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SALUS POPULI SUPREMA LEX ESTO

*“The welfare of the people shall be the supreme law.”*



JOHN R. ASHCROFT  
SECRETARY OF STATE

MISSOURI  
REGISTER

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Register Filing Deadlines	Register Publication Date	Code Publication Date	Code Effective Date
August 1, 2018	<b>September 4, 2018</b>	September 30, 2018	October 30, 2018
August 15, 2018	<b>September 17, 2018</b>	September 30, 2018	October 30, 2018
September 4, 2018	<b>October 1, 2018</b>	October 31, 2018	November 30, 2018
September 17, 2018	<b>October 15, 2018</b>	October 31, 2018	November 30, 2018
October 1, 2018	<b>November 1, 2018</b>	November 30, 2018	December 30, 2018
October 15, 2018	<b>November 15, 2018</b>	November 30, 2018	December 30, 2018
November 1, 2018	<b>December 3, 2018</b>	December 31, 2018	January 30, 2019
November 15, 2018	<b>December 17, 2018</b>	December 31, 2018	January 30, 2019
December 3, 2018	<b>January 2, 2019</b>	January 29, 2019	February 28, 2019
December 17, 2018	<b>January 15, 2019</b>	January 29, 2019	February 28, 2019

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 [www.sos.mo.gov/adrules/pubsched](http://www.sos.mo.gov/adrules/pubsched).

## HOW TO CITE RULES AND RSMO

### RULES

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

<b>Title</b>		<b>Division</b>	<b>Chapter</b>	<b>Rule</b>
3	CSR	10-	4	.115
Department	<i>Code of State Regulations</i>	Agency Division	General area regulated	Specific area regulated

and should be cited in this manner: 3 CSR 10-4.115.

Each department of state government is assigned a title. Each agency or division in 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 paragraphs 1., subparagraphs A., parts (I), subparts (a), items I. and subitems a.

The rule is properly cited by using the full citation, for example, 3 CSR 10-4.115 NOT Rule 10-4.115.

Citations of RSMo are to the *Missouri Revised Statutes* as of the date indicated.

### ***Code and Register on the Internet***

The *Code of State Regulations* and *Missouri Register* are available on the Internet.

The *Code* address is [www.sos.mo.gov/adrules/csr/csr](http://www.sos.mo.gov/adrules/csr/csr)

The *Register* address is [www.sos.mo.gov/adrules/moreg/moreg](http://www.sos.mo.gov/adrules/moreg/moreg)

These websites contain rulemakings and regulations as they appear in the *Code* and *Registers*.

**Title 22—MISSOURI CONSOLIDATED  
HEALTH CARE PLAN  
Division 10—Health Care Plan  
Chapter 3—Public Entity Membership**

**PROPOSED AMENDMENT**

**22 CSR 10-3.010 Definitions.** The Missouri Consolidated Health Care Plan is amending sections (19), (28), (35), (46), (47), and (70) and renumbering as necessary.

*PURPOSE:* This amendment revises the definitions of diabetes education, essential benefits, Health Savings Account Plan, network, and non-network; and removes the definition of terminated vested subscriber because it is duplicative of section (73); and renumbers as necessary.

(19) Diabetes **self-management education/training.** A program prescribed by a provider and taught by a Certified Diabetes Educator to educate and support members with diabetes.

(28) Essential benefits. The plan covers essential benefits as required by the Patient Protection and Affordable Care Act. Essential benefits include:

(J) Pediatric services, including oral and vision care—routine vision exam, dental care/accidental injury, *[immunizations]* **vaccinations**, preventive services, and newborn screenings.

(35) *[Health Savings Account (HSA)]* **High deductible health [P]lan.** A health plan with a higher deductible than a traditional health plan that, when combined with an **Health Savings Account (HSA)**, provides a tax-advantaged way to help save for future medical expenses.

(46) Network. The *[facilities,] providers[, and suppliers]* the health insurer or plan has contracted with to provide health care services **to members.**

(47) Non-network. The *[facilities,] providers, [and suppliers]* the health **insurer, or** plan does not contract with to provide health care services **to members. Some providers may be a part of secondary provider networks recognized by the vendor for non-network benefits.**

*[(70) Terminated vested subscriber. A previous active employee eligible for a future retirement benefit through a public entity's retirement system.]*

*[(71)](70)* Termination of coverage. The termination of medical, dental, or vision coverage initiated by the employer or required by MCHCP eligibility policies.

*[(72)](71)* Usual, customary, and reasonable. The amount paid for a medical service in a geographic area based on what providers in the area usually charge for the same or similar medical service.

*[(73)](72)* Vendor. The current applicable third-party administrators of MCHCP benefits or other services.

*[(74)](73)* Vested subscriber. An active employee eligible for coverage under the plan and eligible for future benefits through a public entity's retirement system.

*[(75)](74)* Waiting/probationary periods. The length of time the employer requires an employee to be employed before he or she is eligible for health insurance coverage. Public entities may set different waiting/probationary periods for different employee classifications (full-time vs. part-time).

*AUTHORITY:* section 103.059, RSMo 2016. Emergency rule filed Dec. 20, 2004, effective Jan. 1, 2005, expired June 29, 2005. Original rule filed Dec. 20, 2004, effective June 30, 2005. For intervening history, please consult the *Code of State Regulations*. Emergency amendment filed Oct. 31, 2018, effective Jan. 1, 2019, expires June 29, 2019. Amended: Filed Oct. 31, 2018.

*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 Consolidated Health Care Plan, Judith Muck, PO Box 104355, Jefferson City, MO 65110. 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 22—MISSOURI CONSOLIDATED  
HEALTH CARE PLAN  
Division 10—Health Care Plan  
Chapter 3—Public Entity Membership**

**PROPOSED AMENDMENT**

**22 CSR 10-3.020 General Membership Provisions.** The Missouri Consolidated Health Care Plan is amending sections (2), (3), (5), and (8).

*PURPOSE:* This amendment revises public entity eligibility requirements, enrollment procedures, disabled dependent documentation timeframes, and voluntary cancellation of enrollment requirements.

(2) Eligibility Requirements.

(G) Dependent Coverage. Eligible dependents include:

1. Spouse.

A. Active Employee Coverage of a Spouse.

(I) If both spouses have access to MCHCP benefits through two (2) different public entities, the employee and his/her spouse may elect to enroll in coverage separately through his/her respective employer or together through one (1) of the employers. The employee cannot have coverage through both public entities.

(II) If both spouses are employed by the same public entity with access to MCHCP benefits, the employee and spouse may elect coverage either as individuals or under the spouse (if allowed by the employer).

B. Retiree Coverage of a Spouse.

(I) A public entity retiree may enroll as a spouse under a public entity employee's coverage or elect coverage as a retiree;

2. Children.

A. Children may be covered through the end of the month in which they turn twenty-six (26) years old if they meet one (1) of the following criteria:

(I) Natural child of subscriber or spouse;

(II) Legally-adopted child of subscriber or spouse;

(III) Child legally placed for adoption of subscriber or spouse;

(IV) Stepchild of subscriber. Such child will continue to be considered a dependent after the stepchild relationship ends due to the death of the child's natural parent and subscriber's spouse;

(V) Foster child of subscriber or spouse. Such child will continue to be considered a dependent child after the foster child relationship ends by operation of law when the child ages out if the foster child relationship between the subscriber or spouse and the

child was in effect the day before the child ages out;

(VI) Grandchild for whom the subscriber or spouse has legal guardianship or legal custody;

(VII) A child for whom the subscriber or spouse is the court-ordered legal guardian under a guardianship of a minor. Such child will continue to be considered a dependent child after the guardianship ends by operation of law when the child becomes eighteen (18) years old if the guardianship of a minor relationship between the subscriber or spouse and the child was in effect the day before the child became eighteen (18) years old;

**(VIII) [Newborn] Child of a dependent [or] as long as the parent is a dependent on the child's date of birth. The dependent and his/her child must remain continuously covered on the plan from the dependent's child's date of birth for the child of the dependent to remain eligible;**

**(IX) [c/Child of a dependent when paternity by the dependent is established after birth [so] as long as the parent is a dependent on [the newborn's day of birth or] the date the child's paternity was established [and continues to be covered as a dependent of the subscriber] the dependent and his/her child must remain continuously covered on the plan from the dependent's child's date of birth for the child of the dependent to remain eligible;**

~~[(IX)](X)~~ Child for whom the subscriber or spouse is required to provide coverage under a Qualified Medical Child Support Order (QMCSO); or

~~[(X)](XI)~~ A child under twenty-six (26) years, who is eligible for MCHCP coverage as a subscriber, may be covered as a dependent of a public entity employee.

B. A child who is twenty-six (26) years old or older and is permanently disabled in accordance with subsection (5)(F), may be covered only if such child was disabled the day before the child turned twenty-six (26) years old and has remained continuously disabled.

C. A child may only be covered by one (1) parent if his/her parents are married to each other and are both covered under an MCHCP medical plan.

D. A child may have dual coverage if the child's parents are divorced or have never married, and both have coverage under an MCHCP medical plan. MCHCP will only pay for a service once, regardless of whether the claim for the child's care is filed under multiple subscribers' coverage. If a child has coverage under two (2) subscribers, the child will have a separate deductible, copayment, and coinsurance under each subscriber. The claims administrator will process the claim and apply applicable cost-sharing using the coverage of the subscriber who files the claim first. The second claim for the same services will not be covered. If a provider files a claim simultaneously under both subscribers' coverage, the claim will be processed under the subscriber whose birthday is first in the calendar year. If both subscribers have the same birthday, the claim will be processed under the subscriber whose coverage has been in effect for the longest period of time; or

3. Changes in dependent status. If a dependent loses his/her eligibility, the subscriber must notify MCHCP within thirty-one (31) days of the loss of eligibility. Coverage will end on the last day of the month that the completed form is received by MCHCP or the last day of the month MCHCP otherwise receives credible evidence of loss of eligibility under the plan.

### (3) Enrollment Procedures.

#### (A) Active Employee Coverage.

1. The public entity must enroll or waive coverage for a new employee by submitting a form signed by the employee and the payroll representative within thirty-one (31) days of his/her eligibility date. A new employee's coverage begins on the first day of the month after the hire date and the applicable waiting period.

2. An active employee may elect, change, or cancel coverage for the next plan year during the annual open enrollment period.

3. An active employee may *[apply for]* **elect or change** cover-

age for himself/herself and/or for his/her spouse/child(ren) if one (1) of the following occurs:

A. Occurrence of a life event, which includes marriage, birth, adoption, and placement of child(ren). A special enrollment period of thirty-one (31) days shall be available beginning with the date of the life event. It is the employee's responsibility to notify MCHCP of the life event;

(I) If paternity is necessary to establish the life event and was not established at birth, the date that paternity is established shall be the date of the life event; or

B. Employer-sponsored group coverage loss. An employee and his/her spouse/child(ren) may enroll within sixty (60) days *[if s/he involuntarily loses]* **due to an involuntary loss** of employer-sponsored coverage under one (1) of the following circumstances:

(I) Employer-sponsored medical, dental, or vision plan terminates;

(II) Eligibility for employer-sponsored coverage ends;

(III) Employer contributions toward the premiums end; or

(IV) COBRA coverage ends; or

C. If an active employee or his/her spouse/child(ren) loses MO HealthNet or Medicaid status, s/he may enroll in an MCHCP plan within sixty (60) days of the date of loss; or

D. If an active employee or active employee's spouse receives a court order stating s/he is responsible for covering a child(ren), the active employee may enroll the child(ren) in an MCHCP plan within sixty (60) days of the court order; or

E. If an active employee submits an Open Enrollment Worksheet or an Enroll/Change/Cancel/Waive form that is incomplete or contains obvious errors, MCHCP will notify the public entity's Human Resource Department of such by mail, phone, or secure message. The corrected form must be submitted to MCHCP by the date enrollment was originally due to MCHCP or ten (10) business days from the date the notice was mailed or sent by secure message or phone, whichever is later.

4. If an active employee is enrolled and does not complete enrollment during the open enrollment period, the employee and his/her dependents will be enrolled at the same level of coverage in the plan offered by the public entity for the new year. If the public entity offers two (2) plan options, the employee and his/her dependents will be enrolled at the same level of coverage in the low cost plan offered by the public entity, effective the first day of the next calendar year.

#### (B) Retiree Coverage.

1. To enroll or continue coverage for him/herself and his/her dependents at retirement, the employee must submit one (1) of the following:

A. A completed enrollment form within thirty-one (31) days of retirement date. Coverage is effective on retirement date; or

B. A completed enrollment form within thirty-one (31) days of retirement date with proof of prior medical, dental, or vision coverage under a separate group or individual insurance policy for six (6) months immediately prior to his/her retirement if s/he chooses to enroll in an MCHCP plan at retirement and has had insurance coverage for six (6) months immediately prior to his/her retirement.

2. A retiree may later add a spouse/child(ren) to his/her current coverage if one (1) of the following occurs:

A. Occurrence of a life event, which includes marriage, birth, adoption, and placement of child(ren). A special enrollment period of thirty-one (31) days shall be available beginning with the date of the life event. It is the employee's responsibility to notify MCHCP of the life event;

(I) If paternity is necessary to establish the life event and was not established at birth, the date that paternity is established shall be the date of the life event; or

B. Employer-sponsored group coverage loss. A retiree may enroll his/her spouse/child(ren) within sixty (60) days *[if the spouse/child(ren) involuntarily loses]* **due to an involuntary loss** of employer-sponsored coverage under one (1) of the following circumstances, and the coverage was in place for twelve (12) months

immediately prior to the loss:

(I) Employer-sponsored medical, dental, or vision plan terminates;

(II) Eligibility for employer-sponsored coverage ends;

(III) Employer contributions toward the premiums end; or

(IV) COBRA coverage ends.

3. If coverage was not maintained while on disability, the employee and his/her dependents may enroll him/herself and his/her spouse/child(ren) within thirty-one (31) days of the date the employee is eligible for retirement benefits subject to the eligibility provisions herein.

4. A retiree may change from one (1) medical plan to another during open enrollment but cannot add coverage for a spouse/child(ren). If a retiree is not already enrolled in medical, dental, and/or vision coverage, s/he cannot enroll in additional coverage during open enrollment.

5. If a retiree submits an Open Enrollment Worksheet or an Enroll/Change/Cancel/Waive form that is incomplete or contains obvious errors, MCHCP will notify the retiree of such by mail, phone, or secure message. The retiree must submit a corrected form to MCHCP by the date enrollment was originally due to MCHCP or ten (10) business days from the date the notice was mailed or sent by secure message or phone, whichever is later.

6. If a retiree is enrolled and does not complete enrollment during the open enrollment period, the retiree and his/her dependents will be enrolled at the same level of coverage in the plan offered by the public entity for the new year. If the public entity offers two (2) plan options, the retiree and his/her dependents will be enrolled at the same level of coverage in the low cost plan offered by the public entity, effective the first day of the next calendar year.

(C) Terminated Vested Coverage.

1. A terminated vested subscriber may later add a spouse/child(ren) to his/her coverage if one (1) of the following occurs:

A. Occurrence of a life event, which includes marriage, birth, adoption, and placement of children. A special enrollment period of thirty-one (31) days shall be available beginning with the date of the life event. It is the employee's responsibility to notify MCHCP of the life event;

(I) If paternity is necessary to establish the life event and was not established at birth, the date that paternity is established shall be the date of the life event; or

B. Employer-sponsored group coverage loss. A terminated vested subscriber may enroll his/her spouse/child(ren) within sixty (60) days *[if the spouse/child(ren) involuntarily loses]* due to an **involuntary loss** of employer-sponsored coverage under one (1) of the following circumstances and the coverage was in place for twelve (12) months immediately prior to the loss:

(I) Employer-sponsored medical, dental, or vision plan terminates;

(II) Eligibility for employer-sponsored coverage ends;

(III) Employer contributions toward the premiums end; or

(IV) COBRA coverage ends.

2. An enrolled terminated vested subscriber may change from one (1) medical plan to another during open enrollment but cannot add a spouse/child(ren). If an enrolled terminated vested subscriber is not already enrolled in medical, dental, and/or vision coverage, s/he cannot enroll in additional coverage during open enrollment.

3. If a terminated vested subscriber submits an Open Enrollment Worksheet or an Enroll/Change/Cancel/Waive form that is incomplete or contains obvious errors, MCHCP will notify the terminated vested subscriber of such by mail, phone, or secure message. The terminated vested subscriber must submit a corrected form to MCHCP by the date enrollment was originally due to MCHCP or ten (10) business days from the date the notice was mailed or sent by secure message or phone, whichever is later.

4. If a terminated vested subscriber is enrolled and does not complete enrollment during the open enrollment period, the terminated vested subscriber and his/her dependents will be enrolled at the

same level of coverage in the plan offered by the public entity for the new year. If the public entity offers two (2) plan options, the terminated vested subscriber and his/her dependents will be enrolled at the same level of coverage in the low cost plan offered by the public entity, effective the first day of the next calendar year.

(D) Long-Term Disability Coverage.

1. A long-term disability subscriber may add a spouse/child(ren) to his/her current coverage if one (1) of the following occurs:

A. Occurrence of a life event, which includes marriage, birth, adoption, and placement of child(ren). A special enrollment period of thirty-one (31) days shall be available beginning with the date of the life event. It is the employee's responsibility to notify MCHCP of the life event;

(I) If paternity is necessary to establish the life event and was not established at birth, the date that paternity is established shall be the date of the life event; or

B. Employer-sponsored group coverage loss. A long-term disability subscriber may enroll his/her spouse/child(ren) within sixty (60) days *[if the spouse/child(ren) involuntarily loses]* due to an **involuntary loss** of employer-sponsored coverage under one (1) of the following circumstances and the coverage was in place for twelve (12) months immediately prior to the loss:

(I) Employer-sponsored medical, dental, or vision plan terminates;

(II) Eligibility for employer-sponsored coverage ends;

(III) Employer contributions toward the premiums end; or

(IV) COBRA coverage ends.

2. An enrolled long-term disability subscriber may change from one (1) medical plan to another during open enrollment but cannot add a spouse/child(ren). If an enrolled long-term disability subscriber is not already enrolled in medical, dental, and/or vision coverage, s/he cannot enroll in additional coverage during open enrollment.

3. If a long-term disability subscriber submits an Open Enrollment Worksheet or an Enroll/Change/Cancel/Waive form that is incomplete or contains obvious errors, MCHCP will notify the long-term disability subscriber of such by mail, phone, or secure message. The long-term disability subscriber must submit a corrected form to MCHCP by the date enrollment was originally due to MCHCP or ten (10) business days from the date the notice was mailed or sent by secure message or phone, whichever is later.

4. If a long-term disability subscriber is enrolled and does not complete enrollment during the open enrollment period, the long-term disability subscriber and his/her dependents will be enrolled at the same level of coverage in the plan offered by the public entity for the new year. If the public entity offers two (2) plan options, the long-term disability subscriber and his/her dependents will be enrolled at the same level of coverage in the low cost plan offered by the public entity, effective the first day of the next calendar year.

(E) Survivor Coverage.

1. A survivor must submit a form and a copy of the death certificate within thirty-one (31) days of the first day of the month after the death of the employee.

A. If the survivor does not elect coverage within thirty-one (31) days of the first day of the month after the death of the employee, s/he cannot enroll at a later date.

B. If the survivor marries, has a child, adopts a child, or a child is placed with the survivor, the spouse/child(ren) must be added within thirty-one (31) days of birth, adoption, placement, or marriage.

C. If eligible spouse/child(ren) are not enrolled when first eligible, they cannot be enrolled at a later date.

2. A survivor may later add a spouse/child(ren) to his/her current coverage if one (1) of the following occurs:

A. Occurrence of a life event, which includes marriage, birth, adoption, and placement of children. A special enrollment period of thirty-one (31) days shall be available beginning with the date of the life event. It is the employee's responsibility to notify

MCHCP of the life event;

(I) If paternity is necessary to establish the life event and was not established at birth, the date that paternity is established shall be the date of the life event; or

B. Employer-sponsored group coverage loss. A survivor may enroll his/her spouse/child(ren) within sixty (60) days [if the spouse/child(ren) involuntarily loses] due to an involuntary loss of employer-sponsored coverage under one (1) of the following circumstances and the coverage was in place for twelve (12) months immediately prior to the loss:

(I) Employer-sponsored medical, dental, or vision plan terminates;

(II) Eligibility for employer-sponsored coverage ends;

(III) Employer contributions toward the premiums end; or

(IV) COBRA coverage ends.

3. A survivor may change from one (1) medical plan to another during open enrollment but cannot add a spouse/child(ren). If a survivor is not already enrolled in medical, dental, and/or vision coverage, s/he cannot enroll in additional coverage during open enrollment.

4. If a survivor submits an Open Enrollment Worksheet or an Enroll/Change/Cancel/Waive form that is incomplete or contains obvious errors, MCHCP will notify the survivor of such by mail, phone, or secure message. The survivor must submit a corrected form to MCHCP by the date enrollment was originally due to MCHCP or ten (10) business days from the date the notice was mailed or sent by secure message or phone, whichever is later.

5. If a survivor is enrolled and does not complete enrollment during the open enrollment period, the survivor and his/her dependents will be enrolled at the same level of coverage in the plan offered by the public entity for the new year. If the public entity offers two (2) plan options, the survivor and his/her dependents will be enrolled at the same level of coverage in the low cost plan offered by the public entity, effective the first day of the next calendar year.

(5) Proof of Eligibility.

(F) Disabled dependent.

1. A new employee may enroll his/her permanently disabled child or an enrolled permanently disabled dependent turning age twenty-six (26) years and may continue coverage beyond age twenty-six (26) years, provided the following documentation is submitted to the plan prior to the **end of the month of the** dependent's twenty-sixth birthday for the enrolled permanently disabled dependent or within thirty-one (31) days of enrollment of a new employee and his/her permanently disabled child:

A. Evidence from the Social Security Administration (SSA) that the permanently disabled dependent or child was entitled to and receiving disability benefits prior to turning age twenty-six (26) years; and

B. A benefit verification letter dated within the last twelve (12) months from the SSA confirming the child is still considered disabled.

2. If a disabled dependent or child over the age of twenty-six (26) years is determined to be no longer disabled by the SSA, coverage will terminate the last day of the month in which the disability ends or never take effect for new enrollment requests.

3. Once the disabled dependent's coverage is cancelled or terminated, s/he will not be able to enroll at a later date.

(8) Voluntary Cancellation of Coverage.

(D) A subscriber may only cancel dental and/or vision coverage during the year for him/herself or his/her dependents for one (1) of the following reasons:

1. Upon retirement;
2. When beginning a leave of absence;
3. No longer eligible for coverage; [or]
4. When new coverage is taken through other employment[.]; or
5. When the member enrolls in Medicaid.

*AUTHORITY: section 103.059, RSMo 2016. Emergency rule filed Dec. 20, 2004, effective Jan. 1, 2005, expired June 29, 2005. Original rule filed Dec. 20, 2004, effective June 30, 2005. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Oct. 31, 2018, effective Jan. 1, 2019, expires June 29, 2019. Amended: Filed Oct. 31, 2018.*

*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 Consolidated Health Care Plan, Judith Muck, PO Box 104355, Jefferson City, MO 65110. 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 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN Division 10—Health Care Plan Chapter 3—Public Entity Membership

### PROPOSED AMENDMENT

**22 CSR 10-3.045 Plan Utilization Review Policy.** The Missouri Consolidated Health Care Plan is amending section (1).

*PURPOSE: This amendment adds preauthorization requirements for chemotherapy for cancer diagnosis, dialysis, and specialty injectibles; revises preauthorization requirements for surgery (outpatient); alphabetizes the list of medical services, and renumbers as necessary.*

(1) Clinical Management—Certain benefits are subject to a utilization review (UR) program. The program has the following components:

(A) Preauthorization of Services—The claims administrator must authorize some services in advance. Without preauthorization, any claim that requires preauthorization will be denied for payment. Members who have another primary carrier, including Medicare, are not subject to this provision except for those services that are not covered by the other primary carrier, but are otherwise subject to preauthorization under this rule. Preauthorization does not verify eligibility or payment. Preauthorizations found to have a material misrepresentation or intentional or negligent omission about the person's health condition or the cause of the condition may be rescinded.

1. The following medical services are subject to preauthorization:

- A. Ambulance services for non-emergent use, whether air or ground;
- B. Anesthesia and hospital charges for dental care for children younger than five (5) years, the severely disabled, or a person with a medical or behavioral condition that requires hospitalization;
- C. Applied behavior analysis for autism at initial service;
- D. Auditory brainstem implant (ABI);
- E. Bariatric surgery;
- F. Cardiac rehabilitation after thirty-six (36) visits within a twelve- (12-) week period;
- G. Chelation therapy;
- H. Chemotherapy for cancer diagnosis;
- [G./I. Chiropractic services after twenty-six (26) visits annually;
- [H./J. Cochlear implant device;



*[I. Chelation therapy;]*

*[J./K. Dental care;*

**L. Dialysis;**

*[K./M. Durable medical equipment (DME) over one thousand five hundred dollars (\$1,500) or DME rentals over five hundred dollars (\$500) per month;*

*[L./N. Genetic testing or counseling;*

*[M./O. Hearing Aids;*

*[N./P. Home health care;*

*[O./Q. Hospice care and palliative services;*

*[P./R. Hospital inpatient services;*

*[Q./S. Imaging (diagnostic non-emergent outpatient), including magnetic resonance imaging (MRI), magnetic resonance angiography (MRA), positron emission tomography (PET), computerized tomography scan (CT), computerized tomography angiography (CTA), electron-beam computed tomography (EBCT), and nuclear cardiology;*

*[R./T. Maternity coverage for maternity hospital stays longer than forty-eight (48) hours for vaginal delivery or ninety-six (96) hours for cesarean delivery;*

*[S./U. Nutritional counseling after six (6) sessions annually;*

*[T./V. Orthognathic surgery;*

*[U./W. Orthotics over one thousand dollars (\$1,000);*

*[V./X. Physical, speech, and occupational therapy and rehabilitation services (outpatient) after sixty (60) combined visits per calendar year;*

*[W./Y. Procedures with procedure codes ending in "T" (temporary procedure codes used for data collection, experimental, investigational, or unproven procedures);*

***[X./Z. Prosthesis over one thousand dollars (\$1,000);***

*[Y./AA. Pulmonary rehabilitation after thirty-six (36) visits within a twelve- (12-) week period;*

*[Z./BB. Skilled nursing facility;*

**CC. Specialty injectables;**

*[AA./DD. Surgery (outpatient)—The following outpatient surgical procedures: cornea transplant, potential cosmetic surgery, sleep apnea surgery, implantable stimulators, stimulators for bone growth, spinal surgery (including, but not limited to, artificial disc replacement, fusions, nonpulsed radiofrequency denervation, vertebroplasty, kyphoplasty, spinal cord stimulator trials, spinal cord stimulator implantation, and any unlisted spinal procedure), **total hip arthroplasty, total knee arthroplasty,** and oral surgery (excisions of tumors and cysts of the jaw, cheeks, lips, tongue, roof, and floor of the mouth when such conditions require pathological exams); and*

*[BB./EE. Transplants, including requests related to covered travel and lodging.*

2. The following pharmacy services included in the prescription drug plan for non-Medicare primary members are subject to preauthorization:

A. Second-step therapy medications that skip the first-step medication trial;

B. Specialty medications;

C. Medications that may be prescribed for several conditions, including some for which treatment is not medically necessary;

D. Medication refill requests that are before the time allowed for refill;

E. Medications that exceed drug quantity and day supply limitations; and

F. Medications with costs exceeding nine thousand nine hundred ninety-nine dollars and ninety-nine cents (\$9,999.99) at retail or the mail order pharmacy and one hundred forty-nine dollars and ninety-nine cents (\$149.99) for compound medications at retail or the mail order pharmacy.

3. Preauthorization timeframes.

A. A benefit determination for non-urgent preauthorization requests will be made within fifteen (15) calendar days of the receipt of the request. The fifteen (15) days may be extended by the claims administrator for up to fifteen (15) calendar days if an extension is needed as a result of matters beyond the claims administrator's con-

trol. The claims administrator will notify the member of any necessary extension prior to the expiration of the initial fifteen- (15-) calendar-day period. If a member fails to submit necessary information to make a benefit determination, the member will be given at least ninety (90) calendar days from receipt of the extension notice to respond with additional information.

B. A benefit determination for urgent preauthorization requests will be made as soon as possible based on the clinical situation, but in no case later than twenty-four (24) hours of the receipt of the request;

*AUTHORITY: section 103.059, RSMo [2000] 2016. Emergency rule filed Dec. 22, 2009, effective Jan. 1, 2010, expired June 29, 2010. Original rule filed Jan. 4, 2010, effective June 30, 2010. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Oct. 31, 2018, effective Jan. 1, 2019, expires June 29, 2019. Amended: Filed Oct. 31, 2018.*

*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 Consolidated Health Care Plan, Judith Muck, PO Box 104355, Jefferson City, MO 65110. 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 22—MISSOURI CONSOLIDATED  
HEALTH CARE PLAN  
Division 10—Health Care Plan  
Chapter 3—Public Entity Membership**

**PROPOSED RECISSION**

**22 CSR 10-3.053 PPO 1000 Plan Benefit Provisions and Covered Charges.** This rule established the policy of the board of trustees in regard to the PPO 1000 Plan Benefit Provisions and Covered Charges of the Missouri Consolidated Health Care Plan.

*PURPOSE: This rule is being rescinded because the PPO 1000 Plan will not be offered after December 31, 2018.*

*AUTHORITY: section 103.059, RSMo 2016. Emergency rule filed Dec. 22, 2009, effective Jan. 1, 2010, expired June 29, 2010. Original rule filed Jan. 4, 2010, effective June 30, 2010. For intervening history, please consult the Code of State Regulations. Emergency rescission filed Oct. 31, 2018, effective Jan. 1, 2019, expires June 29, 2019. Rescinded: Filed Oct. 31, 2018.*

*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 TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Consolidated Health Care Plan, Judith Muck, PO Box 104355, Jefferson City, MO 65110. 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 22—MISSOURI CONSOLIDATED  
HEALTH CARE PLAN  
Division 10—Health Care Plan  
Chapter 3—Public Entity Membership**

**PROPOSED AMENDMENT**

**22 CSR 10-3.055 Health Savings Account Plan Benefit Provisions and Covered Charges.** The Missouri Consolidated Health Care Plan is amending sections (1), (3), (6), (8), (10), and (12).

*PURPOSE:* This amendment revises the HSA Plan deductible, out-of-pocket maximum and clarifies influenza vaccinations, diabetes self-management education/training, family deductible, access to payment information, and maximum plan payments.

(1) Deductible—per calendar year for network: per individual, one thousand six hundred fifty dollars (\$1,650); family, three thousand three hundred dollars (\$3,300) and for non-network: per individual, [four thousand dollars (\$4,000)] **three thousand three hundred dollars (\$3,300)**; family, [eight thousand dollars (\$8,000)] **six thousand six hundred dollars (\$6,600)**.

(3) Out-of-pocket maximum.

(A) The family out-of-pocket maximum applies when two (2) or more family members are covered. The family out-of-pocket maximum must be met before the plan begins to pay one hundred percent (100%) of all covered charges for any covered family member. Out-of-pocket maximums are per calendar year, as follows:

1. Network out-of-pocket maximum for individual—[three thousand three hundred dollars (\$3,300)] **four thousand nine hundred fifty dollars (\$4,950)**;

2. Network out-of-pocket maximum for family—[six thousand six hundred dollars (\$6,600)] **nine thousand nine hundred dollars (\$9,900)**. **Any individual family member need only incur a maximum of seven thousand nine hundred dollars (\$7,900) before the plan begins paying one hundred percent (100%) of covered charges for that individual;**

3. Non-network out-of-pocket maximum for individual—[five thousand dollars (\$5,000)] **nine thousand nine hundred dollars (\$9,900)**; and

4. Non-network out-of-pocket maximum for family—[ten thousand dollars (\$10,000)] **nineteen thousand eight hundred dollars (\$19,800)**.

(6) Influenza [immunizations] **vaccinations** provided by a non-network provider will be reimbursed up to twenty-five dollars (\$25) once the member submits a receipt and a reimbursement form to the claims administrator.

(8) Four (4) diabetes **self-management** education/training visits with a certified diabetes educator when ordered by a provider and received through a network provider are covered at one hundred percent (100%) after deductible is met.

(10) Each subscriber will have access to payment information of the family unit **only when authorization is granted by the adult covered dependent(s)**.

(12) [Usual, customary, and reasonable fee allowed] **Maximum plan payment**—Non-network medical claims that are not otherwise subject to a contractual discount arrangement are processed at [the eightieth percentile of usual, customary, and reasonable fees as determined by the vendor] **one hundred ten percent (110%) of Medicare reimbursement**. Members may be held liable for the amount of the fee above the allowed amount.

*AUTHORITY:* sections 103.059 and 103.080.3., RSMo 2016.

*Emergency rule filed Dec. 22, 2009, effective Jan. 1, 2010, expired June 29, 2010. Original rule filed Jan. 4, 2010, effective June 30, 2010. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Oct. 31, 2018, effective Jan. 1, 2019, expires June 29, 2019. Amended: Filed Oct. 31, 2018.*

*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 Consolidated Health Care Plan, Judith Muck, PO Box 104355, Jefferson City, MO 65110. 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 22—MISSOURI CONSOLIDATED  
HEALTH CARE PLAN  
Division 10—Health Care Plan  
Chapter 3—Public Entity Membership**

**PROPOSED RESCISSION**

**22 CSR 10-3.056 PPO 600 Plan Benefit Provisions and Covered Charges.** This rule established the policy of the board of trustees in regard to the PPO 600 Benefit Provisions and Covered Charges for members of the Missouri Consolidated Health Care Plan.

*PURPOSE:* This rule is being rescinded because the PPO 600 Plan will not be offered after December 31, 2018.

*AUTHORITY:* section 103.059, RSMo 2016. Emergency rule filed Dec. 22, 2010, effective Jan. 1, 2011, expired June 29, 2011. Original rule filed Dec. 22, 2010, effective June 30, 2011. For intervening history, please consult the Code of State Regulations. Emergency rescission filed Oct. 31, 2018, effective Jan. 1, 2019, expires June 29, 2019. Rescinded: Filed Oct. 31, 2018.

*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 TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Consolidated Health Care Plan, Judith Muck, PO Box 104355, Jefferson City, MO 65110. 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 22—MISSOURI CONSOLIDATED  
HEALTH CARE PLAN  
Division 10—Health Care Plan  
Chapter 3—Public Entity Membership**

**PROPOSED AMENDMENT**

**22 CSR 10-3.057 Medical Plan Benefit Provisions and Covered Charges.** The Missouri Consolidated Health Care Plan is amending

sections (1) and (3).

*PURPOSE: This amendment revises the names of the medical plans and clarifies the following benefits: dental care, diabetes education, dialysis, genetic counseling, infusions, injections, nutrition counseling, and preventive services; alphabetizes the list of medical benefits; and renumbers as necessary.*

(1) Benefit Provisions Applicable to the PPO [600] 750 Plan, PPO [1000] 1250 Plan, and Health Savings Account (HSA) Plan. Subject to the plan provisions, limitations, and enrollment of the employee, the benefits are payable for covered charges incurred by a member while covered under the plans, provided the deductible requirement, if any, is met.

(3) Covered Charges Applicable to the PPO [600] 750 Plan, PPO [1000] 1250 Plan, and HSA Plan.

(E) Plan benefits for the PPO [600] 750 Plan, PPO [1000] 1250 Plan, and HSA Plan are as follows:

1. Allergy Testing and Immunotherapy. Allergy testing and allergy immunotherapy are considered medically necessary for members with clinically significant allergic symptoms. The following tests and treatments are covered:

A. Epicutaneous (scratch, prick, or puncture) when Immunoglobulin E- (IgE-) mediated reactions occur to any of the following:

- (I) Foods;
- (II) Hymenoptera venom (stinging insects);
- (III) Inhalants; or
- (IV) Specific drugs (penicillins and macromolecular agents);

B. Intradermal (Intracutaneous) when IgE-mediated reactions occur to any of the following:

- (I) Foods;
- (II) Hymenoptera venom (stinging insects);
- (III) Inhalants; or
- (IV) Specific drugs (penicillins and macromolecular agents);

C. Skin or Serial Endpoint Titration (SET), also known as intradermal dilutional testing (IDT), for determining the starting dose for immunotherapy for members highly allergic to any of the following:

- (I) Hymenoptera venom (stinging insects); or
- (II) Inhalants;

D. Skin Patch Testing: for diagnosing contact allergic dermatitis;

E. Photo Patch Testing: for diagnosing photo-allergy (such as photo-allergic contact dermatitis);

F. Photo Tests: for evaluating photo-sensitivity disorders;

G. Bronchial Challenge Test: for testing with methacholine, histamine, or antigens in defining asthma or airway hyperactivity when either of the following conditions is met:

- (I) Bronchial challenge test is being used to identify new allergens for which skin or blood testing has not been validated; or
- (II) Skin testing is unreliable;

H. Exercise Challenge Testing for exercise-induced bronchospasm;

I. Ingestion (Oral) Challenge Test for any of the following:

- (I) Food or other substances; or
- (II) Drugs when all of the following are met:
  - (a) History of allergy to a particular drug;
  - (b) There is no effective alternative drug; and
  - (c) Treatment with that drug class is essential;

J. In Vitro IgE Antibody Tests (RAST, MAST, FAST, ELISA, ImmunoCAP) are covered for any of the following:

- (I) Allergic broncho-pulmonary aspergillosis (ABPA) and certain parasitic diseases;
- (II) Food allergy;
- (III) Hymenoptera venom allergy (stinging insects);

(IV) Inhalant allergy; or

(V) Specific drugs;

K. Total Serum IgE for diagnostic evaluation in members with known or suspected ABPA and/or hyper IgE syndrome;

L. Lymphocyte transformation tests such as lymphocyte mitogen response test, PHE stimulation test, or lymphocyte antigen response assay are covered for evaluation of persons with any of the following suspected conditions:

(I) Sensitivity to beryllium;

(II) Congenital or acquired immunodeficiency diseases affecting cell-mediated immunity, such as severe combined immunodeficiency, common variable immunodeficiency, X-linked immunodeficiency with hyper IgM, Nijmegen breakage syndrome, reticular dysgenesis, DiGeorge syndrome, Nezelof syndrome, Wiscott-Aldrich syndrome, ataxia telangiectasia, and chronic mucocutaneous candidiasis;

(III) Thymoma; and

(IV) To predict allograft compatibility in the transplant setting;

M. Allergy retesting: routine allergy retesting is not considered medically necessary;

N. Allergy immunotherapy is covered for the treatment of any of the following IgE-mediated allergies:

- (I) Allergic (extrinsic) asthma;
- (II) Dust mite atopic dermatitis;
- (III) Hymenoptera (bees, hornets, wasps, fire ants) sensitive individuals;
- (IV) Mold-induced allergic rhinitis;
- (V) Perennial rhinitis;
- (VI) Seasonal allergic rhinitis or conjunctivitis when one

(1) of the following conditions are met:

(a) Member has symptoms of allergic rhinitis or asthma after natural exposure to the allergen;

(b) Member has a life-threatening allergy to insect stings; or

(c) Member has skin test or serologic evidence of IgE-mediated antibody to a potent extract of the allergen; and

(VII) Avoidance or pharmacologic therapy cannot control allergic symptoms or member has unacceptable side effects with pharmacologic therapy;

O. Other treatments: the following other treatments are covered:

(I) Rapid, rush, cluster, or acute desensitization for members with any of the following conditions:

(a) IgE antibodies to a particular drug that cannot be treated effectively with alternative medications;

(b) Insect sting (e.g., wasps, hornets, bees, fire ants) hypersensitivity (hymenoptera); or

(c) Members with moderate to severe allergic rhinitis who need treatment during or immediately before the season of the affecting allergy;

(II) Rapid desensitization is considered experimental and investigational for other indications;

P. Epinephrine kits, to prevent anaphylactic shock for members who have had life-threatening reactions to insect stings, foods, drugs, or other allergens; have severe asthma or if needed during immunotherapy;

2. Ambulance service. The following ambulance transport services are covered:

A. By ground to the nearest appropriate facility when other means of transportation would be contraindicated;

B. By air to the nearest appropriate facility when the member's medical condition is such that transportation by either basic or advanced life support ground ambulance is not appropriate or contraindicated;

3. Applied Behavior Analysis (ABA) for Autism;

4. Bariatric surgery. Bariatric surgery is covered when all of the following requirements have been met:

A. The surgery is performed at a facility accredited by the

Metabolic and Bariatric Surgery Accreditation and Quality Improvement Program (MBSAQIP) for the billed procedure;

B. The following open or laparoscopic bariatric surgery procedures are covered:

(I) Roux-en-Y gastric bypass;

(II) Sleeve gastrectomy;

(III) Biliopancreatic diversion with duodenal switch for individuals with a body mass index (BMI) greater than fifty (50);

(IV) Adjustable silicone gastric banding and adjustments of a silicone gastric banding to control the rate of weight loss and/or treat symptoms secondary to gastric restriction following an adjustable silicone gastric banding procedure;

(V) Surgical reversal of bariatric surgery when complications of the original surgery (e.g., stricture, pouch dilatation, erosion, or band slippage) cause abdominal pain, inability to eat or drink, or cause vomiting of prescribed meals;

(VI) Revision of a previous bariatric surgical procedure or conversion to another procedure due to inadequate weight loss when one (1) of the following specific criteria has been met:

(a) There is evidence of full compliance with the previously prescribed post-operative dietary and exercise program; or

(b) There is documented clinical testing demonstrating technical failure of the original bariatric surgical procedure which caused the individual to fail achieving adequate weight loss of at least fifty percent (50%) of excess body weight or failure to achieve body weight to within thirty percent (30%) of ideal body weight at least two (2) years following the original surgery;

C. All of the following criteria have been met:

(I) The member is eighteen (18) years or older or has reached full skeletal growth, and has evidence of one (1) of the following:

(a) BMI greater than forty (40); or

(b) BMI between thirty-five (35) and thirty-nine and nine tenths (39.9) and one (1) or more of the following:

I. Type II diabetes;

II. Cardiovascular disease such as stroke, myocardial infarction, stable or unstable angina pectoris, hypertension, or coronary artery bypass; or

III. Life-threatening cardiopulmonary problems such as severe sleep apnea, Pickwickian syndrome, or obesity-related cardiomyopathy; and

(II) Demonstration that dietary attempts at weight control have been ineffective through completion of a structured diet program. Commercial weight loss programs are acceptable if completed under the direction of a provider or registered dietitian and documentation of participation is available for review. One (1) structured diet program for six (6) consecutive months or two (2) structured diet programs for three (3) consecutive months each within a two- (2-) year period prior to the request for the surgical treatment of morbid obesity are sufficient. Provider-supervised programs consisting exclusively of pharmacological management are not sufficient; and

(III) A thorough multidisciplinary evaluation within the previous twelve (12) months, which include all of the following:

(a) An evaluation by a bariatric surgeon recommending surgical treatment, including a description of the proposed procedure and all of the associated current procedural terminology codes;

(b) A separate medical evaluation from a provider other than the surgeon recommending surgery that includes a medical clearance for bariatric surgery;

(c) Completion of a psychological examination from a mental health provider evaluating the member's readiness and fitness for surgery and the necessary post-operative lifestyle changes. After the evaluation, the mental health provider must provide clearance for bariatric surgery; and

(d) A nutritional evaluation by a provider or registered dietitian;

**5. Blood storage. Storage of whole blood, blood plasma, and blood products is covered in conjunction with medical treatment that requires immediate blood transfusion support;**

**/5./6. Bone Growth Stimulators.** Implantable bone growth stimulators are covered as an outpatient surgery benefit. The following nonimplantable bone growth stimulators are covered as a durable medical equipment benefit:

A. Ultrasonic osteogenesis stimulator (e.g., the Sonic Accelerated Fracture Healing System (SAFHS)) to accelerate healing of fresh fractures, fusions, or delayed unions at either of the following high-risk sites:

(I) Fresh fractures, fusions, or delayed unions of the shaft (diaphysis) of the tibia that are open or segmental; or

(II) Fresh fractures, fusions, or delayed unions of the scaphoid (carpal navicular);

B. Ultrasonic osteogenesis stimulator for non-unions, failed arthrodesis, and congenital pseudarthrosis (pseudoarthrosis) of the appendicular skeleton if there has been no progression of healing for three (3) or more months despite appropriate fracture care; or

C. Direct current electrical bone-growth stimulator is covered for the following indications:

(I) Delayed unions of fractures or failed arthrodesis at high-risk sites (i.e., open or segmental tibial fractures, carpal navicular fractures);

(II) Non-unions, failed fusions, and congenital pseudarthrosis where there is no evidence of progression of healing for three (3) or more months despite appropriate fracture care; or

(III) Members who are at high risk for spinal fusion failure when any of the following criteria is met:

(a) A multiple-level fusion entailing three (3) or more vertebrae (e.g., L3 to L5, L4 to S1, etc.);

(b) Grade II or worse spondylolisthesis; or

(c) One (1) or more failed fusions;

**/6./7. Contraception and Sterilization.** All Food and Drug Administration- (FDA-) approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity;

**/7. Blood storage. Storage of whole blood, blood plasma, and blood products is covered in conjunction with medical treatment that requires immediate blood transfusion support;]**

8. Cardiac rehabilitation. An electrocardiographically-monitored program of outpatient cardiac rehabilitation (Phase II) is covered for specific criteria when it is individually prescribed by a provider and a formal exercise stress test is completed following the event and prior to the initiation of the program. Cardiac rehabilitation is covered for members who meet one (1) of the following criteria:

A. Acute myocardial infarction (MI) (heart attack in the last twelve (12) months);

B. Coronary artery bypass grafting (CABG);

C. Stable angina pectoris;

D. Percutaneous coronary vessel remodeling;

E. Valve replacement or repair;

F. Heart transplant;

G. Coronary artery disease (CAD) associated with chronic stable angina that has failed to respond adequately to pharmacotherapy and is interfering with the ability to perform age-related activities of daily living and/or impairing functional abilities; or

H. Heart failure that has failed to respond adequately to pharmacotherapy and is interfering with the ability to perform age-related activities of daily living and/or impairing functional abilities;

9. Chelation therapy. The administration of FDA-approved chelating agents is covered for any of the following conditions:

A. Genetic or hereditary hemochromatosis;

B. Lead overload in cases of acute or long-term lead exposure;

C. Secondary hemochromatosis due to chronic iron overload due to transfusion-dependent anemias (e.g., Thalassemias, Cooley's anemia, sickle cell anemia, sideroblastic anemia);

