headaches not attributed to refractive error; and*
4. *Reduction of confrontation fields.*

(8) Noncovered Services.

(D) Contact lenses **other than for medical purposes as described above in subsection (7)(S).**

AUTHORITY: sections 208.152, 208.153, and 208.201, RSMo Supp. [2008] 2013. This rule was previously filed as 13 CSR 40-81.170. Emergency rule filed April 10, 1981, effective April 20, 1981, expired July 10, 1981. Original rule filed April 10, 1981, effective July 11, 1981. For intervening history, please consult the Code of State Regulations. Amended: Filed Oct. 10, 2013.

PUBLIC COST: The 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, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be delivered by regular mail, express or overnight mail, in person, or by courier within thirty (30) days after publication of this notice in the Missouri Register. If to be hand delivered, comments must be brought to the MO HealthNet Division at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.

Title 13—DEPARTMENT OF SOCIAL SERVICES Division 70—MO HealthNet Division Chapter 45—Hearing Aid Program

PROPOSED AMENDMENT

13 CSR 70-45.010 Hearing Aid Program. The division is amending the following sections: (1), (3), (4), (5), (10), (12), (14) and (15).

PURPOSE: This amendment updates the reference date in section (1), revises terminology in sections (3), (4), (10), and subsection (15)(A), removes outdated information in sections (5), (12), and (14), and replaces the wording in subsection (15)(H).

(1) Administration. The Hearing Aid Program shall be administered by the Department of Social Services, MO HealthNet Division. The services and items covered and not covered, the program limitations and the maximum allowable fees for all covered services shall be determined by the Department of Social Services, MO HealthNet Division through the hearing aid manual and hearing aid bulletins, which are incorporated by reference and made a part of this rule, as published by the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109, at its website at www.dss.mo.gov/mhd, [April 15, 2008] **November 15, 2013**. This rule does not incorporate any subsequent amendments or additions.

(3) Prior Authorization of Hearing Aids. Effective for service dates November 1, 1989 and thereafter, all hearing aids and related services will require prior authorization with the exception of *[audiological testing]* **hearing evaluation for the purpose of prescribing**

a hearing aid, post-fitting evaluations, post-fitting adjustments, repairs to hearing aids no longer under warranty, and special tests for ruling out retrocochlear involvement.

(4) *[Audiological]* **Hearing Evaluation Requirements.** *A[n audio-logical examination]* **hearing evaluation for the purpose of obtaining a hearing aid** must be performed by an audiologist, hearing *[aid dealer/fitter]* **instrument specialist**, or physician (MD or DO) prior to the submission of a Prior Authorization Request form. This testing, when administered for the purpose of prescribing a hearing aid, will be reimbursed by the MO HealthNet program. *[Audiological t]*Testing performed in relation to a medical or surgical diagnosis or treatment for hearing deficits or related medical problems for purposes other than determining the need for a hearing aid is a noncovered service and is not reimbursable by the MO HealthNet Hearing Aid Program. The *[audiological tests]* **hearing evaluation performed for the purpose of obtaining a hearing aid** must include, at a minimum, air conduction thresholds, bone conduction thresholds (with masking when necessary), speech reception thresholds and speech discrimination scores. The results obtained from these basic *[audiological]* **hearing tests** must be clear and internally consistent, and must demonstrate that a hearing aid is needed, that it will benefit the participant and will support the recommendation of which ear is to be fitted. Testing must be provided in accordance with sound professional practice and the standards under which the provider is licensed.

(5) Hearing Loss (HL) Requirement. A participant's pure-tone average (PTA) must be thirty decibels (30dB) HL or greater in the better ear to qualify for a hearing aid. The PTA is the average air-conduction threshold for five hundred (500), one thousand (1,000), and two thousand (2,000) Hertz (Hz) measured with an earphone. *[A participant's speech discrimination must be at least forty percent (40%) without visual cues in the ear to be aided to qualify for a hearing aid. The speech discrimination is measured with an earphone using a CID W-22 word list or equivalent. The speech discrimination test materials that are used must be specified.]* **Word recognition must be tested with twenty-five (25) or fifty (50) item phonetically balanced word lists.**

(10) Services/Items Provided in a Nursing Home. A request for *[audiological testing and a hearing aid]* **hearing evaluation for the purpose of prescribing a hearing aid** must originate with the participant and must proceed with the participant's full knowledge and consent. All hearing aids and related services performed or provided in a nursing home, boarding home, domiciliary home, or institution require prior authorization as specified in section (3), with the exception that *[audiological testing]* **hearing evaluation for the purpose of prescribing a hearing aid being performed in these places of service** also requires prior authorization.

