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

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 If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission.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

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

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

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

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

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

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 4—Wildlife Code: General Provisions

PROPOSED AMENDMENT

3 CSR 10-4.117 Prohibited Species. The commission proposes to amend subsection (2)(D) of this rule.

PURPOSE: This amendment clarifies the reference to the genus Cherax as it is now identified in countries other than Australia and adds the electric blue crayfish to the list of prohibited species.

(2) For the purpose of this rule, prohibited species of wildlife shall include the following:

(D) Invertebrates: New Zealand mudsnail, *Potamopyrgus antipodarum*; rusty crayfish, *Faxonius rusticus*; marbled crayfish, *Procambarus virginalis*; *[Australian]* crayfish of the genus *Cherax;* **electric blue crayfish, *Procambarus alleni*;** mitten crabs of the genus *Eriocheir;* zebra mussels, *Dreissena polymorpha;* quagga mussels, *Dreissena rostriformis*; mystery snails of the genus *Cipangopaludina*.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.040, RSMo 2016. Original rule filed April 20, 2005, effective Sept. 30, 2005. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed Aug. 27, 2021.*

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 Regulations Committee Chairman, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180, or via the department's website at https://short.mdc.mo.gov/Z49. 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 5—Wildlife Code: Permits

PROPOSED AMENDMENT

3 CSR 10-5.205 Permits Required: Exceptions. The commission proposes to amend subsections (1)(D) and (1)(I) of this rule.

PURPOSE: This amendment allows persons fifteen (15) years of age or younger to take fish without permit using all methods authorized by Chapter 6 of the Wildlife Code and removes a reference to cable restraint device requirements from subsection (1)(I) of this rule that is no longer applicable.

(1) Any person who chases, pursues, takes, transports, ships, buys, sells, possesses, or uses wildlife in any manner must first obtain the prescribed hunting, fishing, trapping, or other permit, or be exempted under 3 CSR 10-9.110, with the following exceptions:

(D) Any person fifteen (15) years of age or younger may take fish, live bait, clams, mussels, turtles, and frogs as provided in Chapter 6 without permit (except trout permit or daily tag in areas where prescribed); *[except that fish may be taken only by gig, bow, crossbow, snagging, snaring, grabbing, and by pole and line;]*

(I) Any resident of Missouri fifteen (15) years of age or younger may take wildlife as provided in Chapter 8 without permit*[, except for cable restraint device requirements in rule 3 CSR 10-8.510 subsection (4)(B)]*;

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.040, RSMo 2016. Original rule filed July 22, 1974, effective Dec. 31, 1974. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed Aug. 27, 2021.*

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions eighteen thousand seven hundred thirty-six dollars ($18,736) annually in the aggregate.

PRIVATE COST: This proposed amendment will cost private entities

one thousand nine hundred sixty dollars ($1,960) annually in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Regulations Committee Chairman, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180, or via the department's website at https://short.mdc.mo.gov/Z49. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

FISCAL NOTE
PUBLIC COST

I. **Department Title:** 3 – Department of Conservation
Division Title: 10 - Conservation Commission
Chapter Title: 5 - Permits

Rule Number and Name:	3 CSR 10-5.205 Permits Required; Exceptions.
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Missouri Department of Conservation	$18,736 annually in lost revenue from fishing permit sales.

III. WORKSHEET

$20,696 (Average annual fishing permit sales revenue to youth anglers ages 6 - 14) – [$615 (Transaction costs to issue Privileges) + $1,345 (Fees paid to permit vendors for issuing permits)] = $18,736 (Annual loss in fishing permit sales/estimated yearly cost of compliance).

Estimated Annual Revenue from Fishing Permits Sold to Youth Anglers ages 6-14 (Based on 2018-2020 Permit Sales Data)			
Permit Type	**Average # of Permits**	**Current Permit Cost**	**Total Revenue**
Resident Annual Fishing	1,313	$12.00	$15,756
Resident Daily Fishing	27	$8.00	$216
Non-Resident Annual Fishing	52	$49.00	$2,548
Non-Resident Daily Fishing	272	$8.00	$2,176

1,664 – Average number of fishing permits sold to youth anglers ages 6 – 14 annually.

$20,696 – **Average annual fishing permit sales revenue from youth anglers ages 6 – 14.**

1,664 (Average number of fishing permits sold to youth anglers ages 6-14 annually) X $0.37 (transaction cost to the department per privilege issued) = **$615 (Department transaction costs to issue privileges)**

$20,696 (Average annual fishing permit sales revenue from youth anglers ages 6 - 14) X 6.5% (Percentage of permit sales paid to permit vendors for issuing permits) = **$1,345 (Fees paid to permit vendors for issuing permits).**

IV. ASSUMPTIONS

Information is based on permit sale data maintained by the Missouri Department of Conservation. These figures are based on an average of the yearly permit sales for the past three permit years (2018-2020). This estimate is based on the assumption that youth anglers under the age of 6, and those who were 15 years of age, obtained a permit for a reason other than using a non-exempt fishing method. It is also assumed that the only reason youth anglers ages 6 – 14 purchased a permit was to use a non-exempt fishing method. The estimate assumes no change in future participation, that all permits were obtained from a permit vendor, and does not consider the loss of any funds the Department may receive from the Wildlife and Sport Fish Restoration fund.

FISCAL NOTE
PRIVATE COST

I. **Department Title: 3 – Department of Conservation**
Division Title: 10 - Conservation Commission
Chapter Title: 5 - Permits

Rule Number and Title:	3 CSR 10-5.205 Permits Required; Exceptions.
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
800 Permit Vendors	Businesses contracting with the Department to sell permits.	$1,345 annually for percentage of fees earned by vendors for permit sales
1 Permit System Vendor	Business contracting with the Department to administer permit system	$615 in annual permit transaction fees earned by system vendor
		$1,960 in annual costs for all private entities to comply

III. WORKSHEET

$1,345 (Fees earned by permit vendors for issuing permits) + $615 (Money earned by Permit System Vendor for privilege transaction costs) = $1960 (annual costs of compliance to private entities in the aggregate).

Estimated Annual Fishing Permits Sales to Youth Anglers ages 6-14 (Based on 2018-2020 Permit Sales Data)			
Permit Type	**Average # of Permits**	**Current Permit Cost**	**Total Revenue**
Resident Annual Fishing	1,313	$12.00	$15,756
Resident Daily Fishing	27	$8.00	$216
Non-Resident Annual Fishing	52	$49.00	$2,548
Non-Resident Daily Fishing	272	$8.00	$2,176

1,664 – Average number of fishing permits sold to youth anglers ages 6 – 14 annually.

$20,696 – Average annual fishing permit sales revenue from youth anglers ages 6 – 14.

1,664 (Average number of fishing permits sold to youth anglers ages 6-14 annually) X $0.37 (transaction cost to the department per privilege issued) = **$615 (Money earned by Permit System Vendor for privilege transaction costs)**

$20,696 (Average annual fishing permit sales revenue from youth anglers ages 6 - 14) X 6.5% (Percentage of permit sales paid to permit vendors for issuing permits) = **$1,345 (Fees earned by permit vendors for issuing permits).**

IV. ASSUMPTIONS

Information is based on permit sale data maintained by the Missouri Department of Conservation. These figures are based on an average of the yearly permit sales for the past three years (2018-2020). This estimate is based on the assumption that youth anglers under the age of 6, and those who were 15 years of age, obtained a permit for a reason other than using a non-exempt fishing method. It is also assumed that the only reason youth anglers ages 6 – 14 purchased a permit was to use a non-exempt fishing method. It is also assumed that all permits were purchased through an external permit vendor and there is no change in the average number of permits sold per year.

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 5—Wildlife Code: Permits

PROPOSED AMENDMENT

3 CSR 10-5.210 Permits to be Signed and Carried. The commission proposes to amend this rule.

PURPOSE: This amendment removes the signature requirement for all permits except daily hunting and fishing tags and the Migratory Bird Hunting and Conservation Stamp (Federal Duck Stamp).

All permits and method exemptions shall be *[signed and]* carried by the permittee in either paper, department-issued plastic, or electronic format. Acceptable electronic forms of permits include display of electronic images on a cellular phone or any other type of portable electronic device. **All method exemptions and daily hunting and fishing tags shall be signed, and the Migratory Bird Hunting and Conservation Stamp (Federal Duck Stamp) shall be signed and carried in accordance with federal regulations.** Permits **and method exemptions requiring a signature and** carried in an electronic format shall display either a digitized image of a handwritten signature or some other form of an electronic signature. All permits, or temporary permit authorization number(s), and method exemptions shall be exhibited to any officer charged with the enforcement of this Code, or to any transportation company or postal employee when presenting wildlife for shipment.

*AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. This version of rule filed Sept. 19, 1957, effective Dec. 31, 1957. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Aug. 27, 2021.*

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 Regulations Committee Chairman, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180, or via the department's website at https://short.mdc.mo.gov/Z49. 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 5—Wildlife Code: Permits

PROPOSED AMENDMENT

3 CSR 10-5.220 Resident and Nonresident Permits. The commission proposes to add a new section (7) and renumber subsequent sections.

PURPOSE: This amendment clarifies which persons are considered residents of Missouri for the purposes of applying for and obtaining black bear and elk hunting permits.

(7) For the purposes of applying for and obtaining black bear and elk hunting permits, a Missouri resident is any person who is eligible to obtain resident permits and privileges in accordance with sections (1) and (2) of this rule.

*[(7)]***(8)** All persons who do not meet these qualifications shall possess a nonresident permit. Attendance at a Missouri school in itself does not constitute residency in the state.

*AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.040, RSMo 2016. Original rule filed Aug. 18, 1971, effective Dec. 31, 1971. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Aug. 27, 2021.*

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 Regulations Committee Chairman, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180, or via the department's website at https://short.mdc.mo.gov/Z49. 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 6—Wildlife Code: Sport Fishing: Seasons, Methods, Limits

PROPOSED AMENDMENT

3 CSR 10-6.510 Channel Catfish, Blue Catfish, Flathead Catfish. The commission proposes to amend subsections (1)(A) and (4)(A) and add subsection (4)(B) to this rule.

PURPOSE: The proposed amendment establishes a minimum length limit of twenty-six inches (26") for blue and flathead catfish on Mark Twain Lake and corrects the official name of the Harry S. Truman Reservoir.

(1) Daily Limit: Ten (10) channel catfish, five (5) blue catfish**,** and five (5) flathead catfish, except*[:]***—**

(A) On Lake of the Ozarks and its tributaries and **Harry S.** Truman *[Lake]* **Reservoir** and its tributaries, the daily and possession limit of blue catfish is ten (10).

(4) Length Limits: No length limits, except*[:]***—**

(A) On Lake of the Ozarks and its tributaries and **Harry S.** Truman *[Lake]* **Reservoir** and its tributaries, blue catfish twenty-six inches (26") to thirty-four inches (34") in total length must be returned to the water unharmed immediately after being caught. The daily limit may not contain more than two (2) blue catfish more than thirty-four inches (34") in total length.

(B) On Mark Twain Lake, blue catfish and flathead catfish less than twenty-six inches (26") in total length must be returned to the water unharmed immediately after being caught.

*AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section [252.240] **252.040**, RSMo [2000] **2016**. Original rule filed June 13, 1994, effective Jan. 1, 1995. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Aug. 27, 2021.*

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 Regulations Committee Chairman, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180, or via the department's website at https://short.mdc.mo.gov/Z49. 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 6—Wildlife Code: Sport Fishing: Seasons, Methods, Limits

PROPOSED AMENDMENT

3 CSR 10-6.525 Paddlefish. The commission proposes to amend section (4), subsection (4)(A), section (7), and section (8) of this rule.

PURPOSE: The proposed amendment establishes a statewide minimum length limit of thirty-two inches (32") for taking paddlefish, prohibits snagging for all species on Table Rock Lake after taking the daily limit of two (2) paddlefish, and corrects the official name of the Harry S. Truman Reservoir and Dam.

(4) Length Limits: All paddlefish less than *[twenty-four inches (24")]* **thirty-two inches (32")** in body length, measured from the eye to the fork of the tail, must be returned to the water unharmed immediately after being caught, except—

(A) On Lake of the Ozarks and its tributaries, Table Rock Lake and its tributaries, and **Harry S.** Truman *[Lake]* **Reservoir** and its tributaries, all paddlefish less than thirty-four inches (34") in body length, measured from the eye to the fork of the tail, must be returned to the water unharmed immediately after being caught.

(7) Paddlefish may not be possessed on the water or adjacent banks from **Harry S.** Truman Dam downstream throughout the no-boating zone and the Little Platte River from Smithville Dam downstream to U.S. Highway 169.

(8) On Lake of the Ozarks and its tributaries, Osage River below U.S. Highway 54, **Table Rock Lake,** and **Harry S.** Truman *[Lake]* **Reservoir** and its tributaries, no person shall continue to snag, snare, or grab for any species after taking a daily limit of two (2) paddlefish.

*AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section [252.240] **252.040**, RSMo [2000] **2016**. Original rule filed June 13, 1994, effective Jan. 1, 1995. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Aug. 27, 2021.*

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 Regulations Committee Chairman, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180, or via the department's website at https://short.mdc.mo.gov/Z49. 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 6—Wildlife Code: Sport Fishing: Seasons, Methods, Limits

PROPOSED AMENDMENT

3 CSR 10-6.550 Other Fish. The commission proposes to amend subsection (2)(B) and paragraph (2)(B)3. of this rule.

PURPOSE: The proposed amendment extends the fall snagging, snaring, or grabbing season by fifteen (15) days, from January 31 to February 15, for taking all other fish and prohibits snagging for all species on Table Rock Lake after taking the daily limit of two (2) paddlefish.

(2) Methods and Seasons.

(B) Fish included in this rule may be taken by snagging, snaring, or grabbing from March 15 through May 15 and from September 15 through *[January 31]* **February 15**, except—

1. In the Osage River downstream from U.S. Highway 54 to its confluence with the Missouri River and in the impounded waters of Lake of the Ozarks and Harry S. Truman Reservoir, fish may be taken by these methods only from March 15 through April 30;

2. In the Mississippi River, fish may be taken by these methods from March 15 through May 15 and from September 15 through December 15; and

3. On Lake of the Ozarks and its tributaries, Osage River below U.S. Highway 54, **Table Rock Lake,** and Harry S. Truman Reservoir and its tributaries, no person shall continue to snag, snare, or grab for any species after taking a daily limit of two (2) paddlefish.

*AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.040, RSMo 2016. Original rule filed June 13, 1994, effective Jan. 1, 1995. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Aug. 27, 2021.*

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 Regulations Committee Chairman, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180, or via the department's website at https://short.mdc.mo.gov/Z49. 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 7—Wildlife Code: Hunting: Seasons, Methods, Limits

PROPOSED AMENDMENT

3 CSR 10-7.715 Elk: Regulations for Department Areas. The commission proposes to amend this rule.

PURPOSE: This amendment incorporates elk hunting on department areas into Chapter 7, defaults to statewide regulations outlined in Chapter 11, removes the reference to the Fall Deer and Turkey Hunting Regulations and Information booklet, and mirrors the

Wildlife Code related to black bear hunting on department areas in Chapter 11.

[Elk may be hunted on lands owned or leased by the department and on lands managed by the department under cooperative agreement as authorized in the current Fall Deer & Turkey Hunting Regulations and Information booklet, which is incorporated in this Code by reference. This booklet is published annually in August by, and a printed copy can be obtained from, the Missouri Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180 and is also available online at www.missouriconservation.org. This rule does not incorporate any subsequent amendments or additions] **Elk may be hunted on department areas located within Carter, Reynolds, and Shannon counties in accordance with statewide regulations, except as further restricted in Chapter 11**.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.040, RSMo 2016. Original rule filed June 28, 2019, effective Dec. 30, 2019. Amended: Filed Aug. 27, 2021.

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 Regulations Committee Chairman, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180, or via the department's website at https://short.mdc.mo.gov/Z49. 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 10—Wildlife Code: Commercial Permits: Seasons, Methods, Limits

PROPOSED AMENDMENT

3 CSR 10-10.725 Commercial Fishing: Seasons, Methods. The commission proposes to amend section (5) and subsections (5)(B) and (5)(C), remove section (6), renumber subsequent sections, and amend the renumbered sections (9) and (10) of this rule.

PURPOSE: The proposed amendment establishes a commercial fishing season and minimum length limit of thirty-two inches (32") for taking paddlefish on the Mississippi River and removes a reference to an incorrect section number in the new section (9) of this rule.