D. Copper overload in patients with Wilson's disease;

E. Arsenic, mercury, iron, copper, or gold poisoning when

long-term exposure to and toxicity has been confirmed through lab results or clinical findings consistent with metal toxicity;

- F. Aluminum overload in chronic hemodialysis patients;
- G. Emergency treatment of hypercalcemia;
- H. Prophylaxis against doxorubicin-induced cardiomyopathy;
- I. Internal plutonium, americium, or curium contamination;

or

- J. Cystinuria;

10. Chiropractic services. Chiropractic manipulation and adjunct therapeutic procedures/modalities (e.g., mobilization, therapeutic exercise, traction) are covered when all of the following conditions are met:

A. A neuromusculoskeletal condition is diagnosed that may be relieved by standard chiropractic treatment in order to restore optimal function;

B. Chiropractic care is being performed by a licensed doctor of chiropractic who is practicing within the scope of his/her license as defined by state law;

C. The individual is involved in a treatment program that clearly documents all of the following:

(I) A prescribed treatment program that is expected to result in significant therapeutic improvement over a clearly defined period of time;

(II) The symptoms being treated;

(III) Diagnostic procedures and results;

(IV) Frequency, duration, and results of planned treatment modalities;

(V) Anticipated length of treatment plan with identification of quantifiable, attainable short-term and long-term goals; and

(VI) Demonstrated progress toward significant functional gains and/or improved activity tolerances;

D. Following previous successful treatment with chiropractic care, acute exacerbation or re-injury are covered when all of the following criteria are met:

(I) The member reached maximal therapeutic benefit with prior chiropractic treatment;

(II) The member was compliant with a self-directed home-care program;

(III) Significant therapeutic improvement is expected with continued treatment; and

(IV) The anticipated length of treatment is expected to be short-term (e.g., no more than six (6) visits within a three- (3-) week period);

11. Clinical trials. Routine member care costs incurred as the result of a Phase I, II, III, or IV clinical trial that is conducted in relation to the prevention, detection, or treatment of cancer or other life-threatening disease or condition are covered when—

A. The study or investigation is conducted under an investigational new drug application reviewed by the FDA; or

B. Is a drug trial that is exempt from having such an investigational new drug application. Life-threatening condition means any disease or condition from which the likelihood of death is probable unless the course of the disease or condition is interrupted; and

C. Routine member care costs include all items and services consistent with the coverage provided in plan benefits that would otherwise be covered for a member not enrolled in a clinical trial. Routine patient care costs do not include the investigational item, device, or service itself; items and services that are provided solely to satisfy data collection and analysis needs and are not used in the direct clinical management of the member; or a service that is clearly inconsistent with widely accepted and established standards of care for a particular diagnosis;

D. The member must be eligible to participate in the clinical trial according to the trial protocol with respect to treatment of cancer or other life-threatening disease or condition; and

E. The clinical trial must be approved or funded by one (1) of the following:

(I) National Institutes of Health (NIH);

(II) Centers for Disease Control and Prevention (CDC);

(III) Agency for Health Care Research and Quality;

(IV) Centers for Medicare & Medicaid Services (CMS);

(V) A cooperative group or center of any of the previously named agencies or the Department of Defense or the Department of Veterans Affairs;

(VI) A qualified non-governmental research entity identified in the guidelines issued by the National Institutes of Health for center support grants; or

(VII) A study or investigation that is conducted by the Department of Veterans Affairs, the Department of Defense, or the Department of Energy and has been reviewed and approved to be comparable to the system of peer review of studies and investigations used by the NIH and assures unbiased review of the highest scientific standards by qualified individuals who have no interest in the outcome of the review;

12. Cochlear implant device. Uniaural (monaural) or binaural (bilateral) cochlear implantation and necessary replacement batteries are covered for a member with bilateral, pre- or post-linguistic, sensorineural, moderate-to-profound hearing impairment when there is reasonable expectation that a significant benefit will be achieved from the device and when the following age-specific criteria are met:

A. Auditory brainstem implant. Auditory brainstem implant (ABI) covered for the diagnosis of neurofibromatosis type II, von Recklinghausen's disease, or when a member is undergoing bilateral removal of tumors of the auditory nerves, and it is anticipated that the member will become completely deaf as a result of the surgery, or the member had bilateral auditory nerve tumors removed and is now bilaterally deaf;

(I) For an adult (age eighteen (18) years or older) with BOTH of the following:

(a) Bilateral, severe to profound sensorineural hearing loss determined by a pure-tone average of seventy (70) decibels (dB) hearing loss or greater at five hundred (500) hertz (Hz), one thousand (1000) Hz, and two thousand (2000) Hz; and

(b) Member has limited benefit from appropriately fitted binaural hearing aids. Limited benefit from amplification is defined by test scores of forty percent (40%) correct or less in best-aided listening condition on open-set sentence cognition (e.g., Central Institute for the Deaf (CID) sentences, Hearing in Noise Test (HINT) sentences, and Consonant-Nucleus-Consonant (CNC) test);

(II) For a child age twelve (12) months to seventeen (17) years, eleven (11) months with both of the following:

(a) Profound, bilateral sensorineural hearing loss with thresholds of ninety (90) dB or greater at one thousand (1000) Hz; and

(b) Limited or no benefit from a three- (3-) month trial of appropriately fitted binaural hearing aids;

(III) For children four (4) years of age or younger, with one (1) of the following:

(a) Failure to reach developmentally appropriate auditory milestones measured using the Infant-Toddler Meaningful Auditory Integration Scale, the Meaningful Auditory Integration Scale, or the Early Speech Perception test; or

(b) Less than twenty percent (20%) correct on open-set word recognition test Multisyllabic Lexical Neighborhood Test (MLNT) in conjunction with appropriate amplification and participation in intensive aural habilitation over a three- (3-) to six- (6-) month period;

(IV) For children older than four (4) years of age with one (1) of the following:

(a) Less than twelve percent (12%) correct on the Phonetically Balanced-Kindergarten Test; or

(b) Less than thirty percent (30%) correct on the HINT for children, the open-set Multisyllabic Lexical Neighborhood Test (MLNT) or Lexical Neighborhood Test (LNT), depending on the child's cognitive ability and linguistic skills; and

(V) A three- (3-) to six- (6-) month hearing aid trial has been undertaken by a child without previous experience with hearing aids;

B. Radiologic evidence of cochlear ossification;

C. The following additional medical necessity criteria must also be met for uniaural (monaural) or binaural (bilateral) cochlear implantation in adults and children:

(I) Member must be enrolled in an educational program that supports listening and speaking with aided hearing;

(II) Member must have had an assessment by an audiologist and from an otolaryngologist experienced in this procedure indicating the likelihood of success with this device;

(III) Member must have no medical contraindications to cochlear implantation (e.g., cochlear aplasia, active middle ear infection); and

(IV) Member must have arrangements for appropriate follow-up care, including the speech therapy required to take full advantage of this device;

D. A second cochlear implant is covered in the contralateral (opposite) ear as medically necessary in an individual with an existing unilateral cochlear implant when the hearing aid in the contralateral ear produces limited or no benefit;

E. The replacement of an existing cochlear implant is covered when either of the following criteria is met:

(I) Currently used component is no longer functional and cannot be repaired; or

(II) Currently used component renders the implant recipient unable to adequately and/or safely perform his/her age-appropriate activities of daily living; and

F. Post-cochlear or ABI rehabilitation program (aural rehabilitation) is covered to achieve benefit from a covered device;

### 13. Dental care.

A. Dental care is covered for *[treatment of trauma to the mouth, jaw, teeth, or contiguous sites, as a result of accidental injury.] the following:*

(I) Treatment to reduce trauma and restorative services limited to dental implants only when the result of accidental injury to sound natural teeth and tissue that are viable, functional, and free of disease. **Treatment must be initiated within sixty (60) days of accident; and**

(II) Restorative services limited to dental implants when needed as a result of cancerous or non-cancerous tumors and cysts, cancer, and post-surgical sequelae.

B. The administration of general anesthesia, monitored anesthesia care, and hospital charges for dental care are covered for children younger than five (5) years, the severely disabled, or a person with a medical or behavioral condition that requires hospitalization when provided in a network or non-network hospital or surgical center;

14. Diabetes **self-management training**//E/education when prescribed by a provider and taught by a Certified Diabetes Educator through a medical network provider;

**15. Dialysis is covered when received through a network provider;**

*[15.]16. Durable medical equipment (DME) is covered when ordered by a provider to treat an injury or illness. DME includes, but is not limited to, the following:*

A. Insulin pumps;

B. Oxygen;

C. Augmentative communication devices;

D. Manual and powered mobility devices;

E. Disposable supplies that do not withstand prolonged use and are periodically replaced, including, but not limited to, the following:

(I) Colostomy and ureterostomy bags;

(II) Prescription compression stockings limited to two (2) pairs or four (4) individual stockings per plan year;

F. Blood pressure cuffs/monitors with a diagnosis of diabetes;

G. Repair and replacement of DME is covered when any of the following criteria are met:

(I) Repairs, including the replacement of essential accessories, which are necessary to make the item or device serviceable;

(II) Routine wear and tear of the equipment renders it non-functional and the member still requires the equipment; or

(III) The provider has documented that the condition of the member changes or if growth-related;

*[16.]17. Emergency room services. Coverage is for emergency medical conditions. If a member is admitted to the hospital, s/he may be required to transfer to network facility for maximum benefit. Hospital and ancillary charges are paid as a network benefit;*

*[17.]18. Eye glasses and contact lenses. Coverage limited to charges incurred in connection with the fitting of eye glasses or contact lenses for initial placement within one (1) year following cataract surgery;*

*[18.]19. Foot care (trimming of nails, corns, or calluses). Foot care services are covered when administered by a provider and—*

A. When associated with systemic conditions that are significant enough to result in severe circulatory insufficiency or areas of desensitization in the lower extremities including, but not limited to, any of the following:

(I) Diabetes mellitus;

(II) Peripheral vascular disease; or

(III) Peripheral neuropathy.

(IV) Evaluation/debridement of mycotic nails, in the absence of a systemic condition, when both of the following conditions are met:

(a) Pain or secondary infection resulting from the thickening and dystrophy of the infected toenail plate; and

(b) If the member is ambulatory, pain markedly limits ambulation;

*[19.]20. Genetic counseling. Pre-test and post-test genetic counseling with a provider or a licensed or certified genetic counselor are covered when a member is recommended for covered heritable genetic testing.*

A. Genetic counseling in connection with pregnancy management is covered only for evaluation of any of the following:

(I) Couples who are closely related genetically (e.g., consanguinity, incest);

(II) Familial cancer disorders;

(III) Individuals recognized to be at increased risk for genetic disorders;

(IV) Infertility cases where either parent is known to have a chromosomal abnormality;

(V) Primary amenorrhea, *[azospermia]* **azoospermia**, abnormal sexual development, or failure in developing secondary sexual characteristics;

(VI) Mother is a known, or presumed carrier of an X linked recessive disorder;

(VII) One (1) or both parents are known carriers of an autosomal recessive disorder;

(VIII) Parents of a child born with a genetic disorder, birth defect, inborn error of metabolism, or chromosome abnormality;

(IX) Parents of a child with intellectual developmental disorders, autism, developmental delays, or learning disabilities;

(X) Pregnant women who, based on prenatal ultrasound tests or an abnormal multiple marker screening test, maternal serum alpha-fetoprotein (AFP) test, test for sickle cell anemia, or tests for other genetic abnormalities have been told their pregnancy may be at increased risk for complications or birth defects;

(XI) Pregnant women age thirty-five (35) years or older at delivery;

(XII) Pregnant women, or women planning pregnancy, exposed to potentially teratogenic, mutagenic, or carcinogenic agents such as chemicals, drugs, infections, or radiation;

(XIII) Previous unexplained stillbirth or repeated (three (3) or more; two (2) or more among infertile couples) first-trimester miscarriages, where there is suspicion of parental or fetal chromosome abnormalities; or

(XIV) When contemplating pregnancy, either parent affected with an autosomal dominant disorder;

*[20.]21. Genetic testing.*

A. Genetic testing is covered to establish a molecular diagnosis of an inheritable disease when all of the following criteria are met:

(I) The member displays clinical features or is at direct risk of inheriting the mutation in question (pre-symptomatic);

(II) The result of the test will directly impact the treatment being delivered to the member;

(III) The testing method is considered scientifically valid for identification of a genetically-linked heritable disease; and

(IV) After history, physical examination, pedigree analysis, genetic counseling, and completion of conventional diagnostic studies, a definitive diagnosis remains uncertain;

B. Genetic testing for the breast cancer susceptibility gene (BRCA) when family history is present;

**[21.]22.** Hair analysis. Chemical hair analysis is covered for the diagnosis of suspected chronic arsenic poisoning. Other purposes are considered experimental and investigational;

**[22.]23.** Hair prostheses. Prostheses and expenses for scalp hair prostheses worn for hair loss are covered for alopecia areata or alopecia totalis for children eighteen (18) years of age or younger. The annual maximum is two hundred dollars (\$200), and the lifetime maximum is three thousand two hundred dollars (\$3,200);

**[23.]24.** Hearing aids (per ear). Hearing aids covered for conductive hearing loss unresponsive to medical or surgical interventions, sensorineural hearing loss, and mixed hearing loss.

A. Prior to receiving a hearing aid members must receive—

(I) A medical exam by a physician or other qualified provider to identify any medically treatable conditions that may affect hearing; and

(II) A comprehensive hearing test to assess the need for hearing aids conducted by a certified audiologist, hearing instrument specialist, or other provider licensed or certified to administer this test.

B. Covered once every two (2) years. If the cost of one (1) hearing aid exceeds the amount listed below, member is also responsible for charges over that amount.

(I) Conventional: one thousand dollars (\$1,000).

(II) Programmable: two thousand dollars (\$2,000).

(III) Digital: two thousand five hundred dollars (\$2,500).

(IV) Bone Anchoring Hearing Aid (BAHA): three thousand five hundred dollars (\$3,500);

**[24.]25.** Hearing testing. One (1) hearing test per year. Additional hearing tests are covered if recommended by provider;

**[25.]26.** Home health care. Skilled home health nursing care is covered for members who are homebound because of injury or illness (i.e., the member leaves home only with considerable and taxing effort, and absences from home are infrequent or of short duration, or to receive medical care). Services must be performed by a registered nurse or licensed practical nurse, licensed therapist, or a registered dietitian. Covered services include:

A. Home visits instead of visits to the provider's office that do not exceed the usual and customary charge to perform the same service in a provider's office;

B. Intermittent nurse services. Benefits are paid for only one (1) nurse at any one (1) time, not to exceed four (4) hours per twenty-four- (24-) hour period;

C. Nutrition counseling provided by or under the supervision of a registered dietitian;

D. Physical, occupational, respiratory, and speech therapy provided by or under the supervision of a licensed therapist;

E. Medical supplies, drugs or medication prescribed by provider, and laboratory services to the extent that the plan would have covered them under this plan if the covered person had been in a hospital;

F. A home health care visit is defined as—

(I) A visit by a nurse providing intermittent nurse services (each visit includes up to a four- (4-) hour consecutive visit in a twenty-four- (24-) hour period if clinical eligibility for coverage is met) or a single visit by a therapist or a registered dietitian; and

G. Benefits cannot be provided for any of the following:

(I) Homemaker or housekeeping services;

(II) Supportive environment materials such as handrails, ramps, air conditioners, and telephones;

(III) Services performed by family members or volunteer workers;

(IV) "Meals on Wheels" or similar food service;

(V) Separate charges for records, reports, or transportation;

(VI) Expenses for the normal necessities of living such as food, clothing, and household supplies; and

(VII) Legal and financial counseling services, unless otherwise covered under this plan;

**[26.]27.** Hospice care and palliative services (inpatient or outpatient). Includes bereavement and respite care. Hospice care services, including pre-hospice evaluation or consultation, are covered when the individual is terminally ill and expected to live six (6) months or less, potentially curative treatment for the terminal illness is not part of the prescribed plan of care, the individual or appointed designee has formally consented to hospice care (i.e., care directed mostly toward palliative care and symptom management), and the hospice services are provided by a certified/accredited hospice agency with care available twenty-four (24) hours per day, seven (7) days per week.

A. When the above criteria are met, the following hospice care services are covered:

(I) Assessment of the medical and social needs of the terminally ill person, and a description of the care to meet those needs;

(II) Inpatient care in a facility when needed for pain control and other acute and chronic symptom management, psychological and dietary counseling, physical or occupational therapy, and part-time home health care services;

(III) Outpatient care for other services as related to the terminal illness, which include services of a physician, physical or occupational therapy, and nutrition counseling provided by or under the supervision of a registered dietitian; and

(IV) Bereavement counseling benefits which are received by a member's close relative when directly connected to the member's death and bundled with other hospice charges. The services must be furnished within twelve (12) months of death;

**[27.]28.** Hospital (includes inpatient, outpatient, and surgical centers).

A. The following benefits are covered:

(I) Semi-private room and board. For network charges, this rate is based on network repricing. For non-network charges, any charge over a semi-private room charge will be a covered expense only when clinical eligibility for coverage is met. If the hospital has no semi-private rooms, the plan will allow the private room rate subject to usual, customary, and reasonable charges or the network rate, whichever is applicable;

(II) Intensive care unit room and board;

(III) Surgery, therapies, and ancillary services including, but not limited to:

(a) Cornea transplant;

(b) Coverage for breast reconstruction surgery or prostheses following mastectomy and lumpectomy is available to both females and males. A diagnosis of breast cancer is not required for breast reconstruction services to be covered, and the timing of reconstructive services is not a factor in coverage;

(c) Sterilization for the purpose of birth control is covered;

(d) Cosmetic/reconstructive surgery is covered to repair a functional disorder caused by disease or injury;

(e) Cosmetic/reconstructive surgery is covered to repair a congenital defect or abnormality for a member younger than nineteen (19) years; and

(f) Blood, blood plasma, and plasma expanders are covered, when not available without charge;

(IV) Inpatient mental health services are covered when

authorized by a physician for treatment of a mental health disorder. Inpatient mental health services are covered, subject to all of the following:

(a) Member must be ill in more than one (1) area of daily living to such an extent that s/he is rendered dysfunctional and requires the intensity of an inpatient setting for treatment. Without such inpatient treatment, the member's condition would deteriorate;

(b) The member's mental health disorder must be treatable in an inpatient facility;

(c) The member's mental health disorder must meet diagnostic criteria as described in the most recent edition of the *American Psychiatric Association Diagnostic and Statistical Manual (DSM)*. If outside of the United States, the member's mental health disorder must meet diagnostic criteria established and commonly recognized by the medical community in that region;

(d) The attending provider must be a psychiatrist. If the admitting provider is not a psychiatrist, a psychiatrist must be attending to the member within twenty-four (24) hours of admittance. Such psychiatrist must be United States board-eligible or board-certified. If outside of the United States, inpatient services must be provided by an individual who has received a diploma from a medical school recognized by the government agency in the country where the medical school is located. The attending provider must meet the requirements, if any, set out by the foreign government or regionally-recognized licensing body for treatment of mental health disorders;

(e) Day treatment (partial hospitalization) for mental health services means a day treatment program that offers intensive, multidisciplinary services provided on less than a full-time basis. The program is designed to treat patients with serious mental or nervous disorders and offers major diagnostic, psychosocial, and pre-occupational modalities. Such programs must be a less-restrictive alternative to inpatient treatment; and

(f) Mental health services received in a residential treatment facility that is licensed by the state in which it operates and provides treatment for mental health disorders is covered. This does not include services provided at a group home. If outside of the United States, the residential treatment facility must be licensed or approved by the foreign government or an accreditation or licensing body working in that foreign country; and

(V) Outpatient mental health services are covered if the member is at a therapeutic medical or mental health facility and treatment includes measurable goals and continued progress toward functional behavior and termination of treatment. Continued coverage may be denied when positive response to treatment is not evident. Treatment must be provided by one (1) of the following:

(a) A United States board-eligible or board-certified psychiatrist licensed in the state where the treatment is provided;

(b) A therapist with a doctorate or master's degree that denotes a specialty in psychiatry (Psy.D.);

(c) A state-licensed psychologist;

(d) A state-licensed or certified social worker practicing within the scope of his or her license or certification; or

(e) Licensed professional counselor;

**29. Infusions are covered when received through a network provider. Medications (specialty and non-specialty) that can be safely obtained through a pharmacy and which may be self-administered are not a medical plan benefit but are covered as part of the pharmacy benefit;**

[28.]30. Injections [and infusions. Injections and infusions are covered]. See preventive services for coverage of [immunizations/ vaccinations]. See contraception and sterilization for coverage of birth control injections. Medications (specialty and non-specialty) that can be safely obtained through a pharmacy and which may be self-administered[, including injectables,] are not a medical plan benefit but are covered as part of the pharmacy benefit.

A. B12 injections are covered for the following conditions:

(I) Pernicious anemia;

(II) Crohn's disease;

(III) Ulcerative colitis;

(IV) Inflammatory bowel disease;

(V) Intestinal malabsorption;

(VI) Fish tapeworm anemia;

(VII) Vitamin B12 deficiency;

(VIII) Other vitamin B12 deficiency anemia;

(IX) Macrocytic anemia;

(X) Other specified megaloblastic anemias;

(XI) Megaloblastic anemia;

(XII) Malnutrition of alcoholism;

(XIII) Thrombocytopenia, unspecified;

(XIV) Dementia in conditions classified elsewhere;

(XV) Polyneuropathy in diseases classified elsewhere;

(XVI) Alcoholic polyneuropathy;

(XVII) Regional enteritis of small intestine;

(XVIII) Postgastric surgery syndromes;

(XIX) Other prophylactic chemo-therapy;

(XX) Intestinal bypass or anastomosis status;

(XXI) Acquired absence of stomach;

(XXII) Pancreatic insufficiency; and

(XXIII) Ideopathic progressive polyneuropathy;

[29.]31. Lab, X-ray, and other diagnostic procedures. Outpatient diagnostic services are covered when tests or procedures are performed for a specific symptom and to detect or monitor a condition. Professional charges for automated lab services performed by an out-of-network provider are not covered;

[30.]32. Maternity coverage. Prenatal and postnatal care is covered. Routine prenatal office visits and screenings recommended by the Health Resources and Services Administration are covered at one hundred percent (100%). Other care is subject to the deductible and coinsurance. Newborns and their mothers are allowed hospital stays of at least forty-eight (48) hours after vaginal birth and ninety-six (96) hours after cesarean section birth. If discharge occurs earlier than specific time periods, the plan shall provide coverage for post discharge care that shall consist of a two- (2-) visit minimum, at least one (1) in the home;

[31.]33. Nutritional counseling. Individualized nutritional evaluation and counseling for the management of any medical condition for which appropriate diet and eating habits are essential to the overall treatment program is covered when ordered by a physician or physician extender and provided by a licensed health-care professional (e.g., a registered dietitian);

[32.]34. Nutrition therapy.

A. Nutrition therapy is covered only when the following criteria are met:

(I) Nutrition therapy is the sole source of nutrients or a significant percentage of the daily caloric intake;

(II) Nutrition therapy is used in the treatment of, or in association with, a demonstrable disease, condition, or disorder;

(III) Nutrition therapy is necessary to sustain life or health;

(IV) Nutrition therapy is prescribed by a provider; and

(V) Nutrition therapy is managed, monitored, and evaluated on an on-going basis, by a provider.

B. Only the following types of nutrition therapy are covered:

(I) Enteral Nutrition (EN). EN is the provision of nutritional requirements via the gastrointestinal tract. EN can be taken orally or through a tube into the stomach or small intestine;

(II) Parenteral Nutrition Therapy (PN) and Total Parenteral Nutrition (TPN). PN is liquid nutrition administered through a vein to provide part of daily nutritional requirements. TPN is a type of PN that provides all daily nutrient needs. PN or TPN are covered when the member's nutritional status cannot be adequately maintained on oral or enteral feedings;

(III) Intradialytic Parenteral Nutrition (IDPN). IDPN is a type of PN that is administered to members on chronic hemodialysis during dialysis sessions to provide most nutrient needs. IDPN is covered when the member is on chronic hemodialysis and nutritional status cannot be adequately maintained on oral or enteral feedings;

[33.]35. Office visit. Member encounter with a provider for health care, mental health, or substance use disorder in an office,



clinic, or ambulatory care facility is covered based on the service, procedure, or related treatment plan;

**[34.]36.** Oral surgery is covered for injury, tumors, or cysts. Oral surgery includes, but is not limited to, reduction of fractures and dislocation of the jaws; external incision and drainage of cellulites; incision of accessory sinuses, salivary glands, or ducts; excision of exostosis of jaws and hard palate; and frenectomy. Treatment must be initiated within sixty (60) days of accident. No coverage for dental care, including oral surgery, as a result of poor dental hygiene. Extractions of bony or partial bony impactions are excluded;

**[35.]37.** Orthognathic or Jaw Surgery. Orthognathic or jaw surgery is covered when one (1) of the following conditions is documented and diagnosed:

A. Acute traumatic injury, and post-surgical sequela;  
B. Cancerous or non-cancerous tumors and cysts, cancer, and post-surgical sequela;

C. Cleft lip/palate (for cleft lip/palate related jaw surgery); or  
D. Physical or physiological abnormality when one (1) of the following criteria is met:

(I) Anteroposterior Discrepancies—

(a) Maxillary/Mandibular incisor relationship: over jet of 5mm or more, or a 0 to a negative value (norm 2mm);

(b) Maxillary/Mandibular anteroposterior molar relationship discrepancy of 4mm or more (norm 0 to 1mm); or

(c) These values represent two (2) or more standard deviation from published norms;

(II) Vertical Discrepancies—

(a) Presence of a vertical facial skeletal deformity which is two (2) or more standard deviations from published norms for accepted skeletal landmarks;

(b) Open bite with no vertical overlap of anterior teeth or unilateral or bilateral posterior open bite greater than 2mm;

(c) Deep overbite with impingement or irritation of buccal or lingual soft tissues of the opposing arch; or

(d) Supraeruption of a dentoalveolar segment due to lack of occlusion;

(III) Transverse Discrepancies—

(a) Presence of a transverse skeletal discrepancy which is two (2) or more standard deviations from published norms; or

(b) Total bilateral maxillary palatal cusp to mandibular-fossa discrepancy of 4mm or greater, or a unilateral discrepancy of 3mm or greater, given normal axial inclination of the posterior teeth; or

(IV) Asymmetries—

(a) Anteroposterior, transverse, or lateral asymmetries greater than 3mm with concomitant occlusal asymmetry;

(V) Masticatory (chewing) and swallowing dysfunction due to malocclusion (e.g., inability to incise or chew solid foods, choking on incompletely masticated solid foods, damage to soft tissue during mastication, malnutrition);

(VI) Speech impairment; or

(VII) Obstructive sleep apnea or airway dysfunction;

**[36.]38.** Orthotics.

A. Ankle-Foot Orthosis (AFO) and Knee-Ankle-Foot Orthosis (KAFO).

(I) Basic coverage criteria for AFO and KAFO used during ambulation are as follows:

(a) AFO is covered when used in ambulation for members with weakness or deformity of the foot and ankle, which require stabilization for medical reasons, and have the potential to benefit functionally;

(b) KAFO is covered when used in ambulation for members when the following criteria are met:

I. Member is covered for AFO; and

II. Additional knee stability is required; and

(c) AFO and KAFO that are molded-to-patient-model, or custom-fabricated, are covered when used in ambulation, only when the basic coverage criteria and one (1) of the following criteria are met:

I. The member could not be fitted with a prefabricated AFO;

II. AFO or KAFO is expected to be permanent or for more than six (6) months duration;

III. Knee, ankle, or foot must be controlled in more than one (1) plane;

IV. There is documented neurological, circulatory, or orthopedic status that requires custom fabricating over a model to prevent tissue injury; or

V. The member has a healing fracture which lacks normal anatomical integrity or anthropometric proportions.

(II) AFO and KAFO Not Used During Ambulation.

(a) AFO and KAFO not used in ambulation are covered if the following criteria are met:

I. Passive range of motion test was measured with goniometer and documented in the medical record;

II. Documentation of an appropriate stretching program administered under the care of provider or caregiver;

III. Plantar flexion contracture of the ankle with dorsiflexion on passive range of motion testing of at least ten degrees (10°) (i.e., a non-fixed contracture);

IV. Reasonable expectation of the ability to correct the contracture;

V. Contracture is interfering or expected to interfere significantly with the patient's functional abilities; and

VI. Used as a component of a therapy program which includes active stretching of the involved muscles and/or tendons; or  
VII. Member has plantar fasciitis.

(b) Replacement interface for AFO or KAFO is covered only if member continues to meet coverage criteria and is limited to a maximum of one (1) per six (6) months.

B. Cast Boot, Post-Operative Sandal or Shoe, or Healing Shoe. A cast boot, post-operative sandal or shoe, or healing shoe is covered for one (1) of the following indications:

(I) To protect a cast from damage during weight-bearing activities following injury or surgery;

(II) To provide appropriate support and/or weight-bearing surface to a foot following surgery;

(III) To promote good wound care and/or healing via appropriate weight distribution and foot protection; or

(IV) When the patient is currently receiving treatment for lymphedema and the foot cannot be fitted into conventional footwear.

C. Cranial Orthoses. Cranial orthosis is covered for Synostotic and Non-Synostotic Plagiocephaly. Plagiocephaly is an asymmetrically shaped head. Synostotic Plagiocephaly is due to premature closure of cranial sutures. Non-Synostotic Plagiocephaly is from positioning or deformation of the head. Cranial orthosis is the use of a special helmet or band on the head which aids in molding the shape of the cranium to normal. Initial reimbursement shall cover any subsequent revisions.

D. Elastic Supports. Elastic supports are covered when prescribed for one (1) of the following indications:

(I) Severe or incapacitating vascular problems, such as acute thrombophlebitis, massive venous stasis, or pulmonary embolism;

(II) Venous insufficiency;

(III) Varicose veins;

(IV) Edema of lower extremities;

(V) Edema during pregnancy; or

(VI) Lymphedema.

E. Footwear Incorporated Into a Brace for Members with Skeletally Mature Feet. Footwear incorporated into a brace must be billed by the same supplier billing for the brace. The following types of footwear incorporated into a brace are covered:

(I) Orthopedic footwear;

(II) Other footwear such as high top, depth inlay, or custom;

(III) Heel replacements, sole replacements, and shoe transfers involving shoes on a brace;

(IV) Inserts for a shoe that is an integral part of a brace and are required for the proper functioning of the brace; or

(V) Other shoe modifications if they are on a shoe that is an integral part of a brace and are required for the proper functioning of the brace.

F. Foot Orthoses. Custom, removable foot orthoses are covered for members who meet the following criteria:

(I) Member with skeletally mature feet who has any of the following conditions:

- (a) Acute plantar fasciitis;
- (b) Acute sport-related injuries with diagnoses related to inflammatory problems such as bursitis or tendonitis;
- (c) Calcaneal bursitis (acute or chronic);
- (d) Calcaneal spurs (heel spurs);
- (e) Conditions related to diabetes;
- (f) Inflammatory conditions (e.g., sesamoiditis, sub-metatarsal bursitis, synovitis, tenosynovitis, synovial cyst, osteomyelitis, and plantar fascial fibromatosis);
- (g) Medial osteoarthritis of the knee;
- (h) Musculoskeletal/arthropathic deformities including deformities of the joint or skeleton that impairs walking in a normal shoe (e.g., bunions, hallux valgus, talipes deformities, pes deformities, or anomalies of toes);
- (i) Neurologically impaired feet including neuroma, tarsal tunnel syndrome, ganglionic cyst;
- (j) Neuropathies involving the feet, including those associated with peripheral vascular disease, diabetes, carcinoma, drugs, toxins, and chronic renal disease; or
- (k) Vascular conditions including ulceration, poor circulation, peripheral vascular disease, Buerger's disease (thromboangiitis obliterans), and chronic thrombophlebitis;

(II) Member with skeletally immature feet who has any of the following conditions:

- (a) Hallux valgus deformities;
- (b) In-toe or out-toe gait;
- (c) Musculoskeletal weakness such as pronation or pes planus;
- (d) Structural deformities such as tarsal coalitions; or
- (e) Torsional conditions such as metatarsus adductus, tibial torsion, or femoral torsion.

G. Helmets. Helmets are covered when cranial protection is required due to a documented medical condition that makes the member susceptible to injury during activities of daily living.

H. Hip Orthosis. Hip orthosis is covered for one (1) of the following indications:

- (I) To reduce pain by restricting mobility of the hip;
- (II) To facilitate healing following an injury to the hip or related soft tissues;
- (III) To facilitate healing following a surgical procedure of the hip or related soft tissue; or
- (IV) To otherwise support weak hip muscles or a hip deformity.

I. Knee Orthosis. Knee orthosis is covered for one (1) of the following indications:

- (I) To reduce pain by restricting mobility of the knee;
- (II) To facilitate healing following an injury to the knee or related soft tissues;
- (III) To facilitate healing following a surgical procedure on the knee or related soft tissue; or
- (IV) To otherwise support weak knee muscles or a knee deformity.

J. Orthopedic Footwear for Diabetic Members.

(I) Orthopedic footwear, therapeutic shoes, inserts, or modifications to therapeutic shoes are covered for diabetic members if any following criteria are met:

- (a) Previous amputation of the other foot or part of either foot;
- (b) History of previous foot ulceration of either foot;
- (c) History of pre-ulcerative calluses of either foot;

(d) Peripheral neuropathy with evidence of callus formation of either foot;

- (e) Foot deformity of either foot; or
- (f) Poor circulation in either foot.

(II) Coverage is limited to one (1) of the following within one (1) year:

(a) One (1) pair of custom molded shoes (which includes inserts provided with these shoes) and two (2) additional pairs of inserts;

(b) One (1) pair of depth shoes and three (3) pairs of inserts (not including the non-customized removable inserts provided with such shoes); or

(c) Up to three (3) pairs of inserts not dispensed with diabetic shoes if the supplier of the shoes verifies in writing that the patient has appropriate footwear into which the insert can be placed.

K. Orthotic-Related Supplies. Orthotic-related supplies are covered when necessary for the function of the covered orthotic device.

L. Spinal Orthoses. A thoracic-lumbar-sacral orthosis, lumbar orthosis, lumbar-sacral orthosis, and cervical orthosis are covered for the following indications:

- (I) To reduce pain by restricting mobility of the trunk;
- (II) To facilitate healing following an injury to the spine or related soft tissues;
- (III) To facilitate healing following a surgical procedure of the spine or related soft tissue; or
- (IV) To otherwise support weak spinal muscles or a deformed spine.

M. Trusses. Trusses are covered when a hernia is reducible with the application of a truss.

N. Upper Limb Orthosis. Upper limb orthosis is covered for the following indications:

- (I) To reduce pain by restricting mobility of the joint(s);
- (II) To facilitate healing following an injury to the joint(s) or related soft tissues; or
- (III) To facilitate healing following a surgical procedure of the joint(s) or related soft tissue.

O. Orthotic Device Replacement. When repairing an item that is no longer cost-effective and is out of warranty, the plan will consider replacing the item subject to review of medical necessity and life expectancy of the device;

### **[37.]39. Preventive services.**

A. Services recommended by the U.S. Preventive Services Task Force (categories A and B).

B. *[Immunizations]* **Vaccinations** recommended by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

C. Preventive care and screenings for infants, children, and adolescents supported by the Health Resources and Services Administration.

D. Preventive care and screenings for women supported by the Health Resources and Services Administration.

E. Preventive exams and other services ordered as part of the exam. For benefits to be covered as preventive, they must be coded by the provider as routine, without indication of an injury or illness.

F. Cancer screenings. One (1) per calendar year. Additional screenings beyond one (1) per calendar year covered as diagnostic unless otherwise specified—

(I) Mammograms—no age limit. Standard two-dimensional (2D) breast mammography and breast tomosynthesis (three-dimensional (3D) mammography);

(II) Pap smears—no age limit;

(III) Prostate—no age limit; and

(IV) Colorectal screening—no age limit.

G. *[Zoster vaccination (shingles)–The zoster vaccine is covered for members age fifty (50) years and older]* **Online weight management program offered through the plan's exclusive provider arrangement;**

**[38.]40. Prostheses (prosthetic devices).** Basic equipment that

meets medical needs. Repair and replacement is covered due to normal wear and tear, if there is a change in medical condition, or if growth-related;

[39.]41. Pulmonary rehabilitation. Comprehensive, individualized, goal-directed outpatient pulmonary rehabilitation covered for pre- and post-operative intervention for lung transplantation and lung volume reduction surgery (LVRS) or when all of the following apply:

A. Member has a reduction of exercise tolerance that restricts the ability to perform activities of daily living (ADL) or work;

B. Member has chronic pulmonary disease (including asthma, emphysema, chronic bronchitis, chronic airflow obstruction, cystic fibrosis, alpha-1 antitrypsin deficiency, pneumoconiosis, asbestosis, radiation pneumonitis, pulmonary fibrosis, pulmonary alveolar proteinosis, pulmonary hemosiderosis, fibrosing alveolitis), or other conditions that affect pulmonary function such as ankylosing spondylitis, scoliosis, myasthenia gravis, muscular dystrophy, Guillain-Barré syndrome, or other infective polyneuritis, sarcoidosis, paralysis of diaphragm, or bronchopulmonary dysplasia; and

C. Member has a moderate to moderately severe functional pulmonary disability, as evidenced by either of the following, and does not have any concomitant medical condition that would otherwise imminently contribute to deterioration of pulmonary status or undermine the expected benefits of the program (e.g., symptomatic coronary artery disease, congestive heart failure, myocardial infarction within the last six (6) months, dysrhythmia, active joint disease, claudication, malignancy):

(I) A maximal pulmonary exercise stress test under optimal bronchodilatory treatment which demonstrates a respiratory limitation to exercise with a maximal oxygen uptake ( $VO_{2max}$ ) equal to or less than twenty milliliters per kilogram per minute (20 mL/kg/min), or about five (5) metabolic equivalents (METS); or

(II) Pulmonary function tests showing that either the Forced Expiratory Volume in One Second (FEV1), Forced Vital Capacity (FVC), FEV1/FVC, or Diffusing Capacity of the Lung for Carbon Monoxide (DLCO) is less than sixty percent (60%) of that predicted;

[40.]42. Skilled Nursing Facility. Skilled nursing facility services are covered up to one hundred twenty (120) days per calendar year;

[41.]43. Telehealth Services. Telehealth services are covered for the diagnosis, consultation, or treatment of a member on the same basis that the service would be covered when it is delivered in person;

[42.]44. Therapy. Physical, occupational, and speech therapy are covered when prescribed by a provider and subject to the provisions below:

A. Physical therapy.

(I) Physical therapy must meet the following criteria:

(a) The program is designed to improve lost or impaired physical function or reduce pain resulting from illness, injury, congenital defect, or surgery;

(b) The program is expected to result in significant therapeutic improvement over a clearly defined period of time; and

(c) The program is individualized, and there is documentation outlining quantifiable, attainable treatment goals;

B. Occupational therapy must meet the following criteria:

(I) The program is designed to improve or compensate for lost or impaired physical functions, particularly those affecting activities of daily living, resulting from illness, injury, congenital defect, or surgery;

(II) The program is expected to result in significant therapeutic improvement over a clearly defined period of time; and

(III) The program is individualized, and there is documentation outlining quantifiable, attainable treatment goals;

C. Speech therapy.

(I) All of the following criteria must be met for coverage of speech therapy:

(a) The therapy requires one-to-one intervention and supervision of a speech-language pathologist;

(b) The therapy plan includes specific tests and measures that will be used to document significant progress every two (2) weeks;

(c) Meaningful improvement is expected;

(d) The therapy includes a transition from one-to-one supervision to a self- or caregiver- provided maintenance program upon discharge; and

(e) One (1) of the following:

I. Member has severe impairment of speech-language; and an evaluation has been completed by a certified speech-language pathologist that includes age-appropriate standardized tests to measure the extent of the impairment, performance deviation, and language and pragmatic skill assessment levels; or

II. Member has a significant voice disorder that is the result of anatomic abnormality, neurological condition, or injury (e.g., vocal nodules or polyps, vocal cord paresis or paralysis, post-operative vocal cord surgery);

[43.]45. Transplants. Stem cell, kidney, liver, heart, lung, pancreas, small bowel, or any combination are covered. Includes services related to organ procurement and donor expenses if not covered under another plan. Member must contact medical plan for arrangements.

A. Network includes travel and lodging allowance for the transplant recipient and an immediate family travel companion when the transplant facility is more than fifty (50) miles from the recipient's residence. If the recipient is younger than age nineteen (19) years, travel and lodging is covered for both parents. The transplant recipient must be with the travel companion or parent(s) for the travel companion's or parent(s)' travel expense to be reimbursable. Combined travel and lodging expenses are limited to a ten thousand dollar (\$10,000) maximum per transplant.

(I) Lodging—maximum lodging expenses shall not exceed the per diem rates as established annually by U.S. General Services Administration (GSA) for a specific city or county. Go to [www.gsa.gov](http://www.gsa.gov) for per diem rates.

(II) Travel—IRS standard medical mileage rates (same as flexible spending account (FSA) reimbursement).

(III) Meals—not covered.

B. Non-network. Charges above the maximum for services rendered at a non-network facility are the member's responsibility and do not apply to the member's deductible or out-of-pocket maximum. Travel, lodging, and meals are not covered;

[44.]46. Urgent care. Member encounter with a provider for urgent care is covered based on the service, procedure, or related treatment plan; and

[45.]47. Vision. One (1) routine exam and refraction is covered per calendar year.

*AUTHORITY: section 103.059, RSMo 2016. Emergency rule filed Dec. 22, 2010, effective Jan. 1, 2011, expired June 29, 2011. Original rule filed Dec. 22, 2010, effective June 30, 2011. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Oct. 31, 2018, effective Jan. 1, 2019, expires June 29, 2019. Amended: Filed Oct. 31, 2018.*

*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 Consolidated Health Care Plan, Judith Muck, PO Box 104355, Jefferson City, MO 65110. 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 22—MISSOURI CONSOLIDATED  
HEALTH CARE PLAN  
Division 10—Health Care Plan  
Chapter 3—Public Entity Membership**

**PROPOSED RULE**

**22 CSR 10-3.058 PPO 750 Plan Benefit Provisions and Covered Charges**

*PURPOSE: This rule establishes the policy of the board of trustees in regard to the PPO 750 Benefit Provisions and Covered Charges for members of the Missouri Consolidated Health Care Plan.*

(1) Deductible—per calendar year for network: per individual, seven hundred fifty dollars (\$750); family, one thousand five hundred dollars (\$1,500) and for non-network: per individual, one thousand five hundred dollars (\$1,500); family, three thousand dollars (\$3,000).

(A) Network and non-network deductibles are separate. Expenses cannot be shared or transferred between network and non-network benefits.

(B) Claims will not be paid until the applicable deductible is met.

(C) Services that do not apply to the deductible and for which applicable costs will continue to be charged include, but are not limited to: copayments, charges above the usual, customary, and reasonable (UCR) limit; the amount the member pays due to noncompliance; non-covered services and charges above the maximum allowed.

(D) The family deductible is an embedded deductible with two (2) parts: an individual deductible and an overall family deductible. Each family member must meet his/her own individual deductible amount until the overall family deductible amount is reached. Once a family member meets his/her own individual deductible, the plan will start to pay claims for that individual and any additional out-of-pocket expenses incurred by that individual will not be used to meet the family deductible amount. Once the overall family deductible is met, the plan will start to pay claims for the entire family even if some family members have not met his/her own individual deductible.

(2) Coinsurance—coinsurance amounts apply to covered services after deductible has been met. Coinsurance is no longer applicable for the remainder of the calendar year once the out-of-pocket maximum is reached.

(A) Network claims are paid at eighty percent (80%) until the out-of-pocket maximum is met.

(B) Non-network claims are paid at sixty percent (60%) until the out-of-pocket maximum is met.

(3) Out-of-pocket maximum—per calendar year for network: per individual, two thousand two hundred fifty dollars (\$2,250); family, four thousand five hundred dollars (\$4,500) and for non-network: per individual, four thousand five hundred dollars (\$4,500); family, nine thousand dollars (\$9,000).

(A) Network and non-network out-of-pocket maximums are separate. Expenses cannot be shared or transferred between network and non-network benefits.

(B) Services that do not apply to the out-of-pocket maximum and for which applicable costs will continue to be charged include, but are not limited to: charges above the usual, customary, and reasonable (UCR) limit; the amount the member pays due to noncompliance; non-covered services and charges above the maximum allowed.

(C) The family out-of-pocket maximum is an embedded out-of-pocket maximum with two (2) parts: an individual out-of-pocket maximum and an overall family out-of-pocket maximum. Each family member must meet his/her own individual out-of-pocket maximum amount until the overall family out-of-pocket maximum amount is reached. Once a family member meets his/her own individual out-of-pocket maximum, the plan will start to pay claims at one hundred percent (100%) for that individual. Once the overall family out-of-

pocket maximum is met, the plan will start to pay claims at one hundred percent (100%) for the entire family even if some family members had not met his/her own individual out-of-pocket maximum.

(4) The following services will be paid as a network benefit when provided by a non-network provider:

(A) Emergency services and urgent care;

(B) Covered services that are not available through a network provider within one hundred (100) miles of the member's home. The member must contact the claims administrator before the date of service in order to have a closer non-network provider's claims approved as a network benefit. Such approval is for three (3) months. After three (3) months, the member must contact the claims administrator to reassess network availability;

(C) Covered services when such services are provided in a network hospital or ambulatory surgical center and are an adjunct to a service being performed by a network provider. Examples of such adjunct services include, but are not limited to, anesthesiology, assistant surgeon, pathology, or radiology.

(5) The following services are not subject to deductible, coinsurance, or copayment requirements and will be paid at one hundred percent (100%) when provided by a network provider:

(A) Preventive care;

(B) Nutrition counseling;

(C) A newborn's initial hospitalization until discharge or transfer to another facility if the mother is a Missouri Consolidated Health Care Plan (MCHCP) member at the time of birth; and

(D) Four (4) Diabetes Self-Management Education/Training visits with a certified diabetes educator when ordered by a provider.

(6) Influenza vaccinations provided by a non-network provider will be reimbursed up to twenty-five dollars (\$25) once the member submits a receipt and a reimbursement form to the claims administrator.

(7) Married, active employees who are MCHCP subscribers and have enrolled children may meet only one (1) family deductible and out-of-pocket maximum. Both spouses must enroll in the same medical plan option through the same carrier, and each must provide the other spouse's Social Security number (SSN) and report the other spouse as eligible for coverage when newly hired and during the open enrollment process. In the medical plan vendor and pharmacy benefit manager system, the spouse with children enrolled will be considered the subscriber and the spouse that does not have children enrolled will be considered a dependent. If both spouses have children enrolled the spouse with the higher Social Security number (SSN) will be considered the subscriber. Failure to report an active employee spouse when newly hired and/or during open enrollment will result in a separate deductible and out-of-pocket maximum for both active employees.