(14) Hearing Aid Repairs. MO HealthNet will cover necessary repairs to any eligible participant's hearing aid that is no longer under warranty. The warranty period on new aids or repairs will be for one (1) year from the date the hearing aid is dispensed. *[The methods of reimbursement for repairs are as follows:]*

(A) *[Out-of-shop Repairs.]* Necessary repairs made out-of-shop, where the aid must be sent out to the manufacturer or repair lab, will be reimbursed at twenty dollars (\$20) plus the invoiced cost of the repair. The twenty dollars (\$20) covers the provider's cost for postage and processing. Included also is any postage for returning the aid to the provider, any insurance fee charged, and a six- (6)-[] month warranty[; and].

(B) *[In-shop Repairs. Necessary repairs made in-shop will be reimbursed at the provider's cost for parts plus a reasonable charge for labor. The state consultant will determine the reasonable charge for labor. Repairs will be considered as in-shop repairs for—*

1. Any repair made in the provider's office;
2. Any repair made in a provider-owned and/or operated repair or manufacturing lab; or
3. Any repair made by a provider who is employed by or affiliated with another provider who owns or operates a repair or manufacturing lab.]

(15) Post-fitting Adjustments. A maximum of three (3) post-fitting adjustments or hearing aid repairs or any combination totaling three (3) are covered in a twelve- (12-)/ month period. Minor adjustments and repairs such as the following must be billed as a post-fitting adjustment:

(A) [Resetting] **Reprogramming** or adjusting the frequency response of the aid;

(H) [Performing minor in-shop hearing aid repairs] **Changing microphone filters or receivers;**

AUTHORITY: sections 208.152, 208.153, and 208.201, RSMo Supp. [2007] 2013. This rule was previously filed as 13 CSR 40-81.120. Emergency rule filed June 1, 1979, effective June 11, 1979, expired Sept. 13, 1979. Original rule filed June 1, 1979, effective Sept. 14, 1979. For intervening history, please consult the Code of State Regulations. Amended: Filed Oct. 10, 2013.

PUBLIC COST: The 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, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be delivered by regular mail, express or overnight mail, in person, or by courier within thirty (30) days after publication of this notice in the Missouri Register. If to be hand delivered, comments must be brought to the MO HealthNet Division at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
**Chapter 98—[Psychiatric/Psychology/Counseling/
 Clinical Social Work Program] Behavioral Health
 Services**

PROPOSED AMENDMENT

13 CSR 70-98.020 Prior Authorization Process for Non-Pharmaceutical [Mental] Behavioral Health Services. The division is amending the chapter title, rule title, purpose statement, and sections (1), (2), and (3).

PURPOSE: This amendment is needed to address the name change of Psychiatric/Psychology/Counseling/Clinical Social Work Program to Behavioral Health Services Program; address the name change of mental health services to behavioral health services; and eliminate reference to a specific version of the Diagnostic and Statistical Manual (DSM).

PURPOSE: This rule establishes the process by which non-pharmaceutical [mental] behavioral health services will be prior authorized in order to be reimbursable by the MO HealthNet Program. The prior authorization process will serve as a utilization management measure

allowing payment only for this treatment and services (interventions) that are medically necessary, appropriate and cost-effective, and to reduce over-utilization or abuse of services without compromising the quality of care to MO HealthNet participants.

(1) This rule establishes a MO HealthNet non-pharmaceutical [mental] behavioral health services prior authorization advisory committee in the Department of Social Services, MO HealthNet Division. The advisory committee shall be composed of practicing clinicians who are also licensed in their respective fields. The advisory committee shall be composed of three (3) practicing psychiatrists, three (3) practicing psychologists, three (3) practicing licensed clinical social workers (LCSW), and three (3) practicing licensed professional counselors (LPC). All members shall be appointed by the director of the Department of Social Services. The members of the committee shall represent a broad spectrum of practice including, but not limited to, those providing services to adults, children, children in custody, the geriatric population, and Department of Mental Health clients. The members shall serve for a term of four (4) years, except that of the members first appointed, three (3) shall be appointed for one (1) year, three (3) shall be appointed for two (2) years, three (3) shall be appointed for three (3) years, and three (3) shall be appointed for four (4) years. Members of the committee shall receive no compensation for their services but shall be reimbursed for their actual and necessary expenses incurred related to participation on the committee, as approved by the MO HealthNet Division out of appropriations made for that purpose.