(5) *[From May 16 through October 14 o]***O**n the portions of the Mississippi River defined as commercial waters, the following may not be possessed or transported while fishing by commercial methods or while possessing commercial fishing gear and shall be returned to the water unharmed immediately after being caught:

(B) Paddlefish *[less than twenty-four inches (24") in length (measured from eye to fork of tail)]***, except paddlefish equal to or greater than thirty-two inches (32") in length (measured from eye to fork of tail), may be transported and possessed from November 1 through April 15**;

(C) Shovelnose sturgeon**, except shovelnose sturgeon twenty-four inches (24") to thirty-two inches (32") in length (measured from tip of snout to fork of tail), may be transported and possessed from October 15 through May 15 upstream from the Melvin Price Locks and Dam**; and

[(6) From October 15 through May 15 on the portions of the Mississippi River defined as commercial waters unless further restricted, the following may not be possessed or transported while fishing by commercial methods or while possessing commercial fishing gear and shall be returned to the water unharmed immediately after being caught:

(A) Channel, blue, and flathead catfish less than fifteen inches (15") in total length;

(B) Paddlefish less than twenty-four inches (24") in length (measured from eye to fork of tail);

(C) Shovelnose sturgeon upstream from the Melvin Price Locks and Dam less than twenty-four inches (24") or more than thirty-two inches (32") in length (measured from tip of snout to fork of tail);

(D) Shovelnose sturgeon downstream from Melvin Price Locks and Dam; and

(E) Other game fish.]

*[(7)]***(6)** While on waters of the state and adjacent banks, the head and tail must remain attached to all fish, bowfin, and shovelnose sturgeon must remain whole and intact, and the ovaries of paddlefish must remain intact and accompany the fish from which they were removed.

*[(8)]***(7)** Commercial fishing gear may not be used or set within three hundred (300) yards of any spillway, lock, dam, or the mouth of any tributary stream or ditch, or in waters existing temporarily through overflow outside the banks of the specified rivers except as specified in 3 CSR 10-20.805 (14), and may not be used to take fish underneath or through the ice.

*[(9)]***(8)** Commercial gear must meet the following requirements:

(A) Seines, gill nets, and trammel nets having a mesh smaller than two inches (2") bar measure, measured when wet, may not be used;

(B) Hoop nets having a mesh smaller than one and one-half inches (1 1/2") bar measure, measured when wet, may not be used. Hoop net wings and leads must be a single panel, not more than six feet (6') in depth, mesh size one and one half inches (1 1/2") bar measure, measured when wet, and made of twine not less than three sixty-fourths of an inch (3/64") in diameter;

(C) Hooks attached to trotlines or throwlines shall be staged not less than two feet (2') apart;

(D) While in use, all commercial fishing gear shall be labeled with tags furnished by the department and placed as indicated on the tags. Portions of trotlines and jug or block lines, throwlines, bank lines, and limb lines must have the commercial tag number under which they are being fished attached to each line; and

(E) Commercial fishing gear may not be possessed on waters of the state or adjacent banks that are not open to commercial fishing, except during transportation by boat from the nearest access location to commercial fishing waters as determined by the department.

*[(10)]***(9)** The possession of game fish except as defined as commercial fish in 3 CSR 10-20.805 *[(13)]* while in the act of using commercial fishing gear or aboard a boat transporting fish taken by commercial fishing gear is prohibited.

*[(11)]***(10)** The possession of extracted eggs of any fish species, except as provided in section *[(7)]* **(6)** of this rule, is prohibited while on waters of the state and adjacent banks.

*[(12)]***(11)** Invasive fish, common carp, and grass carp that jump from the water on or into a watercraft, or onto land, may be taken and possessed in any number. Invasive fish may not be transported from waters of the state where taken unconfined or in water.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.040, RSMo 2016. Original rule filed Aug. 16, 1973, effective Dec. 31, 1973. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed Aug. 27, 2021.*

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

PRIVATE COST: This proposed amendment will cost private entities an annual aggregate of approximately three thousand seven hundred twenty-four dollars ($3,724).

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Regulations Committee Chairman, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180, or via the department's website at https://short.mdc.mo.gov/Z49. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

FISCAL NOTE
PRIVATE COST

Department Title: DEPARTMENT OF CONSERVATION
Division Title: Conservation Commission
Chapter Title: Chapter 10—Wildlife Code: Commercial Permits: Seasons, Methods, Limits

Rule Number and Title:	**3 CSR 10-10.725 Commercial Fishing: Seasons, Methods**
Type of Rulemaking:	**PROPOSED AMENDMENT**

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
7	**Roe Fish Commercial Harvest Permit holders**	**$ 3,724 estimated annual aggregate of paddlefish sales**

III. WORKSHEET

Flesh Sales:
3,326 (average annual pounds of paddlefish harvested by Roe Fish Commercial Harvester Permit holders from 2015-2019) X $0.43 (average high flesh price per pound of paddlefish from 2018-2019) = $1,430 (estimated annual flesh sales of paddlefish collected by Roe Fish Commercial Harvester Permit holders)

Roe Sales:
230 (average annual pounds of roe collected from paddlefish harvested by Roe Fish Commercial Harvester Permit holders from 2015-2019) X $90.17 (average high paddlefish roe price per pound from 2015-2016) = $20,739 (estimated annual roe sales from paddlefish collected by Roe Fish Commercial Harvester Permit).

Total Sales:
$1,430 (estimated annual flesh sales of paddlefish collected by Roe Fish Commercial Harvester Permit holders) + $20,739 (estimated annual roe sales from paddlefish

collected by Roe Fish Commercial Harvester Permit) = $22,169 (estimated annual sales of paddlefish by Roe Fish Commercial Harvester Permit holders).

The *Statewide Paddlefish Reproduction and Exploitation in Missouri's Large Rivers and Reservoirs* was referenced for the following information:

- 0 percent of all the paddlefish population mature at twenty-four (24) inches.
- 0 percent of the female paddlefish population mature at twenty-eight (28) inches.
- 41 percent of the female paddlefish population are mature at thirty-two (32) inches.
- Forty-five (i.e., 52 minus 7) percent of all paddlefish between 24 and 32 inches.

Cost to private entity:

Flesh cost:

$1,430 (estimated annual flesh sales of paddlefish) X 0.45 (estimated proportion of flesh fish between 24 and 32 inches; assuming all weigh the same) = $643.50 liberal estimated annual flesh sales loss of paddlefish by Roe Fish Commercial Harvester Permit).

Roe cost:

$20,739 (estimated annual roe sales of paddlefish) X 0.45 (estimated proportion of fish between 24 and 32 inches; assuming equal roe production) = $9,322.55 X 0.33 (estimated proportion of roe bearing paddlefish) = $3,079.74.

Total cost:

$643.5 + $3,079.74 = $3,723.24 (estimated annual sale loss of paddlefish by Roe Fish Commercial Harvester Permit holders).

IV. ASSUMPTIONS

- Currently commercial paddlefish harvest is open all year with a minimum length limit of twenty-four inches (24"). Establishing a commercial fishing season and new minimum length limit of thirty-two inches (32") may impact the sales of commercial fishers. Harvest is focused on roe bearing females; with minor harvest on non-roe bearing paddlefish. Female paddlefish may have roe only once every 2-3 years: up to one-third of the percent mature paddlefish are roe bearing per year.

Annual Missouri Commercial Fish Harvest reports from 2015-2019 were referenced for the following information:

- 7 per year -The average number of Roe Fish Commercial Harvester Permits issued per year from 2015-2019.
- 3,326 pounds per year -The average pounds per year of paddlefish harvested from 2015-2019.
- $0.43 per pound -The average price per pound of paddlefish flesh from 2018-2019 (highest average price).
- 230 pounds per year -The average pounds per year of roe harvested from 2015-2019.
- $90.17 per pound -The average price per pound of paddlefish roe from 2015-2016 (highest average price).

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 11—Wildlife Code: Special Regulations for Department Areas

PROPOSED AMENDMENT

3 CSR 10-11.110 General Provisions. The commission proposes to amend paragraph (1)(B)12. of this rule.

PURPOSE: This amendment adds black bear and elk hunting to the list of referenced rules attributed to species specific hunting opportunities on department areas.

(1) Department areas may be used only as authorized by this chapter, except these rules shall not restrict department employees or their designees when conducting official events or activities. Department areas may be used only in accordance with the following:

(B) The following activities are allowed on department areas as further authorized by this chapter:

1. Entering or remaining on department areas, or designated portions of department areas (See 3 CSR 10-11.115);
2. Possession of pets and hunting dogs (See 3 CSR 10-11.120);
3. Field Trials (See 3 CSR 10-11.125);
4. Use of vehicles, bicycles, horses, and horseback riding (See 3 CSR 10-11.130);
5. Collecting of nuts, berries, fruits, edible wild greens, and mushrooms (See 3 CSR 10-11.135);
6. Camping (See 3 CSR 10-11.140);
7. Tree stands (See 3 CSR 10-11.145);
8. Target shooting and use of shooting ranges (See 3 CSR 10-11.150);
9. Decoys and Blinds (See 3 CSR 10-11.155);
10. Use of boats and motors (See 3 CSR 10-11.160);
11. Taking bullfrogs and green frogs (See 3 CSR 10-11.165);
12. Hunting (See 3 CSR 10-11.180 through 3 CSR 10-11.186 **and 3 CSR 10-11.190 through 3 CSR 10-11.191**);
13. Trapping (See 3 CSR 10-11.187);
14. Fishing (See 3 CSR 10-11.200 through 3 CSR 10-11.215); and
15. Taking feral swine (See 3 CSR 10-11.220);

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.040, RSMo 2016. This rule previously filed as 3 CSR 10-4.115. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed Aug. 27, 2021.*

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 Regulations Committee Chairman, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180, or via the department's website at https://short.mdc.mo.gov/Z49. 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 11—Wildlife Code: Special Regulations for Department Areas

PROPOSED AMENDMENT

3 CSR 10-11.130 Vehicles, Bicycles, Horses, and Horseback Riding. The commission proposes to amend sections (2), (4), (5), and (6) of this rule.

PURPOSE: The proposed amendments would allow bicycles on conservation area service roads (with some exceptions) and would increase the number of multi-use trails open to bicycle use.

(2) Bicycles are permitted only on designated multi-use trails and on roads open to vehicular traffic, unless otherwise posted. Groups of more than ten (10) people **using bicycles on department areas** must obtain a special use permit. **Bicycles are also permitted on locations designated as service roads in the online conservation atlas, unless otherwise posted, and except as follows:**

(A) Bicycles are not allowed on service roads on department lands associated with nature and education centers, fish hatcheries, staffed ranges, offices, designated natural areas, and on the following department areas:

1. Burr Oak Woods Conservation Area;
2. Busch (August A.) Memorial Conservation Area;
3. Henning (Ruth and Paul) Conservation Area;
4. Little Bean Marsh Conservation Area;
5. McCormack (Jamerson C.) Conservation Area;
6. Platte Falls Conservation Area;
7. Reed (James A.) Memorial Wildlife Area;
8. Rocky Barrens Conservation Area;
9. Star School Hill Prairie Conservation Area; and
10. Twenty-Five Mile Prairie Conservation Area; and

(B) Locations designated as service roads in the online conservation atlas are closed to bicycling on the conservation areas listed in section (5) of this rule during all portions of the firearms deer hunting season and the spring turkey hunting seasons.

(4) Designated multi-use trails are open for use year-round as specified on the following department areas:

(B) Areas with multi-use trails open to equestrian use—

1. Forest 44 Conservation Area**; and**
[2. Prairie Home Conservation Area]

(C) Areas with multi-use trails open to bicycling and equestrian use—

1. Bicentennial Conservation Area**;**
2. Big Buffalo Creek Conservation Area**;**
3. Busiek State Forest and Wildlife Area**;**
4. Flag Spring Conservation Area**;**
5. Huckleberry Ridge Conservation Area**;**
6. Prairie Home Conservation Area;
*[6.]***7.** Reed (James A.) Memorial Wildlife Area**;**
*[7.]***8.** Rockwoods Range**;**
[8. Saeger Woods Conservation Area]
9. Stockton Lake Management Lands**;**
10. Three Creeks Conservation Area**;**
11. Wappapello Lake Management Lands**; and**
12. Wire Road Conservation Area**.**

(5) Designated multi-use trails are open for use as specified except during all portions of the firearms deer hunting season and the spring turkey hunting seasons on the following department areas:

(B) Areas with multi-use trails open to equestrian use—

1. Angeline Conservation Area**; and**
[2. Bushwhacker Lake Conservation Area
3. Long Ridge Conservation Area
4. Scrivner Road Conservation Area]

(C) Areas with multi-use trails open to bicycling and equestrian use—

1. Apple Creek Conservation Area**;**
2. Bennitt (Rudolf) Conservation Area**;**
3. Bonanza Conservation Area**;**
4. Bunch Hollow Conservation Area**;**
5. Bushwhacker Lake Conservation Area;

*[5.]***6.** Canaan Conservation Area**;**
*[6.]***7.** Caney Mountain Conservation Area**;**
*[7.]***8.** Castor River Conservation Area**;**
*[8.]***9.** Compton Hollow Conservation Area**;**
*[9.]***10.** Daniel Boone Conservation Area**;**
*[10.]***11.** Deer Ridge Conservation Area**;**
*[11.]***12.** Fort Crowder Conservation Area**;**
13. Gist Ranch Conservation Area;
*[12.]***14.** Heath (Charlie) Memorial Conservation Area**;**
*[13.]***15.** Holly Ridge Conservation Area**;**
*[14.]***16.** Honey Creek Conservation Area**;**
*[15.]***17.** Lead Mine Conservation Area**;**
*[16.]***18.** Little Indian Creek Conservation Area**;**
*[17.]***19.** Little Lost Creek Conservation Area**;**
20. Long Ridge Conservation Area;
*[18.]***21.** Meramec Conservation Area**;**
*[19.]***22.** Pleasant Hope Conservation Area**;**
*[20.]***23.** Poosey Conservation Area (other than Green Hills Trail)**;**
*[21.]***24.** Riverbreaks Conservation Area**;**
25. Scrivner Road Conservation Area;
*[22.]***26.** Sever (Henry) Lake Conservation Area**;**
*[23.]***27.** Sugar Creek Conservation Area**;**
*[24.]***28.** Talbot (Robert E.) Conservation Area**; and**
*[25.]***29.** University Forest Conservation Area**.**

(6) *[Bicycling or e]***E**questrian use may be authorized by special use permit on the following department areas:

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.040, RSMo 2016. This rule previously filed as 3 CSR 10-4.115. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed Aug. 27, 2021.*

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions thirteen thousand eight hundred twenty-five dollars ($13,825) 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 Regulations Committee Chairman, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180, or via the department's website at https://short.mdc.mo.gov/Z49. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

FISCAL NOTE
PUBLIC COST

I. **Department Title: Department of Conservation**
Division Title: Division 10 – Conservation Commission
Chapter Title: Chapter 11—Wildlife Code: Special Regulations for Department Areas

Rule Number and Name:	**3 CSR 10-11.130 Vehicles, Bicycles, Horses, and Horseback Riding**
Type of Rulemaking:	Proposed Amendment

II. **SUMMARY OF FISCAL IMPACT**

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Conservation	$13,825 – approximate one-time cost

III. **WORKSHEET**

1.5 hours X 22 districts = 33 hours to review service roads and bike trails; 33 hours x $25/hour = $825 for one-time staff review of service roads and bike trails in online conservation atlas

$13,000 – approximate one-time cost to upgrade Atlas, MDC public website, MO Outdoors app

$825 staff review + $13,000 upgrade to Atlas, MDC public website, MO Outdoors app = $13,825 approximate one-time cost for proposed amendment

IV. **ASSUMPTIONS**

This includes a one-time thorough review and update of service roads in the online conservation atlas. An average salary range for wildlife management biologist and district supervisor was used to determine average of $25/hour salary.

This also includes a one-time update to modify the online conservation atlas, public website, and MO Outdoors app to better display service roads and where bicycles are allowed.

Updating signage on conservation areas is an ongoing, annual cost, and as part of normal business practices not included in this estimate.

No additional costs associated with the change are anticipated for the life of the rule.

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 11—Wildlife Code: Special Regulations for Department Areas

PROPOSED AMENDMENT

3 CSR 10-11.190 Elk Hunting. The commission proposes to amend this rule.

PURPOSE: This amendment incorporates elk hunting on department areas into Chapter 11, defaults to statewide regulations outlined in Chapter 11, removes the reference to the Fall Deer and Turkey Hunting Regulations and Information booklet, and mirrors the Wildlife Code related to black bear hunting on Department areas.

[Elk may be hunted on department areas as authorized in the current Fall Deer & Turkey Hunting Regulations and Information booklet, which is hereby incorporated in this Code by reference. This booklet is published annually in August by, and a printed copy can be obtained from, the Missouri Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180 and is also available online at www.missouriconservation.org. This rule does not incorporate any subsequent amendments or additions] **Elk may be hunted on department areas located within Carter, Reynolds, and Shannon counties in accordance with statewide regulations, except as further restricted in this chapter**.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.040, RSMo 2016. Original rule filed June 28, 2019, effective Dec. 30, 2019. Amended: Filed Aug. 27, 2021.