(8) Each subscriber will have access to payment information of the family unit only when authorization is granted by the adult covered dependent(s).

(9) Expenses toward the deductible and out-of-pocket maximum will be transferred if the member changes non-Medicare medical plans during the plan year or continues enrollment under another subscriber's non-Medicare medical plan within the same plan year.

(10) Copayments.

(A) Emergency room—two hundred fifty dollars (\$250) network and non-network. Deductible and coinsurance requirements apply to emergency room services in addition to the copayment. If a member is admitted to the hospital or the claims administrator considers the claim to be for a true emergency, the copayment is waived.

(B) Inpatient hospitalization—two hundred dollars (\$200) per admission for network and non-network. Deductible and coinsurance

requirements apply to inpatient hospitalization services in addition to the copayment.

(11) Maximum plan payment—non-network medical claims that are not otherwise subject to a contractual discount arrangement are processed at one hundred ten percent (110%) of Medicare reimbursement. Members may be held liable for the amount of the fee above the allowed amount.

(12) Any claim must be initially submitted within twelve (12) months following the date of service. The plan reserves the right to deny claims not timely filed. A provider initiated correction to the originally filed claim must be submitted within the timeframe agreed in the provider contract, but not to exceed three hundred sixty-five (365) days from adjudication of the originally filed claim. Any claims reprocessed as primary based on action taken by Medicare or Medicaid must be initiated within three (3) years of the claim being incurred.

(13) For a member who is an inpatient on the last calendar day of a plan year and remains an inpatient into the next plan year, the prior plan year's applicable copayment, deductible, and/or coinsurance amounts will apply to the in-hospital facility and related ancillary charges until the member is discharged.

(14) Services performed in a country other than the United States may be covered if the service is included in 22 CSR 10-2.055. Emergency and urgent care services are covered as a network benefit. All other non-emergency services are covered as a non-network benefit. If the service is provided by a non-network provider, the member may be required to provide payment to the provider and then file a claim for reimbursement subject to timely filing limits.

(15) Medicare.

(A) When MCHCP becomes aware that the member is eligible for Medicare benefits, claims will be processed reflecting Medicare coverage.

(B) If a member does not enroll in Medicare when s/he is eligible and Medicare should be the member's primary plan, the member will be responsible for paying the portion Medicare would have paid. An estimate of Medicare Part A and/or Part B benefits shall be made and used for coordination or reduction purposes in calculating benefits. Benefits will be calculated on a claim-submitted basis so that if, for a given claim, Medicare reimbursement would be for more than the benefits provided by this plan without Medicare, the balance will not be considered when calculating subsequent claims for this plan's deductible and out-of-pocket maximum expenses.

(C) If a Medicare primary member chooses a provider who has opted out of Medicare, the member will be responsible for paying the portion Medicare would have paid if the service was performed by a Medicare provider. An estimate of Medicare Part A and/or Part B benefits shall be made and used for coordination or reduction purposes in calculating benefits. Benefits will be calculated on a claim-submitted basis so that if, for a given claim, Medicare reimbursement would be for more than the benefits provided by this plan without Medicare, the balance will not be considered when calculating subsequent claims for this plan's deductible and out-of-pocket maximum expenses.

*AUTHORITY: section 103.059, RSMo 2016. Emergency rule filed Oct. 31, 2018, effective Jan. 1, 2019, expires June 29, 2019. Original rule filed Oct. 31, 2018.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Consolidated Health Care Plan, Judith Muck, PO Box 104355, Jefferson City, MO 65110. 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 22—MISSOURI CONSOLIDATED  
HEALTH CARE PLAN  
Division 10—Health Care Plan  
Chapter 3—Public Entity Membership**

**PROPOSED RULE**

**22 CSR 10-3.059 PPO 1250 Plan Benefit Provisions and Covered Charges**

*PURPOSE: This rule establishes the policy of the board of trustees in regard to the PPO 1250 Benefit Provisions and Covered Charges for members of the Missouri Consolidated Health Care Plan.*

(1) Deductible—per calendar year for network: per individual, one thousand two hundred fifty dollars (\$1,250); family, two thousand five hundred dollars (\$2,500) and for non-network: per individual, two thousand five hundred dollars (\$2,500); family, five thousand dollars (\$5,000).

(A) Network and non-network deductibles are separate. Expenses cannot be shared or transferred between network and non-network benefits.

(B) Claims will not be paid until the applicable deductible is met.

(C) Services that do not apply to the deductible and for which applicable costs will continue to be charged include, but are not limited to: copayments, charges above the usual, customary, and reasonable (UCR) limit; the amount the member pays due to noncompliance; non-covered services and charges above the maximum allowed.

(D) The family deductible is an embedded deductible with two (2) parts: an individual deductible and an overall family deductible. Each family member must meet his/her own individual deductible amount until the overall family deductible amount is reached. Once a family member meets his/her own individual deductible, the plan will start to pay claims for that individual and any additional out-of-pocket expenses incurred by that individual will not be used to meet the family deductible amount. Once the overall family deductible is met, the plan will start to pay claims for the entire family even if some family members have not met his/her own individual deductible.

(2) Coinsurance—coinsurance amounts apply to covered services after deductible has been met. Coinsurance is no longer applicable for the remainder of the calendar year once the out-of-pocket maximum is reached.

(A) Network claims are paid at eighty percent (80%) until the out-of-pocket maximum is met.

(B) Non-network claims are paid at sixty percent (60%) until the out-of-pocket maximum is met.

(3) Out-of-pocket maximum—per calendar year for network: per individual, three thousand seven hundred fifty dollars (\$3,750); family, seven thousand five hundred dollars (\$7,500) and for non-network: per individual, seven thousand five hundred dollars (\$7,500); family, fifteen thousand dollars (\$15,000).

(A) Network and non-network out-of-pocket maximums are separate. Expenses cannot be shared or transferred between network and non-network benefits.

(B) Services that do not apply to the out-of-pocket maximum and for which applicable costs will continue to be charged include, but are not limited to: charges above the usual, customary, and reasonable (UCR) limit; the amount the member pays due to noncompliance; non-covered services and charges above the maximum allowed.

(C) The family out-of-pocket maximum is an embedded out-of-pocket maximum with two (2) parts: an individual out-of-pocket maximum and an overall family out-of-pocket maximum. Each family member must meet his/her own individual out-of-pocket maximum amount until the overall family out-of-pocket maximum amount is reached. Once a family member meets his/her own individual out-of-pocket maximum, the plan will start to pay claims at one hundred percent (100%) for that individual. Once the overall family out-of-pocket maximum is met, the plan will start to pay claims at one hundred percent (100%) for the entire family even if some family members had not met his/her own individual out-of-pocket maximum.

(4) The following services will be paid as a network benefit when provided by a non-network provider:

(A) Emergency services and urgent care;

(B) Covered services that are not available through a network provider within one hundred (100) miles of the member's home. The member must contact the claims administrator before the date of service in order to have a closer non-network provider's claims approved as a network benefit. Such approval is for three (3) months. After three (3) months, the member must contact the claims administrator to reassess network availability; and

(C) Covered services when such services are provided in a network hospital or ambulatory surgical center and are an adjunct to a service being performed by a network provider. Examples of such adjunct services include, but are not limited to, anesthesiology, assistant surgeon, pathology, or radiology.

(5) The following services are not subject to deductible, coinsurance, or copayment requirements and will be paid at one hundred percent (100%) when provided by a network provider:

(A) Preventive care;

(B) Nutrition counseling;

(C) A newborn's initial hospitalization until discharge or transfer to another facility if the mother is a Missouri Consolidated Health Care Plan (MCHCP) member at the time of birth; and

(D) Four (4) Diabetes Self-Management Education/Training visits with a certified diabetes educator when ordered by a provider.

(6) Influenza vaccinations provided by a non-network provider will be reimbursed up to twenty-five dollars (\$25) once the member submits a receipt and a reimbursement form to the claims administrator.

(7) Married, active employees who are MCHCP subscribers and have enrolled children may meet only one (1) family deductible and out-of-pocket maximum. Both spouses must enroll in the same medical plan option through the same carrier, and each must provide the other spouse's Social Security number (SSN) and report the other spouse as eligible for coverage when newly hired and during the open enrollment process. In the medical plan vendor and pharmacy benefit manager systems, the spouse with children enrolled will be considered the subscriber and the spouse that does not have children enrolled will be considered a dependent. If both spouses have children enrolled, the spouse with the higher Social Security number (SSN) will be considered the subscriber. Failure to report an active employee spouse when newly hired and/or during open enrollment will result in a separate deductible and out-of-pocket maximum for both active employees.

(8) Each subscriber will have access to payment information of the family unit only when authorization is granted by the adult covered dependent(s).

(9) Expenses toward the deductible and out-of-pocket maximum will be transferred if the member changes non-Medicare medical plans or continues enrollment under another subscriber's non-Medicare medical plan within the same plan year.

(10) Copayments. Copayments apply to network services unless oth-

erwise specified.

(A) Office visit—primary care: twenty-five dollars (\$25); mental health: twenty-five dollars (\$25); specialist: forty dollars (\$40); chiropractor office visit and/or manipulation: the lesser of twenty dollars (\$20) or fifty percent (50%) of the total cost of services; urgent care: fifty dollars (\$50) network and non-network. All lab, X-ray, or other medical services associated with the office visit apply to the deductible and coinsurance.

(B) Emergency room—two hundred fifty dollars (\$250) network and non-network. Deductible and coinsurance requirements apply to emergency room services in addition to the copayment. If a member is admitted to the hospital or the claims administrator considers the claim to be for a true emergency, the copayment is waived.

(C) Inpatient hospitalization—two hundred dollars (\$200) per admission for network and non-network. Deductible and coinsurance requirements apply to inpatient hospitalization services in addition to the copayment.

(11) Maximum plan payment—non-network medical claims that are not otherwise subject to a contractual discount arrangement are allowed at one hundred ten percent (110%) of Medicare reimbursement. Members may be held liable for the amount of the fee above the allowed amount.

(12) Any claim must be initially submitted within twelve (12) months following the date of service. The plan reserves the right to deny claims not timely filed. A provider initiated correction to the originally filed claim must be submitted within the timeframe agreed in the provider contract, but not to exceed three hundred sixty-five (365) days from adjudication of the originally filed claim. Any claims reprocessed as primary based on action taken by Medicare or Medicaid must be initiated within three (3) years of the claim being incurred.

(13) For a member who is an inpatient on the last calendar day of a plan year and remains an inpatient into the next plan year, the prior plan year's applicable copayment, deductible, and/or coinsurance amounts will apply to the in-hospital facility and related ancillary charges until the member is discharged.

(14) Services performed in a country other than the United States may be covered if the service is included in 22 CSR 10-2.055. Emergency and urgent care services are covered as a network benefit. All other non-emergency services are covered as a non-network benefit. If the service is provided by a non-network provider, the member may be required to provide payment to the provider and then file a claim for reimbursement subject to timely filing limits.

(15) Medicare.

(A) When MCHCP becomes aware that the member is eligible for Medicare benefits claims will be processed reflecting Medicare coverage.

(B) If a member does not enroll in Medicare when s/he is eligible and Medicare should be the member's primary plan, the member will be responsible for paying the portion Medicare would have paid. An estimate of Medicare Part A and/or Part B benefits shall be made and used for coordination or reduction purposes in calculating benefits. Benefits will be calculated on a claim-submitted basis so that if, for a given claim, Medicare reimbursement would be for more than the benefits provided by this plan without Medicare, the balance will not be considered when calculating subsequent claims for this plan's deductible and out-of-pocket maximum expenses.

(C) If a Medicare primary member chooses a provider who has opted out of Medicare, the member will be responsible for paying the portion Medicare would have paid if the service was performed by a Medicare provider. An estimate of Medicare Part A and/or Part B benefits shall be made and used for coordination or reduction purposes in calculating benefits. Benefits will be calculated on a claim-submitted basis so that if, for a given claim, Medicare reimbursement would be

for more than the benefits provided by this plan without Medicare, the balance will not be considered when calculating subsequent claims for this plan's deductible and out-of-pocket maximum expenses.

*AUTHORITY:* section 103.059, RSMo 2016. Emergency rule filed Oct. 31, 2018, effective Jan. 1, 2019, expires June 29, 2019. Original rule filed Oct. 31, 2018.

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

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

*NOTICE TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Consolidated Health Care Plan, Judith Muck, PO Box 104355, Jefferson City, MO 65110. 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 22—MISSOURI CONSOLIDATED  
HEALTH CARE PLAN  
Division 10—Health Care Plan  
Chapter 3—Public Entity Membership**

**PROPOSED RESCISSION**

**22 CSR 10-3.060 PPO 600 Plan, PPO 1000 Plan, and Health Savings Account Plan Limitations.** This rule established the limitations and exclusions of the Missouri Consolidated Health Care Plan PPO 600 Plan, PPO 1000 Plan, and Health Savings Account Plan.

*PURPOSE:* This rule is being rescinded because the PPO 600 and PPO 1000 Plans will not be offered after December 31, 2018.

*AUTHORITY:* section 103.059, RSMo 2016. Emergency rule filed Dec. 22, 2009, effective Jan. 1, 2010, expired June 29, 2010. Original rule filed Jan. 4, 2010, effective June 30, 2010. For intervening history, please consult the Code of State Regulations. Emergency rescission filed Oct. 31, 2018, effective Jan. 1, 2019, expires June 29, 2019. Rescinded: Filed Oct. 31, 2018.

*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 TO SUBMIT COMMENTS:* Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Consolidated Health Care Plan, Judith Muck, PO Box 104355, Jefferson City, MO 65110. 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 22—MISSOURI CONSOLIDATED  
HEALTH CARE PLAN  
Division 10—Health Care Plan  
Chapter 3—Public Entity Membership**

**PROPOSED RULE**

**22 CSR 10-3.061 Plan Limitations**

*PURPOSE:* This rule establishes the policy of the board of trustees in regard to the PPO 750 Plan, PPO 1250 Plan, and Health Savings Account (HSA) Plan limitations of the Missouri Consolidated Health Care Plan.

(1) Benefits shall not be payable for, or in connection with, any medical benefits, services, or supplies which do not come within the definition of covered charges. In addition, the items specified in this rule are not covered unless expressly stated otherwise and then only to the extent expressly provided herein or in 22 CSR 10-3.057 or 22 CSR 10-3.090.

(A) Abortion—unless the life of the mother is endangered if the fetus is carried to term or due to death of the fetus.

(B) Acts of war including—injury or illness caused, or contributed to, by international armed conflict, hostile acts of foreign enemies, invasion, or war or acts of war, whether declared or undeclared.

(C) Alternative therapies—that are outside conventional medicine including, but not limited to, acupuncture, acupressure, homeopathy, hypnosis, massage therapy, reflexology, and biofeedback.

(D) Assistive listening device.

(E) Assistant surgeon services—unless determined to meet the clinical eligibility for coverage under the plan.

(F) Athletic enhancement services and sports performance training.

(G) Autopsy.

(H) Birthing center.

(I) Blood donor expenses.

(J) Blood pressure cuffs/monitors.

(K) Care received without charge.

(L) Charges exceeding the vendor contracted rate or benefit limit.

(M) Charges resulting from the failure to appropriately cancel a scheduled appointment.

(N) Childbirth classes.

(O) Comfort and convenience items.

(P) Cosmetic procedures.

(Q) Custodial or domiciliary care—including services and supplies that assist members in the activities of daily living such as walking, getting in and out of bed, bathing, dressing, feeding, and using the toilet; preparation of special diets; supervision of medication that is usually self-administered; or other services that can be performed by persons who are not providers.

(R) Dental care, including oral surgery.

(S) Devices or supplies bundled as part of a service are not separately covered.

(T) Dialysis received through a non-network provider.

(U) Educational or psychological testing unless part of a treatment program for covered services.

(V) Examinations requested by a third party.

(W) Exercise equipment.

(X) Experimental/investigational/unproven services, procedures, supplies, or drugs as determined by the claims administrator.

(Y) Eye services and associated expenses for orthoptics, eye exercises, radial keratotomy, LASIK, and other refractive eye surgery.

(Z) Genetic testing based on family history alone, except for breast cancer susceptibility gene (BRCA) testing.

(AA) Health and athletic club membership—including costs of enrollment.

(BB) Hearing aid replacement batteries.

(CC) Home births.

(DD) Infertility treatment beyond the covered services to diagnose the condition.

(EE) Infusions received through a non-network provider.

(FF) Level of care, greater than is needed for the treatment of the illness or injury.

(GG) Long-term care.

(HH) Maxillofacial surgery.

(II) Medical care and supplies to the extent that they are payable under—

1. A plan or program operated by a national government or one

(1) of its agencies; or

2. Any state's cash sickness or similar law, including any group insurance policy approved under such law.

(JJ) Medical service performed by a family member—including a person who ordinarily resides in the subscriber's household or is related to the member, such as a spouse, parent, child, sibling, or brother/sister-in-law.

(KK) Military service-connected injury or illness—including expenses relating to Veterans Affairs or a military hospital.

(LL) Never events—never events on a list compiled by the National Quality Forum of inexcusable outcomes in a health care setting.

(MM) Nocturnal enuresis alarm.

(NN) Drugs that the pharmacy benefit manager (PBM) has excluded from the formulary and will not cover as a non-formulary drug unless it is approved in advance by the PBM.

(OO) Non-medically necessary services.

(PP) Non-provider allergy services or associated expenses relating to an allergic condition, including installation of air filters, air purifiers, or air ventilation system cleaning.

(QQ) Non-reusable disposable supplies.

(RR) Online weight management programs.

(SS) Other charges as follows:

1. Charges that would not otherwise be incurred if the subscriber was not covered by the plan;

2. Charges for which the subscriber or his/her dependents are not legally obligated to pay including, but not limited to, any portion of any charges that are discounted;

3. Charges made in the subscriber's name but which are actually due to the injury or illness of a different person not covered by the plan; and

4. No coverage for miscellaneous service charges including, but not limited to, charges for telephone consultations, administrative fees such as filling out paperwork or copy charges, or late payments.

(TT) Over-the-counter medications with or without a prescription including, but not limited to, analgesics, antipyretics, non-sedating antihistamines, unless otherwise covered as a preventive service.

(UU) Physical and recreational fitness.

(VV) Private-duty nursing.

(WW) Routine foot care without the presence of systemic disease that affects lower extremities.

(XX) Services obtained at a government facility if care is provided without charge.

(YY) Sex therapy.

(ZZ) Surrogacy—pregnancy coverage is limited to plan member.

(AAA) Telehealth site origination fees or costs for the provision of telehealth services are not covered.

(BBB) Therapy. Physical, occupational, and speech therapy are not covered for the following:

1. Physical therapy—

A. Treatment provided to prevent or slow deterioration in function or prevent reoccurrences;

B. Treatment intended to improve or maintain general physical condition;

C. Long-term rehabilitative services when significant therapeutic improvement is not expected;

D. Physical therapy that duplicates services already being provided as part of an authorized therapy program through another therapy discipline (e.g., occupational therapy);

E. Work hardening programs;

F. Back school;

G. Vocational rehabilitation programs and any program with the primary goal of returning an individual to work;

H. Group physical therapy (because it is not one-on-one, individualized to the specific person's needs); or

I. Services for the purpose of enhancing athletic or sports performance;

2. Occupational therapy—

A. Treatment provided to prevent or slow deterioration in

function or prevent reoccurrences;

B. Treatment intended to improve or maintain general physical condition;

C. Long-term rehabilitative services when significant therapeutic improvement is not expected;

D. Occupational therapy that duplicates services already being provided as part of an authorized therapy program through another therapy discipline (e.g., physical therapy);

E. Work hardening programs;

F. Vocational rehabilitation programs and any programs with the primary goal of returning an individual to work;

G. Group occupational therapy (because it is not one-on-one, individualized to the specific person's needs); and

H. Driving safety/driver training; and

3. Speech or voice therapy—

A. Any computer-based learning program for speech or voice training purposes;

B. School speech programs;

C. Speech or voice therapy that duplicates services already being provided as part of an authorized therapy program through another therapy discipline (e.g., occupational therapy);

D. Group speech or voice therapy (because it is not one-on-one, individualized to the specific person's needs);

E. Maintenance programs of routine, repetitive drills/exercises that do not require the skills of a speech-language therapist and that can be reinforced by the individual or caregiver;

F. Vocational rehabilitation programs and any programs with the primary goal of returning an individual to work;

G. Therapy or treatment provided to prevent or slow deterioration in function or prevent reoccurrences;

H. Therapy or treatment provided to improve or enhance job, school, or recreational performance; and

I. Long-term rehabilitative services when significant therapeutic improvement is not expected.

(CCC) Travel expenses.

(DDD) Vaccinations requested by third party.

(EEE) Workers' Compensation services or supplies for an illness or injury eligible for, or covered by, any federal, state, or local government Workers' Compensation Act, occupational disease law, or other similar legislation.

*AUTHORITY: section 103.059, RSMo 2016. Emergency rule filed Oct. 31, 2018, effective Jan. 1, 2019, expires June 29, 2019. Original rule filed Oct. 31, 2018.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Consolidated Health Care Plan, Judith Muck, PO Box 104355, Jefferson City, MO 65110. 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 22—MISSOURI CONSOLIDATED  
HEALTH CARE PLAN  
Division 10—Health Care Plan  
Chapter 3—Public Entity Membership**

**PROPOSED AMENDMENT**

**22 CSR 10-3.080 Miscellaneous Provisions.** The Missouri



Consolidated Health Care Plan is amending section (5).

*PURPOSE: This amendment revises the names of the medical plans.*

(5) The PPO [600] 750 Plan, PPO [1000] 1250 Plan, and Health Savings Account Plan benefits including pharmacy are self-funded by the plan. MCHCP has subrogation rights under section 376.433, RSMo for any amounts expended for these benefits.

*AUTHORITY: section 103.059, RSMo [2000] 2016. Emergency rule filed Dec. 20, 2004, effective Jan. 1, 2005, expired June 29, 2005. Original rule filed Dec. 20, 2004, effective June 30, 2005. Amended: Filed Oct. 30, 2012, effective May 30, 2013. Amended: Filed Oct. 29, 2014, effective May 30, 2015. Amended: Filed Oct. 31, 2018.*

*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 Consolidated Health Care Plan, Judith Muck, PO Box 104355, Jefferson City, MO 65110. 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 22—MISSOURI CONSOLIDATED  
HEALTH CARE PLAN  
Division 10—Health Care Plan  
Chapter 3—Public Entity Membership**

**PROPOSED AMENDMENT**

**22 CSR 10-3.090 Pharmacy Benefit Summary.** The Missouri Consolidated Health Care Plan is amending the purpose and section (1).

*PURPOSE: This amendment revises the names of the medical plans, copayments, preventive drugs, and out-of-pocket maximum.*

*PURPOSE: This rule establishes the policy of the board of trustees in regard to the Pharmacy Benefit Summary for the [PPO 600 Plan, PPO 1000 Plan] PPO 750 Plan, PPO 1250 Plan, Health Savings Account (HSA) Plan of the Missouri Consolidated Health Care Plan.*

(1) The pharmacy benefit provides coverage for prescription drugs. Vitamin and nutrient coverage is limited to prenatal agents, therapeutic agents for specific deficiencies and conditions, and hematopoietic agents as prescribed by a provider.

(A) PPO [600] 750 Plan and PPO [1000] 1250 Plan Prescription Drug Coverage.

1. Network.

A. Preferred formulary generic drug copayment: [Eight dollars (\$8)] **Ten Dollars (\$10)** for up to a thirty-one- (31-) day supply; [sixteen dollars (\$16)] **twenty dollars (\$20)** for up to a sixty- (60-) day supply; and [twenty-four dollars (\$24)] **thirty dollars (\$30)** for up to a ninety- (90-) day supply for a generic drug on the formulary; formulary generic birth control and tobacco cessation prescriptions covered at one hundred percent (100%).

B. Preferred formulary brand drug copayment: [Thirty-five dollars (\$35)] **Forty dollars (\$40)** for up to a thirty-one- (31-) day supply; [seventy dollars (\$70)] **eighty dollars (\$80)** for up to a sixty- (60-) day supply; and [one hundred and five dollars (\$105)] **one hundred twenty dollars (\$120)** for up to a ninety- (90-) day sup-

ply for a brand drug on the formulary; formulary brand birth control and tobacco cessation prescriptions covered at one hundred percent (100%).

C. Non-preferred formulary drug and approved excluded drug copayment: One hundred dollars (\$100) for up to a thirty-one- (31-) day supply; two hundred dollars (\$200) for up to a sixty- (60-) day supply; and three hundred dollars (\$300) for up to a ninety- (90-) day supply for a drug not on the formulary.

**D. Specialty drug (as designated as such by the PBM) copayment: Seventy-five dollars (\$75) for up to a thirty-one- (31-) day supply for a specialty drug on the formulary;**

[D.]E. Diabetic drug (as designated as such by the PBM) copayment: [f]Fifty percent (50%) of the applicable network copayment.

[E.]F. Home delivery programs.

(I) Maintenance prescriptions may be filled through the pharmacy benefit manager's (PBM's) home delivery program. A member must choose how maintenance prescription(s) will be filled by notifying the PBM of his/her decision to fill a maintenance prescription through home delivery or retail pharmacy.

(a) If the member chooses to fill his/her maintenance prescription at a retail pharmacy and the member does not notify the PBM of his/her decision, the first two (2) maintenance prescription orders may be filled by the retail pharmacy. After the first two (2) orders are filled at the retail pharmacy, the member must notify the PBM of his/her decision to continue to fill the maintenance prescription at the retail pharmacy. If a member does not make a decision after the first two (2) orders are filled at the retail pharmacy, s/he will be charged the full discounted cost of the drug until the PBM has been notified of the decision and the amount charged will not apply to the out-of-pocket maximum.

(b) Once a member makes his/her delivery decision, the member can modify the decision by contacting the PBM.

(II) Specialty drugs are covered only through the specialty home delivery network for up to a thirty-one- (31-) day supply unless the PBM has determined that the specialty drug is eligible for up to a ninety- (90-) day supply. All specialty prescriptions must be filled through the PBM's specialty pharmacy, unless the prescription is identified by the PBM as emergent. The first fill of a specialty prescription may be filled through a retail pharmacy.

(a) Specialty split-fill program—The specialty split-fill program applies to select specialty drugs as determined by the PBM. For the first three (3) months, members will be shipped a fifteen- (15-) day supply with a prorated copayment. If the member is able to continue with the medication, the remaining supply will be shipped with the remaining portion of the copayment. Starting with the fourth month, an up to thirty-one- (31-) day supply will be shipped if the member continues on treatment.

(III) Prescriptions filled through home delivery programs have the following copayments:

(a) Preferred formulary generic drug copayments: [Eight dollars (\$8)] **Ten dollars (\$10)** for up to a thirty-one- (31-) day supply; [sixteen dollars (\$16)] **twenty dollars (\$20)** for up to a sixty- (60-) day supply; and twenty dollars (\$20) for up to a ninety- (90-) day supply for a generic drug on the formulary;

(b) Preferred formulary brand drug copayments: [Thirty-five dollars (\$35)] **Forty dollars (\$40)** for up to a thirty-one- (31-) day supply; [seventy dollars (\$70)] **eighty dollars (\$80)** for up to a sixty- (60-) day supply; and [eighty-seven dollars and fifty cents (\$87.50)] **one hundred dollars (\$100)** for up to a ninety- (90-) day supply for a brand drug on the formulary;

(c) Non-preferred formulary drug and approved excluded drug copayments: One hundred dollars (\$100) for up to a thirty-one- (31-) day supply; two hundred dollars (\$200) for up to a sixty- (60-) day supply; and two hundred fifty dollars (\$250) for up to a ninety- (90-) day supply for a drug not on the formulary.

**(d) Specialty drug (as designated as such by the PBM) copayment: Seventy-five dollars (\$75) for up to a thirty-one- (31-) day supply for a specialty drug on the formulary;**

*[F./G.* Diabetic drug (as designated as such by the PBM) copayment: *ff*/Fifty percent (50%) of the applicable network copayment.

*[G./H.* Only one (1) copayment is charged if a combination of different manufactured dosage amounts must be dispensed in order to fill a prescribed single dosage amount.

*[H./I.* The copayment for a compound drug is based on the primary drug in the compound. The primary drug in a compound is the most expensive prescription drug in the mix. If any ingredient in the compound is excluded by the plan, the compound will be denied.

*[I./J.* If the copayment amount is more than the cost of the drug, the member is only responsible for the cost of the drug.

*[J./K.* If the physician allows for generic substitution and the member chooses a brand-name drug, the member is responsible for the generic copayment and the cost difference between the brand-name and generic drug which shall not apply to the out-of-pocket maximum.

**L. Preferred select brand drugs, as determined by the PBM: Ten dollars (\$10) for up to a thirty-one- (31-) day supply; twenty dollars (\$20) for up to a sixty- (60-) day supply; and twenty-five dollars (\$25) for up to a ninety- (90-) day supply;**

*[K./M.* Prescription drugs and prescribed over-the-counter drugs as recommended by the U.S. Preventive Services Task Force (categories A and B) and, for women, by the Health Resources and Services Administration are covered at one hundred percent (100%) when filled at a network pharmacy. The following are also covered at one hundred percent (100%) when filled at a network pharmacy:

*[(I)] Prescribed Vitamin D for all ages;*

*(a) The range for preventive Vitamin D at or below 1000 IU of Vitamin D<sub>2</sub> or D<sub>3</sub> per dose;*

*(II) Zoster (shingles) vaccine and administration for members age fifty (50) years and older;]*

*[(III)](I) [Influenza v]Vaccine [and administration as] recommended by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention;*

*[(IV)](II) Generic Tamoxifen, generic Raloxifene, and brand Soltamox for prevention of breast cancer;*

*[(V)](III) Prescribed preferred diabetic test strips and lancets; and*

*[(VI)](IV) One (1) preferred glucometer.*

2. Non-network: If a member chooses to use a non-network pharmacy for non-specialty prescriptions, s/he will be required to pay the full cost of the prescription and then file a claim with the PBM. The PBM will reimburse the cost of the drug based on the network discounted amount as determined by the PBM, less the applicable network copayment.

3. Out-of-pocket maximum.

A. Network and non-network out-of-pocket maximums are separate.

B. The family out-of-pocket maximum is an aggregate of applicable charges received by all covered family members of the plan. Any combination of covered family member applicable charges may be used to meet the family out-of-pocket maximum. Applicable charges received by one (1) family member may only meet the individual out-of-pocket maximum amount.

*[C. PPO 600 Individual—five thousand one hundred dollars (\$5,100).*

*D. PPO 600 Family—ten thousand two hundred dollars (\$10,200).*

*E. PPO 1000 Individual—two thousand one hundred dollars (\$2,100).*

*F. PPO 1000 Family—four thousand two hundred dollars (\$4,200).]*

**C. Network individual—four thousand one hundred fifty dollars (\$4,150).**

**D. Network family—eight thousand three hundred dollars (\$8,300).**

**E. Non-network—no maximum.**

(B) Health Savings Account (HSA) Plan Prescription Drug

Coverage. Medical and pharmacy expenses are combined to apply toward the appropriate network or non-network deductible and out-of-pocket maximum specified in 22 CSR 10-3.055.

1. Network.

A. Preferred formulary generic drug: Ten percent (10%) coinsurance after deductible for a generic drug on the formulary.

B. Preferred formulary brand drug: Twenty percent (20%) coinsurance after deductible for a brand drug on the formulary.

C. Non-preferred formulary drug and approved excluded drug: Forty percent (40%) coinsurance after deductible for a drug not on the formulary.

D. Diabetic drug (as designated by the PBM) coinsurance: *ff*/Fifty percent (50%) of the applicable network coinsurance after deductible has been met.

E. Home delivery program.

(I) Maintenance prescriptions may be filled through the PBM's home delivery program. A member must choose how maintenance prescriptions will be filled by notifying the PBM of his/her decision to fill a maintenance prescription through home delivery or retail pharmacy.

(a) If the member chooses to fill his/her maintenance prescription at a retail pharmacy and the member does not notify the PBM of his/her decision, the first two (2) maintenance prescription orders may be filled by the retail pharmacy. After the first two (2) orders are filled at the retail pharmacy, the member must notify the PBM of his/her decision to continue to fill the maintenance prescription at the retail pharmacy. If a member does not make a decision after the first two (2) orders are filled at the retail pharmacy, s/he will be charged the full discounted cost of the drug until the PBM has been notified of the decision.

(b) Once a member makes his/her delivery decision, the member can modify the decision by contacting the PBM.

(II) Specialty drugs are covered only through network home delivery for up to a thirty-one- (31-) day supply unless the PBM has determined that the specialty drug is eligible for up to a ninety- (90-) day supply. All specialty prescriptions must be filled through the PBM's specialty pharmacy, unless the prescription is identified by the PBM as emergent. The first fill of a specialty prescription identified to be emergent, may be filled through a retail pharmacy.

(a) Specialty split-fill program—The specialty split-fill program applies to select specialty drugs as determined by the PBM. For the first three (3) months, members will be shipped a fifteen- (15-) day supply. If the member is able to continue with the medication, the remaining supply will be shipped. Starting with the fourth month, an up to thirty-one- (31-) day supply will be shipped if the member continues on treatment.

F. Prescription drugs and prescribed over-the-counter drugs as recommended by the U.S. Preventive Services Task Force (categories A and B) and, for women, by the Health Resources and Services Administration are covered at one hundred percent (100%) when filled at a network pharmacy. The following are also covered at one hundred percent (100%) when filled at a network pharmacy:

*[(I)] Prescribed Vitamin D for all ages.*

*(a) The range for preventive Vitamin D is at or below 1000 IU of Vitamin D<sub>2</sub> or D<sub>3</sub> per dose;*

*(II) Zoster (shingles) vaccine and administration for members age fifty (50) years and older;]*

*[(III)](I) [Influenza v]Vaccines and administration as recommended by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention; and*

*[(IV)](II) Generic Tamoxifen, generic Raloxifene, and brand Soltamox for prevention of breast cancer;*

G. The following are covered at one hundred percent (100%) after deductible is met and when filled at a network pharmacy:

(I) Prescribed preferred diabetic test strips and lancets; and

(II) One (1) preferred glucometer.

H. If any ingredient in a compound drug is excluded by the plan, the compound will be denied.

2. Non-network: If a member chooses to use a non-network pharmacy, s/he will be required to pay the full cost of the prescription and then file a claim with the PBM. The PBM will reimburse the cost of the drug based on the network discounted amount as determined by the PBM, less the applicable deductible or coinsurance.

A. Preferred formulary generic drug: Forty percent (40%) coinsurance after deductible has been met for up to a thirty-one- (31-) day supply for a generic drug on the formulary.

B. Preferred formulary brand drug: Forty percent (40%) coinsurance after deductible has been met for up to a thirty-one- (31-) day supply for a brand drug on the formulary.

C. Non-preferred formulary drug and approved excluded drug: Fifty percent (50%) coinsurance after deductible has been met for up to a thirty-one- (31-) day supply for a drug not on the formulary.

D. Diabetic drug (as designated by the PBM) coinsurance: Fifty percent (50%) of the applicable non-network coinsurance after deductible has been met.

*AUTHORITY: section 103.059, RSMo 2016. Emergency rule filed Dec. 22, 2009, effective Jan. 1, 2010, expired June 29, 2010. Original rule filed Jan. 4, 2010, effective June 30, 2010. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Oct. 31, 2018, effective Jan. 1, 2019, expires June 29, 2019. Amended: Filed Oct. 31, 2018.*

*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 Consolidated Health Care Plan, Judith Muck, PO Box 104355, Jefferson City, MO 65110. 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.*

**T**his section will contain the final text of the rules proposed by agencies. The order of rulemaking is required to contain a citation to the legal authority upon which the order or rulemaking is based; reference to the date and page or pages where the notice of proposed rulemaking was published in the *Missouri Register*; an explanation of any change between the text of the rule as contained in the notice of proposed rulemaking and the text of the rule as finally adopted, together with the reason for any such change; and the full text of any section or subsection of the rule as adopted which has been changed from that contained in the notice of proposed rulemaking. The effective date of the rule shall be not less than thirty (30) days after the date of publication of the revision to the *Code of State Regulations*.

**T**he agency is also required to make a brief summary of the general nature and extent of comments submitted in support of or opposition to the proposed rule and a concise summary of the testimony presented at the hearing, if any, held in connection with the rulemaking, together with a concise summary of the agency's findings with respect to the merits of any such testimony or comments which are opposed in whole or in part to the proposed rule. The ninety-(90-) day period during which an agency shall file its order of rulemaking for publication in the *Missouri Register* begins either: 1) after the hearing on the proposed rulemaking is held; or 2) at the end of the time for submission of comments to the agency. During this period, the agency shall file with the secretary of state the order of rulemaking, either putting the proposed rule into effect, with or without further changes, or withdrawing the proposed rule.

**Title 2—DEPARTMENT OF AGRICULTURE  
Division 60—Grain Inspection and Warehousing  
Chapter 1—Organization and Description**

**ORDER OF RULEMAKING**

By the authority vested in the Director of the Department of Agriculture under section 536.023, RSMo 2016, the director amends a rule as follows:

**2 CSR 60-1.010 General Organization is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 2, 2018 (43 MoReg 1419-1420). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 2—DEPARTMENT OF AGRICULTURE  
Division 60—Grain Inspection and Warehousing  
Chapter 2—Grain Sampling**

**ORDER OF RULEMAKING**

By the authority vested in the Director of the Department of Agriculture under section 536.023, RSMo 2016, the director rescinds a rule as follows:

**2 CSR 60-2.010 Grain Sampling is rescinded.**

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on July 2, 2018 (43 MoReg 1420). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 2—DEPARTMENT OF AGRICULTURE  
Division 60—Grain Inspection and Warehousing  
Chapter 4—Missouri Grain Warehouse Law**

**ORDER OF RULEMAKING**

By the authority vested in the Director of the Department of Agriculture under section 536.023, RSMo 2016, the director rescinds a rule as follows:

**2 CSR 60-4.016 Application of Law is rescinded.**

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on July 2, 2018 (43 MoReg 1420). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 2—DEPARTMENT OF AGRICULTURE  
Division 60—Grain Inspection and Warehousing  
Chapter 4—Missouri Grain Warehouse Law**

**ORDER OF RULEMAKING**

By the authority vested in the Director of the Department of Agriculture under section 536.023, RSMo 2016, the director rescinds a rule as follows:

**2 CSR 60-4.045 Weighing of Grain is rescinded.**

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on July 2, 2018 (43 MoReg 1420). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 2—DEPARTMENT OF AGRICULTURE  
Division 60—Grain Inspection and Warehousing  
Chapter 4—Missouri Grain Warehouse Law**

**ORDER OF RULEMAKING**

By the authority vested in the Director of the Department of Agriculture under section 536.023, RSMo 2016, the director rescinds a rule as follows:

**2 CSR 60-4.060 Safety Requirements is rescinded.**

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on July 2, 2018 (43 MoReg 1420-1421). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 2—DEPARTMENT OF AGRICULTURE  
Division 60—Grain Inspection and Warehousing  
Chapter 4—Missouri Grain Warehouse Law**

**ORDER OF RULEMAKING**

By the authority vested in the Director of the Department of Agriculture under section 536.023, RSMo 2016, the director rescinds a rule as follows:

**2 CSR 60-4.070** Notification of Destruction or Damage to Grain is rescinded.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on July 2, 2018 (43 MoReg 1421). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 2—DEPARTMENT OF AGRICULTURE  
Division 60—Grain Inspection and Warehousing  
Chapter 4—Missouri Grain Warehouse Law**

**ORDER OF RULEMAKING**

By the authority vested in the Director of the Department of Agriculture under section 536.023, RSMo 2016, the director amends a rule as follows:

**2 CSR 60-4.080** Storage Space Approval is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 2, 2018 (43 MoReg 1421). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 2—DEPARTMENT OF AGRICULTURE  
Division 60—Grain Inspection and Warehousing  
Chapter 4—Missouri Grain Warehouse Law**

**ORDER OF RULEMAKING**

By the authority vested in the Director of the Department of Agriculture under section 536.023, RSMo 2016, the director rescinds a rule as follows:

**2 CSR 60-4.090** Scale Tickets is rescinded.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on July 2, 2018 (43 MoReg 1421). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 2—DEPARTMENT OF AGRICULTURE  
Division 60—Grain Inspection and Warehousing  
Chapter 4—Missouri Grain Warehouse Law**

**ORDER OF RULEMAKING**

By the authority vested in the Director of the Department of Agriculture under section 536.023, RSMo 2016, the director amends a rule as follows:

**2 CSR 60-4.120** Tariffs is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 2, 2018 (43 MoReg 1422). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 2—DEPARTMENT OF AGRICULTURE  
Division 60—Grain Inspection and Warehousing  
Chapter 4—Missouri Grain Warehouse Law**

**ORDER OF RULEMAKING**

By the authority vested in the Director of the Department of Agriculture under section 536.023, RSMo 2016, the director amends a rule as follows:

**2 CSR 60-4.130** Acceptance of Appraisal Values on Financial Statements is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 2, 2018 (43 MoReg 1422). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 2—DEPARTMENT OF AGRICULTURE  
Division 60—Grain Inspection and Warehousing  
Chapter 4—Missouri Grain Warehouse Law**

**ORDER OF RULEMAKING**

By the authority vested in the Director of the Department of Agriculture under section 536.023, RSMo 2016, the director amends a rule as follows:

**2 CSR 60-4.170** Insurance Deductible is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 2, 2018 (43 MoReg 1422). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 2—DEPARTMENT OF AGRICULTURE  
Division 60—Grain Inspection and Warehousing  
Chapter 5—Missouri Grain Dealer’s Law**

**ORDER OF RULEMAKING**

By the authority vested in the Director of the Department of Agriculture under section 536.023, RSMo 2016, the director rescinds a rule as follows:

**2 CSR 60-5.040 Daily Position Record is rescinded.**

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on July 2, 2018 (43 MoReg 1422). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 5—DEPARTMENT OF ELEMENTARY AND  
SECONDARY EDUCATION  
Division 20—Division of Learning Services  
Chapter 300—Office of Special Education**

**ORDER OF RULEMAKING**

By the authority vested in the State Board of Education (board) under section 161.092, RSMo 2016, the board rescinds a rule as follows:

**5 CSR 20-300.140 Extraordinary Cost Fund is rescinded.**

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on August 1, 2018 (43 MoReg 2013-2014). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 5—DEPARTMENT OF ELEMENTARY AND  
SECONDARY EDUCATION  
Division 20—Division of Learning Services  
Chapter 400—Office of Educator Quality**

**ORDER OF RULEMAKING**

By the authority vested in the State Board of Education (board) under sections 161.092, 168.011, 168.071, 168.081, 168.400, 168.405, and 168.409, RSMo 2016, and section 168.021, RSMo Supp. 2018, the board amends a rule as follows:

5 CSR 20-400.510 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 1, 2018 (43 MoReg 2014). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The board received one (1) comment on this proposed amendment.

COMMENT #1: Steven Beldin on behalf of the Missouri Council of Administrators of Special Education (MO-CASE) suggested additional language be added to part (1)(B)4.B.(I).

RESPONSE AND EXPLANATION OF CHANGE: Based upon the comment received, amended part to (1)(B)4.B.(I). to include explicit and systematic instruction.

**5 CSR 20-400.510 Certification Requirements for Teacher of Early Childhood Education (Birth – Grade 3)**

(1) An applicant for a Missouri certificate of license to teach Early Childhood Education (Birth – Grade 3) who possesses good moral character may be granted an initial Missouri certificate of license to teach Early Childhood Education (Birth – Grade 3) subject to the certification requirements found in 5 CSR 20-400.500 and the following additional certification requirements specific to Early Childhood Education (Birth – Grade 3):

(B) Professional Requirements. A minimum of sixty (60) semester hours of professional preparation. Competency must be demonstrated to the satisfaction of the educator preparation program for the following topics:

1. Content Planning and Delivery. Candidates are prepared with a deep knowledge of and understand the relationships among curriculum, instruction, and assessment—

A. Curriculum and Instructional Planning;

B. Instructional Strategies and Techniques in Content Area Specialty;

C. Assessment, Student Data, and Data-Based Decision-Making;

D. Strategies for Content Literacy;

E. Critical Thinking and Problem Solving;

F. English Language Learning;

2. Individual Student Needs. Candidates build a robust knowledge of learners and the learning environment—

A. Psychological Development of the Child and Adolescent;

B. Psychology/Education of the Exceptional Child;

C. Differentiated Learning;

D. Classroom Management;

E. Cultural Diversity;

F. Educational Psychology;

3. Schools and the Teaching Profession. Candidates fully understand the role of schools and schooling as well as the professional responsibilities of teachers, including a means of professional growth—

A. Consultation and Collaboration;

B. Legal/Ethical Aspects of Teaching;

4. Content Knowledge for Teaching and Teaching and Learning Strategies for the Young Child (minimum requirement of thirty (30) semester hours)—

A. Early Childhood Principles:

(I) Child Development;

(II) Play-Based and Inquiry-Based Learning;

(III) Observing and Assessing Young Children;

(IV) Language Acquisition;

B. Methods of Teaching and Differentiated Instruction in the following integrated areas:

(I) Early Literacy (minimum of six (6) semester hours) to address curriculum, explicit and systematic instruction, and assessment of—

(a) Language acquisition;

- (b) Phonological and phonemic awareness;
  - (c) Phonics;
  - (d) Vocabulary;
  - (e) Fluency;
  - (f) Comprehension; and
  - (g) Writing process using authentic text and purposes;
  - (II) Math;
  - (III) Health;
  - (IV) Science;
  - (V) Nutrition;
  - (VI) Social Studies;
  - (VII) Music;
  - (VIII) Safety;
  - (IX) Movement;
  - (X) Art; and
  - (XI) Drama;
5. Home-School-Community Relations (minimum requirement of six (6) semester hours)—
- A. Families as Educational Partners;
  - B. Family Engagement; and
  - C. Linking Families with Community Resources;
6. Program Management (minimum requirement of six (6) semester hours)—
- A. Program Administration and Management;
  - B. Health, Nutrition, and Safety of Young Children; and
  - C. Environmental Organization and Design; and

**Title 5—DEPARTMENT OF ELEMENTARY AND  
SECONDARY EDUCATION  
Division 20—Division of Learning Services  
Chapter 400—Office of Educator Quality**

**ORDER OF RULEMAKING**

By the authority vested in the State Board of Education (board) under sections 161.092, 168.011, 168.071, 168.081, 168.400, 168.405, and 168.409, RSMo 2016, and section 168.021, RSMo Supp. 2018, the board amends a rule as follows:

5 CSR 20-400.520 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 1, 2018 (43 MoReg 2015–2016). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The board received one (1) comment on this proposed amendment.