(2) All persons eligible for MO HealthNet benefits shall have access to non-pharmaceutical [mental] behavioral health services when they are determined medically necessary when using diagnostic criteria from the **current edition of the** Diagnostic and Statistical Manual [of Mental Disorders—Fourth Edition (DSM-IV), published by] (DSM) of the American Psychiatric Association[, or the most currently published version of the DSM manual]. The services covered and not covered, the limitations under which services are covered, and the maximum allowable fees for all covered services shall be determined by the MO HealthNet Division and shall be included in the MO HealthNet [Psychology/Counseling] Behavioral Health Services Provider Manual and Section 13 of the Physician Provider Manual, which are incorporated by reference and made a part of this rule as published by the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109, on its website www.dss.mo.gov/mhd, [December 3, 2007] **November 15, 2013**. This rule does not incorporate any subsequent amendments or additions. The MO HealthNet non-pharmaceutical [mental] behavioral health services prior authorization advisory committee shall review and make recommendations regarding the prior authorization process to the MO HealthNet Division. The MO HealthNet non-pharmaceutical [mental] behavioral health services prior authorization advisory committee shall hold a public hearing in order to make recommendations to the department prior to any final decisions by the division on the prior authorization process. The recommendations of the non-pharmaceutical [mental] behavioral health services prior authorization advisory committee shall be provided to the MO HealthNet Division, in writing, prior to the division making a final determination. The policy requirements regarding the prior authorization process for non-pharmaceutical [mental] behavioral health services shall be available through the Department of Social Services, MO HealthNet Division website at www.dss.mo.gov/mhd.

(3) The prior authorization requirements shall be reviewed at least every twelve (12) months by the non-pharmaceutical [mental] behavioral health services prior authorization committee.

AUTHORITY: section 208.201, RSMo Supp. [2007] 2013. Original rule filed Jan. 15, 2004, effective Aug. 30, 2004. Amended: Filed

Oct. 30, 2007, effective April 30, 2008. Amended: Filed Oct. 10, 2013.

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, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be delivered by regular mail, express or overnight mail, in person, or by courier within thirty (30) days after publication of this notice in the **Missouri Register**. If to be hand delivered, comments must be brought to the MO HealthNet Division at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.*

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 400—Life, Annuities and Health
Chapter 5—Advertising and Material Disclosures**

PROPOSED AMENDMENT

20 CSR 400-5.600 Missouri Life and Health Insurance Guaranty Association. The department is amending this rule so that the regulation and its appendices are generally consistent with the National Association of Insurance Commissioners (NAIC) Guideline Notice of Protection Provided by State Life and Health Insurance Guaranty Association and the newly amended section 376.717, RSMo Supp. 2013. Only Appendix One, relating to section (1) of this rule is being amended. No changes are being proposed to section (2) of this regulation.

PURPOSE: A notice of guarantee fund limits is required by section 376.756, RSMo 2000. Section 376.717 was amended by SB 59 (2013) to adjust the fund limits. This proposed amendment is intended to make the notice provided by this regulation consistent with the National Association of Insurance Commissioners (NAIC) Guideline Notice of Protection Provided by State Life and Health Insurance Guaranty and the newly amended section 376.717, RSMo Supp. 2013.

(1) Effective May 31, 1989 no insurer may deliver a policy or contract described in section 376.717.2, RSMo, to a policy or contract holder unless a copy of the notice set out in Appendix One is given to the policy or contract holder before or at the time of delivery.

If the policy or contract is excluded under section 376.717.3, RSMo, the notice set out in Appendix One, which is included herein, does not need to be delivered to the policy or contract holder.