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 Regulations Committee Chairman, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180, or via the department's website at https://short.mdc.mo.gov/Z49. 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 11—Wildlife Code: Special Regulations for Department Areas

PROPOSED AMENDMENT

3 CSR 10-11.205 Fishing, Methods and Hours. The commission proposes to add subsection (2)(G) and re-letter subsequent subsections, amend subsections (6)(C) and (6)(F), delete section (7), and renumber as necessary.

PURPOSE: The proposed amendment adds Lost Valley Fish Hatchery to areas where fishing is permitted only by reservation or education groups, reflects changes made to area lakes that provide trout fishing opportunities on Busch (August A.) Memorial Conservation Area, and deletes prior fishing methods and hours of restricted public use on Lost Valley Fish Hatchery.

(2) Fishing is permitted only by reservation by educational groups, and fish must be returned to the water unharmed immediately after being caught, except as provided by special use permit on the following department areas or individually named lakes:

(G) Lost Valley Fish Hatchery;

*[(G)]***(H)** Mule Camp Pond (Twin Pines Conservation Education Center)**;**

*[(H)]***(I)** Prairie Fork Conservation Area**;**

*[(I)]***(J)** Sunfish Lake (Hartell (Ronald and Maude) Conservation Area)**; and**

*[(J)]***(K)** Woods (Walter) Conservation Area Aquatic Education Pond.

(6) On Busch (August A.) Memorial Conservation Area:

(C) On Lakes **7 and** 21 *[and 28]*, only flies, artificial lures, and soft plastic baits (unscented) may be used from November 1 through January 31;

(F) On Lakes 3, **7,** 21, 22, **and** 23, *[and 28,]* from November 1 through January 31, not more than one (1) pole and line may be used by one (1) person at any time and the use of natural or scented baits as chum is prohibited.

[(7) On Lost Valley Fish Hatchery, fishing is permitted only on designated waters from 9:00 a.m. to 4:00 p.m. Tuesday through Saturday from March 1 through November 30. Fishing is restricted to persons fifteen (15) years of age or younger and not more than one (1) pole and line may be used by any one (1) person at any time.]

*[(8)]***(7)** On Binder Community Lake, fishing is permitted only from 3:00 a.m. to 11:00 p.m. daily.

*[(9)]***(8)** Seining or trapping live bait, including tadpoles, is prohibited on all lakes and ponds, except as otherwise provided in this chapter.

(A) Seining or trapping live bait, excluding all frogs and tadpoles, in compliance with 3 CSR 10-6.605 is permitted on designated lakes and ponds on the following department areas:

1. Atlanta Conservation Area**;**
2. Leach (B. K.) Memorial Conservation Area**;**
3. Brown (Bob) Conservation Area**;**
4. Cooley Lake Conservation Area**;**
5. Eagle Bluffs Conservation Area**;**
6. Fountain Grove Conservation Area**;**
7. Grand Pass Conservation Area**;**
8. Long Branch Lake Management Lands**;**
9. Locust Creek Conservation Area**;**
10. Nodaway Valley Conservation Area**;**
11. Rebel's Cove Conservation Area**; and**
12. Shanks (Ted) Conservation Area**.**

*[(10)]***(9)** On Mule Shoe Conservation Area, seining or trapping live bait, including tadpoles, is prohibited on streams and the discharge channels of impoundments.

*[(11)]***(10)** The taking of crayfish, is prohibited on the following department areas:

(A) Caney Mountain Conservation Area**;**

(B) Cover (Dan and Maureen) Prairie Conservation Area**;**

(C) Martin (George and Vida) Access**; and**

(D) Paris Springs Access**.**

*[(12)]***(11)** Salvage seining of other fish as designated in 3 CSR 10-6.550 may be permitted seasonally for personal use with a special use permit.

*[(13)]***(12)** On Wire Road Conservation Area, other fish as designated in 3 CSR 10-6.550 may be taken by snagging, snaring, or grabbing

from March 15 through May 15.

*[(14)]***(13)** Bait transported or held in containers with water is prohibited on the following department areas:

(A) Blackwell Lake (Indian Trail Conservation Area)**;**

(B) Blind Pony Lake Conservation Area**;**

(C) Hunnewell Lake Conservation Area**; and**

(D) Lost Valley Fish Hatchery**.**

*[(15)]***(14)** On the Ozark Regional Office Pond—

(A) Fishing is permitted only on designated waters from 8:30 a.m. to 4:00 p.m., May 1 through September 30, Monday through Friday;

(B) Fishing is restricted to persons fifteen (15) years of age or younger and not more than one (1) pole and line may be used by any one (1) person at any time;

(C) Fish must be returned to the water unharmed immediately after being caught.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.040, RSMo 2016. This rule was previously filed as 3 CSR 10-4.115. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed Aug. 27, 2021.*

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 Regulations Committee Chairman, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180, or via the department's website at https://short.mdc.mo.gov/Z49. 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 11—Wildlife Code: Special Regulations for Department Areas

PROPOSED AMENDMENT

3 CSR 10-11.210 Fishing, Daily and Possession Limits. The commission proposes to amend subsection (7)(A) and section (9) of this rule.

PURPOSE: The proposed amendment reflects changes made to area lakes that provide trout fishing opportunities on Busch (August A.) Memorial Conservation Area and modifies daily limit restrictions on Lost Valley Fish Hatchery.

(7) On Busch (August A.) Memorial Conservation Area—

(A) On Lakes **7 and** 21 *[and 28]*, trout must be returned to the water unharmed immediately after being caught from November 1 through January 31. Trout may not be possessed on these waters during this season. No person shall continue to fish for any species after having four (4) trout in possession from February 1 through October 31; and

(9) On Lake 12 (Busch (August A.) Memorial Conservation Area) *[and Lost Valley Fish Hatchery,]* the daily limit for all fish shall be two (2) in the aggregate. *[On Lost Valley Fish Hatchery, no person shall continue to fish for any species after having two (2) fish in possession.]*

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.040, RSMo 2016. This rule previously filed as 3 CSR 10-4.115. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed Aug. 27, 2021.*

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 Regulations Committee Chairman, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180, or via the department's website at https://short.mdc.mo.gov/Z49. 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 12—Wildlife Code: Special Regulations for Areas Owned by Other Entities

PROPOSED AMENDMENT

3 CSR 10-12.109 Closed Hours. The commission proposes to remove subsection (1)(D), re-letter subsequent subsections, and add subsection (1)(M) of this rule.

PURPOSE: The proposed amendment removes Buchanan County (Gasper Landing) and adds Maysville (Willow Brook Lake) to the rule which establishes closed hours for uses other than fishing and other conservation-related recreation at areas managed in cooperation with other public entities.

(1) Closed Hours. The following areas are closed to public use from 10:00 p.m. to 4:00 a.m. daily; however, hunting, fishing, trapping, dog training, camping, launching boats, and landing boats are permitted at any time on areas where these activities are authorized, except as further restricted in this chapter*[.]***:**

[(D) Buchanan County (Gasper Landing)]

*[(E)]***(D)** Cameron (Century Lake, Eagle Lake, Grindstone Lake, and Sunrise Lake)**;**

*[(F)]***(E)** Department of Mental Health (Marshall Habilitation Center Lake)**;**

*[(G)]***(F)** Kearney (Jesse James Park Lake)**;**

*[(H)]***(G)** Kirksville (Hazel Creek Lake, Spur Pond)**;**

*[(I)]***(H)** Lancaster (City Lake, Paul Bloch Memorial Pond)**;**

*[(J)]***(I)** La Plata City Lake**;**

*[(K)]***(J)** Liberty (*[Fountain Bluff Park]* **Capitol Federal® Sports Complex** Ponds Nos. 1, 2, 3, 4, 5, 6, 7, and 8)**;**

(K) Macon County (Fairground Lake);

(L) Marceline (Marceline City Lake, Old Marceline City Reservoir);

(M) Maysville (Willow Brook Lake);

*[(M)]***(N)** Memphis (Lake Showme)**;**

*[(N)]***(O)** Milan (Elmwood Lake)**;**

*[(O)]***(P)** Monroe City (Route J Reservoir)**;**

*[(P)]***(Q)** Palmyra (Akerson Access)**;**

*[(Q)]***(R)** Pemiscot County (Triangle Boat Club Access)**;**

*[(R)]***(S)** Pleasant Hill (Pleasant Hill City Lake and Porter Park Lake)**;**

*[(S)]***(T)** Rockaway Beach Access**;**

*[(T)]***(U)** Sedalia Water Department (Spring Fork Lake)**; and**

*[(U)]***(V)** Springfield City Utilities (Fellows Lake, Lake Springfield, Tailwaters Access)**.**

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.040, RSMo 2016. Original rule filed June 1, 2001, effective Oct. 30, 2001. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed Aug. 27, 2021.*

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 Regulations Committee Chairman, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180, or via the department's website at https://short.mdc.mo.gov/Z49. 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 12—Wildlife Code: Special Regulations for Areas Owned by Other Entities

PROPOSED AMENDMENT

3 CSR 10-12.125 Hunting and Trapping. The commission proposes to remove paragraph (1)(B)2., amend (1)(B)11., and renumber subsequent paragraphs of this rule.

PURPOSE: The proposed amendment removes Buchanan County (Gasper Landing) and adds Lake Luna and Upper Lake in Harrisonville to the rule which establishes provisions for hunting and trapping on areas under management agreement with the department.

(1) Hunting, under statewide permits, seasons, methods, and limits, is permitted except as further restricted in this chapter and except for deer and turkey hunting as authorized in the annual *Fall Deer & Turkey Hunting Regulations and Information* booklet published in August and annual *Spring Turkey Hunting Regulations and Information* booklet published in March, which are incorporated in this *Code* by reference. A printed copy of these booklets can be obtained from the Missouri Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180 and are also available online at www.missouriconservation.org. This rule does not incorporate any subsequent amendments or additions.

(B) Hunting is prohibited on the following areas:

1. Belton (Cleveland Lake);
2. Bethany (Old Bethany City Reservoir);

[3. Buchanan County (Gasper Landing);]

*[4.]***3.** California (Proctor Park Lake);

*[5.]***4.** Carthage (Kellogg Lake);

*[6.]***5.** Columbia (Antimi Lake, Cosmo-Bethel Lake, Lake of the Woods, Twin Lakes);

*[7.]***6.** Dexter City Lake;

*[8.]***7.** Farmington (Giessing Lake, Hager Lake, Thomas Lake);

*[9.]***8.** Fenton (Preslar Lake, Upper Fabick Lake, Westside Park Lake);

*[10.]***9.** Fulton (Morningside Lake, Truman Lake, Veterans Park Lake);

*[11.]***10.** Hamilton City Lake;

*[12.]***11.** Harrisonville (**Lake Luna,** North Lake**, Upper Lake**);

*[13.]***12.** Jackson (Rotary Lake);

*[14.]***13.** Jackson County (Alex George Lake, Bergan Lake, Bowlin Pond, Fleming Pond, Lake Jacomo, Prairie Lee Lake, Scherer Lake, Tarsney Lake, Wood Lake, Wyatt Lake);

*[15.]***14.** Kearney (Jesse James Park Lake);

*[16.]***15.** Kirksville (Spur Pond);

*[17.]***16.** Lawson City Lake;

*[18.]***17.** Liberty (Capitol Federal® Sports Complex Ponds Nos. 1, 2, 3, 4, 5, 6, 7, and 8);

*[19.]***18.** Mexico (Lakeview Lake, Kiwanis Lake);

*[20.]***19.** Mineral Area College (Quarry Pond);

*[21.]***20.** Moberly (Rothwell Park Lake, Water Works Lake);

*[22.]***21.** Odessa (Lake Venita);

*[23.]***22.** Overland (Wild Acres Park Lake);

*[24.]***23.** Perry County (Legion Lake 1);

*[25.]***24.** Potosi (Roger Bilderback Lake);

*[26.]***25.** Raymore (Johnston Lake);

*[27.]***26.** Rolla (Schuman Park Lake);

*[28.]***27.** St. Ann (Gendron Lake);

*[29.]***28.** St. Charles (Fountain Lakes Pond, Kluesner Lake, Moore Lake, Skate Park Lake);

*[30.]***29.** St. James (Scioto Lake);

*[31.]***30.** St. Joseph (Krug Park Lagoon);

*[32.]***31.** St. Louis County (Bee Tree Park Lake, Blackjack Lake, Carp Lake, Creve Coeur Park Lake, Fountain Lake, Island Lake, Jarville Lake, Simpson Park Lake, Spanish Lake, Sunfish Lake);

*[33.]***32.** Savannah City Lake;

*[34.]***33.** Sedalia (Clover Dell Park Lake);

*[35.]***34.** Sedalia Water Department (Spring Fork Lake);

*[36.]***35.** Springfield City Utilities (Lake Springfield);

*[37.]***36.** Union (Union City Lake);

*[38.]***37.** University of Missouri (Thomas S. Baskett Wildlife Research and Education Center);

*[39.]***38.** Warrensburg (Lions Lake);

*[40.]***39.** Watershed Committee of the Ozarks (Valley Water Mill Lake);

*[41.]***40.** Wentzville (Community Club Lake, Heartland Lake); and

*[42.]***41.** Windsor (Farrington Park Lake).

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.040, RSMo 2016. This rule previously filed as 3 CSR 10-4.116. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed Aug. 27, 2021.*

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 Regulations Committee Chairman, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180, or via the department's website at https://short.mdc.mo.gov/Z49. 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 12—Wildlife Code: Special Regulations for Areas Owned by Other Entities

PROPOSED AMENDMENT

3 CSR 10-12.145 Fishing, Length Limits. The commission proposes

to add paragraph (2)(A)32. and renumber subsequent paragraphs of this rule.

PURPOSE: The proposed amendment establishes a minimum length limit of fifteen inches (15") for black bass on Sikeston (Sikeston Recreation Complex Lake), an area under management agreement with the department.

(2) Black bass more than twelve inches (12") but less than fifteen inches (15") total length must be returned to the water unharmed immediately after being caught, except as follows:

(A) Black bass less than fifteen inches (15") total length must be returned to the water unharmed immediately after being caught on the following lakes:

1. Arrow Rock State Historic Site (Big Soldier Lake);
2. Belton (Cleveland Lake);
3. Bethany (Old Bethany City Reservoir);
4. Blue Springs (Lake Remembrance);
5. Butler City Lake;
6. Cameron (Century Lake, Eagle Lake, Grindstone Lake, Sunrise Lake);
7. Carthage (Kellogg Lake);
8. Columbia (Stephens Park Lake);
9. Concordia (Edwin A. Pape Lake);
10. Confederate Memorial State Historic Site lakes;
11. Dexter City Lake;
12. East Prairie (K. S. Simpkins Park Pond);
13. Farmington (Hager Lake, Giessing Lake, Thomas Lake);
14. Hamilton City Lake;
15. Harrison County Lake;
16. Higginsville (Higginsville City Lake, Upper Higginsville City Lake);
17. Holden City Lake;
18. Jackson (Litz Park Lake, Rotary Lake);
19. Jackson County (Alex George Lake, Bergan Lake, Bowlin Pond, Lake Jacomo, Prairie Lee Lake, Scherer Lake, Tarsney Lake, Wood Lake, Wyatt Lake);
20. Jefferson City (McKay Park Lake);
21. Kearney (Jesse James Park Lake);
22. Keytesville (Maxwell Taylor Park Pond);
23. Kirksville (Hazel Creek Lake);
24. Liberty (Capitol Federal® Sports Complex Ponds Nos. 1, 2, 3, 4, 5, 6, 7, and 8);
25. Marble Hill (Pellegrino Lake);
26. Mark Twain National Forest (Fourche Lake, Huzzah Pond, Loggers Lake, McCormack Lake, Noblett Lake, Roby Lake);
27. Maysville (Willow Brook Lake);
28. Mineral Area College (Quarry Pond);
29. Odessa (Lake Venita);
30. Pershing State Park ponds;
31. Potosi (Roger Bilderback Lake);
32. Raymore (Johnston Lake);
33. Sikeston (Sikeston Recreation Complex Lake);
*[33.]***34.** Unionville (Lake Mahoney);
*[34.]***35.** University of Missouri (McCredie Lake);
*[35.]***36.** Warrensburg (Lions Lake);
*[36.]***37.** Watkins Mill State Park (Williams Creek Lake); and
*[37.]***38.** Windsor (Farrington Park Lake);

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.040, RSMo 2016. This rule previously filed as 3 CSR 10-4.116. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed Aug. 27, 2021.*

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Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 20—Wildlife Code: Definitions

PROPOSED AMENDMENT

3 CSR 10-20.805 Definitions. The commission proposes to amend section (14), add new sections (7), (25), and (58), and renumber subsequent sections of this rule.