COMMENT #1: Steven Beldin on behalf of the Missouri Council of Administrators of Special Education (MO-CASE) suggested additional language be added to part (1)(B)4.A.(I).

RESPONSE AND EXPLANATION OF CHANGE: Based upon the comment received, amended part to (1)(B)4.B.(I) to include explicit and systematic instruction.

**5 CSR 20-400.520 Certification Requirements for Teacher of  
Elementary Education (Grades 1-6)**

- (1) An applicant for a Missouri certificate of license to teach Elementary Education (Grades 1-6) who possesses good moral character may be granted an initial Missouri certificate of license to teach Elementary Education (Grades 1-6) subject to the certification requirements found in 5 CSR 20-400.500 and the following additional certification requirements specific to Elementary Education (Grades 1-6):
- (B) Professional Requirements. A minimum of thirty-six (36)

semester hours of professional preparation. Competency must be demonstrated to the satisfaction of the educator preparation program for the following topics:

1. Content Planning and Delivery. Candidates are prepared with a deep knowledge of and understand the relationships among curriculum, instruction, and assessment—

- A. Curriculum and Instructional Planning;
- B. Instructional Strategies and Techniques in Content Area Specialty;
- C. Assessment, Student Data, and Data-Based Decision-Making;
- D. Strategies for Content Literacy;
- E. Critical Thinking and Problem Solving; and
- F. English Language Learning;

2. Individual Student Needs. Candidates build a robust knowledge of learners and the learning environment—

- A. Psychological Development of the Child and Adolescent;
- B. Psychology/Education of the Exceptional Child;
- C. Differentiated Learning;
- D. Classroom Management;
- E. Cultural Diversity; and
- F. Education Psychology;

3. Schools and the Teaching Profession. Candidates fully understand the role of schools and schooling as well as the professional responsibilities of teachers, including a means of professional growth—

- A. Consultation and Collaboration; and
- B. Legal/Ethical Aspects of Teaching;

4. Content Knowledge for Teaching and Teaching and Learning Strategies (minimum requirement of twenty-one (21) semester hours)—

A. At a minimum, the teaching method competencies shall include:

(I) Elementary Literacy (minimum total of twelve (12) semester hours)—to address curriculum, explicit and systematic instruction, and assessment of—

- (a) Language acquisition;
- (b) Phonological and phonemic awareness;
- (c) Phonics;
- (d) Vocabulary;
- (e) Fluency;
- (f) Comprehension; and
- (g) Writing process using authentic text and purposes;

(II) Mathematics (minimum of six (6) total semester hours);

- (III) Science; and
- (IV) Social Science;

B. Integration of the following areas:

- (I) Art;
- (II) Music;
- (III) Health and Physical Education; and
- (IV) Technology in Education; and

**Title 5—DEPARTMENT OF ELEMENTARY AND  
SECONDARY EDUCATION  
Division 20—Division of Learning Services  
Chapter 400—Office of Educator Quality**

**ORDER OF RULEMAKING**

By the authority vested in the State Board of Education (board) under sections 161.092, 168.011, 168.071, 168.081, 168.400, 168.405, and 168.409, RSMo 2016, and section 168.021, RSMo Supp. 2018, the board amends a rule as follows:

5 CSR 20-400.560 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 1, 2018 (43 MoReg 2016–2017). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** The board received one (1) comment on this proposed amendment.

**COMMENT #1:** Steven Beldin on behalf of the Missouri Council of Administrators of Special Education (MO-CASE) suggested additional language be added to part (4)(A)4.B.(I) and subparagraph (5)(A)4.A.

**RESPONSE AND EXPLANATION OF CHANGE:** Based upon the comment received, amended part (4)(A)4.B.(I) and subparagraph (5)(A)4.A to include explicit and systematic instruction.

### 5 CSR 20-400.560 Certification Requirements for Teacher of Special Education

(4) An applicant for a Missouri certificate to teach Early Childhood Special Education (Birth – Grade 3) who possesses a baccalaureate degree from a college or university having an educator preparation program approved by the department, or from a college or university having an education program approved by the state education agency in states other than Missouri may be granted an initial Missouri certificate of license to teach Early Childhood Special Education (Birth – Grade 3) subject to the certification requirements found in 5 CSR 20-400.500 and the following additional certification requirements:

(A) Professional Requirements. A minimum of sixty (60) semester hours of professional preparation. Competency must be demonstrated to the satisfaction of the educator preparation institution for each topic listed.

1. Content Planning and Delivery. Candidates are prepared with a deep knowledge of and understand the relationship among curriculum, instruction, and assessment—

- A. Curriculum and Instructional Planning;
- B. Instructional Strategies and Techniques in Content Area Specialty;
- C. Assessment, Student Data, and Data-Based Decision-Making;
- D. Critical Thinking and Problem Solving;
- E. English Language Learning; and
- F. Evaluation of Abilities and Achievement (instruction in interpretation of individualized, formative, and summative assessments, eligibility procedures, and assessment to support evidence-based instruction).

2. Individual Student Needs. Candidates build a robust knowledge of learners and the learning environment—

- A. Psychological Development of the Child and Adolescent;
- B. Psychology/Education of the Exceptional Child;
- C. Differentiated Learning;
- D. Classroom Management;
- E. Behavior Intervention Strategies;
- F. Cultural Diversity; and
- G. Educational Psychology.

3. Schools and the Teaching Profession. Candidates fully understand the role of schools and schooling as well as the professional responsibilities of teachers, including a means of professional growth—

- A. Consultation and Collaboration;
- B. Legal/Ethical Aspects of Teaching;
- C. Tiered Systems for Supporting Instruction and Behavior;
- D. Families as Educational Partners;
- E. Family Engagement;
- F. Linking Families with Resources; and
- G. Individualized Education Plans and the Special Education Process.

4. Teaching and Supporting Learning of the Young Child—

- A. Early Childhood Principles;

- (I) Child Development;
- (II) Play-Based and Inquiry-Based Learning;
- (III) Observing and Assessing Young Children;
- (IV) Language Acquisition; and
- (V) Alternative and Augmentative Communication;

B. Methods of Teaching and Differentiated Instruction in the following integrated areas (minimum requirement of fifteen (15) hours):

(I) Early Literacy (minimum of six (6) semester hours) to address curriculum, explicit and systematic instruction, and assessment of—

- (a) Language acquisition;
- (b) Phonological and phonemic awareness;
- (c) Phonics;
- (d) Vocabulary;
- (e) Fluency;
- (f) Comprehension; and
- (g) Writing process using authentic text and purposes;

- (II) Math;
- (III) Health;
- (IV) Science;
- (V) Nutrition;
- (VI) Social Studies;
- (VII) Music;
- (VIII) Safety;
- (IX) Movement;
- (X) Art;
- (XI) Drama; and
- (XII) Instructional and Assistive Technology;

5. Program Management—

- A. Program Administration and Management;
- B. Health, Nutrition, and Safety of Young Children;
- C. Environmental Organization and Design; and
- D. Procedural Safeguards;

(5) An applicant for a Missouri certificate of license to teach students with Mild/Moderate Cross-Categorical Disabilities (Kindergarten – Grade 12) who possesses a baccalaureate degree in Special Education from a college or university having an educator preparation program approved by the department or from a college or university having an educator preparation program approved by the state agency in states other than Missouri may be granted an initial Missouri certificate of license to teach students with Mild/Moderate Cross-Categorical Disabilities (Kindergarten – Grade 12) subject to the certification requirements found in 5 CSR 20-400.500 and the following additional certification requirements:

(A) Professional Requirements. A minimum of sixty (60) semester hours of professional preparation. Competency must be demonstrated to the satisfaction of the educator preparation institution for each topic listed—

1. Content Planning and Delivery. Candidates are prepared with a deep knowledge of and understand the relationships among curriculum, instruction, and assessment—

- A. Curriculum and Instructional Planning;
- B. Instructional Strategies and Techniques in Content Area Specialty;
- C. Assessment, Student Data, and Data-Based Decision-Making;
- D. Strategies for Content Literacy;
- E. Critical Thinking and Problem Solving;
- F. English Language Learning;
- G. Evaluation of Abilities and Achievement (instruction in interpretation of individualized, formative, and summative assessments, eligibility procedures, and assessment to support evidence-based instruction);
- H. Transition Processes, including Career Education or Career Readiness; and

2. Individual Student Needs. Candidates build a robust knowledge of learners and the learning environment—



- A. Psychological Development of the Child and Adolescent;
- B. Psychology/Education of the Exceptional Child;
- C. Differentiated Learning;
- D. Classroom Management;
- E. Behavior Intervention Strategies;
- F. Cultural Diversity;
- G. Educational Psychology; and
- H. Language Development of the Exceptional Child;

3. Schools and the Teaching Profession. Candidates fully understand the role of schools and schooling as well as the professional responsibilities of teachers, including a means of professional growth—

- A. Consultation and Collaboration;
- B. Legal/Ethical Aspects of Teaching;
- C. Tiered Systems for Supporting Instruction and Behavior;
- D. Families as Educational Partners;
- E. Family Engagement;
- F. Linking Families with Resources; and
- G. Individualized Education Plans and the Special Education

Process;

4. Teaching and Learning Strategies—

A. Literacy (a minimum total of twelve (12) semester hours) to address specialized instruction in curriculum, explicit and systematic instruction, assessment, and intensive intervention of—

- (I) Language acquisition;
- (II) Phonological and phonemic awareness;
- (III) Phonics;
- (IV) Vocabulary;
- (V) Fluency;
- (VI) Comprehension; and
- (VII) Writing process using authentic text and purposes;

- B. Science;
- C. Social Science;
- D. Instructional and Assistive Technology; and
- E. Mathematics (two (2) courses required, minimum of six (6) total semester hours) to include instructional interventions for students with mathematics deficits; and

## Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION

### Division 20—Division of Learning Services Chapter 400—Office of Educator Quality

#### ORDER OF RULEMAKING

By the authority vested in the State Board of Education (board) under sections 161.092, 168.011, 168.071, 168.081, 168.400, 168.405, and 168.409, RSMo 2016, and section 168.021, RSMo Supp. 2018, the board amends a rule as follows:

**5 CSR 20-400.640** Certification Requirements for Initial Student Services Certificate **is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 1, 2018 (43 MoReg 2017-2020). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The board received two (2) comments on this proposed amendment. Both comments were related to the School Psychological Examiner.

COMMENT #1: Michele Augustin on behalf of the Missouri Association of School Psychologist (MASP) offered suggestions for the School Psychological Examiner certificate in regards to addition-

al internship requirements and discontinuing the issuance of this certificate.

RESPONSE: No changes have been made to the amendment as a result of this comment.

COMMENT #2: Steven Beldin on behalf of the Missouri Council of Administrators of Special Education (MO-CASE) recommended discontinuing the issuance of the School Psychological Examiner certificate.

RESPONSE: No changes have been made to the amendment as a result of this comment.

## Title 10—DEPARTMENT OF NATURAL RESOURCES Division 10—Air Conservation Commission Chapter 2—Air Quality Standards and Air Pollution Control Rules Specific to the Kansas City Metropolitan Area

#### ORDER OF RULEMAKING

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo 2016, the commission rescinds a rule as follows:

**10 CSR 10-2.215** Control of Emissions From Solvent Cleanup Operations **is rescinded.**

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on May 15, 2018 (43 MoReg 1015-1016). No changes were made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Department of Natural Resources' Air Pollution Control Program received twelve (12) comments on this rulemaking from the U.S. Environmental Protection Agency (EPA).

Due to similar concerns expressed in the following five (5) comments, one (1) response that addresses these concerns is at the end of these five (5) comments.

COMMENT #1: The EPA provided a general comment for all the rules that the department has the responsibility to ensure that the State Implementation Plan (SIP) revision submitted to EPA meets the requirements of sections 110(1) and 193 of the Clean Air Act (CAA).

Section 110(1): Generally, section 110(1) provides that EPA cannot approve a SIP revision if the revision interferes with any applicable requirement concerning attainment and reasonable further progress or any other requirement of the CAA. This section applies to any area and to any National Ambient Air Quality Standard (NAAQS) pollutant and/or precursor. Thus, any SIP rule is subject to this section.

Section 193: Section 193 prohibits modification of a SIP in effect before 1990 unless that modification would ensure equivalent or greater emissions reductions, i.e., "anti-backsliding." Section 193 applies only to nonattainment areas and is specific to the nonattainment pollutant. The applicability of section 193 is specific to nonattainment "criteria" pollutants. The ozone implementation rule (codified at 40 CFR 51.905(a)(4)), describes how section 193 applies to Kansas City - an attainment area for the eight (8)-hour standard and maintenance area for the one (1)-hour standard.

Each of the eleven (11) proposed rule rescissions are subject to section 110(1) requirements; six (6) of the proposed rule rescissions are subject to the section 193 requirements. One (1) of the seven (7) proposed rule revisions is subject to section 110(1) requirements, one (1) is a Title V Part 70 revision, one (1) is a 111(d) plan revision and

the remaining four (4) proposed rule revisions are administrative in nature only.

COMMENT #2: The EPA suggests a demonstration that quantifies any emissions increase or potential increase by rescinding the rule(s), and a discussion on the impact on air quality. This demonstration could be done by comparing the source inventory at the time the rule was promulgated to the source inventory now, and demonstrating the overall impact on emissions. In addition, the department could include a discussion of the monitored air quality when the rule was promulgated/incorporated into the SIP and monitored air quality trends that demonstrate an improvement in air quality and how the rescission of the rule might impact those trends.

COMMENT #3: The EPA suggests a discussion of the rule's purpose; specifically, whether the rule was promulgated to meet nonattainment area requirements, and if so, which specific NAAQS. In addition, the department could describe how the rule no longer serves to meet that purpose or how the rule has been superseded by another permanent and enforceable mechanism.

COMMENT #4: The EPA suggests a discussion of whether the rule was used to support other actions and whether the removal of the rule would impact those obligations such as an attainment demonstration, a request for a determination to attainment, a redesignation request and maintenance plan, or other actions such as Regional Haze or Interstate Transport.

COMMENT #5: The EPA suggests that where the department may be anticipating other federal programs, such as Maximum Achievable Control Technology (MACT) and National Emissions Standards for Hazardous Air Pollutants, as acting as a backstop to removal of its Reasonably Available Control Technology (RACT) rules, a comprehensive discussion of how those programs equal RACT. For example, there may be volatile organic compound (VOC) sources regulated by these programs that are well-controlled through add-on controls, or even through substitution of non-hazardous air pollutant material for VOC hazardous air pollutant materials, however, these programs only cover air toxics and not all VOC emissions that RACT would capture and control are air toxics.

RESPONSE: The rescission of this rule is consistent with Executive Order 17-03 requiring a review of every regulation to affirm that the regulation is essential to the health, safety, or welfare of Missouri residents. The review of this rule indicated that no sources are subject to the rule, that the rule does not reduce any air pollutant, and therefore is not essential. Previously subject sources either have gone out of business or the source is no longer subject to the rule. In some cases, the source has been out of business or not subject to the rule for years. While a rule may have applied to a source to reduce or limit air pollutants in the past, the source is no longer producing the regulated emissions and the rule is no longer needed or relied upon for emission reductions going forward. To address EPA's concern about limiting VOC emissions from a new source, the department reiterates that RACT rules were intended to apply to existing major sources in nonattainment areas present at the time of the rule's promulgation. Any new source would not be subject to a RACT rule and instead would be subject to current applicable state or federal rules. Those state and federal rules would serve as the backstop limiting VOC emissions. These rules are not relied upon for any SIP purposes.

Due to similar concerns expressed in the following seven (7) comments, one (1) response that addresses these concerns is at the end of these seven (7) comments.

COMMENT #6: The Rulemaking Report indicates that "this rule applied Reasonably Available Control Technology to major sources of volatile organic compounds emissions from the use of large quantities of solvent cleaners in the Kansas City nonattainment area. Generally, RACT rules apply to those sources that were subject because they existed at the time the RACT rule became effective and are still currently operating." However, the rule language indicates that it applies to any person who performs or allows the performance

of any cleaning operation involving the use of a VOC solvent or solvent solution unless cleaning solvent VOCs are emitted at less than five hundred (500) pounds per day. Because the rule, as written, does not specifically say if it would or would not apply to a new or modified solvent cleanup operation with potential emissions of greater than five hundred (500) pounds of VOCs per day upon start-up, and the rule could read to imply that it would, the department should provide clarification of the rule's applicability and demonstrate that the SIP revision would not interfere with attainment of the NAAQS.

COMMENT #7: A potential way for the department to demonstrate that the SIP revision would not interfere with attainment of the NAAQS might be to provide an explanation of how its SIP-approved Prevention of Significant Deterioration (PSD) program would ensure that the start-up of a new source or modification of an existing source would be controlled in an equivalent manner as would be required by the rescinded rule.

COMMENT #8: If in the event the start-up of a new source or modification to an existing source would not be applicable under PSD but would otherwise be an applicable source under the rescinded rule, the department should provide a demonstration of the potential emissions from such sources and make a determination about the source's potential impact on air quality.

COMMENT #9: The department could supplement this demonstration by providing information on why it believes no new or modified sources will start-up (i.e., Are solvent cleanup operations no longer performed, or do those operations always meet one (1) of the exceptions to the rescinded rule? Do solvent clean-up operations no longer use VOCs?).

COMMENT #10: The department could demonstrate that the associated limits on hazardous air pollutants also limit VOCs. The department may want to evaluate if the MACT for Halogenated Solvent Cleaning could address the proposed rescission of this RACT rule, although many of the halogenated solvents are specifically not VOCs (i.e., the MACT regulates six (6) solvents specifically and only two (2) of those are VOCs).

COMMENT #11: The Rulemaking Report states that the only applicable source at the time of the rule's effective date was Ford Claycomo and that this source is now exempt, making the rule obsolete. However, the fiscal notes published in the October 2, 2000, and April 1, 2001, *Missouri Register* do not provide this information. The EPA recommends, for clarity to the public, that the department add an explanation in the Purpose section of the rescission how this rule only applied to the Ford Claycomo facility.

COMMENT #12: The Rulemaking Report indicates that the rule is obsolete because the Ford Claycomo facility is now exempt. However, the report does not indicate to the public why the facility is exempt. The EPA recommends that the department provide additional explanation on how it was determined that the source is now exempt from the rule.

RESPONSE: The rescission of this RACT rule is consistent with Executive Order 17-03 requiring a review of every state regulation to affirm that the regulation is necessary. The review of this rule indicated there are no sources subject to the rule, making the rule obsolete. In this case, the source is exempt from the rule according to their current operating permit because the facility uses solvents for nonmanufacturing area cleaning. This rescission will not have a negative effect on air quality since the rule does not function to reduce emissions (no sources regulated) or achieve attainment or maintenance of the NAAQS (SIP requirements met). To address EPA's concern about limiting VOC emissions from a new source, the department reiterates that RACT rules were intended to apply to existing major sources in nonattainment areas present at the time of the rule's promulgation. Any new sources or major modifications of existing sources would not be subject to this RACT rule and instead would be subject to New Source Review permitting and current applicable state or federal rules. Those state and federal rules would serve as the backstop limiting VOC emissions. The rule is not relied upon for any SIP purposes since there are no affected sources.

**Title 10—DEPARTMENT OF NATURAL RESOURCES**  
**Division 10—Air Conservation Commission**  
**Chapter 2—Air Quality Standards and Air Pollution**  
**Control Rules Specific to the Kansas City Metropolitan**  
**Area**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo 2016, the commission amends a rule as follows:

10 CSR 10-2.320 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 15, 2018 (43 MoReg 1016–1017). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** The Missouri Department of Natural Resources' Air Pollution Control Program received ten (10) comments from one (1) source, the U.S. Environmental Protection Agency (EPA).

Due to similar concerns expressed in the following five (5) comments, one (1) response that addresses these concerns is at the end of these five (5) comments.

**COMMENT #1:** The EPA provided a general comment for all the rules that the department has the responsibility to ensure that the State Implementation Plan (SIP) revision submitted to EPA meets the requirements of sections 110(1) and 193 of the Clean Air Act (CAA).

Section 110(1): Generally, section 110(1) provides that EPA cannot approve a SIP revision if the revision interferes with any applicable requirement concerning attainment and reasonable further progress or any other requirement of the CAA. This section applies to any area and to any National Ambient Air Quality Standard (NAAQS) pollutant and/or precursor. Thus, any SIP rule is subject to this section.

Section 193: Section 193 prohibits modification of a SIP in effect before 1990 unless that modification would ensure equivalent or greater emissions reductions, i.e., “anti-backsliding.” Section 193 applies only to nonattainment areas and is specific to the nonattainment pollutant. The applicability of section 193 is specific to nonattainment “criteria” pollutants. The ozone implementation rule (codified at 40 CFR 51.905(a)(4)), describes how section 193 applies to Kansas City - an attainment area for the eight (8)-hour standard and maintenance area for the one (1)-hour standard.

Each of the eleven (11) proposed rule rescissions are subject to section 110(1) requirements; six (6) of the proposed rule rescissions are subject to the section 193 requirements. One (1) of the seven (7) proposed rule revisions is subject to section 110(1) requirements, one (1) is a Title V Part 70 revision, one (1) is a 111(d) plan revision and the remaining four (4) proposed rule revisions are administrative in nature only.

**COMMENT #2:** The EPA suggests a demonstration that quantifies any emissions increase or potential increase by rescinding the rule(s), and a discussion on the impact on air quality. This demonstration could be done by comparing the source inventory at the time the rule was promulgated to the source inventory now, and demonstrating the overall impact on emissions. In addition, the department could include a discussion of the monitored air quality when the rule was promulgated/incorporated into the SIP and monitored air quality trends that demonstrate an improvement in air quality and how the rescission of the rule might impact those trends.

**COMMENT #3:** The EPA suggests a discussion of the rule's purpose; specifically, whether the rule was promulgated to meet nonattainment area requirements, and if so, which specific NAAQS. In

addition, the department could describe how the rule no longer serves to meet that purpose or how the rule has been superseded by another permanent and enforceable mechanism.

**COMMENT #4:** The EPA suggests a discussion of whether the rule was used to support other actions and whether the removal of the rule would impact those obligations such as an attainment demonstration, a request for a determination to attainment, a redesignation request and maintenance plan, or other actions such as Regional Haze or Interstate Transport.

**COMMENT #5:** The EPA suggests that where the department may be anticipating other federal programs, such as Maximum Achievable Control Technology and National Emissions Standards for Hazardous Air Pollutants, as acting as a backstop to removal of its Reasonably Available Control Technology (RACT) rules, a comprehensive discussion of how those programs equal RACT. For example, there may be volatile organic compound (VOC) sources regulated by these programs that are well-controlled through add-on controls, or even through substitution of non-hazardous air pollutant material for VOC hazardous air pollutant materials, however, these programs only cover air toxics and not all VOC emissions that RACT would capture and control are air toxics.

**RESPONSE:** The amendment of the rule is consistent with Executive Order 17-03 requiring a review of every regulation to affirm that the regulation is essential to the health, safety, or welfare of Missouri residents. Emissions will not increase with the proposed rule amendments and the revision will meet CAA sections 110(1) and 193 requirements. There is no negative impact on air quality. The department is not anticipating the use of other federal programs as a backstop because the department is not rescinding this rule. No changes were made to the rule text as a result of these comments.

**COMMENT #6:** The EPA recommends that the department consider revising section (3) General Provisions. Section (3) says “source operations in installations affected by this regulation that are venting emissions to VOC emission control devices [ ... ] shall be required to continue venting emissions to these control devices and these emissions shall be controlled to the extent required in section (4) of this regulation.” However, the proposed revisions of the rule add the emission limitations under a new subsection (3)(A) and change section (4) to Record Keeping and Reporting. Therefore, the department should revise the section (4) reference to subsection (3)(A).

**RESPONSE AND EXPLANATION OF CHANGE:** The reorganization of the rule did change the location of the emission limits in the rule from its previous section (4). The limits are now found in section (3) and the rule text has been corrected as a result of this comment.

**COMMENT #7:** The EPA recommends that the department consider revising its addition of subsection (3)(B) Compliance Method and instead add the information provided in the new subsection (3)(B) to section (5) Test Methods that currently says “(Not Applicable)”. The rule requires testing methods but they are in the new subsection (3)(B). This change would also provide consistency with the formatting of other department Air Conservation Commission Rules.

**RESPONSE AND EXPLANATION OF CHANGE:** As a result of this comment, the compliance methods proposed in subsection (3)(B) are being moved to section (5).

**COMMENT #8:** The EPA recommends that the department consider removing the word “Reporting” from the title of section (4). The word “Reporting” is being added to the title of new section (4) Record Keeping and Reporting even though no reporting is required by rule. This could be confusing to the public and the regulated community.

**RESPONSE:** The use of Reporting and Recordkeeping as a section heading is consistent with the standard rule organization format that the department uses for its air pollution rules. The heading in this format just indicates that reporting and recordkeeping requirements, if applicable, are located in this section of the rule. No changes were made to the rule text as a result of this comment.

COMMENT #9: There is a reference at paragraph (3)(B)l. to 10 CSR 10-6.030(22) however, section (22) does not exist in the state's 10 CSR 10-6.030 Sampling Methods. The EPA understands that the department is in the process of revising 10 CSR 10-6.030 Sampling Methods and that those potential rule changes are being made available for public comment concurrent with this rule. As such, EPA would not act on this submission until 10 CSR 10-6.030 was also submitted to EPA.

RESPONSE: The department is currently in the process of amending rule 10 CSR 10-6.030 Sampling Methods for Air Pollution Sources and plans to submit this rule for inclusion into the SIP before, or concurrently with the submittal to EPA of amendments to 10 CSR 10-2.320. No changes were made to the rule text as a result of this comment.

COMMENT #10: The EPA encourages the department to consider adding "40 CFR 60, Appendix A" instead of adding a reference to 10 CSR 10-6.030(22) in subsection (3)(B) of this rule. The section already specifies which test method to use (Method 25) and the draft rule text language for the potential revisions to 10 CSR 10-6.030 adds section (22), which incorporates 40 CFR 60, in whole, by reference. It may be unnecessary to divert the public to another state regulation that incorporates a federal regulation by reference and provides no additional clarity than what is already specified in the subsection (3)(B).

RESPONSE: The department appreciates this comment and for all air rules found in 10 CSR 10-Chapters 1-6, where stack testing methods or guidance documents are mentioned, a reference to rule 10 CSR 10-6.030 reduces the length of federal content incorporated by reference into these rules. No changes were made to the rule text as a result of this comment.

#### **10 CSR 10-2.320 Control of Emissions From Production of Pesticides and Herbicides**

(3) General Provisions. All source operations in installations affected by this regulation that are venting emissions to VOC emission control devices as of November 23, 1987 shall be required to continue venting emissions to these control devices and these emissions shall be controlled to the extent required in this section. Any pesticide or herbicide manufacturing installation VOC emissions control devices subject to this regulation must achieve an instantaneous VOC destruction or removal efficiency greater than or equal to ninety-nine percent (99%).

#### **(5) Test Methods.**

(A) VOC compliance is to be determined by test method 25 as specified in 10 CSR 10-6.030(22).

(B) For thermal oxidizers, compliance is to be determined by the combustion chamber temperature and residence time after adequate test results, as determined by the director, are provided by the owners or operators. These test results are subject to periodic confirmation at the discretion of the director. Combustion chamber gas temperature is to be monitored with an accuracy of the greater of  $\pm 0.75\%$  of the temperature being measured expressed in degrees Celsius or 2.5 degrees Celsius.

### **Title 10—DEPARTMENT OF NATURAL RESOURCES Division 10—Air Conservation Commission Chapter 2—Air Quality Standards and Air Pollution Control Rules Specific to the Kansas City Metropolitan Area**

#### **ORDER OF RULEMAKING**

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo 2016, the commission

amends a rule as follows:

10 CSR 10-2.340 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 15, 2018 (43 MoReg 1017-1018). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Department of Natural Resources' Air Pollution Control Program received ten (10) comments on this rulemaking from the U.S. Environmental Protection Agency (EPA) and one (1) comment from department staff.

Due to similar concerns expressed in the following five (5) comments, one (1) response that addresses these concerns is at the end of these five (5) comments.

COMMENT #1: The EPA provided a general comment for all the rules that the department has the responsibility to ensure that the State Implementation Plan (SIP) revision submitted to EPA meets the requirements of sections 110(1) and 193 of the Clean Air Act (CAA).

Section 110(1): Generally, section 110(1) provides that EPA cannot approve a SIP revision if the revision interferes with any applicable requirement concerning attainment and reasonable further progress or any other requirement of the CAA. This section applies to any area and to any National Ambient Air Quality Standard (NAAQS) pollutant and/or precursor. Thus, any SIP rule is subject to this section.

Section 193: Section 193 prohibits modification of a SIP in effect before 1990 unless that modification would ensure equivalent or greater emissions reductions, i.e., "anti-backsliding." Section 193 applies only to nonattainment areas and is specific to the nonattainment pollutant. The applicability of section 193 is specific to nonattainment "criteria" pollutants. The ozone implementation rule (codified at 40 CFR 51.905(a)(4)), describes how section 193 applies to Kansas City - an attainment area for the eight (8)-hour standard and maintenance area for the one (1)-hour standard.

Each of the eleven (11) proposed rule rescissions are subject to section 110(1) requirements; six (6) of the proposed rule rescissions are subject to the section 193 requirements. One (1) of the seven (7) proposed rule revisions is subject to section 110(1) requirements, one (1) is a Title V Part 70 revision, one (1) is a 111(d) plan revision and the remaining four (4) proposed rule revisions are administrative in nature only.

COMMENT #2: The EPA suggests a demonstration that quantifies any emissions increase or potential increase by rescinding the rule(s), and a discussion on the impact on air quality. This demonstration could be done by comparing the source inventory at the time the rule was promulgated to the source inventory now, and demonstrating the overall impact on emissions. In addition, the department could include a discussion of the monitored air quality when the rule was promulgated/incorporated into the SIP and monitored air quality trends that demonstrate an improvement in air quality and how the rescission of the rule might impact those trends.

COMMENT #3: The EPA suggests a discussion of the rule's purpose; specifically, whether the rule was promulgated to meet nonattainment area requirements, and if so, which specific NAAQS. In addition, the department could describe how the rule no longer serves to meet that purpose or how the rule has been superseded by another permanent and enforceable mechanism.

COMMENT #4: The EPA suggests a discussion of whether the rule was used to support other actions and whether the removal of the rule would impact those obligations such as an attainment demonstration, a request for a determination to attainment, a redesignation request and maintenance plan, or other actions such as Regional Haze or Interstate Transport.

COMMENT #5: The EPA suggests that where the department may be anticipating other federal programs, such as Maximum Achievable Control Technology and National Emissions Standards for Hazardous Air Pollutants, as acting as a backstop to removal of its Reasonably Available Control Technology (RACT) rules, a comprehensive discussion of how those programs equal RACT. For example, there may be volatile organic compound (VOC) sources regulated by these programs that are well-controlled through add-on controls, or even through substitution of non-hazardous air pollutant material for VOC hazardous air pollutant materials, however, these programs only cover air toxics and not all VOC emissions that RACT would capture and control are air toxics.

RESPONSE: The amendment of the rule is consistent with Executive Order 17-03 requiring a review of every regulation to affirm that the regulation is essential to the health, safety, or welfare of Missouri residents. Emissions will not increase with the proposed rule amendment and the revision will meet CAA sections 110(l) and 193 requirements. There is no negative impact on air quality. The department is not anticipating the use of other federal programs as a backstop because the department is not rescinding this rule. No changes were made to the rule text as a result of these comments.

COMMENT #6: The department is proposing to revise the title of the rule to include the words "and letterpress." The EPA recommends that the department considering adding the words "and letterpress" to the Purpose section of the rule which currently says, "This regulation restricts volatile organic compound emissions from lithographic printing [facilities] operations" so that the title and purpose match to reduce confusion. Because the department is adding the word "letterpress" to the title of the rule, EPA recommends that the department consider adding the word "letterpress" to sections (1) Applicability and (3) General Provisions of the rule.

RESPONSE AND EXPLANATION OF CHANGE: As a result of this comment, the words "and letterpress" will be added to the purpose; subsections (1)(B), (3)(A), (3)(B), and (3)(C); and paragraph (1)(C)2.

COMMENT #7: The EPA recommends that the department consider adding a definition at section (2) of the rule for "letterpress printing". If the department decides to add the definition to the rule, there is an existing definition of "letterpress printing" at paragraph (2)(L)7. of 10 CSR 10-6.020 Definitions and Common Reference Tables that could be used to provide consistency between the department Air Conservation Commission Rules. A definition for "lithographic printing" is already provided at section (2) of 10 CSR 10-2.340.

RESPONSE AND EXPLANATION OF CHANGE: As a result of this comment, the definition of "letterpress printing" will be added to section (2) and this section will be renumbered accordingly.

COMMENT #8: In paragraph (3)(B)2. the department is proposing to remove the following language: "The cloths, when properly cleaned or disposed of, are processed in a way that as much of the solvent, as practicable, is recovered for further use or destroyed. Cleaning and disposal methods shall be approved by the director." The department will need to submit a demonstration showing how the removal of the requirement that "as much of the solvent is recovered for further use or destroyed" from the department's SIP, meets the requirements of CAA sections 110(1) and 193, also known as the "anti-backsliding" provisions.

RESPONSE AND EXPLANATION OF CHANGE: Removing this language was an attempt to provide consistency with the St. Louis area rule 10 CSR 10-5.442, paragraph (3)(B)3. where it is not included. However, the department has determined that this phrase is necessary in 10 CSR 10-2.340 for historical purposes. As a result of this comment, this language will be retained.

COMMENT #9: There is a reference at subsection (5)(A) to 10 CSR 10-6.030(22) however, section (22) does not exist in the state's 10 CSR 10-6.030 Sampling Methods. The EPA understands that the

department is in the process of revising 10 CSR 10-6.030 Sampling Methods and that those potential rule changes are being made available for public comment concurrent with this rule. As such, EPA would not act on this submission until 10 CSR 10-6.030 was also submitted to EPA.

RESPONSE: The department is currently in the process of amending rule 10 CSR 10-6.030 Sampling Methods for Air Pollution Sources and plans to submit this rule for inclusion into the SIP before, or concurrently with the submittal to EPA of amendments to 10 CSR 10-2.340. As a result of this comment, no changes have been made to the rule text.

COMMENT #10: The EPA encourages the department to assess the need for adding a reference to 10 CSR 10-6.030(22) in subsection (5)(A) of this rule because the section already specifies which test method to use (Method 25 or 25A respectively) and where the methods can be found (40 CFR 60, Appendix A). The draft rule text language for the potential revisions to 10 CSR 10-6.030 adds section (22), which incorporates 40 CFR 60, in whole, by reference. It may be unnecessary to divert the public to another state regulation that incorporates a federal regulation by reference and provides no additional clarity than what is already specified in subsection (5)(A).

RESPONSE: The department appreciates this comment and for all air rules found in 10 CSR 10-6.030 Chapters 1-6, where stack testing methods or guidance documents are mentioned more than once, a reference to rule 10 CSR 10-6.030 reduces the length of federal content incorporated by reference into these rules. No changes were made to the rule text as a result of this comment.

COMMENT #11: Department staff commented that all the subsections in section (2) should have periods at the end of them for consistency in rule formats.

RESPONSE AND EXPLANATION OF CHANGE: As a result of this comment, the periods have been added to the end of all the subsections in section (2).

### 10 CSR 10-2.340 Control of Emissions From Lithographic and Letterpress Printing Operations

*PURPOSE: This regulation restricts volatile organic compound emissions from lithographic and letterpress printing operations.*

#### (1) Applicability.

(B) This regulation shall apply to installations that have calculated actual volatile organic compound (VOC) emissions for a known number of crewed hours, increased by the amount by weight of VOCs whose emission into the atmosphere is prevented by the use of air pollution control devices and extrapolated to eight thousand seven hundred sixty (8,760) hours per year equal to or greater than one hundred (100) tons per year from offset lithographic and letterpress printing presses after December 9, 1991. The following factors shall be taken into consideration unless an alternative method is approved by the director:

1. Assume fifty percent (50%) of the solvent used for cleanup is retained in the rag(s) when the used solvent-laden rag(s) are cleaned or disposed of. The installation must demonstrate to the director that the solvents are not evaporated into the air when the waste rags are properly cleaned and disposed of;

2. Assume forty percent (40%) of the heatset ink oils stay in the paper web;

3. Assume no VOCs are emitted from the inks used in sheet-fed presses and nonheatset web presses; and

4. Assume that fifty percent (50%) of the alcohol from the fountain solution is emitted from the dryer.

(C) This regulation does not apply to—

1. Printing on fabric, metal, or plastic;
2. Sheet-fed lithographic and letterpress presses with cylinder widths of twenty-six inches (26") or less; or
3. Web lithographic and letterpress presses with cylinder widths

of eighteen inches (18") or less.

(2) Definitions.

(A) Alcohol—Refers to isopropanol, isopropyl alcohol, normal propyl alcohol, or ethanol.

(B) Coating—A protective, decorative, or functional material applied in a thin layer to a surface. Such materials include, but are not limited to, paints, topcoats, varnishes, sealers, stains, washcoats, basecoats, inks, and temporary protective coatings.

(C) Fountain solution—The solution which is applied to the image plate to maintain the hydrophilic properties of the nonimage areas. It is primarily water containing an etchant, gum arabic, and a dampening aid (commonly containing alcohol and alcohol substitutes).

(D) Heatset—A class of web-offset lithographic and letterpress printing in which the setting of the printing inks requires a heated dryer to evaporate the ink oils. The setting or curing of inks using only radiation (e.g., infrared, ultraviolet light, or electron beam) is not heatset and is classified as nonheatset.

(E) Letterpress printing—A printing process in which the image area is raised relative to the nonimage area, and the ink is transferred to the substrate directly from the image surface.

(F) Lithographic printing—A planographic printing process where the image and nonimage areas are chemically differentiated; the image area is oil receptive and the nonimage area is water receptive. This method differs from other printing methods, where the image is typically printed from a raised or recessed surface. Offset lithographic printing is the only common type of lithographic printing used for commercial printing.

(G) Offset lithographic printing—A printing process that transfers the ink film from the lithographic plate to an intermediary surface (rubber-covered blanket cylinder), which, in turn, transfers the ink film to the substrate.

(H) Sheet-fed—A printing press where individual sheets of substrate are fed into the press sequentially.

(I) Web—A printing process where a continuous roll of substrate is fed into the press.

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

(3) General Provisions.

(A) No owner or operator shall use or permit the use of any offset lithographic and letterpress printing press unless—

1. The fountain solution contains ten percent (10%) or less by weight of alcohol;
2. The fountain solution is refrigerated to a temperature of fifty-five degrees Fahrenheit (55°F) or less for alcohol-based solutions;
3. The fountain solution temperature at the mixing tank for alcohol-based solutions is monitored during each shift; and
4. The fountain solution mixing tanks are covered for alcohol-based solutions.

(B) No owner or operator shall use or permit the use of any offset lithographic and letterpress printing press that uses cleanup solvents containing VOCs unless—

1. The cleanup solvents are kept in tightly covered tanks or containers during transport and storage;
2. The cleaning cloths used with the cleanup solvents are placed in tightly closed containers when not in use and while awaiting off-site transportation. The cleaning cloths should be properly cleaned and disposed of. The cloths, when properly cleaned or disposed of, are processed in a way that as much of the solvent, as practicable, is recovered for further use or destroyed. Cleaning and disposal methods shall be approved by the director; and
3. An owner or operator may use an alternate method for reducing cleanup solvent VOC emissions, including the use of low VOC cleanup solvents, if the owner or operator shows the emission reduction is equal to or greater than those in paragraphs (3)(B)1. and 2. This alternate method is approved by the director.

(C) No owner or operator shall use or permit the use of any heatset web-offset lithographic and letterpress printing press that uses a

dryer that has ever had an actual emission rate of ten (10) tons per year or more VOCs after December 9, 1991, unless one hundred percent (100%) of the dryer exhaust is ducted to a control device that achieves eighty-five percent (85%) by weight or greater control efficiency.

**Title 10—DEPARTMENT OF NATURAL RESOURCES  
Division 10—Air Conservation Commission  
Chapter 2—Air Quality Standards and Air Pollution  
Control Rules Specific to the Kansas City Metropolitan  
Area**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo 2016, the commission rescinds a rule as follows:

**10 CSR 10-2.390 Kansas City Area Transportation Conformity Requirements is rescinded.**

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on May 15, 2018 (43 MoReg 1018-1019). No changes were made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** The Missouri Department of Natural Resources' Air Pollution Control Program received five (5) comments on this rulemaking from the U.S. Environmental Protection Agency (EPA).

Due to similar concerns expressed in the following five (5) comments, one (1) response that addresses these concerns is at the end of these five (5) comments.

**COMMENT #1:** The EPA provided a general comment for all the rules that the department has the responsibility to ensure that the State Implementation Plan (SIP) revision submitted to EPA meets the requirements of sections 110(1) and 193 of the Clean Air Act (CAA).

Section 110(1): Generally, section 110(1) provides that EPA cannot approve a SIP revision if the revision interferes with any applicable requirement concerning attainment and reasonable further progress or any other requirement of the CAA. This section applies to any area and to any National Ambient Air Quality Standard (NAAQS) pollutant and/or precursor. Thus, any SIP rule is subject to this section.

Section 193: Section 193 prohibits modification of a SIP in effect before 1990 unless that modification would ensure equivalent or greater emissions reductions, i.e., "anti-backsliding." Section 193 applies only to nonattainment areas and is specific to the nonattainment pollutant. The applicability of section 193 is specific to nonattainment "criteria" pollutants. The ozone implementation rule (codified at 40 CFR 51.905(a)(4)), describes how section 193 applies to Kansas City - an attainment area for the eight (8)-hour standard and maintenance area for the one (1)-hour standard.

Each of the eleven (11) proposed rule rescissions are subject to section 110(1) requirements; six (6) of the proposed rule rescissions are subject to the section 193 requirements. One (1) of the seven (7) proposed rule revisions is subject to section 110(1) requirements, one (1) is a Title V Part 70 revision, one (1) is a 111(d) plan revision and the remaining four (4) proposed rule revisions are administrative in nature only.

**COMMENT #2:** The EPA suggests a demonstration that quantifies any emissions increase or potential increase by rescinding the rule(s), and a discussion on the impact on air quality. This demonstration could be done by comparing the source inventory at the time the rule

was promulgated to the source inventory now, and demonstrating the overall impact on emissions. In addition, the department could include a discussion of the monitored air quality when the rule was promulgated/incorporated into the SIP and monitored air quality trends that demonstrate an improvement in air quality and how the rescission of the rule might impact those trends.

COMMENT #3: The EPA suggests a discussion of the rule's purpose; specifically, whether the rule was promulgated to meet nonattainment area requirements, and if so, which specific NAAQS. In addition, the department could describe how the rule no longer serves to meet that purpose or how the rule has been superseded by another permanent and enforceable mechanism.

COMMENT #4: The EPA suggests a discussion of whether the rule was used to support other actions and whether the removal of the rule would impact those obligations such as an attainment demonstration, a request for a determination to attainment, a redesignation request and maintenance plan, or other actions such as Regional Haze or Interstate Transport.

COMMENT #5: The EPA suggests where the department may be anticipating other federal programs, such as Maximum Achievable Control Technology and National Emissions Standards for Hazardous Air Pollutants, as acting as a backstop to removal of its Reasonably Available Control Technology (RACT) rules, a comprehensive discussion of how those programs equal RACT. For example, there may be volatile organic compound (VOC) sources regulated by these programs that are well controlled through add-on controls, or even through substitution of non-hazardous air pollutant material for VOC hazardous air pollutant materials, however, these programs only cover air toxics and not all VOC emissions that RACT would capture and control are air toxics.

RESPONSE: The rescission of this rule is consistent with Executive Order 17-03 requiring a review of every regulation to affirm that the regulation is essential to the health, safety, or welfare of Missouri residents. The review of this rule indicated that no sources are subject to the rule, that the rule does not reduce any air pollutant, and therefore is not essential. Previously subject sources either have gone out of business or the source is no longer subject to the rule. In some cases, the source has been out of business or not subject to the rule for years. While a rule may have applied to a source to reduce or limit air pollutants in the past, the source is no longer producing the regulated emissions and the rule is no longer needed or relied upon for emission reductions going forward. To address EPA's concern about limiting VOC emissions from a new source, the department reiterates that RACT rules were intended to apply to existing major sources in nonattainment areas present at the time of the rule's promulgation. Any new source would not be subject to a RACT rule and instead would be subject to current applicable state or federal rules. Those state and federal rules would serve as the backstop limiting VOC emissions. These rules are not relied upon for any SIP purposes.

**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**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo 2016, the commission rescinds a rule as follows:

**10 CSR 10-5.360 Control of Emissions From Polyethylene Bag Sealing Operations is rescinded.**

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on May 15, 2018 (43 MoReg 1019). No changes were made in the proposed rescission, so it is not

reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Department of Natural Resources' Air Pollution Control Program received eleven (11) comments from one (1) source, the U.S. Environmental Protection Agency (EPA).

Due to similar concerns expressed in the following five (5) comments, one (1) response that addresses these concerns is at the end of these five (5) comments.

COMMENT #1: The EPA provided a general comment for all the rules that the department has the responsibility to ensure that the State Implementation Plan (SIP) revision submitted to EPA meets the requirements of sections 110(1) and 193 of the Clean Air Act (CAA).

Section 110(1): Generally, section 110(1) provides that EPA cannot approve a SIP revision if the revision interferes with any applicable requirement concerning attainment and reasonable further progress (RFP) or any other requirement of the CAA. This section applies to any area and to any National Ambient Air Quality Standard (NAAQS) pollutant and/or precursor. Thus, any SIP rule is subject to this section.

Section 193: Section 193 prohibits modification of a SIP in effect before 1990 unless that modification would ensure equivalent or greater emissions reductions, i.e., "anti-backsliding." Section 193 applies only to nonattainment areas and is specific to the nonattainment pollutant. The applicability of section 193 is specific to nonattainment "criteria" pollutants. The ozone implementation rule (codified at 40 CFR 51.905(a)(4)), describes how section 193 applies to Kansas City - an attainment area for the eight (8)-hour standard and maintenance area for the one (1)-hour standard.