APPENDIX ONE
*[NOTICE CONCERNING COVERAGE
LIMITATIONS AND EXCLUSIONS UNDER THE LIFE AND
HEALTH INSURANCE GUARANTY ASSOCIATION ACT]
NOTICE OF PROTECTION PROVIDED BY
MISSOURI LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION*

[Residents of this state who purchase life insurance, annuities or health insurance should know that the insurance companies licensed in this state to write these types of insurance are members of the Missouri Life and Health Insurance Guaranty Association. The purpose of this association is to assure that policyholders will be protected, within limits, in the unlikely event that a member insurer becomes financially unable to meet its obligations. If this should happen, the guaranty association will assess its other member insurance companies for the money to pay the claims of insured persons who live in this state and, in some cases, to keep coverage in force. The valuable extra protection provided by these insurers through the guaranty association is not unlimited, however. And, as noted in the box below, this protection is not a substitute for consumers' care in selecting companies that are well-managed and financially stable.

The Missouri Life and Health Insurance Guaranty Association may not provide coverage for this policy. If coverage is provided, it may be subject to substantial limitations or exclusions, and require continued residency in Missouri. You should not rely on coverage by the Missouri Life and Health Insurance Guaranty Association in selecting an insurance company or in selecting an insurance policy. Coverage is NOT provided for your policy or any portion of it that is not guaranteed by the insurer or for which you have assumed the risk, such as a variable contract sold by prospectus. Insurance companies or their insurance producers are required by law to give or send you this notice. However, insurance companies and their insurance producers are prohibited by law from using the existence of the guaranty association to induce you to purchase any kind of insurance policy. YOU MAY CONTACT EITHER THE ASSOCIATION OR THE MISSOURI DEPARTMENT OF INSURANCE AT THE FOLLOWING ADDRESSES SHOULD YOU HAVE ANY QUESTIONS REGARDING THIS NOTICE

*The Missouri Life and Health Insurance Guaranty Association
994 Diamond Ridge, Suite 102
Jefferson City, MO 65109*

*Missouri Department of Insurance
PO Box 690
Jefferson City, MO 65102-0690*

The state law that provides for this safety-net coverage is called the Missouri Life and Health Insurance Guaranty Association Act. On the back of this page is a brief summary of this law's coverages, exclusions and limits. This summary does not cover all provisions of the law; nor does it in any way change anyone's rights or obligations under the Act or the rights or obligations of the guaranty association.

(please turn to back of page)

Generally, persons will be covered if they live in this state, and hold a life or health insurance contract or annuity, or a certificate under a group policy or contract. However, not all individuals with a right to recover under life or health insurance policies or annuities are protected by the Act. A person is not protected when—

- 1. The person is eligible for protection under the laws of another state;*
- 2. The person purchased the insurance from a company that was not authorized to do business in this state;*
- 3. The policy is issued by an organization which is not a member insurer of the association; or*
- 4. The person does not live in this state, except under limited circumstances.*

Additionally, the Association may not provide coverage for the entire amount a person expects to receive from the policy. The Association does not provide coverage for any portion of the policy where the person has assumed the risk, for any policy of reinsurance (unless an assumption certificate was issued), for interest rates that exceed a specified average rate, for employers' plans that are self-funded, for parts of plans that provide dividends or credits in connection with the administration of policy, or for unallocated annuity contracts (which are generally issued to pension plan trustees). The Act also limits the amount the Association is obligated to pay persons on various policies. The Association does not pay more than the amount of the contractual obligation of the insurance company. The Association does not have to pay more than three hundred thousand dollars (\$300,000) in death benefits for any one life regardless of the number of policies that insure that life. The Association does not have to pay amounts over one hundred thousand dollars (\$100,000) in cash surrender or withdrawal benefits on one life regardless of the number of policies insuring that individual. For health insurance benefits, the Association is not obligated to pay over one hundred thousand dollars (\$100,000) including net cash surrender and withdrawal benefits. On an annuity contract, the Association is not liable for over one hundred thousand dollars (\$100,000) in present value. Finally, the Association is never obligated to pay more than a total of three hundred thousand dollars (\$300,000) for any one insured for any combination of insurance benefits.]

This notice provides a *brief summary* of the Missouri Life and Health Insurance Guaranty Association (“the Association”) and the protection it provides for policyholders. This safety net was created under Missouri law, which determines who and what is covered and the amounts of coverage.