PURPOSE: The proposed amendment defines bicycle, electric bicycle, and the fishing method of snagging as used in the Wildlife Code, and also creates a minimum length limit of thirty-two inches (32") for paddlefish in the commercial fish definition.

(7) Bicycle: Every vehicle propelled solely by human power upon which any person may ride, having two (2) tandem wheels, or two (2) parallel wheels and one (1) or two (2) forward or rear wheels, all of which are more than fourteen inches (14") in diameter, except scooters and similar devices; also includes electric bicycles as defined in this rule.

*[(7)]***(8)** Bow: A device drawn and held by hand and not fastened to a stock nor to any other mechanism that maintains the device in a drawn position. This definition includes longbows, recurve bows, and compound bows.

*[(8)]***(9)** Cable restraint device: A device for the live-capture of certain furbearers in a non-water set by use of a cable loop made of stranded steel cable, not greater than five feet (5') long (not including extensions), with a diameter of not less than five sixty-fourths inch (5/64") and equipped with a commercially manufactured breakaway rated at three hundred fifty pounds (350 lbs.) or less, a relaxing-type lock, a stop device that prevents it from closing to less than two and one-half inches (2 1/2") in diameter, and an anchor swivel, but shall not be equipped with a compression-type choke spring, or be otherwise mechanically-powered.

*[(9)]***(10)** Cervid: All species of the deer family (family *Cervidae*) including those commonly known as white-tailed, mule, fallow, sika, red, musk, Pere David's deer, moose, caribou, reindeer, elk, or wapiti, and all deer-hybrids.

*[(10)]***(11)** Chase or chased: The act of using dogs to follow wildlife or feral swine for the purpose of recreation or dog training, but not for the purpose of catching or taking that wildlife or feral swine.

*[(11)]***(12)** Circus: A scheduled staged event in which entertainment includes performances by trained wildlife, either native or nonnative to the continental United States, and in which physical contact between wildlife and humans is restricted to the handlers, performers, or other circus employees.

*[(12)]***(13)** Closed season: That period of time during which the pursuit or taking of wildlife is prohibited by this Code.

*[(13)]***(14)** Commercial establishment: Any place of business, owned or operated by any person or group of persons, or business concern of any kind, where ordinary trade or business practices are conducted. This term shall include, but is not restricted to, any club, association, or society where meals, lodging, or other services or facilities are furnished for a consideration, price, or fee.

*[(14)]***(15)** Commercial fish: All fish except endangered species as listed in 3 CSR 10-4.111(3), alligator gar, and game fish as defined in this rule. Includes those species for which sale is permitted when legally obtained. For purposes of this Code, packaged salt water species or freshwater species not found in waters of this state, when the processed fish are truly labeled as to content, point of origin, and name and address of the processor, are exempt from restrictions applicable to native commercial fish. Commercial fish include crayfish taken from waters open to commercial fishing. In the Mississippi River and that part of the St. Francis River which forms the boundary between the states of Arkansas and Missouri, commercial fish also include channel, blue, and flathead catfish at least fifteen inches (15") in total length. In the Mississippi River only, commercial fish also include paddlefish at least *[twenty-four]* **thirty-two** inches (*[24]***32**") in length (measured from eye to fork of tail) and shovelnose sturgeon twenty-four inches to thirty-two inches (24"–32") in length (measured from tip of snout to fork of tail) upstream from Melvin Price Locks and Dam.

*[(15)]***(16)** Commercial waters: The flowing portions of the Missouri River, the Mississippi River except in Sand Chute below the mouth of the Salt River in Pike County, and that part of the St. Francis River which forms a boundary between the states of Arkansas and Missouri, and also waters which exist temporarily through overflow from the Mississippi River east of the Missouri Pacific Railroad between Cape Girardeau and Scott City, and east of the Mississippi River mainline and setback levees between Commerce and the Arkansas state line.

*[(16)]***(17)** Commission: The Conservation Commission as specified in Section 3, Reorganization Act of 1974, pursuant to Article IV, Section 40(a) of the *Constitution of Missouri* (see also Article IV, Section 12).

*[(17)]***(18)** Crossbow: A device for discharging quarrels or bolts, formed of a bow set crosswise on a stock, usually drawn by means of a mechanism and discharged by release of a trigger.

*[(18)]***(19)** Days or dates: All days and dates shall be inclusive. A day shall begin or end at midnight, unless otherwise specified.

*[(19)]***(20)** Department: The Department of Conservation as specified in Section 3, Reorganization Act of 1974, pursuant to Article IV, Section 40(a) of **the** *Constitution of Missouri* (see also Article IV, Section 12).

*[(20)]***(21)** Director: The director of the Department of Conservation.

*[(21)]***(22)** Ditch: Any artificial drainageway, tributary to a stream or body of water, and containing sufficient water to support fish.

*[(22)]***(23)** Domicile: The place where a person has his/her true, fixed, and permanent home and principal establishment and to which whenever s/he is absent s/he has the intention of returning. It is his/her legal residence, as distinguished from his/her temporary place or abode; or his/her home, as distinguished from a place to which business or pleasure may temporarily call him/her.

*[(23)]***(24)** Drowning set: Trap or snare sets constructed with a solid fiber or steel rod or cable, anchored at each end, having a drowning lock attached to the trap or snare allowing the trap or snare to only slide one (1) way, and located in water at a depth sufficient for drowning.

(25) Electric Bicycle: Any two (2)- or three (3)-wheeled device equipped with fully operable pedals, a saddle or seat for the rider, and an electric motor of not more than seven hundred fifty (750) watts, and which meets one of the following three classes:

(A) "Class 1 electric bicycle," an electric bicycle equipped with a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the bicycle reaches a speed of twenty (20) miles per hour;

(B) "Class 2 electric bicycle," an electric bicycle equipped with a motor that may be used exclusively to propel the bicycle, and that is not capable of providing assistance when the bicycle reaches the speed of twenty (20) miles per hour; or

(C) "Class 3 electric bicycle," an electric bicycle equipped with a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the bicycle reaches the speed of twenty-eight (28) miles per hour.

*[(24)]***(26)** Established field trial area: One (1) contiguous tract of privately-owned land that is fenced or enclosed in a manner to reasonably prevent dogs pursuing or chasing wildlife from leaving the area, where the primary use of the land is for training dogs to pursue and chase wildlife or to conduct field trials.

*[(25)]***(27)** Field trial: An organized event, contest, demonstration, or trial of dogs whether or not prizes or awards of any kind are offered, and where dogs may be used to chase, locate, pursue, or retrieve wildlife.

*[(26)]***(28)** Firearms: Pistols, revolvers, and rifles propelling a single projectile at one (1) discharge including those powered by spring, air, or compressed gas, and shotguns not larger than ten (10) gauge.

*[(27)]***(29)** Flies, lures, and baits: The following are authorized for use except where restricted in 3 CSR 10-6.415, 3 CSR 10-6.535, 3 CSR 10-11.205, 3 CSR 10-12.135, and 3 CSR 10-12.150.

(A) Natural and scented baits—A natural fish food such as bait fish, crayfish, frogs permitted as bait, grubs, insects, larvae, worms, salmon eggs, cheese, corn, and other food substances not containing any ingredient to stupefy, injure, or kill fish. Does not include flies or artificial lures. Includes dough bait, putty or paste-type bait, any substance designed to attract fish by taste or smell, and any fly, lure, or bait containing or used with such substances.

(B) Soft plastic bait (unscented)—Synthetic eggs, synthetic worms, synthetic grubs, and soft plastic lures.

(C) Artificial lure—A lure constructed of any material excluding soft plastic bait and natural and scented bait as defined in (A) or (B) above.

(D) Fly—An artificial lure constructed on a single-point hook, using any material except soft plastic bait and natural and scented bait as defined in (A) or (B) above, that is tied, glued, or otherwise permanently attached.

*[(28)]***(30)** Furbearing animals: Furbearers: Badger, beaver, bobcat, coyote, gray fox, long-tailed weasel, mink, mountain lion, muskrat, nutria, opossum, raccoon, red fox, river otter, spotted skunk, and striped skunk.

*[(29)]***(31)** Game birds: American coot, American woodcock, crows, ducks, Eurasian collared dove, geese, gray partridge, mourning dove, northern bobwhite quail, ring-necked pheasant, ruffed grouse, sora rail, Virginia rail, white-winged dove, wild turkey, and Wilson's snipe.

*[(30)]***(32)** Game fish: Shall include the following in which the common names are to be interpreted as descriptive of, but not limiting,

the classification by Latin names.

(A) *Ambloplites*, all species of goggle-eye (commonly known as Ozark bass, rock bass, shadow bass) and their hybrids.

(B) *Esox*, all species commonly known as muskellunge, tiger muskie, muskie-pike hybrid, northern pike, chain pickerel, grass pickerel.

(C) *Ictalurus*, all species except bullheads, commonly known as channel catfish, blue catfish, Mississippi cat, Fulton cat, spotted cat, white cat, willow cat, fiddler cat.

(D) *Lepomis gulosus,* commonly known as warmouth.

(E) *Micropterus*, all species of black bass and their hybrids, commonly known as largemouth bass, lineside bass, smallmouth bass, brown bass, Kentucky bass, spotted bass.

(F) *Morone*, all species and their hybrids, commonly known as white bass, yellow bass, striped bass.

(G) *Oncorynchus, Salvelinus, and Salmo*, all species commonly known as salmon, char, and trout.

(H) *Polyodon*, all species, commonly known as paddlefish, spoonbill.

(I) *Pomoxis*, all species, commonly known as crappie, white crappie, black crappie.

(J) *Pylodictis*, commonly known as flathead catfish, goujon, yellow cat, river cat.

(K) *Sander*, all species and their hybrids, commonly known as walleye, pike perch, jack salmon, sauger.

(L) *Scaphirhynchus platorynchus*, commonly known as shovelnose sturgeon, hackleback, sand sturgeon.

*[(31)]***(33)** Game mammals: Black bears, cottontail rabbit, deer, elk, fox squirrel, gray squirrel, groundhog (woodchuck), jackrabbit, swamp rabbit, and furbearers as defined.

*[(32)]***(34)** Grab: The act of snagging or attempting to snag a fish by means of a pole, line, and hook manipulated by hand.

*[(33)]***(35)** Handgun: Any firearm originally designed, made, and intended to fire a projectile (bullet) from one (1) or more barrels when held in one (1) hand, and having a short stock designed to be gripped by one (1) hand at an angle to and extending below the line of the bore(s), with a barrel less than sixteen inches (16") in length, measured from the face of the bolt or standing breech (excluding any muzzle device not permanently attached to the barrel), and an overall length less than twenty-six inches (26") as measured between the muzzle of the barrel and the rearmost portion of the firearm (excluding any pistol brace, muzzle device, or other firearm accessory not permanently attached to the firearm). The use of a pistol brace is specifically authorized, and a second hand may be used for support when firing.

*[(34)]***(36)** Hook: Single- or multiple-pronged hooks and the ordinary artificial lures with attached single- or multiple-pronged hooks and dropper flies. A multiple-pronged hook or two (2) or more hooks employed to hold a single bait, shall be considered a single hook in counting the allowable total in use.

*[(35)]***(37)** Invasive fish: Shall include fish defined as prohibited in 3 CSR 10-4.117(C) and the following:

(A) Bighead carp *(Hypophthalmichthys nobilis)*; and

(B) ?Silver carp *(Hypophthalmichthys molitrix)*.

*[(36)]***(38)** Invertebrate: Any animal lacking a backbone; this includes all animal phyla other than *Chordata*. (Examples include insects and other arthropods, flatworms, roundworms, segmented worms, and mollusks.)

*[(37)]***(39)** Length of fish: Total length is measured from the tip of the snout to the end of the tail, with the fish laid flat on the rule with mouth closed and tail lobes pressed together. The length of paddlefish is measured from the eye to the fork of the tail. The length of sturgeon is measured from the tip of the snout to the fork of the tail.

*[(38)]***(40)** Limit: The maximum number or quantity, total length, or both, of any wildlife permitted to be taken or held in possession by any person within a specified period of time according to this Code.

*[(39)]***(41)** Managed deer hunt: A prescribed deer hunt conducted on a designated area for which harvest methods, harvest quotas, and numbers of participants are determined annually and presented in the deer hunting rules (3 CSR 10-7.431 and 3 CSR 10-7.436).

*[(40)]***(42)** Mouth of stream or ditch: The point at which a line projected along the shore of a main stream or ditch at the existing water level at time of measurement crosses any incoming stream or ditch.

*[(41)]***(43)** Multi-use Trail: A trail upon which hiking and at least one (1) of the following other activities are allowed concurrently: bicycling and equestrian use.

*[(42)]***(44)** Mussels: All species of freshwater mussels and clams. Includes all shells and alive or dead animals. Two (2) shell halves (valves) shall be considered one (1) mussel.

*[(43)]***(45)** Muzzleloading firearm: Any firearm capable of being loaded only from the muzzle; including any firearm capable of having the powder or propellant loaded from the breech, provided the bullet or projectile(s) is/are capable of being loaded only from the muzzle.

*[(44)]***(46)** Night vision equipment: Optical devices (that is, binoculars or scopes) using light amplifying circuits that are electrical or battery powered.

*[(45)]***(47)** Nonresident landowner: Any nonresident of Missouri who is the owner of at least seventy- five (75) acres in one (1) contiguous tract in the state of Missouri, or any member of the immediate household whose legal residence and domicile is the same as the nonresident landowner's for at least thirty (30) days last past.

*[(46)]***(48)** Open season: That time when the pursuing and taking of wildlife is permitted.

*[(47)]***(49)** Other fish: All species other than those listed as endangered in 3 CSR 10-4.111, alligator gar, or defined in this rule as game fish.

*[(48)]***(50)** Persons with disabilities: A person who is blind, as defined in section 8.700, RSMo, or a person with medical disabilities which prohibits, limits, or severely impairs one's ability to ambulate or walk, as determined by a licensed physician as follows: The person cannot ambulate or walk fifty (50) or less feet without stopping to rest due to a severe and disabling arthritic, neurological, orthopedic condition, or other severe and disabling condition; or the person cannot ambulate or walk without the use of, or assistance from, a brace, cane, crutch, another person, prosthetic device, wheelchair, or other assistive device; or the person is restricted by a respiratory or other disease to such an extent that the person's forced respiratory expiratory volume for one (1) second, when measured by spirometry, is less than one (1) liter, or the arterial oxygen tension is less than sixty (60) mmHg on room air at rest; or the person uses portable oxygen; or the person has a cardiac condition to the extent that the person's functional limitations are classified in severity as class III or class IV according to standards set by the American Heart Association. (A person's age, in and of itself, shall not be a factor in determining whether such person is physically disabled.)

*[(49)]***(51)** Poisons, contaminants, pollutants: Any substances that

have harmful effect upon wildlife.

*[(50)]***(52)** Pole and line: Fishing methods using tackle normally held in the hand, such as a cane pole, casting rod, spinning rod, fly rod, or ice fishing tackle commonly known as a tip-up, to which not more than three (3) hooks with bait or lures are attached. This fishing method does not include snagging, snaring, grabbing, or trotlines or other tackle normally attached in a fixed position.

*[(51)]***(53)** Possessed and possession: The actual and constructive possession and control of things referred to in this Code.

*[(52)]***(54)** Public roadway: The right of way which is either owned in fee or by easement by the state of Missouri or any county or municipal entity, or which is used by the general public for travel and is also regularly maintained by Department of Transportation, federal, county, or municipal funds or labor.

*[(53)]***(55)** Pursue or pursued: Includes the act of trying to find, to seek, or to diligently search for wildlife or feral swine for the purpose of taking this wildlife or feral swine.

*[(54)]***(56)** Resident landowner: Any Missouri resident who is the owner of at least five (5) acres in one (1) contiguous tract, or any member of the immediate household whose legal residence or domicile is the same as the landowner's for at least thirty (30) days last past, except ownership of at least twenty (20) acres in one (1) contiguous tract is required to qualify for resident landowner privileges to hunt bears, deer, elk, and turkey. For the purposes of this definition, settlors, revocable, and permissible distributees are defined as found in section 456.1-103 of the *Revised Statutes of Missouri*. In the case of corporate ownership of land or land held in trust, persons defined as landowners include Missouri residents who are—

(A) General partners of resident limited liability partnerships, limited partnerships, or limited liability limited partnerships, and general partners of general partnerships formed by written agreement;

(B) Officers of resident or foreign corporations;

(C) Managing members of resident limited liability companies; *[and]*

(D) Officers of benevolent associations organized pursuant to Chapter 352 of the *Revised Statutes of Missouri*;

(E) Settlors of a revocable trust; *[and]*

(F) Permissible distributees of an irrevocable trust*[.]***; and**

(G) For the purposes of this definition, settlors, revocable, and permissible distributees are defined as found in Section 456.1-103 of the *Revised Statutes of Missouri*.