Each of the eleven (11) proposed rule rescissions are subject to section 110(1) requirements; six (6) of the proposed rule rescissions are subject to the section 193 requirements. One (1) of the seven (7) proposed rule revisions is subject to section 110(1) requirements, one (1) is a Title V Part 70 revision, one (1) is a 111(d) plan revision and the remaining four (4) proposed rule revisions are administrative in nature only.

COMMENT #2: The EPA suggests a demonstration that quantifies any emissions increase or potential increase by rescinding the rule(s), and a discussion on the impact on air quality. This demonstration could be done by comparing the source inventory at the time the rule was promulgated to the source inventory now, and demonstrating the overall impact on emissions. In addition, the department could include a discussion of the monitored air quality when the rule was promulgated/incorporated into the SIP and monitored air quality trends that demonstrate an improvement in air quality and how the rescission of the rule might impact those trends.

COMMENT #3: The EPA suggests a discussion of the rule's purpose; specifically, whether the rule was promulgated to meet nonattainment area requirements, and if so, which specific NAAQS. In addition, the department could describe how the rule no longer serves to meet that purpose or how the rule has been superseded by another permanent and enforceable mechanism.

COMMENT #4: The EPA suggests a discussion of whether the rule was used to support other actions and whether the removal of the rule would impact those obligations such as an attainment demonstration, a request for a determination to attainment, a redesignation request and maintenance plan, or other actions such as Regional Haze or Interstate Transport.

COMMENT #5: The EPA suggests that where the department may be anticipating other federal programs, such as Maximum Achievable Control Technology (MACT) and National Emissions Standards for Hazardous Air Pollutants, as acting as a backstop to removal of its Reasonably Available Control Technology (RACT) rules, a comprehensive discussion of how those programs equal RACT. For example, there may be volatile organic compound (VOC) sources regulated by these programs that are well-controlled through add-on controls, or

even through substitution of non-hazardous air pollutant material for VOC hazardous air pollutant materials, however, these programs only cover air toxics and not all VOC emissions that RACT would capture and control are air toxics.

RESPONSE: The rescission of this rule is consistent with Executive Order 17-03 requiring a review of every regulation to affirm that the regulation is essential to the health, safety, or welfare of Missouri residents. The review of this rule indicated that no sources are subject to the rule, that the rule does not reduce any air pollutant, and therefore is not essential. Previously subject sources either have gone out of business or the source is no longer subject to the rule. In some cases, the source has been out of business or not subject to the rule for years. While a rule may have applied to a source to reduce or limit air pollutants in the past, the source is no longer producing the regulated emissions and the rule is no longer needed or relied upon for emission reductions going forward. To address EPA's concern about limiting VOC emissions from a new source, the department reiterates that RACT rules were intended to apply to existing major sources in nonattainment areas present at the time of the rule's promulgation. Any new source would not be subject to a RACT rule and instead would be subject to current applicable state or federal rules. Those state and federal rules would serve as the backstop limiting VOC emissions. These rules are not relied upon for any SIP purposes.

Due to similar concerns expressed in the following six (6) comments, one (1) response that addresses these concerns is at the end of these six (6) comments.

COMMENT #6: The Rulemaking Report indicates that there were two (2) sources originally subject to the rule and that neither of those businesses are still in operation, making the rule obsolete. However, the rule language indicates that it applies throughout St. Louis City and Jefferson, St. Charles, Franklin, and St. Louis counties and that it applies to all installations that have the uncontrolled potential to emit more than one hundred (100) tons per year (tpy) or two hundred fifty (250) kilograms (kg) per day of VOCs from any polyethylene bag sealing operation. Because the rule, as written, does not specifically say if it would or would not apply to a new or modified polyethylene bag sealing operation with potential emissions of greater than 100 tpy or 250 kg per day of VOCs upon start-up, and the rule could read to imply that it would, the department should provide clarification of the rule's applicability and demonstrate that the SIP revision would not interfere with attainment of the NAAQS.

COMMENT #7: A potential way for the department to demonstrate that the SIP revision would not interfere with attainment of the NAAQS might be provide explanation of how its SIP-approved Prevention of Significant Deterioration (PSD) program would ensure that the start-up of a new source or modification of an existing source would be controlled in an equivalent manner as would be required by the rescinded rule.

COMMENT #8: If EPA's proposed rulemaking to redesignate the Missouri portion of the St. Louis-St. Charles-Farmington, MO-IL 2008 ozone area to attainment is finalized as proposed, Nonattainment New Source Review (NNSR) will no longer apply in Jefferson County and portions of Franklin County and new sources in those counties will then have a potential to emit of up to two hundred forty-nine (249) tpy without being subject to PSD, MACT, or New Source Performance Standards. Because of the change in applicability of NNSR, the department will need to ensure that the department's SIP submission meets the requirements of sections 110(1) and 193 of the CAA, also known as the "antibacksliding" provisions. These sections relate to EPA's authority to approve a SIP revision that removes or modifies control measure(s) in the SIP only after the state has demonstrated that such a removal or modification will not interfere with attainment of the NAAQS, RFP, or any other applicable requirement of the CAA.

COMMENT #9: If in the event the start-up of a new source or modification to an existing source would not be applicable under PSD but

would otherwise be an applicable source under the rescinded rule, the department should provide a demonstration of the potential emissions from such sources and make a determination about the source's potential impact on air quality.

COMMENT #10: The department could supplement this demonstration by providing information on why it believes no new or modified sources will start-up (i.e., Are polyethylene bags no longer sealed, or do those operations always meet one (1) of the exceptions to the rescinded rule? Do bag sealing operations no longer emit VOCs?).

COMMENT #11: Additionally, the department's Redesignation Request and Maintenance Plan for the St. Louis, Missouri 2008 Ozone Standard Nonattainment Area is unclear whether this rule is relied upon to attain and maintain the standard. As such, the SIP revision submission for rescinding this rule should discuss any potential impact of rescinding the rule on that plan.

RESPONSE: The rescission of this RACT rule is consistent with Executive Order 17-03 requiring a review of every state regulation to affirm that the regulation is necessary. The review of this rule indicated there are no sources subject to the rule, making the rule obsolete. This rescission will not have a negative effect on air quality since the rule does not function to reduce emissions (no sources regulated) or achieve attainment or maintenance of the NAAQS (SIP requirements met). To address EPA's concern about limiting VOC emissions from a new source, the department reiterates that RACT rules were intended to apply to existing major sources in nonattainment areas present at the time of the rule's promulgation. Any new sources or major modifications of existing sources would not be subject to this RACT rule and instead would be subject to New Source Review permitting and current applicable state or federal rules. Those state and federal rules would serve as the backstop limiting VOC emissions. This rule is not relied upon for any SIP purposes since there are no affected sources.

**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**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo 2016, the commission rescinds a rule as follows:

**10 CSR 10-5.370 Control of Emissions From the Application of**  
**Deadeners and Adhesives is rescinded.**

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on May 15, 2018 (43 MoReg 1019). No changes were made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Department of Natural Resources' Air Pollution Control Program received twelve (12) comments on this rulemaking from the U.S. Environmental Protection Agency (EPA).

Due to similar concerns expressed in the following five (5) comments, one (1) response that addresses these concerns is at the end of these five (5) comments.

COMMENT #1: The EPA provided a general comment for all the rules that the department has the responsibility to ensure that the State Implementation Plan (SIP) revision submitted to EPA meets the requirements of sections 110(1) and 193 of the Clean Air Act (CAA).

Section 110(1): Generally, section 110(1) provides that EPA cannot



approve a SIP revision if the revision interferes with any applicable requirement concerning attainment and reasonable further progress (RFP) or any other requirement of the CAA. This section applies to any area and to any National Ambient Air Quality Standard (NAAQS) pollutant and/or precursor. Thus, any SIP rule is subject to this section.

Section 193: Section 193 prohibits modification of a SIP in effect before 1990 unless that modification would ensure equivalent or greater emissions reductions, i.e., “anti-backsliding.” Section 193 applies only to nonattainment areas and is specific to the nonattainment pollutant. The applicability of section 193 is specific to nonattainment “criteria” pollutants. The ozone implementation rule (codified at 40 CFR 51.905(a)(4)), describes how section 193 applies to Kansas City - an attainment area for the eight (8)-hour standard and maintenance area for the one (1)-hour standard.

Each of the eleven (11) proposed rule rescissions are subject to section 110(1) requirements; six (6) of the proposed rule rescissions are subject to the section 193 requirements. One (1) of the seven (7) proposed rule revisions is subject to section 110(1) requirements, one (1) is a Title V Part 70 revision, one (1) is a 111(d) plan revision and the remaining four (4) proposed rule revisions are administrative in nature only.

COMMENT #2: The EPA suggests a demonstration that quantifies any emissions increase or potential increase by rescinding the rule(s), and a discussion on the impact on air quality. This demonstration could be done by comparing the source inventory at the time the rule was promulgated to the source inventory now, and demonstrating the overall impact on emissions. In addition, the department could include a discussion of the monitored air quality when the rule was promulgated/incorporated into the SIP and monitored air quality trends that demonstrate an improvement in air quality and how the rescission of the rule might impact those trends.

COMMENT #3: The EPA suggests a discussion of the rule’s purpose; specifically, whether the rule was promulgated to meet nonattainment area requirements, and if so, which specific NAAQS. In addition, the department could describe how the rule no longer serves to meet that purpose or how the rule has been superseded by another permanent and enforceable mechanism.

COMMENT #4: The EPA suggests a discussion of whether the rule was used to support other actions and whether the removal of the rule would impact those obligations such as an attainment demonstration, a request for a determination to attainment, a redesignation request and maintenance plan, or other actions such as Regional Haze or Interstate Transport.

COMMENT #5: The EPA suggests that where the department may be anticipating other federal programs, such as Maximum Achievable Control Technology (MACT) and National Emissions Standards for Hazardous Air Pollutants, as acting as a backstop to removal of its Reasonably Available Control Technology (RACT) rules, a comprehensive discussion of how those programs equal RACT. For example, there may be volatile organic compound (VOC) sources regulated by these programs that are well-controlled through add-on controls, or even through substitution of non-hazardous air pollutant material for VOC hazardous air pollutant (HAP) materials, however, these programs only cover air toxics and not all VOC emissions that RACT would capture and control are air toxics.

RESPONSE: The rescission of this rule is consistent with Executive Order 17-03 requiring a review of every regulation to affirm that the regulation is essential to the health, safety, or welfare of Missouri residents. The review of this rule indicated that no sources are subject to the rule, that the rule does not reduce any air pollutant, and therefore is not essential. Previously subject sources either have gone out of business or the source is no longer subject to the rule. In some cases, the source has been out of business or not subject to the rule for years. While a rule may have applied to a source to reduce or limit air pollutants in the past, the source is no longer producing the regulated emissions and the rule is no longer needed or relied upon for emission reductions going forward. To address EPA’s concern about limiting VOC emissions from a new source, the department

reiterates that RACT rules were intended to apply to existing major sources in nonattainment areas present at the time of the rule’s promulgation. Any new source would not be subject to a RACT rule and instead would be subject to current applicable state or federal rules. Those state and federal rules would serve as the backstop limiting VOC emissions. These rules are not relied upon for any SIP purposes.

Due to similar concerns expressed in the following seven (7) comments, one (1) response that addresses these concerns is at the end of these seven (7) comments.

COMMENT #6: The Rulemaking Report indicates that this “rule applied Reasonably Available Control Technology (RACT) to major sources of volatile organic compounds (VOC) emissions applying automotive underbody deadeners and adhesives in the St. Louis nonattainment area. Generally, RACT rules apply to those sources that were subject because they existed at the time the RACT rule became effective and are still currently operating.” The Rulemaking Report names the Chrysler Corporation and states that this source ceased operations in 2008 and that both the north and south facilities were razed in 2011. However, the rule language indicates that it applies throughout St. Louis City and Jefferson, St. Charles, Franklin, and St. Louis counties and that it applies to all installations that have the uncontrolled potential to emit (PTE) of more than one hundred (100) tons per year (tpy) or two hundred fifty (250) kilogram (kg) per day of VOC. Because the rule, as written, does not specifically say if it would or would not apply to a new or modified applicator of underbody deadener with potential emissions of VOCs greater than one hundred (100) tpy or two hundred fifty (250) kg per day upon start-up, and the rule could read to imply that it would, the department should provide clarification of the rule’s applicability and demonstrate that the SIP revision would not interfere with attainment of the NAAQS.

COMMENT #7: A potential way for the department to demonstrate that this SIP revision would not interfere with attainment of the NAAQS might be to provide an explanation of how its SIP-approved Prevention of Significant Deterioration (PSD) program would ensure that the start-up of a new source or modification of an existing source would be controlled in at least an equivalent manner as would be required by this rescinded rule.

COMMENT #8: If EPA’s proposed rulemaking to redesignate the Missouri portion of the St. Louis-St. Charles-Farmington, MO-IL 2008 Ozone area to attainment is finalized as proposed, Nonattainment New Source Review (NNSR) will no longer apply in Jefferson County and portions of Franklin County and new sources in those counties will then have a PTE of up to 249 tpy without being subject to PSD, MACT, or New Source Performance Standards. Because of the change in applicability of NNSR, the department will need to ensure that the department’s SIP submission meets the requirements of sections 110(1) and 193 of the CAA, also known as the “anti-backsliding” provisions. These sections relate to the EPA’s authority to approve a SIP revision that removes or modifies control measure(s) in the SIP only after the state has demonstrated that such a removal or modification will not interfere with attainment of the NAAQS, RFP, or any other applicable requirement of the CAA.

COMMENT #9: If in the event the start-up of a new source or modification to an existing source would not be applicable under PSD but would otherwise be an applicable source under this rescinded rule, the department should provide a demonstration of the potential emissions from such sources and make a determination about their potential impact on air quality.

COMMENT #10: The department could supplement this demonstration by providing information on why it believes no new or modified source will start-up (i.e., Are underbody deadeners no longer sprayed onto vehicles? If still spray applied, do they no longer have VOCs?).

COMMENT #11: The EPA notes that MACT subpart IIII for Surface Coating of Automobiles and Light-Duty Trucks has provisions for underbody anti-chip coatings and deadeners may provide a backstop.

The department could demonstrate that the associated limits on HAPs in the MACT subpart IIII also limit VOCs. The department may want to evaluate further to see if this MACT rule could address the proposed rescission of this RACT rule.

COMMENT #12: Additionally, the department's Redesignation Request and Maintenance Plan for the St. Louis, Missouri 2008 Ozone Standard Nonattainment Area is unclear whether this rule is relied upon to attain and maintain the standard. As such, the SIP revision submission for rescinding this rule should discuss any potential impact of rescinding the rule on that plan.

RESPONSE: The rescission of this RACT rule is consistent with Executive Order 17-03 requiring a review of every state regulation to affirm that the regulation is necessary. The review of this rule indicated there are no sources subject to the rule, making the rule obsolete. In this case, the source is no longer operating. This rescission will not have a negative effect on air quality since the rule does not function to reduce emission (no sources regulated) or achieve attainment or maintenance of the NAAQS (SIP requirements met). To address EPA's concern about limiting VOC emissions from a new source, the department reiterates that RACT rules were intended to apply to existing major sources in nonattainment areas present at the time of the rule's promulgation. Any new sources or major modifications of existing sources would not be subject to this RACT rule and instead would be subject to New Source Review permitting and current applicable state or federal rules. Those state and federal rules would serve as the backstop limiting VOC emissions. The rule is not relied upon for any SIP purposes since there are no affected sources.

**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**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo 2016, the commission rescinds a rule as follows:

**10 CSR 10-5.410 Control of Emissions From Manufacture of Polystyrene Resin is rescinded.**

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on May 15, 2018 (43 MoReg 1020). No changes were made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Department of Natural Resources' Air Pollution Control Program received twelve (12) comments on this rulemaking from the U.S. Environmental Protection Agency (EPA).

Due to similar concerns expressed in the following five (5) comments, one (1) response that addresses these concerns is at the end of these five (5) comments.

COMMENT #1: The EPA provided a general comment for all the rules that the department has the responsibility to ensure that the State Implementation Plan (SIP) revision submitted to EPA meets the requirements of sections 110(1) and 193 of the Clean Air Act (CAA).

Section 110(1): Generally, section 110(1) provides that EPA cannot approve a SIP revision if the revision interferes with any applicable requirement concerning attainment and reasonable further progress (RFP) or any other requirement of the CAA. This section applies to any area and to any National Ambient Air Quality Standard (NAAQS) pollutant and/or precursor. Thus, any SIP rule is subject

to this section.

Section 193: Section 193 prohibits modification of a SIP in effect before 1990 unless that modification would ensure equivalent or greater emissions reductions, i.e., "anti-backsliding." Section 193 applies only to nonattainment areas and is specific to the nonattainment pollutant. The applicability of section 193 is specific to nonattainment "criteria" pollutants. The ozone implementation rule (codified at 40 CFR 51.905(a)(4)), describes how section 193 applies to Kansas City - an attainment area for the eight (8)-hour standard and maintenance area for the one (1)-hour standard.

Each of the eleven (11) proposed rule rescissions are subject to section 110(1) requirements; six (6) of the proposed rule rescissions are subject to the section 193 requirements. One (1) of the seven (7) proposed rule revisions is subject to section 110(1) requirements, one (1) is a Title V Part 70 revision, one (1) is a 111(d) plan revision and the remaining four (4) proposed rule revisions are administrative in nature only.

COMMENT #2: The EPA suggests a demonstration that quantifies any emissions increase or potential increase by rescinding the rule(s), and a discussion on the impact on air quality. This demonstration could be done by comparing the source inventory at the time the rule was promulgated to the source inventory now, and demonstrating the overall impact on emissions. In addition, the department could include a discussion of the monitored air quality when the rule was promulgated/incorporated into the SIP and monitored air quality trends that demonstrate an improvement in air quality and how the rescission of the rule might impact those trends.

COMMENT #3: The EPA suggests a discussion of the rule's purpose; specifically, whether the rule was promulgated to meet nonattainment area requirements, and if so, which specific NAAQS. In addition, the department could describe how the rule no longer serves to meet that purpose or how the rule has been superseded by another permanent and enforceable mechanism.

COMMENT #4: The EPA suggests a discussion of whether the rule was used to support other actions and whether the removal of the rule would impact those obligations such as an attainment demonstration, a request for a determination to attainment, a redesignation request and maintenance plan, or other actions such as Regional Haze or Interstate Transport.

COMMENT #5: The EPA suggests that where the department may be anticipating other federal programs, such as Maximum Achievable Control Technology (MACT) and National Emissions Standards for Hazardous Air Pollutants, as acting as a backstop to removal of its Reasonably Available Control Technology (RACT) rules, a comprehensive discussion of how those programs equal RACT. For example, there may be volatile organic compound (VOC) sources regulated by these programs that are well-controlled through add-on controls, or even through substitution of non-hazardous air pollutant material for VOC hazardous air pollutant (HAP) materials, however, these programs only cover air toxics and not all VOC emissions that RACT would capture and control are air toxics.

RESPONSE: The rescission of this rule is consistent with Executive Order 17-03 requiring a review of every regulation to affirm that the regulation is essential to the health, safety, or welfare of Missouri residents. The review of this rule indicated that no sources are subject to the rule, that the rule does not reduce any air pollutant, and therefore is not essential. Previously subject sources either have gone out of business or the source is no longer subject to the rule. In some cases, the source has been out of business or not subject to the rule for years. While a rule may have applied to a source to reduce or limit air pollutants in the past, the source is no longer producing the regulated emissions and the rule is no longer needed or relied upon for emission reductions going forward. To address EPA's concern about limiting VOC emissions from a new source, the department reiterates that RACT rules were intended to apply to existing major sources in nonattainment areas present at the time of the rule's promulgation. Any new source would not be subject to a RACT rule and instead would be subject to current applicable state or federal rules. Those state and federal rules would serve as the backstop limiting

VOC emissions. These rules are not relied upon for any SIP purposes.

Due to similar concerns expressed in the following seven (7) comments, one (1) response that addresses these concerns is at the end of these seven (7) comments.

COMMENT #6: The Rulemaking Report indicates that “the rule applied Reasonably Available Control Technology (RACT) to major sources of volatile organic compounds (VOC) emissions from polystyrene resin manufacturers in the St. Louis nonattainment area. Generally, RACT rules apply to those sources that were subject because they existed at the time the RACT rule became effective and are still currently operating.” The Rulemaking Report names Dow Chemical Company as the only applicable source and states that because the company doesn’t manufacture resin anymore, the rule is no longer applicable. However, the rule language indicates that the rule applies throughout St. Louis City and Jefferson, St. Charles, Franklin, and St. Louis counties and that it applies to all installations engaged in the manufacture of polystyrene resin. Because the rule does not specifically say if it would or would not apply to a new or modified manufacturer of polystyrene resin upon start-up, and the rule could read to imply that it would, the department should provide clarification of the rule’s applicability and demonstrate that the SIP revision would not interfere with attainment of the NAAQS.

COMMENT #7: A potential way for the department to demonstrate that the SIP revision would not interfere with attainment of the NAAQS might be to provide an explanation of how its SIP-approved Prevention of Significant Deterioration (PSD) program would ensure that the start-up of a new source or modification of an existing source would be controlled in an equivalent manner as would be required by the rescinded rule.

COMMENT #8: If EPA’s proposed rulemaking to redesignate the Missouri portion of the St. Louis-St. Charles-Farmington, MO-IL 2008 ozone area to attainment is finalized as proposed, Nonattainment New Source Review (NNSR) will no longer apply in Jefferson County and portions of Franklin County and new sources in those counties will then have a potential to emit of up to two hundred forty-nine (249) tons per year (tpy) without being subject to PSD, MACT, or New Source Performance Standards. Because of the change in applicability of NNSR, the department will need to ensure that the department’s SIP submission meets the requirements of sections 110(1) and 193 of the CAA, also known as the “anti-backsliding” provisions. These sections relate to EPA’s authority to approve a SIP revision that removes or modifies control measure(s) in the SIP only after the state has demonstrated that such a removal or modification will not interfere with attainment of the NAAQS, RFP, or any other applicable requirement of the CAA.

COMMENT #9: If in the event the start-up of a new source or modification to an existing source would not be applicable under PSD or NNSR but would otherwise be an applicable source under the rescinded rule, the department should provide a demonstration of the potential emissions from such sources and make a determination about their potential impact on air quality.

COMMENT #10: The department could supplement this demonstration by providing information on why it believes no new or modified sources will start-up (i.e., Is polystyrene resin no longer produced? If the resin is produced, does manufacturing it no longer emit VOCs?).

COMMENT #11: The EPA notes that the MACT subpart JJJ Group IV Polymers and Resins has provisions for polystyrene resins which may provide a backstop. The department could demonstrate that the associated limits on HAPs in the MACT subpart JJJ also limit VOCs. The department may want to evaluate further to see if this MACT rule could address the proposed rescission of this RACT rule.

COMMENT #12: Additionally, the department’s Redesignation Request and Maintenance Plan for the St. Louis, Missouri 2008 Ozone Standard Nonattainment Area is unclear whether this rule is relied upon to attain and maintain the standard. As such, the SIP revision submission for rescinding this rule should discuss any potential

impact of rescinding the rule on that plan.

RESPONSE: The rescission of this RACT rule is consistent with Executive Order 17-03 requiring a review of every state regulation to affirm that the regulation is necessary. The review of this rule indicated there are no sources subject to the rule, making the rule obsolete. In this case, the source is no longer manufacturing polystyrene resin. This rescission will not have a negative effect on air quality since the rule does not function to reduce emissions (no sources regulated) or achieve attainment or maintenance of the NAAQS (SIP requirements met). To address EPA’s concern about limiting VOC emissions from a new source, the department reiterates that RACT rules were intended to apply to existing major sources in nonattainment areas present at the time of the rule’s promulgation. Any new sources or major modifications of existing sources would not be subject to this RACT rule and instead would be subject to New Source Review permitting and current applicable state or federal rules. Those state and federal rules would serve as the backstop limiting VOC emissions. The rule is not relied upon for any SIP purposes since there are no affected sources.

**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**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo 2016, the commission rescinds a rule as follows:

**10 CSR 10-5.440 Control of Emissions From Bakery Ovens**  
**is rescinded.**

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on May 15, 2018 (43 MoReg 1020). No changes were made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Department of Natural Resources’ Air Pollution Control Program received eleven (11) comments on this rulemaking from the U.S. Environmental Protection Agency (EPA).

Due to similar concerns expressed in the following five (5) comments, one (1) response that addresses these concerns is at the end of these five (5) comments.

COMMENT #1: The EPA provided a general comment for all the rules that the department has the responsibility to ensure that the State Implementation Plan (SIP) revision submitted to EPA meets the requirements of sections 110(1) and 193 of the Clean Air Act (CAA).

Section 110(1): Generally, section 110(1) provides that EPA cannot approve a SIP revision if the revision interferes with any applicable requirement concerning attainment and reasonable further progress (RFP) or any other requirement of the CAA. This section applies to any area and to any National Ambient Air Quality Standard (NAAQS) pollutant and/or precursor. Thus, any SIP rule is subject to this section.

Section 193: Section 193 prohibits modification of a SIP in effect before 1990 unless that modification would ensure equivalent or greater emissions reductions, i.e., “anti-backsliding.” Section 193 applies only to nonattainment areas and is specific to the nonattainment pollutant. The applicability of section 193 is specific to nonattainment “criteria” pollutants. The ozone implementation rule (codified at 40 CFR 51.905(a)(4)), describes how section 193 applies to

Kansas City - an attainment area for the eight (8)-hour standard and maintenance area for the one (1)-hour standard.

Each of the eleven (11) proposed rule rescissions are subject to section 110(1) requirements; six (6) of the proposed rule rescissions are subject to the section 193 requirements. One (1) of the seven (7) proposed rule revisions is subject to section 110(1) requirements, one (1) is a Title V Part 70 revision, one (1) is a 111(d) plan revision and the remaining four (4) proposed rule revisions are administrative in nature only.

COMMENT #2: The EPA suggests a demonstration that quantifies any emissions increase or potential increase by rescinding the rule(s), and a discussion on the impact on air quality. This demonstration could be done by comparing the source inventory at the time the rule was promulgated to the source inventory now, and demonstrating the overall impact on emissions. In addition, the department could include a discussion of the monitored air quality when the rule was promulgated/incorporated into the SIP and monitored air quality trends that demonstrate an improvement in air quality and how the rescission of the rule might impact those trends.

COMMENT #3: The EPA suggests a discussion of the rule's purpose; specifically, whether the rule was promulgated to meet nonattainment area requirements, and if so, which specific NAAQS. In addition, the department could describe how the rule no longer serves to meet that purpose or how the rule has been superseded by another permanent and enforceable mechanism.

COMMENT #4: The EPA suggests a discussion of whether the rule was used to support other actions and whether the removal of the rule would impact those obligations such as an attainment demonstration, a request for a determination to attainment, a redesignation request and maintenance plan, or other actions such as Regional Haze or Interstate Transport.

COMMENT #5: The EPA suggests that where the department may be anticipating other federal programs, such as Maximum Achievable Control Technology (MACT) and National Emissions Standards for Hazardous Air Pollutants, as acting as a backstop to removal of its Reasonably Available Control Technology (RACT) rules, a comprehensive discussion of how those programs equal RACT. For example, there may be volatile organic compound (VOC) sources regulated by these programs that are well-controlled through add-on controls, or even through substitution of non-hazardous air pollutant material for VOC hazardous air pollutant materials, however, these programs only cover air toxics and not all VOC emissions that RACT would capture and control are air toxics.

RESPONSE: The rescission of this rule is consistent with Executive Order 17-03 requiring a review of every regulation to affirm that the regulation is essential to the health, safety, or welfare of Missouri residents. The review of this rule indicated that no sources are subject to the rule, that the rule does not reduce any air pollutant, and therefore is not essential. Previously subject sources either have gone out of business or the source is no longer subject to the rule. In some cases, the source has been out of business or not subject to the rule for years. While a rule may have applied to a source to reduce or limit air pollutants in the past, the source is no longer producing the regulated emissions and the rule is no longer needed or relied upon for emission reductions going forward. To address EPA's concern about limiting VOC emissions from a new source, the department reiterates that RACT rules were intended to apply to existing major sources in nonattainment areas present at the time of the rule's promulgation. Any new source would not be subject to a RACT rule and instead would be subject to current applicable state or federal rules. Those state and federal rules would serve as the backstop limiting VOC emissions. These rules are not relied upon for any SIP purposes.

Due to similar concerns expressed in the following six (6) comments, one (1) response that addresses these concerns is at the end of these six (6) comments.

COMMENT #6: The Rulemaking Report indicates that "the rule

applied Reasonably Available Control Technology (RACT) to major sources of volatile organic compounds (VOC) emissions from bakery ovens at large commercial bakeries in the St. Louis nonattainment area. Generally, RACT rules apply to those sources that were subject because they existed at the time the RACT rule became effective and are still currently operation." The Rulemaking Report identifies Hostess as the only applicable source and states that the facility was closed in 2012, making the rule obsolete. However, the rule language indicates that the rule applies to any new or existing installation in the counties of St. Charles, St. Louis, Franklin, or Jefferson or the City of St. Louis that have emissions of greater than one hundred (100) tons per year (tpy) of VOCs. The department should provide a demonstration that the SIP revision would not interfere with attainment of the NAAQS.

COMMENT #7: A potential way for the department to demonstrate that the SIP revision would not interfere with attainment of the NAAQS might be provide explanation of how its SIP-approved Prevention of Significant Deterioration (PSD) program would ensure that the start-up of a new source or modification of an existing source would be controlled in an equivalent manner as would be required by the rescinded rule.

COMMENT #8: If EPA's proposed rulemaking to redesignate the Missouri portion of the St. Louis-St. Charles-Farmington, MO-IL 2008 ozone area to attainment is finalized as proposed, Nonattainment New Source Review (NNSR) will no longer apply in Jefferson County and portions of Franklin County and new sources in those counties will then have a potential to emit of up to two hundred forty-nine (249) tpy without being subject to PSD, MACT, or New Source Performance Standards. Because of the change in applicability of NNSR, the department will need to ensure that the department's SIP submission meets the requirements of sections 110(1) and 193 of the CAA, also known as the "anti-backsliding" provisions. These sections relate to EPA's authority to approve a SIP revision that removes or modifies control measure(s) in the SIP only after the state has demonstrated that such a removal or modification will not interfere with attainment of the NAAQS, RFP, or any other applicable requirement of the CAA.

COMMENT #9: If in the event the start-up of a new source or modification to an existing source would not be applicable under PSD or NNSR but would otherwise be an applicable source under the rescinded rule, the department should provide a demonstration of the potential emissions from such sources and make a determination about their potential impact on air quality.

COMMENT #10: The department could supplement this demonstration by providing information on why it believes no new or modified sources will start-up (i.e., Do bakery ovens no longer emit VOCs?).

COMMENT #11: Additionally, the department's Redesignation Request and Maintenance Plan for the St. Louis, Missouri 2008 Ozone Standard Nonattainment Area is unclear whether this rule is relied upon to attain and maintain the standard. As such, the SIP revision submission for rescinding this rule should discuss any potential impact of rescinding the rule on that plan.

RESPONSE: The rescission of this RACT rule is consistent with Executive Order 17-03 requiring a review of every state regulation to affirm that the regulation is necessary. The review of this rule indicated there are no sources subject to the rule, making the rule obsolete. In this case, the source is no longer operating. This rescission will not have a negative effect on air quality since the rule does not function to reduce emissions (no sources regulated) or achieve attainment or maintenance of the NAAQS (SIP requirements met). To address EPA's concern about limiting VOC emissions from a new source, the department reiterates that RACT rules were intended to apply to existing major sources in nonattainment areas present at the time of the rule's promulgation. Any new sources or major modifications of existing sources would not be subject to this RACT rule and instead would be subject to New Source Review permitting and current applicable state or federal rules. Those state and federal rules would serve as the backstop limiting VOC emissions. The rule is not relied upon for any SIP purposes since there are no affected sources.

**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**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo 2016, the commission rescinds a rule as follows:

**10 CSR 10-5.455 Control of Emissions From Industrial Solvent Cleaning Operations is rescinded.**

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on May 15, 2018 (43 MoReg 1020-1021). No changes were made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** The Missouri Department of Natural Resources' Air Pollution Control Program received twelve (12) comments on this rulemaking from the U.S. Environmental Protection Agency (EPA).

Due to similar concerns expressed in the following five (5) comments, one (1) response that addresses these concerns is at the end of these five (5) comments.

**COMMENT #1:** The EPA provided a general comment for all the rules that the department has the responsibility to ensure that the State Implementation Plan (SIP) revision submitted to EPA meets the requirements of sections 110(1) and 193 of the Clean Air Act (CAA).

Section 110(1): Generally, section 110(1) provides that EPA cannot approve a SIP revision if the revision interferes with any applicable requirement concerning attainment and reasonable further progress (RFP) or any other requirement of the CAA. This section applies to any area and to any National Ambient Air Quality Standard (NAAQS) pollutant and/or precursor. Thus, any SIP rule is subject to this section.

Section 193: Section 193 prohibits modification of a SIP in effect before 1990 unless that modification would ensure equivalent or greater emissions reductions, i.e., "anti-backsliding." Section 193 applies only to nonattainment areas and is specific to the nonattainment pollutant. The applicability of section 193 is specific to nonattainment "criteria" pollutants. The ozone implementation rule (codified at 40 CFR 51.905(a)(4)), describes how section 193 applies to Kansas City - an attainment area for the eight (8)-hour standard and maintenance area for the one (1)-hour standard.

Each of the eleven (11) proposed rule rescissions are subject to section 110(1) requirements; six (6) of the proposed rule rescissions are subject to the section 193 requirements. One (1) of the seven (7) proposed rule revisions is subject to section 110(1) requirements, one (1) is a Title V Part 70 revision, one (1) is a 111(d) plan revision and the remaining four (4) proposed rule revisions are administrative in nature only.

**COMMENT #2:** The EPA suggests a demonstration that quantifies any emissions increase or potential increase by rescinding the rule(s), and a discussion on the impact on air quality. This demonstration could be done by comparing the source inventory at the time the rule was promulgated to the source inventory now, and demonstrating the overall impact on emissions. In addition, the department could include a discussion of the monitored air quality when the rule was promulgated/incorporated into the SIP and monitored air quality trends that demonstrate an improvement in air quality and how the rescission of the rule might impact those trends.

**COMMENT #3:** The EPA suggests a discussion of the rule's purpose; specifically, whether the rule was promulgated to meet nonat-

tainment area requirements, and if so, which specific NAAQS. In addition, the department could describe how the rule no longer serves to meet that purpose or how the rule has been superseded by another permanent and enforceable mechanism.

**COMMENT #4:** The EPA suggests a discussion of whether the rule was used to support other actions and whether the removal of the rule would impact those obligations such as an attainment demonstration, a request for a determination to attainment, a redesignation request and maintenance plan, or other actions such as Regional Haze or Interstate Transport.

**COMMENT #5:** The EPA suggests that where the department may be anticipating other federal programs, such as Maximum Achievable Control Technology (MACT) and National Emissions Standards for Hazardous Air Pollutants, as acting as a backstop to removal of its Reasonably Available Control Technology (RACT) rules, a comprehensive discussion of how those programs equal RACT. For example, there may be volatile organic compound (VOC) sources regulated by these programs that are well-controlled through add-on controls, or even through substitution of non-hazardous air pollutant material for VOC hazardous air pollutant (HAP) materials, however, these programs only cover air toxics and not all VOC emissions that RACT would capture and control are air toxics.

**RESPONSE:** The rescission of this rule is consistent with Executive Order 17-03 requiring a review of every regulation to affirm that the regulation is essential to the health, safety, or welfare of Missouri residents. The review of this rule indicated that no sources are subject to the rule, that the rule does not reduce any air pollutant, and therefore is not essential. Previously subject sources either have gone out of business or the source is no longer subject to the rule. In some cases, the source has been out of business or not subject to the rule for years. While a rule may have applied to a source to reduce or limit air pollutants in the past, the source is no longer producing the regulated emissions and the rule is no longer needed or relied upon for emission reductions going forward. To address EPA's concern about limiting VOC emissions from a new source, the department reiterates that RACT rules were intended to apply to existing major sources in nonattainment areas present at the time of the rule's promulgation. Any new source would not be subject to a RACT rule and instead would be subject to current applicable state or federal rules. Those state and federal rules would serve as the backstop limiting VOC emissions. These rules are not relied upon for any SIP purposes.

Due to similar concerns expressed in the following seven (7) comments, one (1) response that addresses these concerns is at the end of these seven (7) comments.

**COMMENT #6:** The Rulemaking Report indicates that the "rule applied Reasonably Available Control Technology (RACT) to major sources of volatile organic compounds (VOC) emissions from the use of large quantities of solvent cleaners in the St. Louis nonattainment area. Generally, RACT rules apply to those sources that were subject because they existed at the time the RACT rule became effective and are still currently operating." The Rulemaking Report says that the originally subject source is now exempt, making the rule obsolete (it does not identify the originally subject source). The rule language indicates that it applies to any person who performs or allows the performance of any cleaning operation involving the use of organic solvents or solvent solutions and unless exempt from the rule, the provisions apply to any stationary source that emits at least three (3) tons per twelve (12)-month rolling period or more of VOCs from cleaning operations at the source, in the absence of air pollution control equipment, and stores and/or disposes of these solvent materials. The rule language states that it applies throughout St. Louis City and the counties of Jefferson, St. Charles, Franklin, and St. Louis. Because the rule, as written, does not specifically say if it would or would not apply to a new or modified solvent cleaning operation, and the rule could read to imply that it would, the department should provide clarification of the rule's applicability and demonstrate that the SIP revision would not interfere with attainment of the NAAQS.

COMMENT #7: A potential way for the department to demonstrate that the SIP revision would not interfere with attainment of the NAAQS might be provide explanation of how its SIP-approved Prevention of Significant Deterioration (PSD) program or Nonattainment New Source Review (NNSR) program would ensure that the start-up of a new source or modification of an existing source would be controlled in an equivalent manner as would be required by the rescinded rule.

COMMENT #8: If EPA's proposed rulemaking to redesignate the Missouri portion of the St. Louis-St. Charles-Farmington, MO-IL 2008 ozone area to attainment is finalized as proposed, NNSR will no longer apply in Jefferson County and portions of Franklin County and new sources in those counties will then have a potential to emit of up to two hundred forty-nine (249) tons per year without being subject to PSD, MACT, or New Source Performance Standards. Because of the change in applicability of NNSR, the department will need to ensure that the department's SIP submission meets the requirements of sections 110(1) and 193 of the CAA, also known as the "anti-backsliding" provisions. These sections relate to EPA's authority to approve a SIP revision that removes or modifies control measure(s) in the SIP only after the state has demonstrated that such a removal or modification will not interfere with attainment of the NAAQS, RFP, or any other applicable requirement of the CAA.

COMMENT #9: If in the event the start-up of a new source or modification to an existing source would not be applicable under PSD or NNSR, but would otherwise be an applicable source under the rescinded rule, the department should provide a demonstration of the potential emissions from such sources and make a determination about their potential impact on air quality.

COMMENT #10: The department could supplement this demonstration by providing information on why it believes no new or modified sources will start-up (i.e., Are solvent cleanup operations no longer performed, or do those operations always meet one (1) of the exceptions to the rescinded rule? Do solvent clean-up operations no longer use VOCs?).

COMMENT #11: The department could demonstrate that the associate limits on HAPs also limit VOCs and notes that the MACT subpart T for Halogenated Solvent Cleaning has provisions that may provide a backstop. The department may want to evaluate further to see if this MACT rule could address the proposed rescission of this RACT rule, although many of the halogenated solvents are specifically not VOCs (i.e., the MACT regulates six (6) solvents specifically and only two (2) of those are VOCs).

COMMENT #12: Additionally, the department's Redesignation Request and Maintenance Plan for the St. Louis (Missouri) 2008 Ozone Standard Nonattainment Area is unclear whether this rule is relied upon to attain and maintain the standard. As such, the SIP revision submission for rescinding this rule should discuss any potential impact of rescinding the rule on that plan.

RESPONSE: The rescission of this RACT rule is consistent with Executive Order 17-03 requiring a review of every state regulation to affirm that the regulation is necessary. The review of this rule indicated there are no sources subject to the rule, making the rule obsolete. In this case, the source is exempt from the rule according to their current operating permit because the facility is already subject to a different RACT rule for auto and light-duty truck assembly coatings. This rescission will not have a negative effect on air quality since the rule does not function to reduce emissions (no sources regulated) or achieve attainment or maintenance of the NAAQS (SIP requirements met). To address EPA's concern about limiting VOC emissions from a new source, the department reiterates that RACT rules were intended to apply to existing major sources in nonattainment areas present at the time of the rule's promulgation. Any new sources or major modifications of existing sources would not be subject to this RACT rule and instead would be subject to New Source Review permitting and current applicable state or federal rules. Those state and federal rules would serve as the backstop limiting VOC emissions. The rule is not relied upon for any SIP purposes since there are no affected sources.

**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**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo 2016, the commission rescinds a rule as follows:

**10 CSR 10-5.520 Control of Volatile Organic Compound Emissions From Existing Major Sources is rescinded.**

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on May 15, 2018 (43 MoReg 1021). No changes were made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Department of Natural Resources' Air Pollution Control Program received eleven (11) comments on this rulemaking from the U.S. Environmental Protection Agency (EPA).

Due to similar concerns expressed in the following five (5) comments, one (1) response that addresses these concerns is at the end of these five (5) comments.

COMMENT #1: The EPA provided a general comment for all the rules that the department has the responsibility to ensure that the State Implementation Plan (SIP) revision submitted to EPA meets the requirements of sections 110(1) and 193 of the Clean Air Act (CAA).

Section 110(1): Generally, section 110(1) provides that EPA cannot approve a SIP revision if the revision interferes with any applicable requirement concerning attainment and reasonable further progress (RFP) or any other requirement of the CAA. This section applies to any area and to any National Ambient Air Quality Standard (NAAQS) pollutant and/or precursor. Thus, any SIP rule is subject to this section.

Section 193: Section 193 prohibits modification of a SIP in effect before 1990 unless that modification would ensure equivalent or greater emissions reductions, i.e., "anti-backsliding." Section 193 applies only to nonattainment areas and is specific to the nonattainment pollutant. The applicability of section 193 is specific to nonattainment "criteria" pollutants. The ozone implementation rule (codified at 40 CFR 51.905(a)(4)), describes how section 193 applies to Kansas City - an attainment area for the eight (8)-hour standard and maintenance area for the one (1)-hour standard.

Each of the eleven (11) proposed rule rescissions are subject to section 110(1) requirements; six (6) of the proposed rule rescissions are subject to the section 193 requirements. One (1) of the seven (7) proposed rule revisions is subject to section 110(1) requirements, one (1) is a Title V Part 70 revision, one (1) is a 111(d) plan revision and the remaining four (4) proposed rule revisions are administrative in nature only.

COMMENT #2: The EPA suggests a demonstration that quantifies any emissions increase or potential increase by rescinding the rule(s), and a discussion on the impact on air quality. This demonstration could be done by comparing the source inventory at the time the rule was promulgated to the source inventory now, and demonstrating the overall impact on emissions. In addition, the department could include a discussion of the monitored air quality when the rule was promulgated/incorporated into the SIP and monitored air quality trends that demonstrate an improvement in air quality and how the rescission of the rule might impact those trends.

COMMENT #3: The EPA suggests a discussion of the rule's purpose; specifically, whether the rule was promulgated to meet nonattainment

area requirements, and if so, which specific NAAQS. In addition, the department could describe how the rule no longer serves to meet that purpose or how the rule has been superseded by another permanent and enforceable mechanism.

COMMENT #4: The EPA suggests a discussion of whether the rule was used to support other actions and whether the removal of the rule would impact those obligations such as an attainment demonstration, a request for a determination to attainment, a redesignation request and maintenance plan, or other actions such as Regional Haze or Interstate Transport.

COMMENT #5: The EPA suggests that where the department may be anticipating other federal programs, such as Maximum Achievable Control Technology and National Emissions Standards for Hazardous Air Pollutants, as acting as a backstop to removal of its Reasonably Available Control Technology (RACT) rules, a comprehensive discussion of how those programs equal RACT. For example, there may be volatile organic compound (VOC) sources regulated by these programs that are well-controlled through add-on controls, or even through substitution of non-hazardous air pollutant material for VOC hazardous air pollutant materials, however, these programs only cover air toxics and not all VOC emissions that RACT would capture and control are air toxics.

RESPONSE: The rescission of this rule is consistent with Executive Order 17-03 requiring a review of every regulation to affirm that the regulation is essential to the health, safety, or welfare of Missouri residents. The review of this rule indicated that no sources are subject to the rule, that the rule does not reduce any air pollutant, and therefore is not essential. Previously subject sources either have gone out of business or the source is no longer subject to the rule. In some cases, the source has been out of business or not subject to the rule for years. While a rule may have applied to a source to reduce or limit air pollutants in the past, the source is no longer producing the regulated emissions and the rule is no longer needed or relied upon for emission reductions going forward. To address EPA's concern about limiting VOC emissions from a new source, the department reiterates that RACT rules were intended to apply to existing major sources in nonattainment areas present at the time of the rule's promulgation. Any new source would not be subject to a RACT rule and instead would be subject to current applicable state or federal rules. Those state and federal rules would serve as the backstop limiting VOC emissions. These rules are not relied upon for any SIP purposes.

Due to similar concerns expressed in the following six (6) comments, one (1) response that addresses these concerns is at the end of these six (6) comments.

COMMENT #6: The Rulemaking Report indicates that the proposed action will rescind an unnecessary regulation because no sources are subject to this rule. This rule was created to help bring the St. Louis ozone nonattainment area into compliance by reducing VOCs from sources that were not affected by other rulemakings. However, the rule language indicates that the rule applies to any installation in the counties of St. Charles, St. Louis, Franklin, or Jefferson or the City of St. Louis that have the potential to emit (PTE) greater than one-hundred (100) tons per year (tpy) of VOCs and that are not subject to one (1) of three (3) exemptions in the rule. Because the rule, as written, does not specifically say if it would or would not apply to a new or modified source with the PTE greater than one-hundred (100) tpy of VOCs upon start-up, and the rule could read to imply that it would, the department should provide clarification of the rule's applicability and demonstrate that the SIP revision would not interfere with attainment of the NAAQS.

COMMENT #7: A potential way for the department to demonstrate that this SIP revision would not interfere with attainment of the NAAQS might be to provide an explanation of how its SIP approved Prevention of Significant Deterioration (PSD) program would ensure that the start-up of a new source or modification of an existing source would be controlled in at least an equivalent manner as would be

required by this rescinded rule.