The Association was established to provide protection in the unlikely event that your life, annuity, or health insurance company becomes financially unable to meet its obligations and is taken over by its insurance department. If this should happen, the Association will typically arrange to continue coverage and pay claims, in accordance with Missouri law, with funding from assessments paid by other insurance companies.

The basic protections provided by the Association are as follows:

- Life Insurance
 - \$300,000 in death benefits
 - \$100,000 in cash surrender or withdrawal values
- Health Insurance
 - \$500,000 in hospital, medical and surgical insurance benefits
 - \$300,000 in disability insurance benefits
 - \$300,000 in long-term care insurance benefits
 - \$100,000 in other types of health insurance benefits
- Annuities
 - \$250,000 in withdrawal and cash values

The maximum amount of protection for each individual, regardless of the number of policies or contracts, is as follows:

- \$300,000 in aggregate for all types of coverage listed above, with the exception of basic hospital, medical, and surgical insurance or major medical insurance
- \$500,000 in aggregate for basic hospital, medical, and surgical insurance or major medical insurance
- \$5,000,000 to one policy owner of multiple nongroup policies of life insurance, whether the policy owner is an individual, firm, corporation, or other person, and whether the persons insured are officers, managers, employees, or other persons

Note: Certain policies and contracts may not be covered or fully covered. For example, coverage does not extend to any portion(s) of a policy or contract that the insurer does not guarantee, such as certain investment additions to the account value of a variable life insurance policy or a variable annuity contract. There are also various residency requirements and other limitations under Missouri law.

To learn more about the above protections, as well as protections relating to group contracts or retirement plans, please visit the Association’s website at www.mo-iga.org, or contact:

Missouri Life and Health
Insurance Guaranty Association
994 Diamond Ridge, Suite 102
Jefferson City, Missouri 65109
Ph.: 573-634-8455
Fax: 573-634-8488

Missouri Department of Insurance, Financial
Institutions and Professional Registration
301 West High Street, Room 530
Jefferson City, Missouri 65101
Ph.: 573-522-6115

Insurance companies and agents are not allowed by Missouri law to use the existence of the Association or its coverage to encourage you to purchase any form of insurance. When selecting an insurance company, you should not rely on Association coverage. If there is any inconsistency between this notice and Missouri law, then Missouri law will control.

AUTHORITY: section[s] 374.045.1(2), **RSMo Supp. 2013**, and section 376.756, **RSMo 2000**. This rule was previously filed as 4 CSR 190-13.290. Original rule filed Sept. 6, 1988, effective April 1, 1989. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Oct. 10, 2013.

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 cost private entities approximately one hundred five thousand dollars (\$105,000) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Insurance, Financial Institutions and Professional Registration, Attention: Carolyn H. Kerr, Senior Counsel, Legal Section, PO Box 690, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. A public hearing is scheduled for 10:00 a.m. on Tuesday, December 20, 2013, at the Harry S Truman State Office Building, Room 530, 301 West High Street, Jefferson City, Missouri.

SPECIAL NEEDS: If you have any special needs addressed by the Americans with Disabilities Act, please notify us at (573) 751-2619 at least five (5) working days prior to the hearing.

**FISCAL NOTE
 PRIVATE COST**

- I. Department Title:** Department of Insurance, Financial Institutions and Professional Registration
Division Title: 400 - Life, Annuities and Health
Chapter Title: 5 – Advertising and Material Disclosures

Rule Number and Title:	20 CSR 400-5.600 Missouri Life and Health Insurance Guaranty Association
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the 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:
418	Insurance Companies	Approx. \$105,000

III. WORKSHEET

418 companies
 \$50/form filing
 Average 5 forms per company (\$250.00/company)
 418 companies * \$250 filing fees = \$104,500

IV. ASSUMPTIONS

Insurance companies that deliver certain types of policies or contracts are required to provide a notice of life and health insurance guaranty fund limits. That notice is promulgated as Appendix 1 to 20 CSR 400-5.600. Once the notice changes, as required by amendments to § 376.717 (SB 59, Laws 2013), companies may refile forms to incorporate the new notice. Form filings cost companies \$50 per filing. The aggregate impact will be determined by the number of insurance companies that deliver policies described in § 376.717.2 and how many policy forms will have to be filed per company. The Department estimates that each company will file approximately five forms, bringing the total to approximately \$105,000.