*[(55)]***(57)** Sell: To exchange for compensation in any material form, and the term shall include offering for sale.

(58) Snag or Snagging: The act of hooking or attempting to hook a fish in a part of the body other than the mouth or jaw by means of a pole, line, and hook. Snagging is characterized by a repeated drawing or jerking motion of the pole, line, and hook or by trolling with an unbaited hook rather than enticement by bait or lure.

*[(56)]***(59)** Snare: A device for the capture of furbearers in a water-set by use of a cable loop. Snares must be constructed of cable that is at least five sixty-fourths inch (5/64") and no greater than one-eighth inch (1/8") in diameter, and must be equipped with a mechanical lock and anchor swivel.

*[(57)]***(60)** Speargun: A mechanically powered device that propels a single- or multiple-pronged spear underwater.

*[(58)]***(61)** Store and storage: Shall also include chilling, freezing, and other processing.

*[(59)]***(62)** Take or taking: Includes killing, trapping, snaring, netting, or capturing in any manner, any wildlife or feral swine, and also refers to pursuing, molesting, hunting, wounding; or the placing, setting, or use of any net, trap, device, contrivance, or substance in an attempt to take; and every act of assistance to every other person in taking or attempting to take any wildlife or feral swine.

*[(60)]***(63)** Transgenic: Any organism, or progeny thereof, that contains DNA from a species that was not a parent of that organism.

*[(61)]***(64)** Transport and transportation: All carrying or moving or causing to be carried or moved from one (1) point to another, regardless of distance, vehicle, or manner, and includes offering or receiving for transport or transit.

*[(62)]***(65)** Underwater spearfishing: The taking of fish by a diver while underwater, with the aid of a manually or mechanically propelled, single- or multiple-pronged spear.

*[(63)]***(66)** Ungulate: Hoofed animals.

*[(64)]***(67)** Waters of the state: All rivers, streams, lakes, and other bodies of surface water lying within or forming a part of the boundaries of the state which are not entirely confined and located completely upon lands owned or leased by a single person or by two (2) or more persons jointly or as tenants in common or by corporate shareholders, and including waters of the United States lying within the state. Waters of the state will include any waters which have been stocked by the state or which are subject to movement of fishes to and from waters of the state.

*[(65)]***(68)** Zoo: Any publicly owned facility, park, building, cage, enclosure, or other structure or premises in which live animals are held and exhibited for the primary purpose of public viewing.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.040, RSMo 2016. This rule previously filed as 3 CSR 10-11.805. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed Aug. 27, 2021.*

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 Regulations Committee Chairman, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180, or via the department's website at https://short.mdc.mo.gov/Z49. 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 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 20—Division of Learning Services
Chapter 400—Office of Educator Quality

PROPOSED AMENDMENT

5 CSR 20-400.540 Certification Requirements for Teacher of Secondary Education (Grades 9-12). The State Board of Education (board) is amending section (3).

PURPOSE: The proposed amendment will combine the Implementing

Business Education Programs and Coordination of Cooperative Education courses into Administration of Business and Marketing Education Programs, which will reduce the overlap of topics currently covered in both of the courses.

(3) In addition to the requirements specified in subsections (1)(A)-(C) of this rule, an applicant for a Missouri certificate of license to teach Business may be granted an initial Missouri certificate of license to teach Business subject to completion of at least thirty-nine (39) semester hours in the following content knowledge areas and demonstration of competency to the satisfaction of the educator preparation institution:

(H) Electives, three (3) semester hours; **and**

(I) *[Implementing Business Education Programs]* **Administration of Business and Marketing Education Programs**, three (3) semester hours*[; and]***.**

[(J) Coordination of Cooperative Education, three (3) semester hours.]

*AUTHORITY: sections 161.092, 168.011, 168.071, 168.081, 168.400, 168.405, and 168.409, RSMo 2016, and section 168.021, RSMo Supp. [2020] **2021**. Original rule filed Oct. 29, 2013, effective May 30, 2014. Amended: Filed Jan. 15, 2019, effective Aug. 30, 2019. Amended: Filed Nov. 2, 2020, effective May 30, 2021. Amended: Filed Aug. 27, 2021.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Elementary and Secondary Education, Attention: Dr. Paul Katnik, Assistant Commissioner, Office of Educator Quality, PO Box 480, Jefferson City, MO 65102-0480 or by email to educatorquality@dese.mo.gov. 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 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 20—Division of Learning Services
Chapter 700—Office of Data System Management

PROPOSED AMENDMENT

5 CSR 20-700.100 Statewide Longitudinal Data System. The State Board of Education (board) is amending sections (1), (2), and (3).

PURPOSE: This proposed amendment adds language to ensure the rule covers all confidential information maintained by the department and to clarify the data sharing agreement.

(1) Data Inventory.

(A) The Department of Elementary of Secondary Education (department) *[publishes]* annually **publishes** an inventory of student data collected and posted on the department's website.

(B) The department shall *[notify]* annually *[to]* **notify** the governor, president pro tempore of the senate, the speaker of the house, and the joint committee on education any changes to existing data elements.

(2) Data Access and Management Policies.

(A) The department adheres to the confidentiality requirements of *[both federal and state laws including, but not limited to, the Family Educational Rights and Privacy Act (FERPA), the Individuals with Disabilities Education Act (IDEA), the Protection of Pupil Rights Amendment (PPRA), and the National School Lunch Act. These]* **all state and federal laws relating to confidentiality of student records and confidentiality of individually identifiable personal records generally. The department's** policies include:

1. Defining privacy, confidentiality, personally identifiable information, disclosure, access, and confidential data; and

2. Maintaining adequate privacy and confidentiality protections; including the assignment of a unique student identifier, data security, restricted access, and reasonable statistical disclosure.

(3) Data Requests.

(B) All recipients/users of the requested information must sign a MOA that includes:

1. Introduction and Relationship;

2. Purpose of the Data Sharing Agreement;

*[2.]***3.** Data Being Requested;

*[3.]***4.** Scope of Activities;

*[4.]***5.** Participant Non-disclosure;

*[5.]***6.** Confidentiality/Redisclosure;

*[6.]***7.** *[Transfer]* **Data Access**/Storage/Disposal;

*[7.]***8.** Release of Analyses;

*[8.]***9.** Right to Audit; and

*[9.]***10.** Agreement Period, Amendment, and Termination.

*AUTHORITY: sections 161.092 and 161.096, RSMo [Supp. 2014] **2016**. Original rule filed Jan. 22, 2015, effective Aug. 30, 2015. Amended: Filed Aug. 18, 2021.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Elementary and Secondary Education, Attention: Jeff Falter, Chief Data Officer, Office of Data System Management, PO Box 480, Jefferson City, MO 65102-0480 or by email to dsm@dese.mo.gov. 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 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 30—Division of Financial and Administrative Services
Chapter 680—Food and Nutrition Services

PROPOSED AMENDMENT

5 CSR 30-680.010 National School *[Lunch]* ***Meals*** **Program**. The State Board of Education is amending the title and purpose, adding sections (1) and (2), and removing current text of the rule.

PURPOSE: This proposed amendment consolidates the school meal programs into one (1) regulation and updates references to federal materials.

PURPOSE: [The State Board of Education is authorized and directed to cooperate with the secretary of agriculture in the administration of the National School Lunch Act. This rule establishes the regulations for the establishment, maintenance, operation and expansion of nonprofit school lunch

programs.] ***The State Board of Education (board) is authorized and directed to cooperate with the secretary of agriculture to administer programs to provide meals to students. This rule establishes the regulations for the establishment, maintenance, and operation of the national school meals program, including: determining eligibility for Free and Reduced Price Meals and Milk in Schools; the National School Lunch Program; and the School Breakfast Program.***

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

[This rule details state and local responsibilities, as outlined in 7 CFR part 210, for the administration of the National School Lunch Program including, but not limited to, requirements for participation, requirements for lunches, free and reduced price lunches, reimbursement payments, management evaluations and audits.]

(1) The Department of Elementary and Secondary Education (department) is authorized and directed to cooperate with the secretary of agriculture to administer programs to provide meals to students in the following programs:

(A) Determining Eligibility for Free and Reduced Price Meals and Milk in Schools.

1. This rule details state and local responsibilities, as outlined in 7 CFR part 245, which is used to determine eligibility and establish procedures for extending free and reduced price meals and free milk to eligible children from economically needy families. Specific areas in this rule include eligibility standards, public announcements, applications, hearing procedures, and nondiscrimination practices. This rule enables the department to calculate students in districts that elect other Special Provision Options to include Provision 1, Provision 2, and Provision 3 in the same manner as is used for the United States Department of Agriculture (USDA) Community Eligibility Option as stated in section 163.011(6), RSMo;

(B) Administration of the National School Lunch Program.

1. This rule details state and local responsibilities, as outlined in 7 CFR part 210, for the administration of the National School Lunch Program including, but not limited to, requirements for participation, requirements for lunches, free and reduced price lunches, reimbursement payments, management evaluations, and audits; and

(C) School Breakfast Program.

1. This rule details the state and local responsibilities, as outlined in 7 CFR part 220, for the administration of the School Breakfast Program, and as also outlined in sections 191.800-191.815, RSMo.

A. The USDA's School Breakfast Program, as authorized by 42 U.S.C. section 1773, shall be established in each public school district in the state in each school under its authority in which thirty-five percent (35%) or more of the students enrolled in the school were eligible for free or reduced price meals on October 1 of the preceding school year.

B. In subsequent years, any school within a school district where the percentage of students approved to receive free or reduced price school meals is thirty-five percent (35%) or more of the enrollment as of October 1, the School Breakfast Program must be established by July 1 of the following school year.

C. To determine the participation requirement, as of October 1 of each school year for each school which does not operate the School Breakfast Program, the school district must determine the enrollment of the school, the number of students approved according to federal guidelines to receive free or reduced price school meals, and the percentage of students enrolled in the school approved to receive free or reduced price school meals. The percentage of students approved to receive free or reduced price school meals is obtained by dividing the total number of students approved to receive free or reduced price school meals by the enrollment.

D. Documentation of the participation determination for each school which does not operate the School Breakfast Program shall be provided to the department on a form as may be required by the department no later than February 1 of each year. This documentation also shall be maintained at the school district office and shall be made available for review by interested individuals.

E. A review of the documentation records relating to the School Breakfast Program participation requirement will be made by representatives of the department during school food service on-site reviews. School districts determined not to be in compliance with the School Breakfast Program participation requirement will be given sixty (60) days to initiate the School Breakfast Program in schools where required or request a School Breakfast Program waiver as outlined in paragraph (1)(C)2.

2. School Breakfast Program Participation Waiver.

A. A public school district may receive a waiver from department from the School Breakfast Program requirement described in paragraph (1)(C)1. The board of education of the school district seeking a waiver must adopt by majority vote a resolution requesting a waiver from the School Breakfast Program requirement.

B. A written request for a waiver shall be filed with the department and shall contain the name of the school district, the name(s) of the school(s) to which the waiver applies, the enrollment and number of students approved to receive free or reduced price school meals in each school, a statement indicating the board of education's reason(s) for the waiver, the date of the board action, the effective date of the waiver, and the signature of the board president, board secretary, or superintendent.

C. A request for a waiver may be submitted at any time during the year, but should be submitted before July 1. Following department approval, a waiver will be valid for a period of three (3) years. At the end of that time, the request process must be repeated. A board of education may rescind a waiver at any time.

D. Documentation of the waiver must be kept on file at the school district office and made available for review by interested individuals.

3. School Breakfast Program Hardship Grant Program.

A. Subject to appropriation of funds for this purpose, state supplemental funds will be distributed through the School Breakfast Program Hardship Grant Program. Application for School Breakfast Program Hardship Grant Program funds may be made by public school districts participating in the School Breakfast Program to the department any time after July 1 but no later than November 1 of the school year following the year for which supplemental funds are being requested (grant year). Each application shall contain information as may be required to enable the department to dispense funds under the provisions of this rule.

B. Priority for allocating funds under the School Breakfast Program Hardship Grant Program shall be based upon a need factor, which will be the percentage (by school) of free and reduced price student breakfasts served of total student breakfasts served during the grant year. To determine school priority, a ranking from the highest to the lowest by need factor will be made.

C. Following the priority ranking of schools, supplemental funds will be distributed to schools according to the student breakfasts served during the grant year. Distribution of funds for breakfasts served will be made in the order of—student free

breakfasts, student reduced price breakfasts, and student paid breakfasts. In each instance, the combined funds received by a school per breakfast from all sources, federal, local, and state, shall not exceed the district per breakfast cost.

D. In the event that insufficient funds are appropriated to allow for a complete allocation to schools that apply, a proration of the funds provided will be made. First priority for the allocation of prorated funds will be schools classified under federal guidelines as severe need breakfast schools. Second priority will be schools serving thirty-five percent (35%) or more free and reduced price breakfasts. Third priority will be all other schools that apply. The distribution of funds will be the same as outlined in subparagraph (1)(C)3.C. of this rule, except that funds for free and reduced price meals will be distributed in all levels before being distributed for paid meals.

4. Outreach Activities. The department shall collaborate with other agencies responsible for administering emergency and supplemental food programs in designing and implementing food program outreach activities. Department outreach activities shall be focused on information concerning the School Breakfast Program and may include written materials, brochures, newsletters, news releases, public service announcements, and videos.

(2) 7 CFR parts 210, 220, and 245, and 42 U.S.C. section 1773 are hereby incorporated by reference and made part of this rule as published by the U.S. Government Publishing Office, 732 North Capitol Street NW, Washington, DC 20401-0001, in August 2021. Copies of these regulations can also be obtained from the Department of Elementary and Secondary Education, Division of Financial and Administrative Services, Food and Nutrition Services Section, 205 Jefferson Street, PO Box 480, Jefferson City, MO 65102-0480 and at https://dese.mo.gov/governmental-affairs/dese-administrative-rules/incorporated-reference-materials. This rule does not incorporate any subsequent amendments or additions.

AUTHORITY: sections ***161.092,*** *167.201,* ***178.430, 191.800-191.815,*** *RSMo [1986]* ***2016****. This rule was previously filed as 5 CSR 40-680.010. Original rule filed Dec. 24, 1975, effective Jan. 3, 1976. For intervening history, please consult the* ***Code of State Regulations****. Amended: Filed Aug. 19, 2021.*

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 Department of Elementary and Secondary Education, ATTN: Barbara Shaw, Coordinator, Division of Financial and Administrative Services, Food and Nutrition Services Section, 205 Jefferson St, PO Box 480, Jefferson City, MO. 65102 and by email at foodandnutritionservices@dese.mo.gov. 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 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 30—Division of Financial and Administrative Services
Chapter 680—Food and Nutrition Services

PROPOSED AMENDMENT

5 CSR 30-680.020 Special Milk Program for Children. The State Board of Education is amending the incorporated by reference material and amending section (1).

PURPOSE: This rule is being amended to incorporate the federal regulations published in 7 CFR part 215, which are used to administer the Special Milk Program for Children.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) This rule incorporates federal regulations, as contained in 7 CFR part 215, which are used to administer the Special Milk Program for Children. Specific areas in this rule include requirements for participation, reimbursement procedures, administrative analyses, and audits. **7 CFR part 215 of the *Code of Federal Regulations*, which is incorporated by reference and made a part of this rule by the Office of the Federal Register, Office of Administration, is available by contacting the U.S. Government Publishing Office, 732 North Capitol Street NW, Washington, DC 20401-0001, as published in August 2021. A copy of this regulation can also be obtained from the Department of Elementary and Secondary Education, Division of Financial and Administrative Services, Food and Nutrition Services Section, 205 Jefferson Street, PO Box 480, Jefferson City, MO 65102-0480 and at https://dese.mo.gov/governmental-affairs/dese-administrative-rules/incorporated-reference-materials. This rule does not include any later amendments or additions.**

AUTHORITY: sections ***161.092 and*** *178.430, RSMo [1986]* ***2016****. This rule was previously filed as 5 CSR 40-680.020. Original rule filed Dec. 24, 1975, effective Jan. 3, 1976. For intervening history, please consult the* ***Code of State Regulations****. Amended: Filed Aug. 19, 2021.*

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 Department of Elementary and Secondary Education, ATTN: Barbara Shaw, Coordinator, Division of Financial and Administrative Services, Food and Nutrition Services Section, 205 Jefferson St, PO Box 480, Jefferson City, MO 65102 and by email at foodandnutritionservices@dese.mo.gov. 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 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 30—Division of Financial and Administrative Services
Chapter 680—Food and Nutrition Services

PROPOSED RESCISSION

5 CSR 30-680.030 School Breakfast Program. This rule detailed state and local responsibilities for the administration of the School Breakfast Program including, but not limited to, requirements for

participation, reimbursement procedures, records and reports.