COMMENT #8: If the EPA's proposed rulemaking to redesignate the Missouri portion of the St. Louis-St. Charles-Farmington, MO-IL 2008 ozone area to attainment is finalized as proposed, Nonattainment New Source Review (NNSR) will no longer apply in Jefferson County and portions of Franklin County and new sources in those counties will then have a PTE of up to two-hundred forty-nine (249) tpy without being subject to PSD, MACT, or NSPS. Because of the change in applicability of NNSR, the department will need to ensure that the department's SIP submission meets the requirements of sections 110(1) and 193 of the CAA, also known as the "anti-backsliding" provisions. These sections relate to EPA's authority to approve a SIP revision that removes or modifies control measure(s) in the SIP only after the state has demonstrated that such a removal or modification will not interfere with attainment of the NAAQS, RFP, or any other applicable requirement of the CAA.

COMMENT #9: If in the event the start-up of a new source or modification to an existing source would not be applicable under PSD but would otherwise be an applicable source under this rescinded rule, the department should provide a demonstration of the potential emissions from such sources and make a determination about their potential impact on air quality.

COMMENT #10: The department could supplement this demonstration by providing information on why it believes no new or modified source will start-up [i.e., Are there no sources that have PTE greater than one-hundred (100) tpy VOCs?].

COMMENT #11: Additionally, the department's Redesignation Request and Maintenance Plan for the St. Louis, Missouri 2008 Ozone Standard Nonattainment Area is unclear whether this rule is relied upon to attain and maintain the standard. As such, the SIP revision submission for rescinding this rule should discuss any potential impact of rescinding the rule on that plan.

RESPONSE: The rescission of this RACT rule is consistent with Executive Order 17-03 requiring a review of every state regulation to affirm that the regulation is necessary. The review of this rule indicated there are no sources subject to the rule, making the rule obsolete. This rescission will not have a negative effect on air quality since the rule does not function to reduce emission (no sources regulated) or achieve attainment or maintenance of the NAAQS (SIP requirements met). To address EPA's concern about limiting VOC emissions from a new source, the department reiterates that RACT rules were intended to apply to existing major sources in nonattainment areas present at the time of the rule's promulgation. Any new sources or major modifications of existing sources would not be subject to this RACT rule and instead would be subject to New Source Review permitting and current applicable state or federal rules. Those state and federal rules would serve as the backstop limiting VOC emissions. The rule is not relied upon for any SIP purposes since there are no affected sources.

**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**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo 2016, the commission amends a rule as follows:

10 CSR 10-5.570 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 15, 2018 (43 MoReg 1021-1024). Those sections with changes are reprinted

here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** The Missouri Department of Natural Resources' Air Pollution Control Program received sixteen (16) comments on this rulemaking from the U.S. Environmental Protection Agency (EPA).

Due to similar concerns expressed in the following five (5) comments, one (1) response that addresses these concerns is at the end of these five (5) comments.

**COMMENT #1:** The EPA provided a general comment for all the rules that the department has the responsibility to ensure that the State Implementation Plan (SIP) revision submitted to EPA meets the requirements of sections 110(1) and 193 of the Clean Air Act (CAA).

Section 110(1): Generally, section 110(1) provides that EPA cannot approve a SIP revision if the revision interferes with any applicable requirement concerning attainment and reasonable further progress or any other requirement of the CAA. This section applies to any area and to any National Ambient Air Quality Standard (NAAQS) pollutant and/or precursor. Thus, any SIP rule is subject to this section.

Section 193: Section 193 prohibits modification of a SIP in effect before 1990 unless that modification would ensure equivalent or greater emissions reductions, i.e. "anti-backsliding." Section 193 applies only to nonattainment areas and is specific to the nonattainment pollutant. The applicability of section 193 is specific to nonattainment "criteria" pollutants. The ozone implementation rule (codified at 40 CFR 51.905(a)(4)), describes how section 193 applies to Kansas City - an attainment area for the eight (8)-hour standard and maintenance area for the one (1)-hour standard.

Each of the eleven (11) proposed rule rescissions are subject to section 110(1) requirements; six (6) of the proposed rule rescissions are subject to the section 193 requirements. One (1) of the seven (7) proposed rule revisions is subject to section 110(1) requirements, one (1) is a Title V Part 70 revision, one (1) is a 111(d) plan revision and the remaining four (4) proposed rule revisions are administrative in nature only.

**COMMENT #2:** The EPA suggests a demonstration that quantifies any emissions increase or potential increase by rescinding the rule(s), and a discussion on the impact on air quality. This demonstration could be done by comparing the source inventory at the time the rule was promulgated to the source inventory now, and demonstrating the overall impact on emissions. In addition, the department could include a discussion of the monitored air quality when the rule was promulgated/incorporated into the SIP and monitored air quality trends that demonstrate an improvement in air quality and how the rescission of the rule might impact those trends.

**COMMENT #3:** The EPA suggests a discussion of the rule's purpose; specifically, whether the rule was promulgated to meet nonattainment area requirements, and if so, which specific NAAQS. In addition, the department could describe how the rule no longer serves to meet that purpose or how the rule has been superseded by another permanent and enforceable mechanism.

**COMMENT #4:** The EPA suggests a discussion of whether the rule was used to support other actions and whether the removal of the rule would impact those obligations such as an attainment demonstration, a request for a determination to attainment, a redesignation request and maintenance plan, or other actions such as Regional Haze or Interstate Transport.

**COMMENT #5:** The EPA suggests that where the department may be anticipating other federal programs, such as Maximum Achievable Control Technology and National Emissions Standards for Hazardous Air Pollutants, as acting as a backstop to removal of its Reasonably Available Control Technology (RACT) rules, a comprehensive discussion of how those programs equal RACT. For example, there may be volatile organic compound (VOC) sources regulated by these programs that are well-controlled through add-on controls, or

even through substitution of non-hazardous air pollutant material for VOC hazardous air pollutant materials, however, these programs only cover air toxics and not all VOC emissions that RACT would capture and control are air toxics.

**RESPONSE:** The amendment of the rule is consistent with Executive Order 17-03 requiring a review of every regulation to affirm that the regulation is essential to the health, safety, or welfare of Missouri residents. Emissions will not increase with the proposed rule amendment and the revision will meet CAA sections 110(1) and 193 requirements. There is no negative impact on air quality. The department is not anticipating the use of other federal programs as a backstop because the department is not rescinding this rule. No changes were made to the rule text as a result of this comment.

**COMMENT #6:** The EPA recommends that the department reconsider adding the incorporation by reference of 40 CFR 60, 40 CFR 61, and 40 CFR 65 in whole in subsection (2)(C) (the definition for "gaseous fuel"). It would be unusual for a state to adopt these parts of the *Code of Federal Regulations* (CFR) in whole. If the federal definitions are absent or differ from those found in 10 CSR 10-6.020 Definitions and Common Reference Tables or 10 CSR 10-5.570(2)(C), for clarity, EPA recommends that the full text of the definition be included at subsection (2)(C), or even 10 CSR 10-6.020 Definitions and Common Reference Tables rather than incorporated by reference in whole. If the department intends to keep the incorporations by reference of 40 CFR 60, 40 CFR 61, and 40 CFR 65 in the rule but did not intend for the incorporations to apply only to the definition for "gaseous fuel" at subsection (2)(C), then EPA recommends that the department move it to another location in the rule text.

**RESPONSE AND EXPLANATION OF CHANGE:** As a result of this comment, "blast furnace gases" and "process gases" that are regulated in 40 CFR 60, 40 CFR 61, and 40 CFR 65 will not be included for exemption in the definition of "gaseous fuel" and subsection (2)(C) will be updated to reflect this.

**COMMENT #7:** There are several references to 10 CSR 10-6.030(22) however, section (22) does not exist in the state's 10 CSR 10-6.030 Sampling Methods. The EPA understands that the department is in the process of revising 10 CSR 10-6.030 Sampling Methods and that those potential rule changes are currently available for public comment. As such, EPA would not act on a SIP submission revising 10 CSR 10-5.570 until a SIP submission has been made to EPA for 10 CSR 10-6.030.

**RESPONSE:** The department is currently in the process of amending rule 10 CSR 10-6.030 Sampling Methods for Air Pollution Sources and plans to submit this rule for inclusion into the SIP before, or concurrently with, the submittal to EPA of amendments to 10 CSR 10-5.570. As a result of this comment, no changes were made to the rule text.

**COMMENT #8:** The EPA encourages the department to assess the need for adding a reference to 10 CSR 10-6.030(22) in paragraph (3)(B)1. of this rule because the paragraph already specifies which test methods to use (Methods 6, 6A, 6B, or 6C) and where the methods can be found (40 CFR 60, Appendix A). The draft rule text language for the potential revisions to 10 CSR 10-6.030 adds section (22), which incorporates 40 CFR 60 in whole by reference. It may be unnecessary to divert the public to another state regulation that incorporates a federal regulation by reference and provides no additional clarity than what is already specified in paragraph (3)(B)1.

**RESPONSE:** The department appreciates this comment and for all air rules found in 10 CSR 10-6.030 Chapters 1-6, where stack testing methods or guidance documents are mentioned more than once, a reference to rule 10 CSR 10-6.030 reduces the length of federal content incorporated by reference into these rules. As a result of this comment, no changes were made to the rule text.

**COMMENT #9:** There is a reference at paragraph (3)(B)2. to 10



CSR 10-6.040 Reference Methods however, the American Society for Testing and Material (ASTM) methods that are referenced in the rule do not yet exist in the state's 10 CSR 10-6.040. The EPA understands that the department is in the process of revising 10 CSR 10-6.040 and that those potential rule changes are currently available for public comment. As such, EPA would not act on a SIP submission revising 10 CSR 10-5.570 until a SIP submission has been made to EPA for 10 CSR 10-6.040.

RESPONSE: The department is currently in the process of amending rule 10 CSR 10-6.040 Reference Methods and plans to submit this rule for inclusion into the SIP before, or concurrently with, the submittal to EPA of amendments to 10 CSR 10-5.570. As a result of this comment, no changes were made to the rule text.

COMMENT #10: The EPA encourages the department to assess the need for adding a reference to 10 CSR 10-6.030(22) in subparagraph (3)(D)1.A. because the subparagraph already specifies the applicable requirements of the continuous emissions monitoring system (CEMS) can be found at 40 CFR 60, Appendix B. The draft rule text language for the potential revisions to 10 CSR 10-6.030 adds section (22), which incorporates 40 CFR 60 in whole by reference. It may be unnecessary to divert the public to another state regulation that incorporates a federal regulation by reference and provides no additional clarity than what is already specified in subparagraph (3)(D)1.A.

RESPONSE: The department appreciates this comment and for all air rules found in 10 CSR 10-Chapters 1-6, where stack testing methods or guidance documents are mentioned more than once, a reference to rule 10 CSR 10-6.030 was necessary to reduce the length of federal content incorporated by reference into these rules. As a result of this comment, no changes were made to the rule text.

COMMENT #11: The EPA encourages the department to assess the need for adding a reference to 10 CSR 10-6.030(22) in subparagraph (3)(D)1.B. because the subparagraph already specifies the CEMS must comply with the quality assurance procedures regardless of whether the installation is subject to New Source Performance Standards specified in 40 CFR 60, Appendix F. The draft rule text language for the potential revisions to 10 CSR 10-6.030 adds section (22), which incorporates 40 CFR 60 in whole by reference. It may be unnecessary to divert the public to another state regulation that incorporates a federal regulation by reference and provides no additional clarity than what is already specified in subparagraph (3)(D)1.B.

RESPONSE: The department appreciates this comment and for all air rules found in 10 CSR 10-Chapters 1-6, where stack testing methods or guidance documents are mentioned more than once, a reference to rule 10 CSR 10-6.030 reduces the length of federal content incorporated by reference into these rules. As a result of this comment, no changes were made to the rule text.

COMMENT #12: The EPA encourages the department to assess the need for adding a reference to 10 CSR 10-6.030(22) in paragraph (4)(A)1. because the paragraph already specifies the owner or operator must submit the "calculation and record keeping results" based upon correlations with ASTM and 40 CFR 60, Appendix A reference method results. The draft rule text language for the potential revisions to 10 CSR 10-6.030 adds section (22), which incorporates 40 CFR 60 in whole by reference. It may be unnecessary to divert the public to another state regulation that incorporates a federal regulation by reference and provides no additional clarity than what is already specified in paragraph (4)(A)1.

RESPONSE: The department appreciates this comment and for all air rules found in 10 CSR 10-Chapters 1-6, where stack testing methods or guidance documents are mentioned more than once, a reference to rule 10 CSR 10-6.030 was necessary to reduce the length of federal content incorporated by reference into these rules. As a result of this comment, no changes were made to the rule text.

COMMENT #13: The EPA encourages the department to assess the need for adding a reference to 10 CSR 10-6.030(22) in parts (4)(A)4.B.(I) or (4)(A)4.B.(II) because the parts already specify that—units maintaining a CEMS shall submit an excess emissions monitoring system performance report— in accordance with 40 CFR 60.7(c) and 40 CFR 60.13 (respectively). The draft rule text language for the potential revisions to 10 CSR 10-6.030 adds section (22), which incorporates 40 CFR 60 in whole by reference. It may be unnecessary to divert the public to another state regulation that incorporates a federal regulation by reference and provides no additional clarity than what is already specified in parts (4)(A)4.B.(I) or (4)(A)4.B.(II).

RESPONSE: The department appreciates this comment and for all air rules found in 10 CSR 10-Chapters 1-6, where stack testing methods or guidance documents are mentioned more than once, a reference to rule 10 CSR 10-6.030 reduces the length of federal content incorporated by reference into these rules. As a result of this comment, no changes were made to the rule text.

COMMENT #14: The EPA recommends the department reconsider removing the words "must be" from paragraphs (4)(B)12. and 13. Without "must be" the sentence—The twelve (12)-month rolling tonnages [must be] made available upon request for inspector review no later than one (1) month following any calendar—is an incomplete sentence and may be confusing to the public. The EPA suggests "will be" as an alternative to striking the language completely.

RESPONSE AND EXPLANATION OF CHANGE: As a result of this comment, the terms "must be" will be replaced with "will be" in paragraphs (4)(B)12. and (4)(B)13.

COMMENT #15: The EPA recommends the department consider not limiting its incorporation by reference language of AP-42: EPA Compilation of Air Emissions Factors in subsection (5)(D) to those versions "published by January 1995 and August 1995." Many chapters of AP-42 have been updated since 1995 and this incorporation makes it unclear if those chapters can be used to report emissions.

RESPONSE AND EXPLANATION OF CHANGE: In subsection (5)(D), the AP-42 and Factor Information and Retrieval System (FIRE) referenced documents are generally used and obtained from the current electronic version on EPA's internet site. Missouri statute 536.031.4., RSMo, requires that the department "shall maintain a copy of the referenced rule, regulation, standard, or guideline at the headquarters of the agency and shall make it available to the public for inspection and copying at no more than the actual cost of reproduction." The most updated full version containing all the chapters of AP-42 and FIRE in PDF format were published on the January 1995 and August 1995 dates. Chapters in AP-42 and FIRE are continually being revised and the department has determined that the latest updates for all chapters in AP-42 and FIRE will be used as the incorporation by reference dates. Copies will be retained by the department as required by statute. As a result of this comment, the publishing dates in subsection (5)(D) will be adjusted to August 2018 and August 2017 to account for the latest approved versions of AP-42 and FIRE, and the terms "as updated" will be removed to avoid confusion.

COMMENT #16: The EPA recommends the department reconsider adding the sentence in subsection (5)(D), "This rule does not incorporate any subsequent amendments or additions" as it appears to preclude the use of emission factors published since 1995.

RESPONSE AND EXPLANATION OF CHANGE: In subsection (5)(D), the AP-42 and FIRE referenced documents are generally used and obtained from the current electronic version on EPA's internet site. Missouri statute 536.031.4., RSMo, requires that the department "shall maintain a copy of the referenced rule, regulation, standard, or guideline at the headquarters of the agency and shall make it available to the public for inspection and copying at no more than the actual cost of reproduction." The most updated full version containing all the chapters of AP-42 and FIRE in PDF format were

published on the January 1995 and August 1995 dates. Chapters in AP-42 and FIRE are continually being revised and the department has determined that the latest updates for all chapters in AP-42 and FIRE will be used as the incorporation by reference dates. Copies will be retained by the department as required by statute. As a result of this comment, the publishing dates in subsection (5)(D) will be adjusted to August 2018 and August 2017 to account for the latest approved versions of AP-42 and FIRE, and the terms “as updated” will be removed to avoid confusion.

#### 10 CSR 10-5.570 Control of Sulfur Emissions From Stationary Boilers

##### (2) Definitions.

(C) Gaseous fuel—A combustible gas that includes, but is not limited to, natural gas, landfill gas, coal-derived gas, refinery gas, and biogas. Blast furnace gas is not considered a gaseous fuel under this definition.

##### (4) Reporting and Record Keeping.

(B) Record Keeping Requirements. The owner or operator subject to this rule shall maintain all records necessary to demonstrate compliance with this rule for a period of five (5) years at the plant at which the unit is located. Daily records, along with the twelve (12)-month rolling tonnage or twelve (12)-month rolling average, shall be made available no later than one (1) month following any calendar month. The records shall be made available to the director upon request. The owner or operator shall maintain records of the following information for each month the unit is operated:

1. The identification number of each unit and the name and address of the plant where the unit is located for each unit subject to this rule;
2. The calendar date of record;
3. The number of hours the unit is operated each day including start-ups, shutdowns, malfunctions, and the type and duration of maintenance and repair;
4. The date and results of each emissions inspection;
5. A summary of any emissions corrective maintenance taken;
6. The results of all compliance tests;
7. If a unit is equipped with a CEMS—
  - A. The identification of time periods during which SO<sub>2</sub> standards are exceeded, the reason for exceedance, and action taken to correct the exceedance and prevent similar future exceedances; and
  - B. The identification of the time periods for which operating conditions and pollutant data were not obtained, including reasons for not obtaining sufficient data, and a description of corrective actions taken;
8. The total heat input for each fuel used per emissions unit on a monthly basis;
9. The amount of each fuel consumed per emissions unit on a monthly basis;
10. The average heat content for each fuel used per emissions unit on a monthly basis;
11. The average percent sulfur for each fuel used per emissions unit on a monthly basis;
12. The emission rate in lbs per mmBtu for each unit on a monthly basis for those units complying with the limit in paragraph (3)(A)1. of this rule. The twelve (12)-month rolling averages will be made available upon request for the inspector to review no later than one (1) month following any calendar month;
13. The monthly emission rate in tons SO<sub>2</sub> for those units complying with the limit in paragraph (3)(A)2. of this rule. The twelve (12)-month rolling tonnages will be made available upon request for inspector review no later than one (1) month following any calendar month; and
14. Any other reports deemed necessary by the director.

(5) Test Methods. The following hierarchy of methods shall be used to determine if a unit qualifies for the low-emitter exemption in para-

graph (1)(C)4. of this rule. If data is not available for an emission estimation method or an emission estimation method is impractical for a source, then the subsequent emission estimation method shall be used in its place:

(D) AP-42 (EPA *Compilation of Air Pollution Emission Factors*) or FIRE (Factor Information and Retrieval System) as published by EPA August 2018 and August 2017 and hereby incorporated by reference in this rule. Copies can be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield VA 22161. This rule does not incorporate any subsequent amendments or additions;

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

#### ORDER OF RULEMAKING

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo 2016, the commission amends a rule as follows:

10 CSR 10-6.030 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 15, 2018 (43 MoReg 1024-1026). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Department of Natural Resources’ Air Pollution Control Program received eight (8) comments on this rulemaking from the U.S. Environmental Protection Agency (EPA).

Due to similar concerns expressed in the following five (5) comments, one (1) response that addresses these concerns is at the end of these five (5) comments.

COMMENT #1: The EPA provided a general comment for all the rules that the department has the responsibility to ensure that the State Implementation Plan (SIP) revision submitted to EPA meets the requirements of Sections 110(1) and 193 of the Clean Air Act (CAA).

Section 110(1): Generally, section 110(1) provides that EPA cannot approve a SIP revision if the revision interferes with any applicable requirement concerning attainment and reasonable further progress or any other requirement of the CAA. This section applies to any area and to any National Ambient Air Quality Standard (NAAQS) pollutant and/or precursor. Thus, any SIP rule is subject to this section.

Section 193: Section 193 prohibits modification of a SIP in effect before 1990 unless that modification would ensure equivalent or greater emissions reductions, i.e., “anti-backsliding.” Section 193 applies only to nonattainment areas and is specific to the nonattainment pollutant. The applicability of section 193 is specific to nonattainment “criteria” pollutants. The ozone implementation rule (codified at 40 CFR 51.905(a)(4)), describes how section 193 applies to Kansas City - an attainment area for the eight (8)-hour standard and maintenance area for the one (1)-hour standard.

Each of the eleven (11) proposed rule rescissions are subject to section 110(1) requirements; six (6) of the proposed rule rescissions are subject to the section 193 requirements. One (1) of the seven (7) proposed rule revisions is subject to section 110(1) requirements, one (1) is a Title V Part 70 revision, one (1) is a 111(d) plan revision, and the remaining four (4) proposed rule revisions are administrative

in nature only.

COMMENT #2: The EPA suggests a demonstration that quantifies any emissions increase or potential increase by rescinding the rule(s), and a discussion on the impact on air quality. This demonstration could be done by comparing the source inventory at the time the rule was promulgated to the source inventory now, and demonstrating the overall impact on emissions. In addition, the department could include a discussion of the monitored air quality when the rule was promulgated/incorporated into the SIP and monitored air quality trends that demonstrate an improvement in air quality and how the rescission of the rule might impact those trends.

COMMENT #3: The EPA suggests a discussion of the rule's purpose; specifically, whether the rule was promulgated to meet nonattainment area requirements, and if so, which specific NAAQS. In addition, the department could describe how the rule no longer serves to meet that purpose or how the rule has been superseded by another permanent and enforceable mechanism.

COMMENT #4: The EPA suggests a discussion of whether the rule was used to support other actions and whether the removal of the rule would impact those obligations such as an attainment demonstration, a request for a determination to attainment, a redesignation request and maintenance plan, or other actions such as Regional Haze or Interstate Transport.

COMMENT #5: The EPA suggests that where the department may be anticipating other federal programs, such as Maximum Achievable Control Technology and National Emissions Standards for Hazardous Air Pollutants, as acting as a backstop to removal of its Reasonably Available Control Technology (RACT) rules, a comprehensive discussion of how those programs equal RACT. For example, there may be volatile organic compound (VOC) sources regulated by these programs that are well-controlled through add-on controls, or even through substitution of non-hazardous air pollutant material for VOC hazardous air pollutant materials, however, these programs only cover air toxics and not all VOC emissions that RACT would capture and control are air toxics.

RESPONSE: The amendment of the rule is consistent with Executive Order 17-03 requiring a review of every regulation to affirm that the regulation is essential to the health, safety, or welfare of Missouri residents. Emissions will not increase with the proposed rule amendment and the revision will meet CAA sections 110(l) and 193 requirements. There is no negative impact on air quality. The department is not anticipating the use of other federal programs as a backstop because the department is not rescinding this rule. No changes were made to the rule text as a result of this comment.

COMMENT #6: The EPA encourages the department to assess the need for adding a reference to sections (21), (22), and (23) in sections (1) to (17) of the rule because sections (1) to (17) already specify the applicable test methods and where to find them in 40 CFR 51, Appendix M; 40 CFR 60, Appendix A; or 40 CFR 61, Appendix A, respectively. The draft rule text language for the proposed revisions to 10 CSR 10-6.030 adds sections (21), (22), and (23), which incorporate 40 CFR 51, 60, and 61 (respectively), in whole, by reference. It may be unnecessary to divert the public to another section of the same Missouri Air Conservation Commission (MACC) regulation that incorporates a federal regulation by reference and provides no additional clarity than what is already specified in sections (1) to (17).

RESPONSE: The department appreciates this comment and for all air rules found in 10 CSR 10 Chapters 1-6, where stack testing methods or guidance documents are mentioned more than once, a reference to rule 10 CSR 10-6.030 reduces the length of federal content incorporated by reference into these rules. When all rules have been revised to the new method of incorporating by references, sections (1) through (20) will no longer be in use. As a result of this comment, no rule text changes have been made.

COMMENT #7: The EPA recommends that the department consider their incorporations by reference of 40 CFR 51, 60, and 61 in whole

in sections (21), (22), and (23) of the rule. Incorporating whole parts of the *Code of Federal Regulations* like 40 CFR 51, 60, and 61 would be unusual, where the department already selectively incorporates individual technology standards in 10 CSR 10-6.070 and 6.080. The EPA recommends, if the department intends to continue to incorporate requirements of the code of federal regulations by reference, that the incorporations be very specific. Because the title of 10 CSR 10-6.030 is Sampling Methods for Air Pollution Sources, EPA recommends that the department consider incorporating by reference only the sampling method related requirements of 40 CFR 51, 60, and 61 into the MACC rule. For example, the department could incorporate by reference Appendix M to part 51-Recommended Test Methods for State Implementation Plans, Appendix A to part 60-Test Methods or Appendix B to part 61-Test Methods.

RESPONSE AND EXPLANATION OF CHANGE: As a result of this comment, rather than incorporating by reference 40 CFR 51, 60, and 61 in whole, rule text in sections (21), (22), and (23) has been revised to incorporate by reference specific appendices and subparts.

COMMENT #8: If the department's intention is to expand the scope of this rule to include all incorporation by reference materials, then it may also want to consider changing the title of this rule.

RESPONSE: One (1) of the aims of the proposed amendments to this rule is to reduce the amount of federal content incorporated by reference into all 10 CSR 10 chapters 1-6. Where stack testing methods or guidance documents in other 10 CSR 10-chapters 1-6 rules are mentioned only once, a reference is not made to 10 CSR 10-6.030 and those documents are incorporated by reference in their respective rules. The department plans to retain the title of this rule because all information in other rules are not incorporated by reference in 10 CSR 10-6.030. As a result of this comment, no rule text changes have been made.

#### 10 CSR 10-6.030 Sampling Methods for Air Pollution Sources

(21) 40 CFR 51, Appendices M, and W, and Subparts A, G, I, T, and W promulgated as of July 1, 2018 are hereby incorporated by reference in this rule, as published by the Office of the Federal Register. Copies can be obtained from the U.S. Publishing Office Bookstore, 710 N. Capitol Street NW, Washington, DC 20401. This rule does not incorporate any subsequent amendments or additions.

(22) 40 CFR 60, Appendices A, B, E, and F, and Subparts A, B, Cb, Cf, XXX, DDDD, MMMM, and RRRR promulgated as of July 1, 2018 are hereby incorporated by reference in this rule, as published by the Office of the Federal Register. Copies can be obtained from the U.S. Publishing Office Bookstore, 710 N. Capitol Street NW, Washington, DC 20401. This rule does not incorporate any subsequent amendments or additions.

(23) 40 CFR 61, Appendix B promulgated as of July 1, 2018 are hereby incorporated by reference in this rule, as published by the Office of the Federal Register. Copies can be obtained from the U.S. Publishing Office Bookstore, 710 N. Capitol Street NW, Washington, DC 20401. This rule does not incorporate any subsequent amendments or additions.

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

#### ORDER OF RULEMAKING

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo 2016, the commission

amends a rule as follows:

**10 CSR 10-6.040 Reference Methods is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 15, 2018 (43 MoReg 1026–1029). No changes were made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** The Missouri Department of Natural Resources' Air Pollution Control Program received five (5) comments on this rulemaking from the U.S. Environmental Protection Agency (EPA).

Due to similar concerns expressed in the following five (5) comments, one (1) response that addresses these concerns is at the end of these five (5) comments.

**COMMENT #1:** The EPA provided a general comment for all the rules that the department has the responsibility to ensure that the State Implementation Plan (SIP) revision submitted to EPA meets the requirements of Sections 110(1) and 193 of the Clean Air Act (CAA).

Section 110(1): Generally, section 110(1) provides that EPA cannot approve a SIP revision if the revision interferes with any applicable requirement concerning attainment and reasonable further progress or any other requirement of the CAA. This section applies to any area and to any National Ambient Air Quality Standard (NAAQS) pollutant and/or precursor. Thus, any SIP rule is subject to this section.

Section 193: Section 193 prohibits modification of a SIP in effect before 1990 unless that modification would ensure equivalent or greater emissions reductions, i.e., "anti-backsliding." Section 193 applies only to nonattainment areas and is specific to the nonattainment pollutant. The applicability of section 193 is specific to nonattainment "criteria" pollutants. The ozone implementation rule (codified at 40 CFR 51.905(a)(4)), describes how section 193 applies to Kansas City - an attainment area for the eight (8)-hour standard and maintenance area for the one (1)-hour standard.

Each of the eleven (11) proposed rule rescissions are subject to section 110(1) requirements; six (6) of the proposed rule rescissions are subject to the section 193 requirements. One (1) of the seven (7) proposed rule revisions is subject to section 110(1) requirements, one (1) is a Title V Part 70 revision, one (1) is a 111(d) plan revision, and the remaining four (4) proposed rule revisions are administrative in nature only.

**COMMENT #2:** The EPA suggests a demonstration that quantifies any emissions increase or potential increase by rescinding the rule(s), and a discussion on the impact on air quality. This demonstration could be done by comparing the source inventory at the time the rule was promulgated to the source inventory now, and demonstrating the overall impact on emissions. In addition, the department could include a discussion of the monitored air quality when the rule was promulgated/incorporated into the SIP and monitored air quality trends that demonstrate an improvement in air quality and how the rescission of the rule might impact those trends.

**COMMENT #3:** The EPA suggests a discussion of the rule's purpose; specifically, whether the rule was promulgated to meet nonattainment area requirements, and if so, which specific NAAQS. In addition, the department could describe how the rule no longer serves to meet that purpose or how the rule has been superseded by another permanent and enforceable mechanism.

**COMMENT #4:** The EPA suggests a discussion of whether the rule was used to support other actions and whether the removal of the rule would impact those obligations such as an attainment demonstration, a request for a determination to attainment, a redesignation request and maintenance plan, or other actions such as Regional Haze or Interstate Transport.

**COMMENT #5:** The EPA suggests that where the department may be anticipating other federal programs, such as Maximum Achievable Control Technology and National Emissions Standards for Hazardous Air Pollutants, as acting as a backstop to removal of its Reasonably Available Control Technology (RACT) rules, a comprehensive discussion of how those programs equal RACT. For example, there may be volatile organic compound (VOC) sources regulated by these programs that are well-controlled through add-on controls, or even through substitution of non-hazardous air pollutant material for VOC hazardous air pollutant materials, however, these programs only cover air toxics and not all VOC emissions that RACT would capture and control are air toxics.

**RESPONSE:** The amendment of the rule is consistent with Executive Order 17-03 requiring a review of every regulation to affirm that the regulation is essential to the health, safety, or welfare of Missouri residents. Emissions will not increase with the proposed rule amendment and the revision will meet CAA sections 110(l) and 193 requirements. There is no negative impact on air quality. The department is not anticipating the use of other federal programs as a backstop because the department is not rescinding this rule. No changes were made to the rule text as a result of this comment.

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

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo 2016, the commission amends a rule as follows:

10 CSR 10-6.110 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 15, 2018 (43 MoReg 1029–1032). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** The Missouri Department of Natural Resources' Air Pollution Control Program received a total of nine (9) comments on this rulemaking. Eight (8) comments on this rulemaking were from the U.S. Environmental Protection Agency (EPA) and one (1) comment was from Liberty Utilities/Empire District.

Due to similar concerns expressed in the following five (5) comments, one (1) response that addresses these concerns is at the end of these five (5) comments.

**COMMENT #1:** The EPA provided a general comment for all the rules that the department has the responsibility to ensure that the State Implementation Plan (SIP) revision submitted to EPA meets the requirements of Sections 110(1) and 193 of the Clean Air Act (CAA).

Section 110(1): Generally, section 110(1) provides that EPA cannot approve a SIP revision if the revision interferes with any applicable requirement concerning attainment and reasonable further progress or any other requirement of the CAA. This section applies to any area and to any National Ambient Air Quality Standard (NAAQS) pollutant and/or precursor. Thus, any SIP rule is subject to this section.

Section 193: Section 193 prohibits modification of a SIP in effect before 1990 unless that modification would ensure equivalent or greater emissions reductions, i.e., "anti-backsliding." Section 193 applies only to nonattainment areas and is specific to the nonattainment pollutant.

The applicability of section 193 is specific to nonattainment “criteria” pollutants. The ozone implementation rule (codified at 40 CFR 51.905(a)(4)), describes how section 193 applies to Kansas City - an attainment area for the eight (8)-hour standard and maintenance area for the one (1)-hour standard.

Each of the eleven (11) proposed rule rescissions are subject to section 110(1) requirements; six (6) of the proposed rule rescissions are subject to the section 193 requirements. One (1) of the seven (7) proposed rule revisions is subject to section 110(1) requirements, one (1) is a Title V Part 70 revision, one (1) is a 111(d) plan revision, and the remaining four (4) proposed rule revisions are administrative in nature only.

COMMENT #2: The EPA suggests a demonstration that quantifies any emissions increase or potential increase by rescinding the rule(s), and a discussion on the impact on air quality. This demonstration could be done by comparing the source inventory at the time the rule was promulgated to the source inventory now, and demonstrating the overall impact on emissions. In addition, the department could include a discussion of the monitored air quality when the rule was promulgated/incorporated into the SIP and monitored air quality trends that demonstrate an improvement in air quality and how the rescission of the rule might impact those trends.

COMMENT #3: The EPA suggests a discussion of the rule’s purpose; specifically, whether the rule was promulgated to meet nonattainment area requirements, and if so, which specific NAAQS. In addition, the department could describe how the rule no longer serves to meet that purpose or how the rule has been superseded by another permanent and enforceable mechanism.

COMMENT #4: The EPA suggests a discussion of whether the rule was used to support other actions and whether the removal of the rule would impact those obligations such as an attainment demonstration, a request for a determination to attainment, a redesignation request and maintenance plan, or other actions such as Regional Haze or Interstate Transport.

COMMENT #5: The EPA suggests that where the department may be anticipating other federal programs, such as Maximum Achievable Control Technology and National Emissions Standards for Hazardous Air Pollutants, as acting as a backstop to removal of its Reasonably Available Control Technology (RACT) rules, a comprehensive discussion of how those programs equal RACT. For example, there may be volatile organic compound (VOC) sources regulated by these programs that are well-controlled through add-on controls, or even through substitution of non-hazardous air pollutant material for VOC hazardous air pollutant materials, however, these programs only cover air toxics and not all VOC emissions that RACT would capture and control are air toxics.

RESPONSE: The amendment of the rule is consistent with Executive Order 17-03 requiring a review of every regulation to affirm that the regulation is essential to the health, safety, or welfare of Missouri residents. Emissions will not increase with the proposed rule amendment and the revision will meet CAA sections 110(l) and 193 requirements. There is no negative impact on air quality. The department is not anticipating the use of other federal programs as a backstop because the department is not rescinding this rule. No changes were made to the rule text as a result of this comment.

COMMENT #6: The EPA recommends that the department consider the date cited in subparagraph (3)(C)4.B. This subsection incorporates 40 CFR 51.21 by reference as of July 1, 2017, however, the Code of Federal Regulations (CFR) is traditionally updated as of July 1 of each year. The EPA recommends the reference date “as of July 1, 2018.”

RESPONSE AND EXPLANATION OF CHANGE: As a result of this comment, subparagraph (3)(C)4.B. was updated to include the most recent updates to the CFR.

COMMENT #7: The EPA recommends that the department consider not limiting its incorporation by reference language of AP-42: EPA Compilation of Air Emissions Factors in subparagraph (3)(B)1.D. to

those versions “published by January 1995 and August 1995.” Many chapters of AP-42 have been updated since 1995 and this incorporation makes it unclear if those chapters can be used to report emissions.

RESPONSE AND EXPLANATION OF CHANGE: In subparagraph (3)(B)1.D., the AP-42 and Factor Information and Retrieval System (FIRE) referenced documents are generally used and obtained from the current electronic version on EPA’s internet site. Missouri statute 536.031.4., RSMo, requires that the department “shall maintain a copy of the referenced rule, regulation, standard, or guideline at the headquarters of the agency and shall make it available to the public for inspection and copying at no more than the actual cost of reproduction.” The most updated full version containing all the chapters of AP-42 and FIRE in PDF format were published on the January 1995 and August 1995 dates. Chapters in AP-42 and FIRE are continually being revised and the department has determined that the latest updates for all chapters in AP-42, and FIRE will be used as the incorporation by reference dates. Copies will be retained by the department as required by statute. As a result of this comment, the publishing dates in subparagraph (3)(B)1.D. will be adjusted to August 2018 and August 2017 to account for the latest approved versions of AP-42 and FIRE, and the terms “as updated” will be removed to avoid confusion.

COMMENT #8: The EPA recommends that the department reconsider adding the sentence in subparagraph (3)(B)1.D., “This rule does not incorporate any subsequent amendments or additions” as it appears to preclude the use of emission factors published since 1995.

RESPONSE AND EXPLANATION OF CHANGE: In subparagraph (3)(B)1.D., the AP-42 and FIRE referenced documents are generally used and obtained from the current electronic version on EPA’s internet site. Missouri statute 536.031.4., RSMo, requires that the department “shall maintain a copy of the referenced rule, regulation, standard, or guideline at the headquarters of the agency and shall make it available to the public for inspection and copying at no more than the actual cost of reproduction.” The most updated full version containing all the chapters of AP-42 and FIRE in PDF format were published on the January 1995 and August 1995 dates. Chapters in AP-42 and FIRE are continually being revised and the department has determined that the latest updates for all chapters in AP-42, and FIRE will be used as the incorporation by reference dates. Copies will be retained by the department as required by statute. As a result of this comment, the publishing dates in subparagraph (3)(B)1.D. will be adjusted to August 2018 and August 2017 to account for the latest approved versions of AP-42 and FIRE, and the terms “as updated” will be removed to avoid confusion.

COMMENT #9: In the General Provisions section, paragraph (3)(A)1.—Why is the forty-eight dollars (\$48.00) per ton effective date January 1, 2019 and not 2017? The way this reads indicates that sources will have overpaid fees for 2017 and 2018.

RESPONSE AND EXPLANATION OF CHANGE: This amendment is not intended to change the effective date for the fee. As a result of this comment, the last sentence in paragraph (3)(A)1. was revised for clarification.

## 10 CSR 10-6.110 Reporting Emission Data, Emission Fees, and Process Information

### (3) General Provisions.

#### (A) Emission Fees.

1. Any installation subject to this rule, except sources that produce charcoal from wood, shall pay an annual emission fee per ton of applicable pollutant emissions identified in Table 2 of this rule based on previous calendar year emissions and in accordance with paragraphs (3)(A)2. through (3)(A)7. of this rule. The emission fee shall be forty-eight dollars and no cents (\$48.00) per ton.

2. For Full Emissions Reports, the fee is based on the information provided in the installation’s emissions report. For sources

which qualify for and use the Reduced Reporting Form, the fee shall be based on the last Full Emissions Report.

3. The fee shall apply to the first four thousand (4,000) tons of each air pollutant subject to fees as identified in Table 2 of this rule. No installation shall be required to pay fees on total emissions in excess of twelve thousand (12,000) tons for any reporting year. An installation subject to this rule which emitted less than one (1) ton of all pollutants subject to fees shall pay a fee for one (1) ton.

4. An installation which pays emission fees to a holder of a certificate of authority issued pursuant to section 643.140, RSMo, may deduct those fees from the emission fee due under this section.

5. The fee imposed in paragraph (3)(A)1. of this rule shall not apply to NH<sub>3</sub>, CO, PM<sub>2.5</sub>, or HAPs reported as PM<sub>10</sub> or VOC, as summarized in Table 2 of this rule.

6. Emission fees for the reporting year are due June 1 after each reporting year. The fees shall be payable to the Missouri Department of Natural Resources.

7. To determine emission fees, an installation shall be considered one (1) source as defined in section 643.078.2, RSMo, except that an installation with multiple operating permits shall pay emission fees separately for air pollutants emitted under each individual permit.

**TABLE 2. Pollutant Fee Applicability**

<b>Pollutants Subject to Fees</b>	<b>Pollutants Not Subject to Fees</b>
PM <sub>10</sub> pri	PM <sub>2.5</sub> pri
SO <sub>2</sub>	CO
NO <sub>x</sub>	NH <sub>3</sub>
VOC	HAPs reported as PM <sub>10</sub> or VOC
HAP	
Lead	

**(B) Emission Estimation Calculation and Verification.**

1. The method of determining an emission factor, capture efficiency, or control efficiency for use in the emissions report shall be consistent with the installation's applicable permit. Variance from this method shall be based on the hierarchy described below. If data is not available for an emission estimation method or an emission estimation method is impractical for a source, then the subsequent emission estimation method shall be used in its place—

A. Continuous Emission Monitoring System (CEMS) as specified in subparagraph (3)(B)2.A. of this rule;

B. Stack tests as specified in subparagraph (3)(B)2.B. of this rule;

C. Material/mass balance;

D. AP-42 (Environmental Protection Agency (EPA) *Compilation of Air Pollution Emission Factors*) or FIRE (Factor Information and Retrieval System) as published by EPA August 2018 and August 2017, respectively, and hereby incorporated by reference in this rule. Copies can be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161. This rule does not incorporate any subsequent amendments or additions;

E. Other EPA documents as specified in subparagraph (3)(B)2.C. of this rule;

F. Sound engineering or technical calculations; or

G. Facilities shall obtain department approval of emission estimation methods other than those listed in subparagraphs (3)(B)1.A.–F. of this rule before using any such method to estimate emissions in the submission of an emissions report.

2. The director reserves the authority to review and approve all

emission estimation methods used to calculate emissions for the purpose of filing an emissions report for accuracy, reliability, and appropriateness. Inappropriate usage of an emission factor or method shall include, but is not limited to: varying from the method used in permit without prior approval, using emission factors not representative of a process, using equipment in a manner other than that for which it was designed for in calculating emissions, or using a less accurate emission estimation method for a process when a facility has more accurate emission data available. Additional requirements for the use of a specific emission estimation method include:

**A. Continuous Emission Monitoring System (CEMS).**

(I) CEMS must be shown to have met applicable performance specifications during the period for which data is being presented.

(II) CEMS data must be presented in the units which the system was designed to measure. Additional data sets used to extrapolate CEMS data must have equal or better reliability for such extrapolation to be acceptable.

(III) When using CEMS data to estimate emissions, the data must include all parameters (i.e., emission rate, gas flow rate, etc.) necessary to accurately determine the emissions. CEMS data which does not include all the necessary parameters must be reviewed and approved by the director or local air pollution control authority before it may be used to estimate emissions;

**B. Stack tests.**

(I) Stack tests must be conducted on the specific equipment for which the stack test results are used to estimate emissions.

(II) Stack tests must be conducted according to the methods cited in 10 CSR 10-6.030, unless an alternative method has been approved in advance by the director or local air pollution control authority.

(III) Stack tests will not be accepted unless the choice of test sites and a detailed test plan have been approved in advance by the director or local air pollution control authority.

(IV) Stack tests will not be accepted unless the director or local air pollution control authority has been notified of test dates at least thirty (30) days in advance and thus provided the opportunity to observe the testing. This thirty (30)-day notification may be reduced or waived on a case-by-case basis by the director or local air pollution control authority.

(V) Stack test results which do not meet all the criteria of parts (3)(B)2.B.(I)–(IV) of this rule may be acceptable for estimating emissions but must be submitted for review and approval by the director or local air pollution control authority on a case-by-case basis; and

C. Other EPA documents may be used to estimate emissions if the emission factors are more appropriate or source specific than AP-42 or FIRE. Newly developed EPA emission factors must be published by December 31 of the year for which the facility is submitting an emissions report.

**(C) Emission Data and Fee Auditing and Adjustment.**

1. The department may conduct detailed audits of emissions reports and supporting documentation as the director deems necessary. A minimum seven (7)-day notice must be provided to the installation to prepare documentation if this audit is done on-site.

2. The department may make emission fee adjustments when any of the following applies—

A. Clerical or arithmetic errors have been made;

B. Submitted documentation is not supported by inspections or audits;

C. Emissions estimates are modified as a result of emission verification or audits;

D. Credit has been incorrectly applied for an emissions fee paid to a local air pollution control agency; or

E. Emission estimation calculation varies from the methods described in subsection (3)(B) of this rule.

3. The department is not limited by subparagraphs (3)(C)2.A.–E. of this rule in making emission fee adjustments.

4. Adjustments to data and fees will be subject to a three (3)-year statute of limitations unless it is—

A. Due to a willful failure to report emissions or fraudulent representation for which there shall be no statute of limitations; or

B. Adjustment of emissions is based on a permitting action under 40 CFR 52.21 for which an adjustment of fees is required to all years of emission data changed up to a maximum of ten (10) years. 40 CFR 52.21 was promulgated as of July 1, 2018 and is hereby incorporated by reference as published by the Office of the Federal Register. Copies can be obtained from the U.S. Publishing Office Bookstore, 710 N. Capitol Street NW, Washington, DC 20401. This rule does not incorporate any subsequent amendments or additions. If approved, fees in effect at the time will be due, but no credit will be applied at the emission unit level.

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

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo 2016, the commission amends a rule as follows:

10 CSR 10-6.200 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 15, 2018 (43 MoReg 1032-1046). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** The Missouri Department of Natural Resources' Air Pollution Control Program received nine (9) comments from the U.S. Environmental Protection Agency (EPA) and one (1) comment from Department staff.

Due to similar concerns expressed in the following five (5) comments, one (1) response that addresses these concerns is at the end of these five (5) comments.

**COMMENT #1:** The EPA provided a general comment for all the rules that the department has the responsibility to ensure that the State Implementation Plan (SIP) revision submitted to EPA meets the requirements of sections 110(1) and 193 of the Clean Air Act (CAA).

Section 110(1): Generally, Section 110(1) provides that EPA cannot approve a SIP revision if the revision interferes with any applicable requirement concerning attainment and reasonable further progress or any other requirement of the CAA. This section applies to any area and to any National Ambient Air Quality Standard (NAAQS) pollutant and/or precursor. Thus, any SIP rule is subject to this section.

Section 193: Section 193 prohibits modification of a SIP in effect before 1990 unless that modification would ensure equivalent or greater emissions reductions, i.e., "anti-backsliding." Section 193 applies only to nonattainment areas and is specific to the nonattainment pollutant. The applicability of section 193 is specific to nonattainment "criteria" pollutants. The ozone implementation rule (codified at 40 CFR 51.905(a)(4)), describes how section 193 applies to Kansas City - an attainment area for the eight (8)-hour standard and maintenance area for the one (1)-hour standard.

Each of the eleven (11) proposed rule rescissions are subject to section 110(1) requirements; six (6) of the proposed rule rescissions are subject to the section 193 requirements. One (1) of the seven (7)

proposed rule revisions is subject to section 110(1) requirements, one (1) is a Title V Part 70 revision, one (1) is a 111(d) plan revision, and the remaining four (4) proposed rule revisions are administrative in nature only.

**COMMENT #2:** The EPA suggests a demonstration that quantifies any emissions increase or potential increase by rescinding the rule(s), and a discussion on the impact on air quality. This demonstration could be done by comparing the source inventory at the time the rule was promulgated to the source inventory now, and demonstrating the overall impact on emissions. In addition, the department could include a discussion of the monitored air quality when the rule was promulgated/incorporated into the SIP and monitored air quality trends that demonstrate an improvement in air quality and how the rescission of the rule might impact those trends.

**COMMENT #3:** The EPA suggests a discussion of the rule's purpose; specifically, whether the rule was promulgated to meet nonattainment area requirements, and if so, which specific NAAQS. In addition, the department could describe how the rule no longer serves to meet that purpose or how the rule has been superseded by another permanent and enforceable mechanism.

**COMMENT #4:** The EPA suggests a discussion of whether the rule was used to support other actions and whether the removal of the rule would impact those obligations such as an attainment demonstration, a request for a determination to attainment, a redesignation request and maintenance plan, or other actions such as Regional Haze or Interstate Transport.

**COMMENT #5:** The EPA suggests that where the department may be anticipating other federal programs, such as Maximum Achievable Control Technology and National Emissions Standards for Hazardous Air Pollutants, as acting as a backstop to removal of its Reasonably Available Control Technology (RACT) rules, a comprehensive discussion of how those programs equal RACT. For example, there may be volatile organic compound (VOC) sources regulated by these programs that are well-controlled through add-on controls, or even through substitution of non-hazardous air pollutant material for VOC hazardous air pollutant materials, however, these programs only cover air toxics and not all VOC emissions that RACT would capture and control are air toxics.

**RESPONSE:** The amendment of the rule is consistent with Executive Order 17-03 requiring a review of every regulation to affirm that the regulation is essential to the health, safety, or welfare of Missouri residents. Emissions will not increase with the proposed rule amendment and the revision will meet CAA section 111(d) plan requirements. There is no negative impact on air quality. The department is not anticipating the use of other federal programs as a backstop because the department is not rescinding this rule. No changes were made to the rule text as a result of this comment.

**COMMENT #6:** The EPA encourages the department to assess the need for the rule in general. The Rulemaking Report says that "the purpose of the proposed rulemaking is to incorporate by reference the federal regulatory requirements for existing hospital, medical, and infectious waste incinerators of 40 CFR 60 Subpart Ce-Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators." The hospital, medical, and infectious waste incinerator (HMIWI) emission guidelines at 40 CFR subpart Ce apply to existing sources for which construction was commenced on or before June 20, 1996, or for which modification was commenced on or before March 16, 1998, or for which construction was commenced after June 20, 1996, but no later than December 1, 2008, or for which modification is commenced after March 16, 1998, but no later than April 6, 2010. It is our understanding, given the applicability dates noted above, that the department currently does not regulate an existing source subject to the HMIWI, and it is unlikely that the department will regulate a new "existing" source. New sources subject to HMIWI regulations would be subject to the requirements of 40 CFR 60, subpart Ee.

**RESPONSE:** Missouri has hospitals that have older incinerators located at their facility. While these incinerators may not be operating

at this time, they could be returned to service in the future. This rule is necessary until those older incinerators are permanently removed from service. No change was made to the rule text as a result of this comment.

Due to similar concerns expressed in the following two (2) comments, one (1) response that addresses these concerns is at the end of these two (2) comments.

**COMMENT #7:** The EPA encourages the department to assess the need for adding a reference to 10 CSR 10-6.030(22) in section (2), Definitions, because the subsection already specifies that applicable definitions can be found at 40 CFR 60.31e. The draft rule text language for the potential revisions to 10 CSR 10-6.030 Sampling Methods, adds section (22), which incorporates 40 CFR 60 in whole by reference. It may be unnecessary to divert the public to another state regulation that incorporates a federal regulation by reference and provides no additional clarity than what is already specified in section (2).

**COMMENT #8:** The EPA encourages the department to assess the need for adding 10 CSR 10-6.030(22) in section (3), General Provisions. The proposed rule revision text says, “The following references to 40 CFR 60.33e through 60.37e and 40 CFR 60 Subpart Ce Tables 1A through 2B apply as specified in 10 CSR 10-6.030(22),” however the draft rule text language for the potential revisions to 10 CSR 10-6.030, Sampling Methods, adds section (22) incorporates 40 CFR 60 in whole by reference and does not provide any specific information about the rules referenced. It may be unnecessary to divert the public to another state regulation that incorporates a federal regulation by reference and provides no additional clarity than what is already specified in section (3).

**RESPONSE:** The department appreciates this comment and for all air rules found in 10 CSR 10 Chapters 1-6, where stack testing methods or guidance documents are mentioned, a reference to rule 10 CSR 10-6.030 reduces the length of federal content incorporated by reference into these rules. No change was made to the rule text as a result of this comment.

**COMMENT #9:** The EPA recommends, if the department intends to continue to incorporate requirements of the code of federal regulations by reference, that the incorporations be very specific. Because the title of 10 CSR 10-6.200 is “Hospital and Medical Infectious Waste Incinerators” EPA recommends that the department consider incorporating by reference only the related requirements of 40 CFR 60, subpart Ce into the Missouri Air Conservation Commission rule.

**RESPONSE:** The department incorporated only the specific sections of 40 CFR 60, subpart Ce that were necessary for the rule. Those specific sections can be found in subsection (2)(A) and sections (3) and (4) of the rule. No change was made to the rule text as a result of this comment.

**COMMENT #10:** Since proposal of the rule amendment, department staff determined that the proposed amendment may be interpreted to suggest that a previously mandatory obligation had become discretionary. The proposed amendment would modify the language of that requirement from “shall” to “have to.” Because those terms may have different legal effect, the change may be misinterpreted.

**RESPONSE AND EXPLANATION OF CHANGE:** The department is revising the language to retain the word “shall” in order to clarify the obligation for facilities.

#### **10 CSR 10-6.200 Hospital, Medical, Infectious Waste Incinerators**

##### **(1) Applicability.**

(I) Facilities subject to this rule shall operate pursuant to a permit issued under the permitting authorities operating permit program.

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

### **ORDER OF RULEMAKING**

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo 2016, the commission rescinds a rule as follows:

#### **10 CSR 10-6.362 Clean Air Interstate Rule Annual NO<sub>x</sub> Trading Program is rescinded.**

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on May 15, 2018 (43 MoReg 1046). No changes were made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** The Missouri Department of Natural Resources’ Air Pollution Control Program received five (5) comments on this rulemaking from the U.S. Environmental Protection Agency (EPA).

Due to similar concerns expressed in the following five (5) comments, one (1) response that addresses these concerns is at the end of these five (5) comments.

**COMMENT #1:** The EPA provided a general comment for all the rules that the department has the responsibility to ensure that the State Implementation Plan (SIP) revision submitted to EPA meets the requirements of sections 110(1) and 193 of the Clean Air Act (CAA).

Section 110(1): Generally, Section 110(1) provides that EPA cannot approve a SIP revision if the revision interferes with any applicable requirement concerning attainment and reasonable further progress or any other requirement of the CAA. This section applies to any area and to any National Ambient Air Quality Standard (NAAQS) pollutant and/or precursor. Thus, any SIP rule is subject to this section.

Section 193: Section 193 prohibits modification of a SIP in effect before 1990 unless that modification would ensure equivalent or greater emissions reductions, i.e., “anti-backsliding.” Section 193 applies only to nonattainment areas and is specific to the nonattainment pollutant. The applicability of section 193 is specific to nonattainment “criteria” pollutants. The ozone implementation rule (codified at 40 CFR 51.905(a)(4)), describes how section 193 applies to Kansas City - an attainment area for the eight (8)-hour standard and maintenance area for the one (1)-hour standard.

Each of the eleven (11) proposed rule rescissions are subject to section 110(1) requirements; six (6) of the proposed rule rescissions are subject to the section 193 requirements. One (1) of the seven (7) proposed rule revisions is subject to section 110(1) requirements, one (1) is a Title V Part 70 revision, one (1) is a 111(d) plan revision, and the remaining four (4) proposed rule revisions are administrative in nature only.

**COMMENT #2:** The EPA suggests a demonstration that quantifies any emissions increase or potential increase by rescinding the rule(s), and a discussion on the impact on air quality. This demonstration could be done by comparing the source inventory at the time the rule was promulgated to the source inventory now, and demonstrating the overall impact on emissions. In addition, the department could include a discussion of the monitored air quality when the rule was promulgated/incorporated into the SIP and monitored air quality trends that demonstrate an improvement in air quality and how the rescission of the rule might impact those trends.

**COMMENT #3:** The EPA suggests a discussion of the rule’s purpose;



specifically, whether the rule was promulgated to meet nonattainment area requirements, and if so, which specific NAAQS. In addition, the department could describe how the rule no longer serves to meet that purpose or how the rule has been superseded by another permanent and enforceable mechanism.

COMMENT #4: The EPA suggests a discussion of whether the rule was used to support other actions and whether the removal of the rule would impact those obligations such as an attainment demonstration, a request for a determination to attainment, a redesignation request and maintenance plan, or other actions such as Regional Haze or Interstate Transport.

COMMENT #5: The EPA suggests that where the department may be anticipating other federal programs, such as Maximum Achievable Control Technology and National Emissions Standards for Hazardous Air Pollutants, as acting as a backstop to removal of its Reasonably Available Control Technology (RACT) rules, a comprehensive discussion of how those programs equal RACT. For example, there may be volatile organic compound (VOC) sources regulated by these programs that are well-controlled through add-on controls, or even through substitution of non-hazardous air pollutant material for VOC hazardous air pollutant materials, however, these programs only cover air toxics and not all VOC emissions that RACT would capture and control are air toxics.

RESPONSE: The rescission of this rule is consistent with Executive Order 17-03 requiring a review of every regulation to affirm that the regulation is essential to the health, safety, or welfare of Missouri residents. The review of this rule indicated that no sources are subject to the rule, that the rule does not reduce any air pollutant, and therefore is not essential. Previously subject sources either have gone out of business or the source is no longer subject to the rule. In some cases, the source has been out of business or not subject to the rule for years. To address EPA's concern about limiting VOC emissions from a new source, the department reiterates that RACT rules were intended to apply to existing major sources in nonattainment areas present at the time of the rule's promulgation. Any new source would not be subject to a RACT rule and instead would be subject to current applicable state or federal rules. Those state and federal rules would serve as the backstop limiting VOC emissions. These rules are not relied upon for any SIP purposes.

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

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo 2016, the commission rescinds a rule as follows:

**10 CSR 10-6.364 Clean Air Interstate Rule Seasonal NO<sub>x</sub> Trading Program is rescinded.**

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on May 15, 2018 (43 MoReg 1047). No changes were made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Department of Natural Resources' Air Pollution Control Program received six (6) comment on this rulemaking from the U.S. Environmental Protection Agency (EPA).

Due to similar concerns expressed in the following five (5) com-

ments, one (1) response that addresses these concerns is at the end of these five (5) comments.

COMMENT #1: The EPA provided a general comment for all the rules that the department has the responsibility to ensure that the State Implementation Plan (SIP) revision submitted to EPA meets the requirements of sections 110(1) and 193 of the Clean Air Act (CAA).

Section 110(1): Generally, Section 110(1) provides that EPA cannot approve a SIP revision if the revision interferes with any applicable requirement concerning attainment and reasonable further progress or any other requirement of the CAA. This section applies to any area and to any National Ambient Air Quality Standard (NAAQS) pollutant and/or precursor. Thus, any SIP rule is subject to this section.

Section 193: Section 193 prohibits modification of a SIP in effect before 1990 unless that modification would ensure equivalent or greater emissions reductions, i.e., "anti-backsliding." Section 193 applies only to nonattainment areas and is specific to the nonattainment pollutant. The applicability of section 193 is specific to nonattainment "criteria" pollutants. The ozone implementation rule (codified at 40 CFR 51.905(a)(4)), describes how section 193 applies to Kansas City - an attainment area for the eight (8)-hour standard and maintenance area for the one (1)-hour standard.

Each of the eleven (11) proposed rule rescissions are subject to section 110(1) requirements; six (6) of the proposed rule rescissions are subject to the section 193 requirements. One (1) of the seven (7) proposed rule revisions is subject to section 110(1) requirements, one (1) is a Title V Part 70 revision, one (1) is a 111(d) plan revision, and the remaining four (4) proposed rule revisions are administrative in nature only.

COMMENT #2: The EPA suggests a demonstration that quantifies any emissions increase or potential increase by rescinding the rule(s), and a discussion on the impact on air quality. This demonstration could be done by comparing the source inventory at the time the rule was promulgated to the source inventory now, and demonstrating the overall impact on emissions. In addition, the department could include a discussion of the monitored air quality when the rule was promulgated/incorporated into the SIP and monitored air quality trends that demonstrate an improvement in air quality and how the rescission of the rule might impact those trends.

COMMENT #3: The EPA suggests a discussion of the rule's purpose; specifically, whether the rule was promulgated to meet nonattainment area requirements, and if so, which specific NAAQS. In addition, the department could describe how the rule no longer serves to meet that purpose or how the rule has been superseded by another permanent and enforceable mechanism.

COMMENT #4: The EPA suggests a discussion of whether the rule was used to support other actions and whether the removal of the rule would impact those obligations such as an attainment demonstration, a request for a determination to attainment, a redesignation request and maintenance plan, or other actions such as Regional Haze or Interstate Transport.

COMMENT #5: The EPA suggests that where the department may be anticipating other federal programs, such as Maximum Achievable Control Technology and National Emissions Standards for Hazardous Air Pollutants, as acting as a backstop to removal of its Reasonably Available Control Technology (RACT) rules, a comprehensive discussion of how those programs equal RACT. For example, there may be volatile organic compound (VOC) sources regulated by these programs that are well-controlled through add-on controls, or even through substitution of non-hazardous air pollutant material for VOC hazardous air pollutant materials, however, these programs only cover air toxics and not all VOC emissions that RACT would capture and control are air toxics.

RESPONSE: The rescission of this rule is consistent with Executive Order 17-03 requiring a review of every regulation to affirm that the regulation is essential to the health, safety, or welfare of Missouri residents. The review of this rule indicated that no sources are subject to the rule, that the rule does not reduce any air pollutant, and therefore

is not essential. Previously subject sources either have gone out of business or the source is no longer subject to the rule. In some cases, the source has been out of business or not subject to the rule for years. To address EPA's concern about limiting VOC emissions from a new source, the department reiterates that RACT rules were intended to apply to existing major sources in nonattainment areas present at the time of the rule's promulgation. Any new source would not be subject to a RACT rule and instead would be subject to current applicable state or federal rules. Those state and federal rules would serve as the backstop limiting VOC emissions. These rules are not relied upon for any SIP purposes.

**COMMENT #6:** The Rulemaking Report indicates that this rule is being proposed for rescission because it is no longer necessary and has been superseded by the Cross-State Air Pollution Rule (CSAPR) trading program. However, there are two (2) remaining issues to be addressed by the department even with the current federal implementation of the CSAPR: 1) the nitrogen oxide (NO<sub>x</sub>) SIP Call mass emissions cap for existing and new units, and 2) the 40 CFR 75, subpart H monitoring requirements. NO<sub>x</sub> SIP Call states, like Missouri, that brought large non-electric generating units (EGUs) into the Clean Air Interstate Rule (CAIR) NO<sub>x</sub> ozone season trading program have not brought those units into the CSAPR NO<sub>x</sub> ozone season trading program. Although the CSAPR essentially covers states' NO<sub>x</sub> SIP Call obligations for large EGUs, by default the CSAPR does not cover large non-EGUs. As such, the department would need to submit a SIP revision to address the state's NO<sub>x</sub> SIP Call requirements for the large non-EGU reductions in some other way. With respect to the NO<sub>x</sub> SIP Call mass emissions cap requirements, it is important to note that, regardless if the state finalizes the rescission of 10 CSR 10-6.364, the issue will need resolution through a SIP revision. The EPA is willing to work with the department on developing a SIP revision using any option that the state may offer.

**RESPONSE:** Missouri initially had three (3) non-EGU boilers subject to both the NO<sub>x</sub> SIP Call and the CAIR ozone season trading programs (10 CSR 10-6.360 and 10 CSR 10-6.364) and were allocated NO<sub>x</sub> allowances for each program. The NO<sub>x</sub> SIP Call has been superseded by CAIR, which has been replaced with CSAPR. The CSAPR ozone season trading program did not include non-EGUs, and new units cannot opt-in to this program. All three (3) of the non-EGU units in Missouri subject to the CAIR ozone season trading program (and formally subject to the NO<sub>x</sub> SIP Call) have ceased operation. The department recognizes that EPA has concerns with two (2) remaining issues. As noted in EPA's comment, EPA believes a SIP revision will be needed regardless if the rule is rescinded and is willing to work with the department to address EPA concerns.

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

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo 2016, the commission rescinds a rule as follows:

**10 CSR 10-6.366 Clean Air Interstate Rule SO<sub>2</sub> Trading Program  
is rescinded.**

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on May 15, 2018 (43 MoReg 1047). No changes were made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** The Missouri Department of Natural Resources' Air Pollution Control Program received five (5) comments on this rulemaking from the U.S. Environmental Protection Agency (EPA).

Due to similar concerns expressed in the following five (5) comments, one (1) response that addresses these concerns is at the end of these five (5) comments.

**COMMENT #1:** The EPA provided a general comment for all the rules that the department has the responsibility to ensure that the State Implementation Plan (SIP) revision submitted to EPA meets the requirements of sections 110(1) and 193 of the Clean Air Act (CAA).

Section 110(1): Generally, Section 110(1) provides that EPA cannot approve a SIP revision if the revision interferes with any applicable requirement concerning attainment and reasonable further progress or any other requirement of the CAA. This section applies to any area and to any National Ambient Air Quality Standard (NAAQS) pollutant and/or precursor. Thus, any SIP rule is subject to this section.

Section 193: Section 193 prohibits modification of a SIP in effect before 1990 unless that modification would ensure equivalent or greater emissions reductions, i.e., "anti-backsliding." Section 193 applies only to nonattainment areas and is specific to the nonattainment pollutant. The applicability of section 193 is specific to nonattainment "criteria" pollutants. The ozone implementation rule (codified at 40 CFR 51.905(a)(4)), describes how section 193 applies to Kansas City - an attainment area for the eight (8)-hour standard and maintenance area for the one (1)-hour standard.

Each of the eleven (11) proposed rule rescissions are subject to section 110(1) requirements; six (6) of the proposed rule rescissions are subject to the section 193 requirements. One (1) of the seven (7) proposed rule revisions is subject to section 110(1) requirements, one (1) is a Title V Part 70 revision, one (1) is a 111(d) plan revision, and the remaining four (4) proposed rule revisions are administrative in nature only.

**COMMENT #2:** The EPA suggests a demonstration that quantifies any emissions increase or potential increase by the rule(s), and a discussion on the impact on air quality. This demonstration could be done by comparing the source inventory at the time the rule was promulgated to the source inventory now, and demonstrating the overall impact on emissions. In addition, the department could include a discussion of the monitored air quality when the rule was promulgated/incorporated into the SIP and monitored air quality trends that demonstrate an improvement in air quality and how the rescission of the rule might impact those trends.

**COMMENT #3:** The EPA suggests a discussion of the rule's purpose; specifically, whether the rule was promulgated to meet nonattainment area requirements, and if so, which specific NAAQS. In addition, the department could describe how the rule no longer serves to meet that purpose or how the rule has been superseded by another permanent and enforceable mechanism.

**COMMENT #4:** The EPA suggests a discussion of whether the rule was used to support other actions and whether the removal of the rule would impact those obligations such as an attainment demonstration, a request for a determination to attainment, a redesignation request and maintenance plan, or other actions such as Regional Haze or Interstate Transport.

**COMMENT #5:** EPA suggests that where the department may be anticipating other federal programs, such as Maximum Achievable Control Technology and National Emissions Standards for Hazardous Air Pollutants, as acting as a backstop to removal of its Reasonably Available Control Technology (RACT) rules, a comprehensive discussion of how those programs equal RACT. For example, there may be volatile organic compound (VOC) sources regulated by these programs that are well-controlled through add-on controls, or even through substitution of non-hazardous air pollutant material for VOC hazardous air pollutant materials, however, these programs only cover air toxics and not all VOC emissions that RACT would capture

and control are air toxics.

RESPONSE: The rescission of this rule is consistent with Executive Order 17-03 requiring a review of every regulation to affirm that the regulation is essential to the health, safety, or welfare of Missouri residents. The review of this rule indicated that no sources are subject to the rule, that the rule does not reduce any air pollutant, and therefore is not essential. Previously subject sources either have gone out of business or the source is no longer subject to the rule. In some cases, the source has been out of business or not subject to the rule for years. While a rule may have applied to a source to reduce or limit air pollutants in the past, the source is no longer producing the regulated emissions and the rule is no longer needed or relied upon for emission reductions going forward. To address EPA's concern about limiting VOC emissions from a new source, the department reiterates that RACT rules were intended to apply to existing major sources in nonattainment areas present at the time of the rule's promulgation. Any new source would not be subject to a RACT rule and instead would be subject to current applicable state or federal rules. Those state and federal rules would serve as the backstop limiting VOC emissions. These rules are not relied upon for any SIP purposes.

**Title 10—DEPARTMENT OF NATURAL RESOURCES**  
**Division 20—Clean Water Commission**  
**Chapter 2—Definitions**

**ORDER OF RULEMAKING**

By the authority vested in the Clean Water Commission of the State of Missouri under sections 536.023(3) and 644.026, RSMo 2016, the commission amends a rule as follows:

10 CSR 20-2.010 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 1, 2018 (43 MoReg 1148-1153). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed amendment was held July 16, 2018, and the public comment period ended July 25, 2018. At the public hearing, department staff provided testimony on the proposed amendment. One (1) comment was received during the public hearing from Mr. Robert Brundage with Newman, Comley & Ruth, PC. The department received four (4) comment letters from three (3) individuals during the public comment period.

**PUBLIC COMMENTS:**

COMMENT #1: Mr. Robert Brundage with Newman, Comley & Ruth, PC and Mr. Stanley Thessen, MFA, both provided comments on returning the agrichemical definition to the rule. Mr. Thessen commented that other definitions in the rule utilized the term agrichemical.

RESPONSE AND EXPLANATION OF CHANGE: The definition for agrichemical was reinstated into the rule.

COMMENT #2: Mr. Paul Calamita with the Association of Clean Water Agencies, recommended adding "Blending is not a bypass" to the definition of bypass.

RESPONSE AND EXPLANATION OF CHANGE: A statement was added to the end of the bypass definition stating that blending is not a bypass.

COMMENT #3: Mr. Robert Brundage with Newman, Comley & Ruth, PC and Mr. Stanley Thessen, MFA, both recommended retain-

ing the definition of "Dedicated agrichemical container."

RESPONSE AND EXPLANATION OF CHANGE: The definition was modified to eliminate the prescriptive language and returned to the rule.

COMMENT #4: Mr. Robert Brundage with Newman, Comley & Ruth, PC and Mr. Stanley Thessen, MFA, both recommended removal of the definition for "Emergency and discharge response plan." Mr. Thessen also questioned how the definition relates to Missouri Clean Water Commission regulations and how the federal requirement was cited in the definition.

RESPONSE AND EXPLANATION OF CHANGE: The Emergency and discharge response plans are required under Emergency Planning and Community Right to Know Act previously referenced in 10 CSR 20-8.500(13). The 10 CSR 20-8.500(13) reference is being proposed for deletion. The definition for "Emergency and discharge response plan" is being removed from the definitions rule.

COMMENT #5: Mr. Robert Brundage with Newman, Comley & Ruth, PC provided written comment and verbal testimony at the July 16, 2018, hearing on the procedures being part of the definition of losing stream and the procedures are not currently in rule. Also he commented on the definition of the term, bedrock aquifer, in the existing definition.

RESPONSE AND EXPLANATION OF CHANGE: The losing stream definition is being modified to remove the determination procedures from the definition. This is a definitions rule and should not set how determinations are made. On the question of bedrock aquifer, this is being deleted in the modified definition; however the United States Geological Survey defines that as an aquifer composed of consolidated material such as limestone, dolomite, sandstone, siltstone, shale, or fractured crystalline rock (Atlas of Water Resources in the Black Hills Area, South Dakota, pg. 118, <https://pubs.usgs.gov/ha/ha747/pdf/definition.pdf>). Further discussion with stakeholders on the existing process for determining losing stream and if that process should be included in rule will be undertaken separate of this rulemaking.

COMMENT #6: Mr. Robert Brundage with Newman, Comley & Ruth, PC and Mr. Stanley Thessen, MFA, commented that the reference to Missouri Department of Transportation standards was incorrect in the definition of "Mobile Container."

RESPONSE AND EXPLANATION OF CHANGE: The definition has been updated to reference United States Department of Transportation standards.

COMMENT #7: Mr. Robert Brundage with Newman, Comley & Ruth, PC stated that a more precise citation should be used for "new source" and "pollutant."

RESPONSE: The citations in the rule follow the direction from the Secretary of State's Office for citing federal regulations. No changes were made to the definition.

COMMENT #8: Mr. Robert Brundage with Newman, Comley & Ruth, PC and Mr. Stanley Thessen, MFA, provided comments on the definition of no-discharge being self-contradictory with the inclusion of the term "treatment facility" and conflicts with statute.

RESPONSE AND EXPLANATION OF CHANGE: There are some circumstances where treatment does not occur and as such the term "treatment" is being deleted from the definition.

COMMENT #9: Mr. Robert Brundage with Newman, Comley & Ruth, PC provided comment on the definition of "operating location" and specifically the proposed deletion of the terminology "in common."

RESPONSE AND EXPLANATION OF CHANGE: The term "in common" is a legal term and will be retained.

COMMENT #10: Mr. Robert Brundage with Newman, Comley & Ruth, PC and Mr. Stanley Thessen, MFA, provided comments on the definition of rinsate, including the removal of the term agrichemical, that the rule should say contaminants not contaminates, and the broadening of the definition. Additionally, they raised concern that the proposed exemption in 10 CSR 20-6.010 would be expanded to other industries as an unintended consequence.

RESPONSE AND EXPLANATION OF CHANGE: The removal of the term agrichemical was a result of the stakeholder meetings as other industries use the term in response to their wastewater. The rule has been corrected to state contaminants. In the proposed 10 CSR 20-6.010, the term agrichemical will be added to limit the proposed exemption, as the exemption was developed for the agrichemical rinsates.

COMMENT #11: Mr. Robert Brundage with Newman, Comley & Ruth, PC and Mr. Stanley Thessen, MFA, commented on the definition of "secondary containment" and that it was being expanded to include additional facilities and may be creating additional cost to facilities with the proposed requirement to surround. Mr. Brundage recommended removing the word "surround" and deleting the words "solids, liquids and gaseous chemical."

RESPONSE AND EXPLANATION OF CHANGE: Secondary containment requirements are present in other regulations than 10 CSR 20-8.500 and the existing definition was not comprehensive. As this is a definition rule, it is not intended to set requirements on facilities, but to provide a definition of terms used in the other chapters of 10 CSR 20 that have requirements associated. The definition has been changed to reflect the recommendations from Mr. Brundage.

COMMENT #12: Mr. Stanley Thessen, MFA, commented that the rulemaking was beyond the scope of the purpose statement in the amendment and asked for an explanation of how the definitions are being changed to meet current statutes, federal definitions or current terminology.

RESPONSE AND EXPLANATION OF CHANGE: The amendment now references twenty-eight (28) statute definitions and five (5) federal definitions. The other sections being amended were discussed with stakeholders and changed for additional clarity and industry standard terminology. Changes were made throughout the rule, such as the definition of mobile container, as a result of the previous comments.

COMMENT #13: Mr. Stanley Thessen, MFA, disagreed that the cost estimate was less than five hundred dollars (\$500) due to expanding the definition of secondary containment and should be considered with the context of other concurrent rulemaking revisions.

RESPONSE: 10 CSR 20-2.010 sets no environmental requirements and as such is an administrative rule. The cost should be considered with rules that have direct requirements on the facilities. The definition of secondary containment was incorrect previously and applicable to more facilities than just agrichemical facilities. No changes were made as a result of this comment.

COMMENT #14: Mr. Stanley Thessen, MFA, questioned the public hearing being before the end of the public comment period and how could the department hold a meeting before the public comment period was closed.

RESPONSE: Previously the department held stakeholder meetings to allow comments and discussion on the development of the rule. The public hearing is not where the department responds to comments. According to 644.036.2, RSMo, a public hearing is held a minimum of seven (7) days before the public comment period closes to allow the public to make verbal comments to be considered along with the written comments received. No changes were made as a result of this comment.

## 10 CSR 20-2.010 Definitions

(2) "Agrichemical," any pesticide or fertilizer but does not include anhydrous ammonia fertilizer material.

(3) "Agrichemical facility," any site, with the exception of chemical production facilities, where bulk pesticides or fertilizers, excluding anhydrous ammonia fertilizer, are stored in non-mobile containers or dedicated containers and are being mixed, applied, repackaged, or transferred between containers for more than thirty (30) consecutive days per year.

(4) "Application," the application form supplied by the department, the filing fee, if applicable, and other supporting documents if requested.

(5) "Appurtenances," valves, pumps, fittings, pipes, hoses, plumbing, or metering devices connected to sewers, basins, tanks, storage vessels, treatment units, and discharge or delivery structures, or used for transferring products or wastes.

(6) "Aquaculture facility," as defined by section 644.016(1), RSMo.

(7) "Aquifer," a subsurface water-bearing bed or stratum which stores or transmits water in recoverable quantities that is presently being utilized or could be utilized as a water source for private or public use. It does not include water in the vadose zone. For purpose of the effluent regulation, sandy or gravelly alluvial soils in or on the floodplains of intermittent streams are not an aquifer.

(8) "Blending," the practice of diverting wet-weather flows around any treatment unit and recombining those flows within the treatment facility, while providing primary and secondary or biological treatment up to the available capacity, consistent with all applicable effluent limits and conditions. See bypass, section (11) of this rule.

(9) "Bulk fertilizer," any liquid or dry fertilizer which is transported or stored in undivided quantities of greater than five hundred (500) gallons measure or five thousand (5,000) pounds net dry weight respectively.

(10) "Bulk pesticide," any registered pesticide which is transported or stored in an individual container in undivided quantities greater than fifty-six (56) gallons liquid measure or one hundred (100) pounds dry weight respectively.

(11) "Bulk repackaging," the transfer of a registered pesticide from one (1) container to another in an unaltered state in preparation for sale to or distribution for use by another person.

(12) "Bypass," as defined by 40 CFR part 122 subpart C, October 22, 2015, as published by the EPA Docket Center, EPA West 1301 Constitution Avenue NW., Washington, DC 20004, is incorporated by reference. This rule does not incorporate any subsequent amendments or additions. Blending is not a bypass.

(13) "Clean Water Act," the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) (P.L. 92- 500) as amended in 1977, (P.L. 95-217), 1978 (P.L. 95-576), 1980 (P.L. 96-483), and in 1981 (P.L. 97-117), 33 U.S.C. 1251 et seq, as published by the Office of the Law Revision Counsel, U.S. House of Representatives, H2-308 Ford House Office Building, Washington, DC 20515, are incorporated by reference. This rule does not incorporate any subsequent amendments or additions.

(14) "Commission," as defined by section 644.016(2), RSMo.

- (15) "Common promotional plan," a plan, undertaken by one (1) or more persons, to offer individual lots or residential housing units within a residential housing development for sale or lease; where land or residential housing units are offered for sale or lease by a person or group of persons acting in concert, and the land is contiguous or is known, designated, or advertised as a common unit or by a common name or similar names, the land is presumed, without regard to the number of lots or residential housing units covered by each individual offering, as being offered for sale or lease as part of a common promotional plan. State and county roads are not considered property boundaries.
- (16) "Composite sample," a combination of individual samples collected over a designated period of time.
- (17) "Conference, conciliation, and persuasion," as defined by section 644.016(3), RSMo.
- (18) "Construction," any activities including, but not limited to, the erection, installation, or significant modification of any dwelling, structure, building, sewer system, water contaminant source, or point source. Construction commences with any preparatory activity including, but not limited to, trenching, excavation for any building in a subdivision, or for a wastewater treatment facility, demolition of existing wastewater treatment facility structures or change in the wastewater treatment facility operation necessary to allow modification, but not to include interior remodeling of single-family residences or commercial buildings which will not result in a substantial change in wastewater volume, nature, or strength of the discharge therefrom.
- (19) "Continuing authority," is a person, as defined in 644.016(15), RSMo, that is either an area wide management authority or owns and/or operates a point source, treatment facility, or a sewer collection system.
- (20) "Daily maximum," an effluent limitation that specifies the total mass or average concentration of pollutants that may be discharged in a calendar day.
- (21) "Dedicated agrichemical container," a container effectively designed and constructed to hold a specific agrichemical and to be reused, repackaged, or refilled.
- (22) "Department," as defined by section 644.016(4), RSMo.
- (23) "Developer," any person or group of persons who directly or indirectly, sells or leases or offers to sell or lease, any lots, residential housing units, or recreational camping sites, but not to include any licensed broker or licensed salesman who is not a shareholder, director, officer, or employee of a developer and who has no legal or equitable interest in the land.
- (24) "Director," as defined by section 644.016(5), RSMo.
- (25) "Discharge," as defined by section 644.016(6), RSMo.
- (26) "Domestic wastewater," wastewater (i.e., human sewage) originating primarily from the sanitary conveniences of residences, commercial buildings, factories, and institutions, including any water which may have infiltrated the sewers. Domestic wastewater excludes stormwater, animal waste, process waste, and other similar waste.
- (27) "Effluent," any wastewater or other substance flowing out of or released from a point source, water contaminant source, or wastewater treatment facility.
- (28) "Effluent Control Regulations," as defined by section 644.016(7), RSMo.
- (29) "Effluent limitation segment," any segment of water where the water quality meets and will continue to meet water quality standards or where the water quality will meet water quality standards after the application of effluent limitation guidelines.
- (30) "Engineer," as defined by section 327.011(13), RSMo.
- (31) "Environmental Protection Agency (EPA)," the United States Environmental Protection Agency.
- (32) "Fertilizer," as defined by section 266.291, RSMo.
- (33) "Filing fee," a credit card, check, money order, or bank draft payable to the state of Missouri as filing fee for a construction permit, an operating permit, or a variance.
- (34) "General permit," as defined by section 644.016(8), RSMo.
- (35) "General permit template," as defined by section 644.016(9), RSMo.
- (36) "Grab sample," any individual sample collected without compositing or adding other samples.
- (37) "Human sewage," as defined in section 644.016(10), RSMo.
- (38) "Innovative technology," new and generally unproven technology in the type or method of its application that bench testing or theory suggests has environmental, efficiency, and cost benefits beyond standard technologies.
- (39) "Lagoon," an earthen basin or lined basin used for biological treatment of wastewater, usually designed for biochemical oxygen demand (BOD) removal and settling of solids. Lagoons can be designed as flow-through, controlled discharge, no-discharge systems, or for storage.
- (40) "Losing streams," a stream which distributes thirty percent (30%) or more of its flow during low flow conditions through natural processes. Losing streams are identified in the digital geospatial dataset 'LOSING\_STREAM' developed by the Missouri Department of Natural Resources, Missouri Geological Survey; additional streams may be determined to be losing by the department.
- (41) "Lot," any portion, piece, division, unit, or undivided interest in real estate, if the interest includes the right to the exclusive use of a specific portion of real estate, whether for a specific term or in perpetuity.
- (42) "Minor Violation," as defined by section 644.016(12), RSMo.
- (43) "Missouri Clean Water Law," as defined by sections 644.006 through 644.141, RSMo.
- (44) "Mobile container," a container designed and used for transporting agrichemicals that meet the United States Department of Transportation standards for the product being transported.
- (45) "Monthly average," the total mass or concentration of all daily discharges sampled during a calendar month divided by the number of daily discharges sampled or measured during that month.
- (46) "Municipality," an incorporated city, town, or village (including an intermunicipal agency of two (2) or more of the foregoing entities).

(47) “National Pollutant Discharge Elimination System (NPDES),” as defined in the Clean Water Act. See Clean Water Act, section (12) of this rule.

(A) NPDES permit. Any permit issued by either the EPA or the state of Missouri under authorization by EPA which fulfills the NPDES requirements as set forth in the Clean Water Act.

(B) NPDES application. Any application on a form supplied by the department, submitted for an NPDES permit.

(48) “New discharger,” any building, structure, facility or installation—

(A) Which on October 18, 1972, has never discharged pollutants;

(B) Which has never received a finally effective NPDES permit;

(C) From which there is or may be a new or additional discharge of pollutants; and

(D) Which does not fall within the definition of new source.

(49) “New source,” as defined by 40 CFR part 122 subpart A, June 29, 2015, as published by the EPA Docket Center, EPA West 1301 Constitution Avenue NW., Washington, DC 20004, are incorporated by reference. This rule does not incorporate any subsequent amendments or additions.

(50) “No-discharge,” a facility designed, constructed, and operated to hold or irrigate, or otherwise dispose without discharge to surface or subsurface waters of the state, all process wastes and associated stormwater flows except for discharges that are caused by catastrophic and chronic storm events; any basin is sealed in accordance with 10 CSR 20-8, Minimum Design Standards; and no subsurface releases exist in violation of 10 CSR 20-7.015, Effluent Regulations, or section 577.155, RSMo.

(51) “Non-mobile container,” a stationary container designed to be incapable of movement once installed; not defined as mobile.

(52) “Operating location,” all contiguous lands owned, operated, or controlled by one (1) or more persons jointly or as tenants in common.

(53) “Operation and maintenance,” activities to assure the dependable and economical function of wastewater and stormwater systems.

(A) Maintenance. Preservation of functional integrity and efficiency of equipment and structures. The proper keeping of all aspects of a collection system and wastewater treatment facility and appurtenances thereto, that pertain to safety, in a state of repair and working order as necessary to comply with the Missouri Clean Water Law and any permit issued thereunder and to protect public health and safety. This includes preventive maintenance, corrective maintenance, and replacement of equipment as needed.

(B) Operation. Control of the unit processes and equipment which make up the wastewater treatment facility. This includes financial and personnel management, records, laboratory control, process control, safety, and emergency operation planning.

(54) “Operational area,” an area(s) at an agrichemical facility where agrichemicals are transferred, loaded, unloaded, mixed, repackaged, refilled, or where agrichemicals are cleaned, washed, or rinsed from containers or equipment that is used in application, handling, storage, or transportation.

(55) “Operational containment area,” any structure or system effectively designed and constructed to intercept and contain discharges, including container or equipment wash water, rinsates and precipitation, and to prevent escape, runoff, or leaking from the operational area.

(56) “Permit by rule,” as defined by section 644.016(13), RSMo.

(57) “Permit holders or applicants for a permit,” as defined by section 644.016(14), RSMo.

(58) “Person,” as defined by section 644.016(15), RSMo.

(59) “Pesticide,” as defined by section 281.020(18), RSMo.

(60) “Point source,” as defined by section 644.016(16), RSMo.

(61) “Pollutant,” as defined by 40 CFR part 122 subpart A, June 29, 2015, as published by the EPA Docket Center, EPA West 1301 Constitution Avenue NW., Washington, DC 20004, is incorporated by reference. This rule does not incorporate any subsequent amendments or additions.

(62) “Pollution,” as defined by section 644.016(17), RSMo.

(63) “Pretreatment regulations,” as defined by section 644.016(18), RSMo.

(64) “Primary containment,” the storage of an agrichemical in either its original container or other suitable container, including dedicated containers, effectively designed and constructed to contain the product that may be stored there.

(65) “Publicly owned treatment works (POTW),” wastewater treatment facility and collection system which conveys wastewater to the POTW owned by the state, a municipality, a political subdivision or a sewer district defined by Chapters 644, 249, and 250, RSMo, 2016.

(66) “Regional administrator,” regional administrator of the Environmental Protection Agency’s regional office for the region in which the state of Missouri is located.

(67) “Release,” to discharge directly or indirectly to waters of the state, or to place, cause, or permit to be placed, any water contaminant in any location where it is reasonably certain to enter waters of the state. For agrichemical facilities, this includes any spill, leak, deposit, dumping, or emptying of an agrichemical, process wastewater, or collected precipitation from a secondary containment area or operational containment area. Release does not include the lawful transfer, loading, unloading, repackaging, refilling, distribution, use, or application of an agrichemical, agrichemical process wastewater, or related collected precipitation.

(68) “Residence,” any structure, dwelling, unit, or shelter which is intended or used for human habitation as a permanent, vacation, or recreational home or building. They may be detached or part of one (1) or more attached units.

(A) “Multiple-family,” residential housing units that share the same structure, dwelling, unit, shelter, or common wall with or without a common social area that includes the right to the exclusive use of a specific portion of real estate, whether for a specific term or in perpetuity; they may include, but are not limited to, duplexes, condominiums, townhouses, apartments, hotels, motels, hospitals, dormitories, boarding schools, group homes, barracks, etc.

(B) “Single-family,” an individual structure, dwelling, unit, or shelter constructed for the purpose of human habitation, with one (1) or more rooms occupied or intended for occupancy by one (1) family for cooking, sanitary, and sleeping purposes that includes the right to the exclusive use of a specific portion of real estate, whether for a specific term or in perpetuity; they do not include multiple-family residences.

(69) “Residential housing development,” as defined by section 644.016(19), RSMo.

(70) "Rinsate," any water containing contaminant that have been washed off or rinsed from containers, application equipment, handling or storage areas, or transportation equipment, including but not limited to: industrial chemicals, agrichemicals, or concrete.

(71) "Secondary containment," any structure effectively designed and constructed to contain one (1) or more primary storage containers to collect any leaks or spills in the event of loss of integrity or primary container failure.

(72) "Separate storm sewer," conveyance or systems of conveyances primarily used for conducting and conveying storm water runoff and located in an urbanized area or designated by the department as a separate storm sewer due to its size, its location, the quantity and nature of pollutants reaching the waters of the state, and other relevant factors.

(73) "Service area population," the population to be served by a wastewater treatment facility.

(74) "Service connection," the connection point of the service line and the sanitary sewer system which is operated and maintained by one (1) of the continuing authorities listed in 10 CSR 20-6.010(3)(B).

(75) "Seven- (7-) day Q10 stream flow," the lowest average flow that occurs for seven (7) consecutive days that has a probable recurrence interval of once every ten (10) years.

(76) "Sewer extension," sewer systems which are added to existing sewers and wastewater treatment facilities.

(77) "Sewer system," as defined by section 644.016(20), RSMo.

(78) "Single family residence wastewater treatment facility," any method or system for the treatment of domestic wastewater from a single-family residence.

(79) "Site-specific permit," as defined by section 644.016(22), RSMo.

(80) "Small rural community," a community of less than ten thousand (10,000) population and not located in whole or in part, in an area of St. Louis County or City encircled by Interstate Route 270, or in an area of Jackson, Clay, or Platte Counties encircled by State Route 150 and 291 and Interstate Routes 29 and 635.

(81) "Soil Scientist," as defined by section 701.040.1.(2)(e), RSMo.

(82) "Stream," a defined watercourse which carries water either continuously or intermittently and which is not entirely confined or located completely upon land owned, leased, or otherwise controlled by one (1) person.

(83) "Test hole," a hole which has been drilled, bored, augered, or otherwise excavated in the exploration for mineral commodities or for obtaining geologic data. Test holes that penetrate only the residuum or unconsolidated materials and which do not enter a geologic unit, are deemed to be an aquifer, exempt from this definition.

(84) "Treatment facilities," as defined by section 644.016(23), RSMo.

(85) "User charge," a charge levied on users of a wastewater treatment facility for the user's share of the costs of operation, maintenance, and replacement of the collection system and wastewater treatment facility.

(86) "Waste load allocation," the amount of pollutants each discharger is allowed by the department to release into a given stream after the department has determined the total amount of pollutants that may be discharged into that stream without endangering its water quality.

(87) "Wastewater," water or other liquids which carry or contain pollutants or water contaminants from any source.

(88) "Water contaminant," as defined by section 644.016(24), RSMo.

(89) "Water contaminant source," as defined by section 644.016(25), RSMo.

(90) "Waters of the state," as defined by section 644.016(27), RSMo.

(91) "Water quality limited segment," a segment where water quality does not meet and/or is not expected to meet applicable water quality standards even after the application of effluent limitations.

(92) "Weekly average," the total mass or concentration of all daily discharges sampled during any calendar week divided by the number of daily discharges sampled or measured during that week.

**Title 10—DEPARTMENT OF NATURAL RESOURCES  
Division 70—Soil and Water Districts Commission  
Chapter 2—Referendums**

**ORDER OF RULEMAKING**

By the authority vested in the Soil and Water Districts Commission under section 278.080, RSMo 2016, the commission amends a rule as follows:

10 CSR 70-2.010 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 2, 2018 (43 MoReg 1437-1438). The public comment period extended from July 2, 2018 to August 1, 2018. Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** The Missouri Department of Natural Resources' Soil and Water Conservation Program received ten (10) general comments for all five (5) chapters related to the Soil and Water Districts Commission's rules from Mr. Ryan Britt, with the Missouri Association of Soil and Water Conservation Districts (MASWCD).

Due to similarity in nature of the comments, the comments are grouped together and one (1) response is provided.

**COMMENT:** The MASWCD made the following general comments regarding all proposed amendments to the Soil and Water Districts Commission rules in Chapter 2, 3, 4, 5, and 6: correct grammar and make sentences read better; make sentences gender neutral; make sentences more concise by adding or removing words; apply sentence structure and terms consistently in a rule or chapter; replace the term "installation" with "implementation" and the term "constructed" with "implemented"; replace the term "cost-sharing" with "cost-share"; replace the term "subdistrict" with "watershed district"; update and better describe program procedures; list general documents and non-formal names in lower case; and amend the definition of "State cost-share funds" to include "cost-share and incentive funds."

RESPONSE AND EXPLANATION OF CHANGE: The department amended sections (1), (2), (3), (4), and (6) to address the general comments.