PURPOSE: This rule is being rescinded because the provisions in this rule are being moved to 5 CSR 30-680.010.

AUTHORITY: section 178.430, RSMo 1986. This rule was previously filed as 5 CSR 40-680.030. Original rule filed Dec. 24, 1975, effective Jan. 3, 1976. For intervening history, please consult the ***Code of State Regulations****. Rescinded: Filed Aug. 19, 2021.*

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 Department of Elementary and Secondary Education, ATTN: Barbara Shaw, Coordinator, Division of Financial and Administrative Services, Food and Nutrition Services Section, 205 Jefferson St, PO Box 480, Jefferson City, MO 65102 and by email at foodandnutritionservices@dese.mo.gov. 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 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 30—Division of Financial and Administrative Services
Chapter 680—Food and Nutrition Services

PROPOSED AMENDMENT

5 CSR 30-680.035 Food Service Equipment Assistance Program. The State Board of Education is amending the incorporated by reference material and amending section (1).

PURPOSE: This rule is being amended to incorporate the federal regulations published in 7 CFR part 230, governing the Nonfood Assistance Program, which implement P.L. 94-105.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) This rule details state and local responsibilities, as outlined in 7 CFR part 230, for administering the Food Service Equipment Assistance Program. Specific areas in this rule include use of funds, requirements for participation, reimbursement payments, claims for reimbursement, management evaluations and audits, procurement standards, and property management requirements. **7 CFR part 230 is hereby incorporated by reference and made a part of this rule as published by the U.S. Government Publishing Office, 732 North Capitol Street NW, Washington, DC 20401-0001, as published in August 2021. A copy of this regulation can also be obtained from the Department of Elementary and Secondary Education, Division of Financial and Administrative Services, Food and Nutrition Services Section, 205 Jefferson Street, PO Box 480, Jefferson City, MO 65102-0480 and at https://dese.mo.gov/governmental-affairs/dese-administrative-rules/incorporated-reference-materials. This rule does not include any later amendments or additions.**

AUTHORITY: sections ***161.092 and*** *178.430, RSMo [1986] **2016**. This rule was previously filed as 5 CSR 40-680.035. Original rule filed Oct. 14, 1976, effective Feb. 1, 1977. For intervening history, please consult the* ***Code of State Regulations****. Amended: Filed Aug. 19, 2021.*

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 Department of Elementary and Secondary Education, ATTN: Barbara Shaw, Coordinator, Division of Financial and Administrative Services, Food and Nutrition Services Section, 205 Jefferson St, PO Box 480, Jefferson City, MO 65102 and by email at foodandnutritionservices@dese.mo.gov. 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 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 30—Division of Financial and Administrative Services
Chapter 680—Food and Nutrition Services

PROPOSED AMENDMENT

5 CSR 30-680.040 Cash in Lieu of Commodities. The State Board of Education is amending the incorporated by reference material and amending section (1).

PURPOSE: This rule is being amended to incorporate the federal regulations published in 7 CFR part 240, which are used to distribute cash in lieu of commodities and specify how these funds may be used.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) This rule details state and local responsibilities, as outlined in 7 CFR part 240, which are used to distribute cash in lieu of commodities and specify how these funds may be used. Specific areas in this rule include apportionment of funds, use of funds, payments to schools, records, and reports. **7 CFR part 240 is hereby incorporated by reference and made a part of this rule as published by the U.S. Government Publishing Office, 732 North Capitol Street NW, Washington, DC 20401-0001, in August 2021. A copy of this regulation can also be obtained from the Department of Elementary and Secondary Education, Division of Financial and Administrative Services, Food and Nutrition Services Section, 205 Jefferson Street, PO Box 480, Jefferson City, MO 65102-0480 and at https://dese.mo.gov/governmental-affairs/dese-administrative-rules/incorporated-reference-materials. This rule does not include any later amendments or additions.**

AUTHORITY: sections ***161.092 and*** *178.430, RSMo [1986] **2016**. This rule was previously filed as 5 CSR 40-680.040. Original rule filed Dec. 24, 1975, effective Jan. 3, 1976. Amended: Filed Dec. 27, 1976, effective April 15, 1977. Amended: Filed Aug. 19, 2021.*

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 Department of Elementary and Secondary Education, ATTN: Barbara Shaw, Coordinator, Division of Financial and Administrative Services, Food and Nutrition Services Section, 205 Jefferson St, PO Box 480, Jefferson City, MO 65102 and by email at foodandnutritionservices@dese.mo.gov. 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 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 30—Division of Financial and Administrative Services
Chapter 680—Food and Nutrition Services

PROPOSED RESCISSION

5 CSR 30-680.050 Determining Eligibility for Free and Reduced Price Meals and Milk in Schools. This rule detailed state and local administrative responsibilities for determining eligibility for free and reduced price meals and free milk in schools.

PURPOSE: This rule is being rescinded because the provisions in this rule are being moved to 5 CSR 30-680.010.

AUTHORITY: section 161.092, RSMo Supp. 2014, and section 178.430, RSMo 2000. This rule was previously filed as 5 CSR 40-680.050. Original rule filed Dec. 24, 1975, effective Jan. 3, 1976. For intervening history, please consult the ***Code of State Regulations****. Rescinded: Filed Aug. 19, 2021.*

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 Department of Elementary and Secondary Education, ATTN: Barbara Shaw, Coordinator, Division of Financial and Administrative Services, Food and Nutrition Services Section, 205 Jefferson St, PO Box 480, Jefferson City, MO 65102 and by email at foodandnutritionservices@dese.mo.gov. 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 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 30—Division of Financial and Administrative Services
Chapter 680—Food and Nutrition Services

PROPOSED AMENDMENT

5 CSR 30-680.060 Food Distribution. The State Board of Education is amending the incorporated by reference material and amending section (1).

PURPOSE: This rule is being amended to incorporate the federal regulations published in 7 CFR part 250, which are used to administer the Food Distribution Program.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) This rule details state and local responsibilities, as outlined in 7 CFR part 250, which are used to administer the Food Distribution Program. Specific areas in this rule include availability of donated foods, eligible recipients, disposition of damaged or out-of-condition foods**,** and obligations and responsibilities of states and recipient agencies which enter into agreement with food processors. **7 CFR Part 250 is incorporated by reference and made a part of this rule as published by the U.S. Government Publishing Office, 732 North Capitol Street NW, Washington, DC 20401-0001, in August 2021. A copy of this regulation can also be obtained from the Department of Elementary and Secondary Education, Division of Financial and Administrative Services, Food and Nutrition Services Section, 205 Jefferson Street, PO Box 480, Jefferson City, MO 65102-0480 and at https://dese.mo.gov/governmental-affairs/dese-administrative-rules/incorporated-reference-materials. This rule does not include any later amendments or additions.**

AUTHORITY: sections ***161.092 and*** *167.201, RSMo [1986]* ***2016****. This rule was previously filed as 5 CSR 40-680.060. Original rule filed Dec. 24, 1975, effective Jan. 3, 1976. For intervening history, please consult the* ***Code of State Regulations****. Amended: Filed Aug.19, 2021.*

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 Department of Elementary and Secondary Education, ATTN: Barbara Shaw, Coordinator, Division of Financial and Administrative Services, Food and Nutrition Services Section, 205 Jefferson St, PO Box 480, Jefferson City, MO. 65102 and by email at foodandnutritionservices@dese.mo.gov. 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 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 30—Division of Financial and Administrative Services
Chapter 680—Food and Nutrition Services

PROPOSED AMENDMENT

5 CSR 30-680.070 Summer Food Service Program—Request for Waiver. The State Board of Education is adding a new section (1), incorporated by reference material, renumbering as needed, and amending renumbered section (2).

PURPOSE: This rule is being amended to reflect current department

language usage and to incorporate federal materials by reference.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) The Summer Food Service Program is authorized by 42 U.S.C. section 1761, which is hereby incorporated by reference and made a part of this rule as published by the U.S. Government Publishing Office, 732 North Capitol Street NW, Washington, DC 20401-0001, as published in August 2021. A copy of this code can also be obtained from the Department of Elementary and Secondary Education, Division of Financial and Administrative Services, Food and Nutrition Services Section, 205 Jefferson Street, PO Box 480, Jefferson City, MO 65102-0480 and at https://dese.mo.gov/governmental-affairs/dese-administrative-rules/incorporated-reference-materials. This rule does not include any later amendments or additions

*[(1)]***(2)** Summer Food Service Participation Waiver.

(A) A public school district may receive a waiver from participating in the Summer Food Service Program from the Department of Elementary and Secondary Education *[(DESE)]* **(department)**. The board of education of the school district seeking a waiver must adopt by majority vote a resolution requesting a waiver from participating in the Summer Food Service Program.

(B) A written request for a waiver shall be filed with *[DESE]* **the department** and shall contain the name of the school district, a statement indicating the board of education's reason(s) for the waiver, the date of the board action, the effective date of the waiver**,** and the signature of the board president, board secretary**,** or superintendent.

(C) A request for a waiver may be submitted at any time during the year but should be submitted before the end of the school year. Following *[DESE]* **department** approval of a waiver, it will be valid for a period of three (3) years. At the end of that time, the request process must be repeated. A board of education may rescind a waiver at any time.

(D) Documentation of the waiver must be kept on file at the school district office and made available for review by interested individuals.

AUTHORITY: sections ***161.092 and*** *191.810, RSMo [Supp. 1992]* ***2016****. Original rule filed Dec. 21, 1992, effective Aug. 9, 1993. Amended: Filed Aug. 19, 2021.*

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 Department of Elementary and Secondary Education, ATTN: Barbara Shaw, Coordinator, Division of Financial and Administrative Services, Food and Nutrition Services Section, 205 Jefferson St, PO Box 480, Jefferson City, MO 65102 and by email at foodandnutritionservices@dese.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 6—DEPARTMENT OF HIGHER EDUCATION AND WORKFORCE DEVELOPMENT
Division 10—Commissioner of Higher Education and Workforce Development
Chapter 2—Student Financial Assistance Programs

PROPOSED RULE

6 CSR 10-2.195 A+ Dual Credit/Dual Enrollment Scholarship Program

PURPOSE: This rule sets forth the policies of the Coordinating Board for Higher Education regarding institutional and student eligibility for student financial assistance under the A+ Dual Credit/Dual Enrollment Scholarship program.

(1) Definitions.

(A) A+ designated high school shall mean a high school that the Department of Elementary and Secondary Education has determined meets the requirements established in section 160.545, RSMo, and has been approved by the Board of Education for participation in the A+ Program.

(B) A+ Dual Credit/Dual Enrollment Scholarship shall mean the tuition reimbursement program set forth in subsection 160.545.9, RSMo.

(C) Approved institution shall mean any institution located in the state of Missouri that meets the requirements set forth in subdivisions 173.1102.1(2), (3), or (4), RSMo, that has been approved under 6 CSR 10-2.140, and that has been approved to participate in the federal student financial assistance programs created in Title IV of the Higher Education Act of 1965, as amended.

(D) Award year shall be from July 1 of any year through June 30 of the following year.

(E) CBHE shall mean the Coordinating Board for Higher Education created by section 173.005.2, RSMo.

(F) Department shall mean the Department of Higher Education and Workforce Development created by section 173.005.1, RSMo.

(G) Dual Credit coursework shall mean college level courses taught by high school instructors to high school students who are simultaneously earning both high school and college credit for these courses.

(H) Dual Enrollment coursework shall mean college level courses taught by postsecondary faculty to high school students who are earning college credit, and may be earning high school credit, for these courses.

(I) Eligible coursework shall mean dual credit or dual enrollment coursework provided by an approved institution.

(J) Eligible student shall mean a student at an A+ designated high school who has applied for the Dual Credit/Dual Enrollment Scholarship program and who has been verified by the A+ designated high school in accordance with subsection (2)(A) of this rule.

(K) Recipient shall mean an eligible student who has been verified by an approved institution in accordance with subsection (3)(A) of this rule and has been paid an award.

(L) Repeat coursework shall be any coursework for which the recipient has been assigned a grade under the institution's standard grading policy, excluding coursework for which the recipient was placed in an incomplete or withdrawn status, in a previous term.

(M) Student shall mean a student attending an A+ designated high school who is applying for, or has applied for, a Dual Credit/Dual Enrollment Scholarship award.

(N) Tuition and fees shall mean any charges to eligible students classified as tuition and any institutional fees charged to all dual credit or dual enrollment students, excluding course-specific fees.

(O) Tuition reimbursement shall mean an amount of money paid by the state of Missouri to an eligible student enrolled in dual credit or dual enrollment coursework under the A+ Dual Credit/Dual Enrollment Scholarship program for costs related to tuition and

general fees, subject to state appropriations, after all other sources of non-loan funding have been applied.

(2) Responsibilities of A+ Designated High Schools.

(A) Verify which students enrolled in dual credit or dual enrollment coursework have met the eligibility requirements listed in section (4) of this rule except for paragraph (4)(A)2.

(B) Submit the information required to verify student eligibility to the department by the deadline established for each semester.

(3) Responsibilities of Approved Institutions.

(A) Before requesting reimbursement for an eligible student, verify the following:

1. The eligible student is enrolled in eligible coursework;

2. The amount of the reimbursement request, including the number of hours in which the eligible student is enrolled and the credit hour rate for those hours; and

3. The eligible student is a U.S. citizen or permanent resident.

(B) Comply with the institutional responsibilities required in section 6 CSR 10-2.140(5), with the exception of paragraph 6 CSR 10-2.140(5)(A)5.

(C) Verify all other sources of non-loan funding are applied correctly to tuition and general fees, as specified in subsection (6)(C) of this rule.

(4) Eligibility Policy.

(A) To qualify for tuition reimbursement, a student must meet the following criteria:

1. Attend an A+ designated high school or high schools for at least two (2) years prior to the semester in which tuition reimbursement is being sought. Enrollment during the two (2) years in which the student was in attendance at one (1) or more A+ designated high schools must total a minimum of seventy-five percent (75%) of the instructional days required by the high school at which the student is enrolled while taking the dual credit or dual enrollment coursework. Interruptions in enrollment cumulatively totaling no more than twenty-five percent (25%) of instructional days in the two (2) years in which the student was in attendance at one (1) or more A+ designated high schools may occur consecutively or intermittently;

2. Be a U.S. citizen or permanent resident;

3. Enter into a written agreement as required by paragraph 6 CSR 10-2.190(3)(A)4. with the A+ designated high school prior to the semester in which tuition reimbursement is being sought;

4. Meet the high school's requirements for taking dual credit or dual enrollment coursework, except that students must have a minimum overall unweighted high school grade point average of at least two and one-half (2.5) on a four-point (4.0) scale, or the equivalent on another scale, through the semester immediately preceding the semester in which tuition reimbursement is being sought;

5. Have at least a ninety-five percent (95%) attendance record overall through the semester immediately preceding the semester in which tuition reimbursement is being sought;

6. Meet one (1) of the following indicators of college preparedness prior to the semester in which tuition reimbursement is being sought, unless the A+ school district has met all of the Department of Elementary and Secondary Education's (DESE) requirements for waiver of the Algebra I end-of-course exam for the student:

A. Have achieved a score of proficient or advanced on the official Algebra I end-of-course exam, or a higher level DESE approved end-of-course exam in the field of mathematics; or

B. Meet other criteria established by the CBHE. The CBHE will develop these criteria in consultation with approved institutions and A+ designated high schools and may revise these criteria annually;

7. Have maintained a record of good citizenship and avoidance of the unlawful use of drugs and/or alcohol through the semester immediately preceding the semester in which reimbursement is being sought. Student participation in the Constitution Project of Missouri may be included in a student's record of good citizenship in accordance with the A+ designated high school's policy; and

8. Be enrolled in eligible coursework.

(5) Application and Evaluation.

(A) The department shall prescribe the time and method for filing applications for tuition reimbursement under the A+ Dual Credit/Dual Enrollment Scholarship program. It shall make announcement of its action in these respects.

(B) Students must submit a completed application by any established deadlines to be considered for tuition reimbursement.

(C) The department will evaluate each application and assign the eligible student's payment rank in accordance with subsection (6)(E) of this rule.

(6) Award Policy.

(A) Tuition reimbursement shall occur each semester within one (1) award year.

(B) Tuition reimbursement will be as specified for the following categories of eligible coursework:

1. Completed coursework for which a grade is assigned under the institution's standard grading policy, including coursework assigned a grade of incomplete, will be reimbursed;

2. Dropped or withdrawn coursework will be reimbursed, based on the approved institution's tuition refund policy; and

3. Repeat high school dual credit or dual enrollment coursework will not be reimbursed.

(C) The amount of the tuition reimbursement must be calculated based on the remaining costs of actual tuition and fees after all other non-loan aid has been applied.

(D) Tuition reimbursement is subject to legislative appropriation.

(E) If insufficient funds are available to pay all eligible students, the department will rank eligible students first from lowest to highest Adjusted Gross Income as provided in the eligible student's application and then from earliest application received date, and will make reimbursement according to rank order until all available funds for the semester are expended.

(F) Tuition reimbursement will be made for dual credit or dual enrollment coursework taken in the fall and spring semesters, but no tuition reimbursement will be made for such coursework taken in summer school.

(G) No tuition reimbursement will be made retroactive to a previous award year. Tuition reimbursement will be made retroactive to a previous semester only upon the sole discretion of the department.

(H) Tuition reimbursement will be made only after institutional certification of the eligible student's eligibility and the amount of the tuition reimbursement.

(I) The recipient's award will be sent to the approved institution to be delivered to the student's account.

(J) An eligible student's failure to provide required information by the established deadlines may result in loss of the A+ Dual Credit/Dual Enrollment Scholarship for the period covered by the deadline.

(K) The CBHE has the discretion to withhold payments of any tuition reimbursements after initiating an inquiry into the eligibility or continued eligibility of an eligible student or recipient.

(L) A recipient may receive tuition reimbursement from more than one (1) approved institution in a semester or award year.

(7) Information Sharing Policy. All information on an individual's A+ Dual Credit/Dual Enrollment Scholarship application may be shared with the financial aid office of the approved institution providing the individual's dual credit or dual enrollment coursework, or the A+ designated high school the student is attending, to permit verification of data submitted. Information may be shared with federal financial aid offices, if necessary, to verify data furnished by state or federal governments as provided for in the Privacy Act of 1974, 5 U.S.C. sections 552 and 552a.

AUTHORITY: section 160.545, RSMo Supp. 2021 and Executive Order 10-16, dated January 29, 2010. Original rule filed Aug. 27, 2021.

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Higher Education and Workforce Development at PO Box 1469 Jefferson City, Missouri 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 9—Internal Control System

PROPOSED RULE

11 CSR 45-9.123 Minimum Internal Control Standards (MICS)—Chapter W

*PURPOSE: This rule establishes the internal controls for Chapter W of the **Minimum Internal Control Standards**.*

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here. The Minimum Internal Control Standards may also be accessed at http://www.mgc.dps.mo.gov.

(1) The commission shall adopt and publish minimum standards for internal control procedures that in the commission's opinion satisfy 11 CSR 45-9.020, as set forth in *Minimum Internal Control Standards* (MICS) Chapter W—Hybrid Table Game Systems, which is incorporated by reference and made part of this rule as adopted by the commission on August 25, 2021, and published by the Missouri Gaming Commission, 3417 Knipp Dr., PO Box 1847, Jefferson City, MO 65102, and which may be accessed at http://www.mgc.dps.mo.gov. This rule does not incorporate any subsequent amendments or additions.

AUTHORITY: sections 313.004 and 313.817, RSMo 2016, and sections 313.800, 313.805, 313.812, and 313.830, RSMo Supp. 2021. Original rule filed Aug. 26, 2021.

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

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

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule via email to MGCPolicy@mgc.dps.mo.gov, or by mail to the Missouri Gaming Commission, Policy Section, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. A public hearing is scheduled for November 1, 2021, at 10:00 a.m., in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.*

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 90—Missouri 911 Service Board
Chapter 2—911 Financial Assistance Program

PROPOSED AMENDMENT

11 CSR 90-2.010 Definitions. The board is amending subsection (1)(G).

PURPOSE: This amendment changes the definition of eligible applicants to include elected emergency services boards consistent with a change to section 650.335, RSMo that became effective on August 28, 2021.

(1) As used in this chapter, the following terms shall mean:

(G) "Eligible applicants" or "Applicants," counties *[and]***,** cities**, and elected emergency service boards** that sections 650.330 and 655.335, RSMo**,** authorize to submit applications to the board for grants and loans to finance all or a portion of the costs incurred by their 911 services authorities in implementing a 911 communications service project;

*AUTHORITY: sections 650.330 and 650.335, RSMo Supp. **[2020] 2021**. Emergency rule filed May 6, 2020, effective May 21, 2020, expired Feb. 25, 2021. Original rule filed May 7, 2020, effective Dec. 30, 2020. Amended: Filed Aug. 31, 2021.*

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 Missouri 911 Service Board, PO Box 2126, Jefferson City MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 26—Dealer Licensure

PROPOSED RULE

12 CSR 10-26.230 Dealer Administrative Fees and System Modernization

PURPOSE: Section 301.558, RSMo, requires motor vehicle dealers collecting administrative fees to remit ten percent (10%) of those fees to the Motor Vehicle Administration Technology Fund for the development of a modernized, integrated system for the Department of Revenue. This rule clarifies the process for declaring whether an administrative fee is charged and, if so, the amount, the process for remitting payment and reporting sales, disciplinary action that may occur for failure to timely remit payment, and provides other guidelines for modernization efforts.

(1) Beginning December 1, 2021, all motor vehicle dealers, boat dealers, and powersport dealers licensed pursuant to sections 301.550 to 301.580, RSMo, ("licensees") who charge an administrative fee as allowed under section 301.558, RSMo, must remit funds equaling ten percent (10%) of all administrative fees collected to the Motor Vehicle Administration Technology Fund (the "fund") for the implementation of the modernized, integrated system described in section 301.558, RSMo. If an administrative fee is charged but is later refunded or credited back to the purchaser of a vehicle or vessel, no credit or refund will be permitted on any fees remitted to the fund.

(A) Beginning on January 20, 2022, for motor vehicle, boat, and powersport sales in December 2021, and on or about the 20th of each month thereafter for sales occurring the month prior, an electronic notification will be generated and issued to each licensee which charges an administrative fee in compliance with 301.558, RSMo. The electronic notification will indicate the amount due and payable to the fund, and the licensee must authorize the Department of Revenue to initiate an automated clearing house (ACH) transaction with the licensee's financial institution to credit/debit the amount due and payable to the fund. The amount due and payable will be ten percent (10%) of each administrative fee charged by the licensee based upon the total number of sales reported in the previous month, as well as any additional or amended sales in prior monthly sales reports, less any sales exempted pursuant to section 301.558.5, RSMo.

1. Any licensee charging administrative fees must provide the following information to the Department of Revenue:

A. Name of the bank or other financial institution;

B. Banking or other financial institution account number;

C. Banking or other financial institution routing number;

D. Whether or not the account is a checking or savings account;

E. Signature of an authorized person on the bank or other financial institution account; and

F. Any other information necessary to complete the monthly ACH transaction.

(2) Effective January 1, 2022, all licensees will be required to apply for licensure or license renewal through the Department of Revenue's electronic online business licensing portal.

(3) All current licensees in existence when this rule becomes effective must, prior to December 1, 2021, in a manner prescribed by the Department of Revenue, declare whether they are charging an administrative fee in their current licensure period and, if so, the amount of the administrative fee being charged in accordance with section 301.558, RSMo. In addition, all current licensees must provide the information required by paragraph (1)(A)1. above.

(4) Effective January 1, 2022, as part of an initial application for licensure or a licensee's renewal application for licensure, any applicant or licensee must declare whether it intends to collect an administrative fee under section 301.558, RSMo, and if so, at what dollar amount that fee will be established. The applicant or licensee must charge the declared administrative fee to all retail customers for the entire licensure period on all sales not exempted pursuant to section 301.558.5, RSMo. In addition, all applicants desiring to collect an administrative fee and renewal licensees must provide the information required by paragraph (1)(A)1. above.

(A) Licensees shall be authorized to charge an administrative fee of up to five hundred dollars ($500), and the maximum fee permitted to be charged shall be increased annually as described in section 301.558.4, RSMo. The director of the Department of Revenue shall base any maximum fee increase identified on an annual review of the prior calendar year, and shall furnish the maximum annual fee determined to the secretary of state on January 15 of each year, or as soon as is practicable thereafter.

(B) The table outlined in 12 CSR 10-26.231 provides calendar year adjustments to the administrative fee in accordance with section 301.558, RSMo.

(C) Franchised new motor vehicle dealers limited by a franchise agreement, or documents incorporated by the franchise agreement, may exempt certain classes of customers clearly identified in the franchise agreement or incorporated documents from being required to charge the declared administrative fee. New motor vehicle dealers seeking licensure or renewal shall indicate whether any classes of customers are exempted under the terms of its franchise agreement or incorporated documents and must report any exempted sales in its monthly electronic sales reporting required by section 301.280, RSMo, and this rule.

1. The licensee must maintain monthly documentation in a table or worksheet of all sales which are exempted and include in the table or worksheet the purchaser's name, date of sale, class of customer, as well as the year, make, and Vehicle Identification Number (VIN) of the purchased vehicle.

2. The required documentation must be provided to the Department of Revenue upon a request to inspect such documentation, and the documentation must be maintained for a minimum of three (3) years after the year in which the sale occurred.

3. Upon implementation of updates to the electronic dealer sales reporting system incorporating a means to report exempted sales, the department may notify licensees that they no longer need to meet the requirements of paragraphs (4)(C)1.-2. above.

(5) Any licensee who fails to meet its obligation relating to section 301.558, RSMo, or this rule shall be subject to disciplinary action for violation of section 301.562.2(8), including, but not limited to, suspension; revocation; non-renewal of the licensee's license to operate a motor vehicle dealership; and revocation of the ability to issue temporary registrations upon the sale of vehicles. If appropriate, the Department of Revenue may enter into a settlement with the licensee consistent with section 501.562.7, RSMo, to resolve a disciplinary action arising under this provision. Any such settlement will only be entered into upon full payment of monies owed and payable to the fund, and any other amounts assessed as a result of disciplinary action shall be separate and distinct from monies owed to the fund. An employee with the Department of Revenue, as well as any other duly authorized law enforcement agency, may audit any licensee in similar manner and scope as is allowed under section 301.564, RSMo, to ensure compliance with the requirements of section 301.558, RSMo, and this rule.

(6) To ensure the timely remittance of all dealer fees required to be paid pursuant to sections 301.550 to 301.580, RSMo, all sales required to be reported pursuant to section 301.280, RSMo, must be filed electronically with the Department of Revenue for the 2022 licensure year and every year thereafter. However, any dealer which has been previously licensed prior to January 1, 2022, and who is not charging an administrative fee may choose to file sales reports electronically or by paper process until the next license renewal.

AUTHORITY: sections 301.553 and 301.558, RSMo Supp. 2021. Emergency rule filed Aug. 19, 2021, effective Sept. 2, 2021, expires Feb. 28, 2022. Original rule filed Aug. 19, 2021.

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate, as any costs associated with the proposed rule are not a product of the rule itself but incident to the statutory changes included in SB 176 (2021).

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars ($500) in the aggregate, as any costs associated with the proposed rule are not a product of the rule itself but incident to the statutory changes included in SB 176 (2021).

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Revenue, Administration Division, 301 W. High Street, Room 218, Jefferson City, MO 65105-0475. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 10—Division of Finance and Administrative Services
Chapter 3—Tax Credits

PROPOSED AMENDMENT

13 CSR 10-3.040 Domestic Violence Shelter ***and Rape Crisis Center*** **Tax Credit**. The division is amending the title of the rule, the purpose, and sections (2)–(6).

PURPOSE: This amendment adds rape crisis centers to the Domestic Violence Shelter Tax Credit under section 135.550, RSMo, to reflect the requirements of House Bill 430 (2021).

PURPOSE: This rule describes the procedures for the implementation of section 135.550, RSMo, Domestic Violence Shelter ***and Rape Crisis Center*** *Tax Credit,* ***and*** *to reflect the requirements of [SB 614 (2006)]* ***House Bill 430 (2021)****.*

(2) Definition of Terms.

(B) *["Qualified Shelter for victims of domestic violence,"]* **"Qualified facility for domestic violence" or "qualified facility,"** for the purpose of the Domestic Violence Shelter **and Rape Crisis Center** Tax Credit, means a shelter for victims of domestic violence **located in Missouri** that meets the definition stated in section *[135.550]* **455.220**, RSMo**, or a nonprofit organization established and operating exclusively for the purpose of supporting a shelter for victims of domestic violence operated by the state or one (1) of its political subdivisions**.

(C) "Rape Crisis Center" means a community-based nonprofit rape crisis center, as defined in section 455.003, RSMo, located in Missouri and that provides the twenty-four- (24-) hour core services of hospital advocacy and crisis hotline support to survivors of rape and sexual assault.

(3) The director will**, at least** annually**,** develop and maintain a list of domestic violence shelters **and rape crisis centers** which are qualified for the *[Domestic Violence Shelter Tax Credit]* **tax credit**.

(A) Information provided on the list available to taxpayers will be the domestic violence shelter **or rape crisis center** name and telephone number.

(B) A copy of the qualified *[shelters]* **facilities** is posted on the DSS website and will be made available to taxpayers upon request to the address referenced in paragraph (4)(A)1.

(4) **At least** *[A]***a**nnually, the director will determine which facilities in *[the state of]* Missouri may be classified as shelters for victims of domestic violence **or rape crisis centers** for purposes of the *[Domestic Violence Shelter Tax Credit]* **tax credit**. In order to be an eligible *[shelter]* **facility** for purposes of the *[Domestic Violence Shelter Tax Credit]* **tax credit**, a facility must meet the definition as set forth in section 135.550, RSMo.

(A) In order for the director to make such determinations, applicants for eligibility must submit the following information:

1. A complete and accurate Domestic Violence Shelter **or Rape Crisis Center** Tax Credit Application for Agency Eligibility Verification. Applications are available at the Department of Social Services website*[:]* www.dss.mo.gov or may be obtained by sending a request to—

Department of Social Services
Attn: Domestic Violence Shelter **or Rape Crisis Center** Tax Credit Program
PO Box 216
Jefferson City, MO 65102-0216;

2. A copy of the articles of incorporation;

3. Verification of Internal Revenue Service (IRS) tax exempt status;

4. A brief program description including the number of individuals served annually and the capacity of the facility; and

5. All information should be submitted to the address referenced in paragraph (4)(A)1.

(B) All domestic violence shelters **or rape crisis centers** must establish their eligibility on **at least** an annual basis. All *[shelters]* **facilities** must submit the above information no later than June 1 *[of each calendar year]***, or as requested by the Department of Social Services,** to maintain their eligibility for the tax credit.

(C) Within forty-five (45) days of receipt of all the required documentation, the director will make a determination of eligibility and will notify the domestic violence shelters **or rape crisis centers** of the determination in writing. Upon a determination of eligibility, a *[shelter]* **facility** will automatically be added to the *[shelter]* **facility** listing.

(D) Qualified *[shelters]* **facilities** must contact the Department of Social Services within thirty (30) days of any changes in business functions that could impact their qualifying status. Within thirty (30) days of notification, the department will review the agency's eligibility for participation in this tax credit program and notify the agency of the determination in writing.

(5) **For fiscal years ending on or before June 30, 2022,** *[T]***t**he director shall equally apportion the total available tax credits among all qualified *[shelters for domestic violence]* **facilities** effective the first day of each state fiscal year (FY). **Beginning July 1, 2022, no apportionment is necessary because there is no limit imposed on the cumulative amount of the tax credit.**

(A) The director shall inform each qualified *[domestic violence shelter]* **facility** of its share of the apportioned credits no later than thirty (30) days following July 1 of each fiscal year.

(B) The director shall no less than quarterly review the cumulative amount of apportioned tax credits being utilized by each qualified *[domestic violence shelter]* **facility**. Upon request by the director, *[domestic violence shelters]* **facilities** will provide in writing the amount their *[shelter]* **facility** plans to utilize in tax credits for the fiscal year. Domestic violence shelters **or rape crisis centers** seeking additional apportionment should submit requests to the director in writing. If a *[domestic violence shelter]* **facility** fails to use all or a portion of their available tax credits throughout the fiscal year, the director may reapportion these unused tax credits to maximize the amount of tax credits available to taxpayers.

(C) Within thirty (30) days of any reapportionment, the director shall notify in writing those *[domestic violence shelters]* **facilities** that would be affected by the reapportioned tax credit. The director will consider comments the domestic violence shelters **or rape crisis centers** submit concerning planned future uses of the agency's tax credit allocation prior to the end of the thirty- (30-) day period. The director's decision regarding reapportionment shall be final.

(6) A qualified *[shelter]* **facility** shall report the receipt of any contribution it believes qualifies for the tax credit on a form provided by the director. This form is known as the Domestic Violence Shelter **or Rape Crisis Center** Tax Credit Application *[F]***f**or Claiming Tax Credits.