#### 10 CSR 70-2.010 Conduct of Referendums

- (1) The process for the local committee and election judges is—
- (A) Publish successive notices of the referendum in one (1) or more newspapers in the county where the referendum is being held during each of the two (2) weeks immediately preceding the referendum;
  - (B) Open polls promptly at the time advertised;
  - (C) Furnish official ballots to each polling place; and
  - (D) Close the polls promptly at the closing hour designated but allow those who have entered the polling place before this time to complete their ballots.
- (2) If any elected judge is not present at the polls on the date and time of the referendum, the judges present may select any citizen in the district to serve as a judge and provide the necessary instructions.
- (3) Only one (1) vote is allowed per farm by the owner or the owner's legal representative. A tract of land must be operated as an independent farm enterprise to entitle its land representative to a single vote. Two (2) or more tracts of land that are operated by one (1) management entity as an independent farm enterprise will be entitled to one (1) vote.
- (4) Each landowner may personally cast one (1) vote per owned and independently operated farm. If the landowner is unable to personally vote, the landowner may give power of attorney to a taxpayer residing within the county to represent the landowner in the referendum.
- (6) Referendum and election tally sheets and all supplies should be returned to the clerk of the county court within twenty-four (24) hours after polls are closed, where they shall be safely preserved for twelve (12) months. If arrangements cannot be made with the county clerk, these materials shall be sent to the Soil and Water Districts Commission, PO Box 176, Jefferson City, MO 65102. The chair of the local committee and the clerk of the county court shall certify the total referendum vote by area and polling place and report the results to the chair of the Soil and Water Districts Commission.

### Title 10—DEPARTMENT OF NATURAL RESOURCES Division 70—Soil and Water Districts Commission Chapter 2—Referendums

#### ORDER OF RULEMAKING

By the authority vested in the Soil and Water Districts Commission under section 278.080, RSMo 2016, the commission amends a rule as follows:

10 CSR 70-2.020 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 2, 2018 (43 MoReg 1438–1439). The public comment period extended from July 2, 2018 to August 1, 2018. Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Department of Natural Resources' Soil and Water Conservation Program received ten (10) general comments for all five (5) chapters related to the Soil and Water Districts Commission's rules from Mr. Ryan Britt, with

the Missouri Association of Soil and Water Conservation Districts (MASWCD).

Due to similar concerns expressed in the following three (3) comments, one (1) response that addresses these concerns is at the end of these (3) comments.

COMMENT: The MASWCD made the following general comments regarding all proposed amendments to the Soil and Water Districts Commission rules in Chapter 2, 3, 4, 5, and 6: correct grammar and make sentences read better; make sentences gender neutral; make sentences more concise by adding or removing words; apply sentence structure and terms consistently in a rule or chapter; replace the term "installation" with "implementation" and the term "constructed" with "implemented"; replace the term "cost-sharing" with "cost-share"; replace the term "subdistrict with "watershed district"; update and better describe program procedures; list general documents and non-formal names in lower case; and amend the definition of "State cost-share funds" to include "cost-share and incentive funds."

RESPONSE AND EXPLANATION OF CHANGE: The department amended section (1), section (2), subsection (3)(C), subsection (4)(A), and section (5) to address the general comments.

#### 10 CSR 70-2.020 Conduct of Supervisor Elections

- (1) The Soil and Water Conservation District (SWCD) Board is responsible for conducting the election of supervisors in accordance with procedures established by the commission. Elections may be conducted electronically or with paper ballots.
- (2) The SWCD shall be partitioned by the commission into four (4) areas for the purpose of identifying candidates for the SWCD board.
- (3) To qualify for office, a candidate shall—
- (C) Reside in or own a farm lying in the same area where there is an expiring term; and
- (4) Eligibility for Voting.
- (A) Voting in SWCD supervisor elections is limited to one (1) vote per independent farm enterprise by a landowner or the landowner's legal representative. A legal representative must have a power of attorney that specifically authorizes voting in SWCD supervisor elections.
- (5) The election shall be certified by a majority of the board responsible for conducting the election. The SWCD Board of Supervisors shall complete and sign two (2) copies of the report and certification of supervisor election form. One (1) copy shall be mailed to the Soil and Water Conservation Program and one (1) copy shall be kept permanently in the SWCD files along with the tally sheet signed by the judges. After the election, the newly composed board shall select new officers and submit a list of the new officers to the Soil and Water Conservation Program.

### Title 10—DEPARTMENT OF NATURAL RESOURCES Division 70—Soil and Water Districts Commission Chapter 3—Formation of Subdistrict

#### ORDER OF RULEMAKING

By the authority vested in the Soil and Water Districts Commission under section 278.080, RSMo 2016, the commission amends a rule as follows:

10 CSR 70-3.010 is amended.



A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 2, 2018 (43 MoReg 1439-1441). The public comment period extended from July 2, 2018 to August 1, 2018. Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** The Missouri Department of Natural Resources' Soil and Water Conservation Program received ten (10) general comments for all five (5) chapters related to the Soil and Water Districts Commission's rules from Mr. Ryan Britt, with the Missouri Association of Soil and Water Conservation Districts (MASWCD).

Due to similarity in nature of the comments, the comments are grouped together.

**COMMENT #1:** The MASWCD made the following general comments regarding all proposed amendments to the Soil and Water Districts Commission rules in Chapter 2, 3, 4, 5, and 6: correct grammar and make sentences read better; make sentences gender neutral; make sentences more concise by adding or removing words; apply sentence structure and terms consistently in a rule or chapter; replace the term "installation" with "implementation" and the term "constructed" with "implemented"; replace the term "cost-sharing" with "cost-share"; update and better describe program procedures; list general documents and non-formal names in lower case; and amend the definition of "State cost-share funds" to include "cost-share and incentive funds."

**RESPONSE AND EXPLANATION OF CHANGE:** The department amended the purpose section, section (2), section (5), section (6), section (9), section (11), and renumbered sections to address the general comments.

**COMMENT #2:** The MASWCD commented to replace the term "subdistrict" with "watershed district."

**RESPONSE:** Section 278.160, RSMo, that authorizes the creation of a subdistrict uses the term subdistrict not watershed district. In order to maintain consistency with the statute, the department did not change the term subdistrict in this chapter.

**COMMENT #3:** Following the public comment period, staff noticed that additional clarification was needed in describing the certification form in section (9).

**RESPONSE AND EXPLANATION OF CHANGE:** The department agrees and additional information was provided to better describe the certification form.

### **10 CSR 70-3.010 Formation of Soil and Water Conservation Subdistricts**

*PURPOSE:* This rule sets forth the basic procedures for the organization of a subdistrict within a soil and water conservation district.

- (1) Petition forms may be secured from the local soil and water conservation district board of supervisors or from the state commission office in Jefferson City, Missouri.
- (2) The soil and water conservation district board should require certification by an elected county official that the signatures on the petition are those of landowners within the proposed subdistrict.
- (3) The supervisors may divide a subdistrict into five (5) areas to nominate trustees.
- (4) Landowners present at the hearing will nominate at least two (2) landowners from each of the five (5) designated areas, whose names will be placed on the ballot for election to serve as trustees of the

subdistrict.

- (5) Landowners present at the hearing will select the polling places and judges for the referendum.
- (6) Any landowner may be represented by a notarized proxy not more than one (1) year old.
- (7) The voting will be on the question of establishing the proposed area as a subdistrict.
- (8) Notice of the referendum shall be made in the same manner as the notice of the hearing and a copy of the notice shall be filed with the Soil and Water Districts Commission in Jefferson City.
- (9) The district board shall certify the formation of the subdistrict in the official minutes of a district board meeting and record authentic copies of the certification form provided by the Soil and Water Districts Commission by filing it with the recorder of deeds of each county in which any portion of the subdistrict lies. The certification form shall also be filed with the Soil and Water Districts Commission in Jefferson City.
- (10) Five (5) landowners representing the five (5) designated areas within the proposed subdistrict shall be elected to serve as trustees of the subdistrict. Elections shall not fall upon the date of any regular political election held in the county and a simple majority vote is needed to elect a trustee.

(11) The board of supervisors of a subdistrict shall submit to the Soil and Water Districts Commission copies of any rules, forms, or other documents used in pursuance of board duties and other information concerning board activities as the commission may require.

(12) If the boundary of a subdistrict intersects a property, no less than a legally described one-quarter of a quarter section of land (40 acres) shall be considered for tax assessment purposes.

## **Title 10—DEPARTMENT OF NATURAL RESOURCES**

### **Division 70—Soil and Water Districts Commission**

#### **Chapter 4—Definitions**

#### **ORDER OF RULEMAKING**

By the authority vested in the commission under section 278.080, RSMo 2016, the commission amends a rule as follows:

10 CSR 70-4.010 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 2, 2018 (43 MoReg 1441). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** The Missouri Department of Natural Resources' Soil and Water Conservation Program received seventeen (17) comments related to the Soil and Water Districts Commission's rules from Mr. Ryan Britt, with the Missouri Association of Soil and Water Conservation Districts (MASWCD).

Due to the similar nature of ten (10) comments, they are grouped and addressed together.

**COMMENT #1:** The MASWCD made the following general comments regarding all proposed amendments to the Soil and Water Districts Commission rules in Chapter 2, 3, 4, 5, and 6: correct

grammar and make sentences read better; make sentences gender neutral; make sentences more concise by adding or removing words; apply sentence structure and terms consistently in a rule or chapter; replace the term “installation” with “implementation” and the term “constructed” with “implemented”; replace the term “cost-sharing” with “cost-share”; replace the term “subdistrict with “watershed district”; update and better describe program procedures; list general documents and non-formal names in lower case; and amend the definition of “State cost-share funds” to include “cost-share and incentive funds.”

**RESPONSE AND EXPLANATION OF CHANGE:** The department amended subsections (1)(J), (1)(L), (1)(N), and (1)(O) and deleted subsection (1)(P) which defines “Tolerable soil loss limits” as this term is no longer listed elsewhere in the rules.

**COMMENT #2:** The MASWCD made the following comment: list definitions in 10 CSR 70-4.010 in alphabetical order.

**RESPONSE AND EXPLANATION OF CHANGE:** The department agrees and updated the rule accordingly.

**COMMENT #3:** The MASWCD made the following specific comment: include the term “cooperative working agreement” with “memorandum of understanding” in 10 CSR 70-4.010.

**RESPONSE AND EXPLANATION OF CHANGE:** The department agrees and updated the rule with this language.

**COMMENT #4:** The MASWCD made the following comment: include a definition of “Technician” in 10 CSR 70-4.010.

**RESPONSE AND EXPLANATION OF CHANGE:** The department agrees and updated the rule with this language.

**COMMENT #5:** The MASWCD made the following comment: amend the definition of “Farm” in 10 CSR 70-4.010.

**RESPONSE AND EXPLANATION OF CHANGE:** The department agrees and updated the definition of “Farm.”

**COMMENT #6:** The MASWCD made the following comment: amend the definition of “Landowner” in 10 CSR 70-4.010 to describe when the term “operator” can be used interchangeably with landowner.

**RESPONSE:** This language was in the proposed language during the public notice period. No additional change was made.

**COMMENT #7:** The MASWCD made the following comment: amend the definition of “State Soil and Water Districts Commission” in 10 CSR 70-4.010 to include other names it is listed by in the rules.

**RESPONSE AND EXPLANATION OF CHANGE:** The department agrees and updated the rule with this language.

**COMMENT #8:** The MASWCD made the following comment: amend the definition of “Board” in 10 CSR 70-4.010 to include the other names it is listed by in the rules.

**RESPONSE:** This language was in the proposed language during the public notice period. No additional change was made.

## 10 CSR 70-4.010 Definitions

### (1) Definitions.

(A) Act means the Missouri Soil and Water Conservation Districts Law;

(B) Commission or Soil and Water Districts Commission or State Soil and Water Districts Commission means the agency created by section 278.080, RSMo for the administration of the soil and water conservation districts provided for by the Act;

(C) Conservation plan means the properly recorded decisions of the cooperating landowner on how the landowner plans, within practical limits, to use land in an operating unit within its capabilities and to treat it according to its needs for maintenance or improvement of

the soil, water, and other related resources;

(D) Cost-Share Program means the Missouri State Soil and Water Conservation Cost-Share Program created by the Missouri State Soil and Water Conservation Districts Act, Chapter 278, RSMo;

(E) District means a soil and water conservation district as defined in section 278.070(4), RSMo;

(F) District board or board or board of supervisors means the local governing body of a soil and water conservation district elected or appointed in accordance with the provisions of the Act;

(G) Eligible practice means a soil and water conservation practice designated as eligible for state cost-share funds by the commission in accordance with 10 CSR 70-5.020(1);

(H) Farm means land which has been assigned a United States Department of Agriculture Farm Service Agency (FSA) farm number or assessed as agricultural land by the county assessor where agriculture activities are normally performed and from which one thousand dollars (\$1000) or more of agriculture products are normally sold in a year;

(I) Land representative means the owner or representative authorized by power of attorney of any farm lying within an area proposed to be established, and subsequently established, as a soil and water conservation district under Chapter 278, RSMo. Each farm is entitled to representation by a land representative; provided, however, that the land representative is a taxpayer of the county within which the soil and water district is located;

(J) Landowner means any person, firm, or corporation holding title to any lands lying within a district organized or to be organized under the provisions of Chapter 278, RSMo. Any landowner may be represented by notarized power of attorney not more than one (1) year old. The term operator may be used interchangeably with landowner only for Chapter 5. The operator is the principal person who runs a farm by conducting or supervising the work, making day-to-day management decisions, and incurring expenses for applying or implementing conservation practices. The operator may be a landowner, tenant, lessee, or sublessee;

(K) NRCS means the United States Department of Agriculture Natural Resources Conservation Service;

(L) Participating district means a soil and water conservation district which is a party to a memorandum of understanding or a cooperative working agreement as determined by the commission, which is entered into in accordance with 10 CSR 70-5.010(1);

(M) Practice means any individual structure, conservation measure, or operation which constitutes a viable method of erosion abatement, sediment control, or protection of water quality;

(N) State cost-share funds means funds available through the Missouri State Soil and Water Conservation Cost-Share Program; and

(O) Technician means a person recognized by the commission as demonstrating acceptable technical knowledge and skills to evaluate and verify whether conservation practices meet required standards and specifications.

## Title 10—DEPARTMENT OF NATURAL RESOURCES Division 70—Soil and Water Districts Commission Chapter 5—State Funded Cost-Share Program

### ORDER OF RULEMAKING

By the authority vested in the Soil and Water Districts Commission under section 278.080, RSMo 2016, the commission amends a rule as follows:

10 CSR 70-5.010 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 2, 2018 (43 MoReg 1441-1442). The public comment period extended from

July 2, 2018 to August 1, 2018. Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** The Missouri Department of Natural Resources' Soil and Water Conservation Program received eleven (11) comments related to this rule from Mr. Ryan Britt, with the Missouri Association of Soil and Water Conservation Districts (MASWCD).

Due to the similar nature of ten (10) comments, they are grouped and addressed together.

**COMMENT #1:** The MASWCD made the following general comments regarding all proposed amendments to the Soil and Water Districts Commission rules in Chapter 2, 3, 4, 5, and 6: correct grammar and make sentences read better; make sentences gender neutral; make sentences more concise by adding or removing words; apply sentence structure and terms consistently in a rule or chapter; replace the term "installation" with "implementation" and the term "constructed" with "implemented"; replace the term "cost-sharing" with "cost-share"; replace the term "subdistrict" with "watershed district"; update and better describe program procedures; list general documents and non-formal names in lower case; and amend the definition of "State cost-share funds" to include "cost-share and incentive funds."

**RESPONSE AND EXPLANATION OF CHANGE:** The department amended section (1) and subsection (2)(A) to address these comments.

**COMMENT #2:** The MASWCD, made the following comment: include the term "cooperative working agreement" with "memorandum of understanding" in 10 CSR 70-5.010.

**RESPONSE AND EXPLANATION OF CHANGE:** The department amended sections (1) and (3) to address these comments.

### 10 CSR 70-5.010 Allocation of Funds

(1) General Availability of Funds. State cost-share funds are available only to landowners located in soil and water conservation districts which have agreed to locally administer the program and have executed a memorandum of understanding or a cooperative working agreement with the commission setting forth the terms of assistance. To be eligible, a landowner must have a conservation plan approved by the district. Acceptable formats for preparing conservation plans are determined by the commission.

(2) Annual Allocation of Funds. All funds allocated to the cost-share program for any fiscal year shall be apportioned by the commission to the participating districts by considering the character of the districts' soil and water conservation needs according to criteria developed by the commission.

(A) Special Allocations. The commission may withhold funds from the general allocation for the purpose of providing cost-share for special projects which the commission considers necessary and of high priority for the saving of soil and water on Missouri's agricultural land.

(3) Termination of the Memorandum of Understanding or Cooperative Working Agreement. In the event that the memorandum of understanding or cooperative working agreement is terminated by any district or by the commission, the commission may withdraw funds assigned to that district.

## Title 10—DEPARTMENT OF NATURAL RESOURCES Division 70—Soil and Water Districts Commission Chapter 5—State Funded Cost-Share Program

### ORDER OF RULEMAKING

By the authority vested in the Soil and Water Districts Commission under section 278.080, RSMo 2016, the commission amends a rule as follows:

10 CSR 70-5.020 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 2, 2018 (43 MoReg 1442-1444). The public comment period extended from July 2, 2018 to August 1, 2018. Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** The Missouri Department of Natural Resources' Soil and Water Conservation Program received ten (10) comments related to this rule from Mr. Ryan Britt, with the Missouri Association of Soil and Water Conservation Districts (MASWCD).

Due to the similar nature of ten (10) comments, they are grouped and addressed together.

**COMMENT #1:** The MASWCD made the following general comments regarding all proposed amendments to the Soil and Water Districts Commission rules in Chapter 2, 3, 4, 5, and 6: correct grammar and make sentences read better; make sentences gender neutral; make sentences more concise by adding or removing words; apply sentence structure and terms consistently in a rule or chapter; replace the term "installation" with "implementation" and the term "constructed" with "implemented"; replace the term "cost-sharing" with "cost-share"; replace the term "subdistrict" with "watershed district"; update and better describe program procedures; list general documents and non-formal names in lower case; and amend the definition of "State cost-share funds" to include "cost-share and incentive funds."

**RESPONSE AND EXPLANATION OF CHANGE:** The department amended sections (1), (2), (3), (4), (5), (6), (7), and (9) to address these comments.

### 10 CSR 70-5.020 Application and Eligibility for Funds

(1) Establishing Practice Eligibility. The commission establishes a list of eligible practices for which cost-share funds are available and affirms or modifies the list as it considers appropriate. The participating districts shall develop annual priority listings of preferred practices from the commission eligibility list upon which they will base their considerations for cost-share. Landowners are eligible for cost-share funds for only the practices designated as eligible by both the Soil and Water Districts Commission and the participating districts. No eligible practices are available to treat flood scouring problems.

(2) Application for Assistance. To be eligible for assistance from the Cost-Share Program, a landowner must apply for cost-share on forms provided by the commission. Copies of these forms are available at district offices. The district board will only act upon those applications for cost-share from landowners who have a conservation plan approved by the district for eligible practices in which implementation has not yet begun. However, governmental agencies, political subdivisions, and public institutions are excluded from participation in the Cost-Share Program.

(3) Funding Determination and Limits. It is the responsibility and duty of the district board to determine the actual dollar amount of cost-share for individual applications. In the event that the landowner wishes to construct or implement practices over and above the size or scope determined by a qualified technician to be of minimum and necessary need for soil and water conservation, the board shall provide cost-share assistance on only that part of the practice necessary for soil and water conservation purposes.

(4) Availability of Federal Funds. State cost-share assistance is available for practice units applied for but not approved by the federal program, if those additional units constitute a complete structure, conservation measure, or operation in and of themselves. State cost-share assistance may also supplement federal cost-share on an individual practice.

(5) Compliance with Applicable Law. In the implementation of any eligible practices, the landowner is responsible for assuring compliance with any applicable federal, state or local laws, ordinances, and regulations. The landowner is also responsible for obtaining all permits, licenses, or other instruments of permission required prior to the implementation of the proposed practice.

(6) Group Projects. Landowners may cooperate with other landowners in the event that the most appropriate solution to the soil and water conservation needs requires eligible practices to be located on or across property lines of different landowners. In these cases, an agreement between or among cooperating landowners must be prepared by or on behalf of the group stipulating and providing for, but not limited to, the divisions of unshared costs, maintenance, such easements as necessary to accomplish the implementation, operation, and maintenance of the practice and the sharing of rights and benefits over and above the public benefits which might accrue from the implementation of the practice. This agreement and an area conservation plan may be submitted to the district(s) within which the land included in the plans lies. Upon approval of the area conservation plan by the district(s), the individual landowners are eligible to apply for cost-share assistance under this rule. The area conservation plan may serve in lieu of the individual landowner conservation plans. All other requirements for application and cost-share assistance remain in effect.

(7) Special Projects. Upon notification of available funds for special critical-needs projects designated by the commission, the district board shall make all reasonable efforts to contact landowners within the special project area to inform them of the available cost-share funds and encourage them to cooperate in the special critical-needs projects. Landowners within the project boundaries may apply for the special cost-share assistance on practices specified as eligible by the commission. Cooperation in these special projects is entirely voluntary for landowners.

(9) Application Amendments. A copy of any amendments will be furnished to each party receiving a copy of the original application. The board shall approve each amendment required by the commission before it becomes effective. The commission will provide guidance regarding appropriate reasons for amendments.

**Title 10—DEPARTMENT OF NATURAL RESOURCES  
Division 70—Soil and Water Districts Commission  
Chapter 5—State Funded Cost-Share Program**

**ORDER OF RULEMAKING**

By the authority vested in the Soil and Water Districts Commission under section 278.080, RSMo 2016, the commission amends a rule as follows:

10 CSR 70-5.030 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 2, 2018 (43 MoReg 1444-1445). The public comment period extended from July 2, 2018 to August 1, 2018. Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** The Missouri Department of Natural Resources' Soil and Water Conservation Program received ten (10) comments related to this rule from Mr. Ryan Britt, with the Missouri Association of Soil and Water Conservation Districts (MASWCD).

Due to the similar nature of ten (10) comments, they are grouped and addressed together.

**COMMENT #1:** The MASWCD made the following general comments regarding all proposed amendments to the Soil and Water Districts Commission rules in Chapter 2, 3, 4, 5, and 6: correct grammar and make sentences read better; make sentences gender neutral; make sentences more concise by adding or removing words; apply sentence structure and terms consistently in a rule or chapter; replace the term "installation" with "implementation" and the term "constructed" with "implemented"; replace the term "cost-sharing" with "cost-share"; replace the term "subdistrict" with "watershed district"; update and better describe program procedures; list general documents and non-formal names in lower case; and amend the definition of "State cost-share funds" to include "cost-share and incentive funds."

**RESPONSE AND EXPLANATION OF CHANGE:** The department amended sections (1), (2), (3), and (4) to address these comments.

**10 CSR 70-5.030 Design, Layout and Construction of Proposed Practices; Operation and Maintenance**

(1) Technical Specifications. The commission shall rely on standards and specifications for soil and water conservation practices used by the United States Department of Agriculture Natural Resources Conservation Service as the basis for determining need and practicability of the proposed practice, preparing plans and specifications, designing and laying out the practices, and certifying the proper implementation of the practices. Modifications to the standards and specifications may be considered and authorized by the commission. Practice description and specification information will be available in the district office.

(2) Inspections and Certifications. An approved technician shall inspect the work in progress to ensure that practice standards and specifications are met. Following the implementation, the technician will certify to the district that the practice was or was not properly implemented. If the district does not receive a technician's certification that the practice was properly implemented, it shall not approve any claim to the commission for payment regarding the practice.

(3) Operation and Maintenance by Landowner. The landowner shall be responsible for the operation and maintenance of all practices implemented with assistance from the Cost-Share Program and the landowner will be expected to maintain the practices in good operating condition to assure their continued effectiveness.

(4) Requests for Removal, Alteration, or Modification of Practices. The commission may grant a district's request for the removal, alteration, or modification of a practice at any time during the ten- (10-) year or expected life span, whichever is less, following payment of cost-share assistance.

**Title 10—DEPARTMENT OF NATURAL RESOURCES  
Division 70—Soil and Water Districts Commission  
Chapter 5—State Funded Cost-Share Program**

**ORDER OF RULEMAKING**

By the authority vested in the Soil and Water Districts Commission under section 278.080, RSMo 2016, the commission amends a rule as follows:

10 CSR 70-5.040 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 2, 2018 (43 MoReg 1445). The public comment period extended from July 2, 2018 to August 1, 2018. Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** The Missouri Department of Natural Resources' Soil and Water Conservation Program received ten (10) comments related to this rule from Mr. Ryan Britt, with the Missouri Association of Soil and Water Conservation Districts (MASWCD).

Due to the similar nature of ten (10) comments, they are grouped and addressed together.

**COMMENT #1:** The MASWCD made the following general comments regarding all proposed amendments to the Soil and Water Districts Commission rules in Chapter 2, 3, 4, 5, and 6: correct grammar and make sentences read better; make sentences gender neutral; make sentences more concise by adding or removing words; apply sentence structure and terms consistently in a rule or chapter; replace the term "installation" with "implementation" and the term "constructed" with "implemented"; replace the term "cost-sharing" with "cost-share"; replace the term "subdistrict" with "watershed district"; update and better describe program procedures; list general documents and non-formal names in lower case; and amend the definition of "State cost-share funds" to include "cost-share and incentive funds."

**RESPONSE AND EXPLANATION OF CHANGE:** The department amended sections (2) and (4) to address these comments.

#### **10 CSR 70-5.040 Cost-Share Rates and Reimbursement Procedures**

(2) Eligible Costs. Eligible costs will be determined by the commission to include necessary and reasonable costs incurred by the landowner in implementing an approved practice. The costs may include, but are not limited to, machine hire or the use of the landowner's own equipment, necessary materials delivered to and used at the site, and labor required to implement the practice.

(4) Claim for Payment. The landowner is eligible for payment after the practice has been completed, certified by the technician, and approved by the district board.

### **Title 10—DEPARTMENT OF NATURAL RESOURCES Division 70—Soil and Water Districts Commission Chapter 5—State Funded Cost-Share Program**

#### **ORDER OF RULEMAKING**

By the authority vested in the Soil and Water Districts Commission under section 278.080, RSMo 2016, the commission amends a rule as follows:

10 CSR 70-5.050 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 2, 2018 (43 MoReg 1445-1447). The public comment period extended from July 2, 2018 to August 1, 2018. Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** The Missouri Department of Natural Resources' Soil and Water Conservation Program received ten (10) comments related to this rule from Mr. Ryan Britt, with the Missouri Association of Soil and Water Conservation Districts (MASWCD).

Due to the similar nature of ten (10) comments, they are grouped and addressed together.

**COMMENT #1:** The MASWCD made the following general comments regarding all proposed amendments to the Soil and Water Districts Commission rules in Chapter 2, 3, 4, 5, and 6: correct grammar and make sentences read better; make sentences gender neutral; make sentences more concise by adding or removing words; apply sentence structure and terms consistently in a rule or chapter; replace the term "installation" with "implementation" and the term "constructed" with "implemented"; replace the term "cost-sharing" with "cost-share"; replace the term "subdistrict" with "watershed district"; update and better describe program procedures; list general documents and non-formal names in lower case; and amend the definition of "State cost-share funds" to include "cost-share and incentive funds."

**RESPONSE AND EXPLANATION OF CHANGE:** The department amended sections (1), (2), (3), and (4) to address these comments.

#### **10 CSR 70-5.050 District Administration of the Cost-Share Program**

(1) District Board Action on Applications. The district board shall review the cost-share assistance application and any amendments and approve or disapprove each application or amendment. The action shall be recorded in the official minutes of the district meeting and the landowners shall be notified of the action within thirty (30) days. Special circumstances may arise where district board approval for cost-share assistance is needed before the next monthly district board meeting. In those cases, the district board shall establish specific criteria by which any district board member may approve that action. Applications for cost-share assistance may be approved by the district board only when there is a sufficient unobligated fund balance to provide the estimated cost-share amount. The district board shall not approve any application for cost-share assistance in which the implementation of a project or practice has begun.

(2) District Review of Claim for Payment. Upon completion of an eligible practice, the district shall review and approve the claim for payment. If the district determines that deficiencies exist, the district shall notify the landowner and provide the landowner with a reasonable opportunity to correct the deficiencies and resubmit the claim for payment.

(3) Filing System. To provide for efficient processing of requests for cost-share assistance and for maintenance of necessary documentation of matters relating to the administration of the Cost-Share Program, the district shall develop and maintain with the assistance of the commission, a filing system which includes copies of all forms completed by the landowner and all other information considered relevant to the implementation of the eligible practices and to the cost-share assistance provided. The files shall be available for inspection by representatives of the commission and the state auditor's office.

(4) Regardless of the source of funding, each district board is authorized to deny any application or claim for payment for any program generally available through the district which is administered by the commission. The district board shall provide written notification of any denial to the applicant. The applicant may request that the commission conduct a review of the application or claim for payment. The request must be in writing and directed to the Soil and Water Districts Commission, PO Box 176, Jefferson City, MO 65102. The

request must be received by the commission no later than thirty (30) days from the date the applicant received the denial notification from the district board. The applicant, upon request, may appear before the commission in person, by a representative, or in writing. The commission shall schedule the review of the application at a commission meeting within one hundred twenty (120) days of the district board's denial. The commission shall give the applicant at least thirty (30) days written notice of the meeting when the commission will review the application.

**Title 10—DEPARTMENT OF NATURAL RESOURCES**  
**Division 70—Soil and Water Districts Commission**  
**Chapter 5—State Funded Cost-Share Program**

**ORDER OF RULEMAKING**

By the authority vested in the Soil and Water Districts Commission under section 278.080, RSMo 2016, the commission amends a rule as follows:

10 CSR 70-5.060 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 2, 2018 (43 MoReg 1447-1448). The public comment period extended from July 2, 2018 to August 1, 2018. Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** The Missouri Department of Natural Resources' Soil and Water Conservation Program received ten (10) comments related to this rule from Mr. Ryan Britt, with the Missouri Association of Soil and Water Conservation Districts (MASWCD).

Due to the similar nature of ten (10) comments, they are grouped and addressed together.

**COMMENT #1:** The MASWCD made the following general comments regarding all proposed amendments to the Soil and Water Districts Commission rules in Chapter 2, 3, 4, 5, and 6: correct grammar and make sentences read better; make sentences gender neutral; make sentences more concise by adding or removing words; apply sentence structure and terms consistently in a rule or chapter; replace the term "installation" with "implementation" and the term "constructed" with "implemented"; replace the term "cost-sharing" with "cost-share"; replace the term "subdistrict" with "watershed district"; update and better describe program procedures; list general documents and non-formal names in lower case; and amend the definition of "State cost-share funds" to include "cost-share and incentive funds."

**RESPONSE AND EXPLANATION OF CHANGE:** The department amended sections (1), (2), and (5) to address these comments.

**10 CSR 70-5.060 Commission Administration of the Cost-Share Program**

(1) Forms. The commission shall develop and make available to participating districts, forms necessary for district administration, and prepare and keep updated guidance for district use in assisting with administration of the Cost-Share Program.

(2) Commission Review of Claims for Payment. Upon receipt of a district-approved claim for payment, a commission representative reviews the claim and supporting documentation. If the claim is determined to be complete and properly documented, payment will be made by the Office of Administration to the landowner.

(5) Violations of Cost-Share Assistance Agreement. In the event the commission is notified of an alleged violation of the cost-share assistance agreement, a representative of the commission, or a representative of the district, or both, shall investigate the alleged violation and report the results of the investigation to the commission. If, following the investigation, it appears as though a violation has occurred, the district board shall notify the landowner by certified mail, return receipt requested, and demand repayment of the appropriate amount to the Cost-Share Program within thirty (30) days after receipt of the demand for repayment. Within that thirty- (30-) day period, the landowner may request the commission review the demand for repayment. The request for a review must be in writing. The review shall be conducted at a commission meeting, allowing adequate opportunity for the landowner to present arguments in support of the claim. The landowner's arguments may be presented by the landowner, by a representative, or in writing. If, following the review, the commission determines that no violation has occurred or that extenuating circumstances justify the landowner's position, the demand for repayment shall be withdrawn and the commission shall notify the landowner of its decision. If, however, following the review, the commission determines the violation did occur, it shall notify the landowner by certified mail, return receipt requested, and renew the demand for repayment. If the repayment is not received within thirty (30) days of receipt of the commission's request for repayment or if all deficiencies are not corrected at the landowner's expense within the time specified by the commission, the commission may refer the matter to the Office of the Attorney General for recovery of the state cost-share funds.

**Title 10—DEPARTMENT OF NATURAL RESOURCES**  
**Division 70—Soil and Water Districts Commission**  
**Chapter 6—Tax Levy Referendums**

**ORDER OF RULEMAKING**

By the authority vested in the Soil and Water Districts Commission under section 278.080, RSMo 2016, the commission amends a rule as follows:

10 CSR 70-6.010 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 2, 2018 (43 MoReg 1448). The public comment period extended from July 2, 2018 to August 1, 2018. Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** The Missouri Department of Natural Resources' Soil and Water Conservation Program received ten (10) general comments for all five (5) chapters related to the Soil and Water Districts Commission's rules from Mr. Ryan Britt, with the Missouri Association of Soil and Water Conservation Districts (MASWCD).

Due to similarity in nature of the comments, some of the comments are grouped together.

**COMMENT #1:** The MASWCD made the following general comments regarding all proposed amendments to the Soil and Water Districts Commission rules in Chapter 2, 3, 4, 5, and 6: correct grammar and make sentences read better; make sentences gender neutral; make sentences more concise by adding or removing words; apply sentence structure and terms consistently in a rule or chapter; replace the term "installation" with "implementation" and the term "constructed" with "implemented"; replace the term "cost-sharing" with "cost-share"; update and better describe program procedures;

list general documents and non-formal names in lower case; and amend the definition of “State cost-share funds” to include “cost-share and incentive funds.”

RESPONSE AND EXPLANATION OF CHANGE: The department amended section (3) and subsections (4)(D) and (5)(A) to address the general comments.

COMMENT #2: The MASWCD commented to replace the term “subdistrict” with “watershed district.”

RESPONSE: This language was in the proposed language during the public notice period. No additional change was made.

#### 10 CSR 70-6.010 Watershed District Tax Levy Referendums

(3) Each landowner is eligible to vote at a designated polling place. If a landowner is unable to personally vote, such landowner may give power of attorney to a taxpaying citizen of the watershed district to represent the landowner. The power of attorney authorization form must be given to the referendum judges.

(4) The watershed district trustees will—

(D) Prepare ballots, tally sheets, voter registration sheets, and an envelope for storing cast ballots and deliver them to the judges. Ballots shall state the amount of the proposed tax and whether it is an organization tax or a tax for construction, repair, alteration, maintenance, and operation;

(5) The referendum judges will—

(A) Be present during the polling period and for counting the votes. If any election judge is not present at the time for opening the polls, the judges present shall select a landowner of the watershed district to serve as a judge and give this person the necessary instructions. A majority of the election judges shall determine, in accordance with section (3), the qualifications of a voter as presented at the polls;

### Title 10—DEPARTMENT OF NATURAL RESOURCES Division 130—State Environmental Improvement and Energy Resources Authority Chapter 1—Applications

#### ORDER OF RULEMAKING

By the authority vested in the State Environmental Improvement and Energy Resources Authority under section 260.035(1), RSMo 2016, the State Environmental Improvement and Energy Resources Authority withdraws a proposed amendment as follows:

#### 10 CSR 130-1.010 Definitions is withdrawn.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 1, 2018 (43 MoReg 2308–2309). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: The State Environmental Improvement and Energy Resources Authority received no comments on this proposed amendment; however, a link to the *Missouri Register* containing the proposed amendment was not provided on the agency’s website.

RESPONSE: The proposed amendment is being withdrawn to allow the State Environmental Improvement and Energy Resources Authority to provide a link on its web site to the proposed amendment when refiled.

### Title 10—DEPARTMENT OF NATURAL RESOURCES Division 130—State Environmental Improvement and Energy Resources Authority Chapter 1—Applications

#### ORDER OF RULEMAKING

By the authority vested in the State Environmental Improvement and Energy Resources Authority under section 260.035(1) RSMo 2016, the State Environmental Improvement and Energy Resources Authority withdraws a proposed amendment as follows:

#### 10 CSR 130-1.020 Applications Forms and Fees is withdrawn.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 1, 2018 (43 MoReg 2309–2311). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: The State Environmental Improvement and Energy Resources Authority received no comments on this proposed amendment; however, a link to the *Missouri Register* containing the proposed amendment was not provided on the agency’s website.

RESPONSE: The proposed amendment is being withdrawn to allow the State Environmental Improvement and Energy Resources Authority to provide a link on its web site to the proposed amendment when refiled.

### Title 11—DEPARTMENT OF PUBLIC SAFETY Division 45—Missouri Gaming Commission Chapter 7—Security and Surveillance

#### ORDER OF RULEMAKING

By the authority vested in the Missouri Gaming Commission under section 313.805, RSMo 2016, the commission rescinds a rule as follows:

#### 11 CSR 45-7.090 Dock Site Commission Facility is rescinded.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on July 2, 2018 (43 MoReg 1448–1449). No changes have been made to the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing was held on this proposed rescission on July 31, 2018. No one commented on this proposed rescission at the public hearing, and no written comments were received.

### Title 11—DEPARTMENT OF PUBLIC SAFETY Division 45—Missouri Gaming Commission Chapter 10—Licensee’s Responsibilities

#### ORDER OF RULEMAKING

By the authority vested in the Missouri Gaming Commission under section 313.805, RSMo 2016, the commission amends a rule as follows:

#### 11 CSR 45-10.020 Licensee’s and Applicant’s Duty to Disclose Changes in Information is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 2, 2018 (43 MoReg 1449). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing was held on this proposed amendment on July 31, 2018. No one commented on this proposed amendment at the public hearing, and no written comments were received.

**Title 11—DEPARTMENT OF PUBLIC SAFETY  
Division 45—Missouri Gaming Commission  
Chapter 40—Fantasy Sports Contests**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Gaming Commission under section 313.955, RSMo 2016, the commission amends a rule as follows:

**11 CSR 45-40.060** Cash Reserve and Segregated Account Requirements **is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 2, 2018 (43 MoReg 1449–1450). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing was held on this proposed amendment on July 31, 2018. No one commented on this proposed amendment at the public hearing, and no written comments were received.

**Title 13—DEPARTMENT OF SOCIAL SERVICES  
Division 70—MO HealthNet Division  
Chapter 15—Hospital Program**

**ORDER OF RULEMAKING**

By the authority vested in the Department of Social Services, MO HealthNet Division under sections 208.153, 208.201, and 660.017, RSMo 2016, the division amends a rule as follows:

**13 CSR 70-15.010** Inpatient Hospital Services Reimbursement Plan; Outpatient Hospital Services Reimbursement Methodology **is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 1, 2018 (43 MoReg 2311–2314). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 13—DEPARTMENT OF SOCIAL SERVICES  
Division 70—MO HealthNet Division  
Chapter 15—Hospital Program**

**ORDER OF RULEMAKING**

By the authority vested in the Department of Social Services, MO HealthNet Division under sections 208.201, 208.455, and 660.017, RSMo 2016, the division amends a rule as follows:

**13 CSR 70-15.110** Federal Reimbursement Allowance (FRA) **is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 1, 2018 (43 MoReg 2315–2318). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 20—DEPARTMENT OF INSURANCE,  
FINANCIAL INSTITUTIONS AND PROFESSIONAL  
REGISTRATION**

**Division 2150—State Board of Registration for the  
Healing Arts  
Chapter 3—Licensing of Physical Therapists and  
Physical Therapist Assistants**

**ORDER OF RULEMAKING**

By the authority vested in the State Board of Registration for the Healing Arts under section 334.125, RSMo 2016, the board amends a rule as follows:

**20 CSR 2150-3.080** Physical Therapists Licensure Fees **is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 15, 2018 (43 MoReg 2469–2471). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 20—DEPARTMENT OF INSURANCE,  
FINANCIAL INSTITUTIONS AND PROFESSIONAL  
REGISTRATION**

**Division 2150—State Board of Registration for the  
Healing Arts  
Chapter 3—Licensing of Physical Therapists and  
Physical Therapist Assistants**

**ORDER OF RULEMAKING**

By the authority vested in the State Board of Registration for the Healing Arts under section 334.125, RSMo 2016, the board amends a rule as follows:

**20 CSR 2150-3.170** Physical Therapist Assistant Licensure Fees **is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 15, 2018 (43 MoReg 2472–2474). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.



SUMMARY OF COMMENTS: No comments were received.

**Title 20—DEPARTMENT OF INSURANCE,  
FINANCIAL INSTITUTIONS AND PROFESSIONAL  
REGISTRATION**

**Division 2150—State Board of Registration for the  
Healing Arts**

**Chapter 3—Licensing of Physical Therapists and  
Physical Therapist Assistants**

**ORDER OF RULEMAKING**

By the authority vested in the State Board of Registration for the Healing Arts under section 334.125, RSMo 2016, the board adopts a rule as follows:

**20 CSR 2150-3.300 Physical Therapy Compact Rules is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 15, 2018 (43 MoReg 2475). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**T**his section may contain notice of hearings, correction notices, public information notices, rule action notices, statements of actual costs, and other items required to be published in the *Missouri Register* by law.

## Salary Schedule Maintained pursuant to Section 105.005, RSMo

<u>Office</u>	<u>FY 2019 Salary</u>
<u>Elected Officials</u>	
Governor	\$133,821
Lt. Governor	86,484
Attorney General	116,437
Secretary of State	107,746
State Treasurer	107,746
State Auditor	107,746
<u>General Assembly</u>	
Senator	35,915
Representative	35,915
Speaker of House	38,415
President Pro Tem of Senate	38,415
Speaker Pro Tem of the House	37,415
Majority Floor Leader of House	37,415
Majority Floor Leader of Senate	37,415
Minority Floor Leader of House	37,415
Minority Floor Leader of Senate	37,415
<u>State Tax Commissioners**</u>	108,756
<u>Administrative Hearing Commissioners**</u>	106,039
<u>Labor and Industrial Relations</u>	
<u>Commissioners**</u>	108,759
<u>Division of Workers' Compensation</u>	
Chief Legal Counsel *	113,754
Administrative Law Judge *	125,724
Administrative Law Judge in Charge *	130,724
Director, Division of Workers' Compensation*	132,724
<u>Public Service Commissioners**</u>	108,759
<u>FY 2019</u>	
<u>Statutory Department Directors**</u>	\$86,688 - \$147,408
Administration, Agriculture, Corrections, Economic Development, Labor and Industrial Relations, Natural Resources, Public Safety, Revenue, and Social Services	
<u>Probation and Parole**</u>	
Chairman	\$66,624 - \$106,632
Board Members	\$50,112 - \$80,184

*\*Division of Workers' Compensation statutory salaries are tied to those of Associate Circuit Judges and are subject to appropriation.*

*\*\*As per appropriated pay plan beginning January 1, 2019, these salaries and the salaries of other state employees generally will increase by 1% (or \$700 for salaries less than \$70,000).*

**Salary Schedule Maintained pursuant to Section 476.405, RSMo**

	<u>FY 2019 Salary</u>
<u>Supreme Court</u>	
Chief Justice	\$184,230
Judges	176,157
<u>Court of Appeals</u>	
Judges	161,038
<u>Circuit Court</u>	
Circuit Court Judges	151,840
Associate Circuit Judges	139,693
<u>Juvenile Officers</u>	
Juvenile Officer	49,062
Chief Deputy Juvenile Officer	42,721
Deputy Juvenile Officer Class 1	38,121
Deputy Juvenile Officer Class 2	24,759
Deputy Juvenile Officer Class 3	31,742
<u>Court Reporters</u>	58,322
<u>Probate Commissioner *</u>	149,723
<u>Deputy Probate Commissioner *</u>	137,745
<u>Family Court Commissioner *</u>	137,745
<u>Circuit Clerk</u>	
1st Class Counties	71,846
St. Louis City	115,850
Jackson, Jasper & Cape Girardeau	76,145
2nd & 4th Class Counties	64,800
3rd Class Counties	56,752
Marion-Hannibal & Palmyra	63,798
Randolph	61,981

*As per appropriated pay plan beginning January 1, 2019, the salaries of other state employees generally will increase by 1% (or \$700 for salaries less than \$70,000).*

*\*Salaries are tied to those of Circuit and Associate Circuit Judges, subject to appropriation.*

**Missouri Executive Pay Plan  
Fiscal Year 2019\***

<b>Executive Level</b>	<b>Minimum</b>	<b>Maximum</b>
I	\$86,688	\$147,408
II	\$73,776	\$125,448
III	\$66,624	\$106,632
IV	\$50,112	\$80,184

\*As per appropriated pay plan beginning January 1, 2019, these salaries and the salaries of other state employees generally will increase by 1% (or \$700 for salaries less than \$70,000).

**Title 5—DEPARTMENT OF ELEMENTARY AND  
SECONDARY EDUCATION**

**Division 20—Division of Learning Services**  
*[Chapter 600—Office of Early and Extended  
Learning]*  
**Chapter 100—Office of Quality Schools**

**IN ADDITION**

As a result of an internal reorganization, the Department of Elementary and Secondary Education (department) is transferring from the Division of Learning Services, Office of Early and Extended Learning to the Division of Learning Services, Office of Quality Schools. Effective September 18, 2018, the following rules are transferred to the Division of Learning Services, Office of Quality Schools.

**5 CSR 20-/600.120/100.300 Instruction for Prekindergarten**

**5 CSR 20-/600.130/100.310 General Provisions Governing Programs Authorized Under Early Childhood Development, Education, and Care**

**5 CSR 20-/600.140/100.320 Prekindergarten Program Standards**

**Title 19—DEPARTMENT OF HEALTH AND  
SENIOR SERVICES**

**Division 60—Missouri Health Facilities Review  
Committee**  
**Chapter 50—Certificate of Need Program**

**NOTIFICATION OF REVIEW:  
APPLICATION REVIEW SCHEDULE**

The Missouri Health Facilities Review Committee has initiated review of the CON application listed below. A decision is tentatively scheduled for December 27, 2018. This application is available for public inspection at the address shown below.

**Date Filed**

**Project Number:** Project Name  
City (County)  
Cost, Description

**11/13/2018**

**#5658 HT:** Mercy Hospital St. Louis  
St. Louis (St. Louis County)  
\$1,782,845, Replace angiography system

Any person wishing to request a public hearing for the purpose of commenting on this application must submit a written request to this effect, which must be received by December 14, 2018. All written requests and comments should be sent to—

Chairman  
Missouri Health Facilities Review Committee  
c/o Certificate of Need Program  
3418 Knipp Drive, Suite F  
PO Box 570  
Jefferson City, MO 65102  
For additional information contact Karla Houchins at karla.houchins@health.mo.gov.