(A) *[Shelters]* **Facilities** may request the tax credit application at the Department of Social Services website*[:]* www.dss.mo.gov or by writing to the address referenced in paragraph (4)(A)1.

(B) *[Shelters]* **Facilities** shall be permitted to decline a contribution from a taxpayer.

(C) The tax credit application shall be submitted to the director by the domestic violence shelter **or rape crisis center** within one (1) calendar year of the receipt of the contribution. Tax credit applications submitted more than one (1) year following the date of the contribution will be void and the right to the tax credit will be forfeited.

(D) Verifying documentation must be attached to the tax credit application when submitted by the domestic violence shelter **or rape crisis center**. The type of documentation required will depend on the type of donation. Required documentation includes the following:

1. Cash—legible receipt from the domestic violence shelter **or rape crisis center** which indicates the name and address of the organization; name, address, and telephone number of the contributor; amount and date the contribution was received; signature of a representative of the domestic violence shelter **or rape crisis center** receiving the contribution;

2. Check—photocopy of the canceled check, front and back—if not possible then copy of the original check and a receipt from the domestic violence shelter **or rape crisis center** including the same information required of a cash donation as described in paragraph (6)(D)1. of this rule;

3. Credit card—legible transaction receipt with the name and address of the domestic violence shelter **or rape crisis center**; contributor's name, address, and telephone number; amount and date the contribution was received; signature of a representative of the *[domestic violence shelter]* **facility** receiving the contribution. Receipts should have the credit card account number blacked out;

4. Money order or cashier's check—legible copy of the original document with the name and address of the domestic violence shelter **or rape crisis center**; contributor's name, address, and telephone number; amount and date the contribution was received; signature of a representative of the *[domestic violence shelter]* **facility** receiving the contribution;

5. Regarding contributions of stocks and bonds, the amount of the contribution is the fair market value of the item as of the date of the donation. Information required when submitting applications for tax credit shall include the source and date the stock was *[valued]* **donated** and how the bond amount was determined**. Stock value will be determined by calculating the average of the high and low prices for the stock on the date the facility received the stock, multiplied by the number of shares donated**; **and**

6. The value of contributions of real estate shall be the fair market value of the real estate within three (3) months of the date of the donation. The fair market value is the lower of at least two (2) qualified independent appraisals for commercial, vacant, or residential property that has been determined to have a value of over fifty thousand dollars ($50,000). Commercial, vacant, or residential property having a value fifty thousand dollars ($50,000) or less will require only one (1) appraisal. The appraisals will be conducted by two (2) different licensed real estate appraisers*[; and]***.**

*[7.]***(E)** Contributions that include a benefit to the donor—in addition to the documentation needed in paragraphs (6)(D)1.–6., the domestic violence shelter **or rape crisis center** must provide written documentation of the type of function or event from which the benefit was received, description of the benefit received (if an auction item, identify the item received), gross amount of the contribution, fair market value of the benefit, and how the fair market value of the benefit was determined.

*AUTHORITY: section[s 135.550 and] 660.017, RSMo 2016, **and section 135.550, RSMo Supp. 2021**. This rule originally filed as 13 CSR 40-79.010. Emergency rule filed Sept. 18, 2006, effective Oct. 1, 2006, expired March 29, 2007. Original rule filed Sept. 18, 2006, effective March 30, 2007. Moved to 13 CSR 10-3.040 and amended: Filed July 19, 2018, effective March 30, 2019. Amended: Filed Aug. 20, 2021.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Social Services, Legal Services Division-Rulemaking, PO Box 1527, Jefferson City, MO 65102-1527, or by email to Rules.Comment@dss.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 10—Division of Finance and Administrative Services
Chapter 3—Tax Credits

PROPOSED AMENDMENT

13 CSR 10-3.050 Maternity Home Tax Credit. The division is amending sections (1), (2), (9), and (12).

PURPOSE: This proposed amendment implements changes to the Maternity Home Tax Credit calculation pursuant to House Bill 430 (2021).

(1) A maternity home may apply for tax credits on behalf of taxpayers who make contributions to the agency. **For fiscal years ending on or before June 30, 2022,** *[T]***t**he amount of tax credit issued may be equivalent to up to fifty percent (50%) of the contribution to the agency. **For fiscal years starting on or after July 1, 2022, the amount of tax credits issued may be equivalent to up to seventy percent (70%) of the contribution to the agency.** Initial credits issued cannot be less than fifty dollars ($50). The amount of credit claimed by a taxpayer cannot exceed the amount of the taxpayer's state tax liability for the taxable year the credit is claimed and cannot exceed fifty thousand dollars ($50,000) per taxable year. The total amount of tax credits issued under this rule cannot exceed the amount stated in section 135.600, RSMo**,** in a fiscal year.

(2) Definitions.

(A) "Agency," in the context of this rule, is a qualified maternity home.

*[(A)]***(B)** "Director," means the director of the Department of Social Services or designee.

*[(B)]***(C)** "Qualified maternity home," for the purpose of the Maternity Home Tax Credit, means a maternity home that meets the definition stated in section 135.600, RSMo.

(9) A qualified maternity home shall report the receipt of any contribution it believes qualifies for the tax credit on a form provided by the Department of Social Services. This form is known as the Maternity Home Tax Credit Application for Claiming Tax Credits.

(D) Verifying documentation must be attached to the tax credit application when submitted by the Maternity Home. The type of documentation necessary will depend on the type of donation. Necessary documentation includes:

1. Cash—legible receipt from the maternity home, which indicates the name and address of the maternity home; name, address, and telephone number of the contributor; amount of the cash donation and the date the contribution was received; and a signature of a representative of the maternity home receiving the contribution;

2. Check—photocopy of the canceled check, front and back—if not possible then copy of the original check and a receipt from the

maternity home including the same information needed for a cash donation as described in paragraph (9)(D)1. of this subsection;

3. Credit card—legible transaction receipt with the name and address of the maternity home; name, address, and telephone number of the contributor; amount and date the contribution was received; and a signature of a representative of the maternity home receiving the contribution. Receipts should have the credit card account number blacked out;

4. Money order or cashier's check—legible copy of the original document with the name and address of the maternity home; name, address, and telephone number of the contributor; amount of the cash donation and the date the contribution was received; and a signature of a representative of the maternity home receiving the contribution;

5. Regarding contributions of stocks and bonds, the amount of the contribution is the fair market value of the item as of the date of the donation. Information needed when submitting applications for tax credit shall include the source and date the stock was donated and how the bond amount was determined, and confirmation documentation of the transfer from the contributor's account to the maternity home**. The division shall directly determine the stock value by calculating the average of the high and low prices for the stock on the date the facility received the stock, multiplied by the number of shares donated**; **and**

6. The value of contributions of real estate is the fair market value of the real estate within three (3) months of the date of the donation. The fair market value is the lower of at least two (2) qualified independent appraisals for commercial, vacant, or residential property that has been determined to have a value of over fifty thousand dollars ($50,000). Commercial, vacant, or residential property having a value of fifty thousand dollars ($50,000) or less will require only one (1) appraisal. The appraisals will be conducted by two (2) different, licensed real estate appraisers*[; and]***.**

*[7.]***(E)** Contributions that include a benefit to the donor- in addition to the documentation necessary in paragraphs (9)(D)1.–6., the maternity home should provide written documentation of the type of function or event from which the benefit was received, description of the benefit received (if an auction item, identify the item received), gross amount of the contribution, fair market value of the benefit, and how the fair market value of the benefit was determined.

(12) **For fiscal years ending on or before June 30, 2022,** *[T]***t**he director shall equally apportion the total available tax credits among all qualified maternity homes and the apportionment will be effective the first day of each state fiscal year (FY). **Beginning July 1, 2022, no apportionment is necessary because there is no limit imposed on the cumulative amount on the tax credit.**

*AUTHORITY: section 660.017, RSMo 2016, and section 135.600, RSMo Supp. [2018] **2021**. This rule previously filed as 13 CSR 40-80.010. Emergency rule filed May 26, 1998, effective June 11, 1998, expired Feb. 25, 1999. Original rule filed May 26, 1998, effective Nov. 30, 1998. Amended: Filed Sept. 1, 1999, effective April 30, 2000. Rescinded, moved, and readopted: Filed July 19, 2018, effective March 30, 2019. Amended: Filed Aug. 20, 2021.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Social Services, Legal Services Division-Rulemaking, PO Box 1527, Jefferson City, MO 65102-1527, or by email to Rules.Comment@dss.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 65—Missouri Medicaid Audit and Compliance
Chapter 2—Medicaid

PROPOSED AMENDMENT

13 CSR 65-2.010 Definitions. The department is adding new sections (1), (2), (11), (17), (22), (26), (31)-(35), (37), (40), (41), (51), and (52). The department is also deleting sections (18), (27)-(29), and (48), and is renumbering accordingly. The department is also amending every other section of the rule.

PURPOSE: This amendment combines and clarifies definitions found in this regulation and definitions formerly found in 13 CSR 70-3.020, which is being rescinded, making it easier for providers to locate and understand the definitions. Additionally, this regulation now mirrors federal Medicaid program integrity regulatory requirements that Missouri must follow as a condition of its federal Medicaid funding.

(1) Affiliates means persons having an overt, covert, or conspiratorial relationship so that any one (1) of them directly or indirectly controls or has the power to control another.

(2) Agent means any person who has been delegated the authority to obligate or act on behalf of a provider.

*[(1)]***(3)** Application shall include:

(A) Enrollment application to become a MO HealthNet Program provider;

(B) Revalidation application to remain a MO HealthNet Program provider;

(C) New practice location application;

(D) Provider direct deposit application;

(E) Change of ownership application;

(F) Hardship waiver request; or

(G) Other information **Missouri Medicaid Audit and Compliance (**MMAC**)** needs, under applicable federal or state laws and regulations as they pertain to the Medicaid program, in order to enroll a MO HealthNet Program provider.

*[(2)]***(4)** Application fee means a fee required to be paid by a MO HealthNet Program institutional provider at the time of—

(A) Initial application;

(B) Revalidation application;

(C) Change of ownership application; or

(D) New practice location application.

*[(3)]***(5)** Applying provider means any person submitting an application *[to become a MO HealthNet Program provider, submitting a renewal or revalidation application to continue to be a MO HealthNet Program provider and/or submitting an application to establish a new practice location]* **as defined in section (3) above**.

*[(4)]***(6)** Approve/*[A]***a**pproval as to a billing provider means the billing provider has been determined to be eligible under Medicaid rules and regulations to receive a Medicaid billing number and be granted Medicaid billing privileges.

*[(5)]***(7)** Approve/*[A]***a**pproval as to a performing provider means the performing provider has been determined to be eligible under Medicaid rules and regulations to receive a **non-billing** Medicaid *[billing]* number.

*[(6)]***(8)** Best interests of the MO HealthNet Program shall include consideration of the following factors:

(A) Ensuring reasonable access to MO HealthNet Program services;

(B) Promoting health, safety, and welfare of participants;

(C) The provider's history of compliance with applicable rules and regulations related to the MO HealthNet Program; and

(D) Any other factors related to MO HealthNet Program integrity.

*[(7)]***(9)** Billing provider means a provider or supplier who is authorized to bill the MO HealthNet Program for items or services provided to Medicaid participants. Billing provider includes providers who are authorized to bill Medicaid for items or services provided by performing providers.

*[(8)]***(10)** Closed-end provider agreement means an agreement which is for a specific period of time not to exceed *[twelve (12)]* **twenty-four (24)** months and which must be renewed in order for the provider to continue to participate *[as a]* **in the** Missouri Medicaid *[Title XIX, SCHIP Title XXI, or Waiver program provider]* **Program**.

(11) Conviction or convicted means that—

(A) A judgment of conviction has been entered by a federal, state, or local court, regardless of whether an appeal from that judgment is pending;

(B) A person has pled guilty to a criminal offense; or

(C) A person is serving any period of probation or parole, regardless of any suspended imposition of sentence or suspended execution of sentence resulting from that offense.

*[(9)]***(12)** Deactivate means that the provider's *[billing privileges were stopped, but such provider's billing number was not terminated]* **participation in the MO HealthNet program is stopped**.

*[(10)]***(13)** Deny/*[D]***denial** means the applying provider has been determined to be ineligible under Medicaid rules and regulations to *[receive a Medicaid billing number and/or Medicaid billing privileges]* **participate in the MO HealthNet program**.

*[(11)]***(14)** Department means the Department of Social Services or its designated divisions or units.

*[(12)]***(15)** Enroll/*[E]***enrollment** means the process that MMAC uses to establish eligibility to *[receive a Medicaid billing number and/or Medicaid billing privileges]* **participate as a provider in the MO HealthNet program**. The process includes:

(A) Identification of a provider **and any owners**;

(B) Validation of the provider's *[eligibility to provide items or services to Medicaid beneficiaries]* **qualifications to meet program requirements**;

(C) Screening the provider and owners through all required federal and state databases;

*[(C)]***(D)** Identification and confirmation of the provider's practice location(s) and owner(s); and

*[(D)]***(E)** Granting the provider *[Medicaid billing privileges and/or a Medicaid billing number]* **a MO HealthNet number**.

*[(13)]***(16)** Enrollment application means a MMAC*[-]* approved paper enrollment application or *[an electronic]* **a** MMAC*[-]* approved **electronic** enrollment process.

(17) Exclusion from participation in a federal health care program (e.g., Medicare and Medicaid) is a penalty imposed on a provider by the Office of Inspector General (OIG) under section 1128 or 1128A of the Social Security Act. Individuals and entities may be excluded by the OIG for misconduct ranging from fraud convictions, to patient abuse, to defaulting on health education loans. States may also exclude providers from their Medicaid Programs under state law or pursuant to 42 CFR section 1002.2.

*[(14)]***(18)** Federal health care program means a program as defined in section 1128B(f) of the Social Security Act.

*[(15)]***(19)** Fiscal agent means an organization under contract to the state of Missouri for providing services related to the administration of the MO HealthNet Program.

*[(16)]***(20)** Hardship means a financial condition in which paying the application fee would impose a significant financial burden on the provider, and the provider is otherwise eligible to be a MO HealthNet Program provider. Other factors which may indicate that a hardship exists include:

(A) Considerable bad debt expenses incurred by the provider;

(B) Considerable amount of charity care/financial assistance furnished to patients;

(C) Presence of substantive partnerships (whereby clinical, financial integration are present) with those who furnish medical care to a disproportionately low-income population;

(D) Whether an institutional provider receives considerable amounts of funding through disproportionate share hospital payments; or

(E) Whether the provider is enrolling in a geographic area that is a presidentially declared disaster area under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. **sections** 5121-5206 (Stafford Act).

*[(17)]***(21)** Hardship waiver request means a request submitted to MMAC (defined below) along with the provider application requesting that the application fee be waived due to hardship, detailing the hardship, and providing any documentation in support of the hardship waiver request.

[(18) Institutional provider is a non-corporeal provider. Individual physicians, individual dentists, and individual non-physician practitioners are not institutional providers. Institutional provider includes, but is not limited to:

(A) Ambulance service suppliers (ambulance);

(B) Ambulatory surgical centers;

(C) Community mental health centers;

(D) Comprehensive outpatient rehabilitation centers (comprehensive rehabilitation centers);

(E) End stage renal disease facilities (dialysis clinic);

(F) Federally qualified health centers;

(G) Health clinics;

(H) Histocompatibility laboratories;

(I) Home health agencies;

(J) Hospices;

(K) Hospitals;

(L) Inpatient psychiatric facilities;

(M) Inpatient rehabilitation facilities;

(N) Independent clinical laboratories;

(O) Independent diagnostic testing facilities;

(P) Mammography centers;

(Q) Mass immunizers (roster billers);

(R) Mental health hospitals or inpatient facilities;

(S) Organ procurement organizations;

(T) Outpatient physical therapy facilities;

(U) Outpatient occupational therapy facilities;

(V) Outpatient rehabilitation centers;

(W) Outpatient speech pathology services;

(X) Pharmacies;

(Y) Portable x-ray suppliers (independent x-ray supplier);

(Z) Public health department clinics;

(AA) Skilled nursing facilities (nursing home);

(BB) Radiation therapy centers;

(CC) Religious nonmedical healthcare institutions;

(DD) Rural health clinics;

(EE) Other institutional entities that bill the MO HealthNet

Program on a fee-for-service basis, such as personal care agencies, nonemergency transportation providers, residential care facilities, adult day care facilities, assisted living facilities, residential treatment centers, providers billing under the Consumer Directed Services Program or entities established under sections 205.968-205.973, RSMo;

(FF) Durable medical equipment, prosthetics, orthotics, and supplies suppliers whether owned by physicians or otherwise;

(GG) Institutional non-profit and public providers;

(HH) Institutional providers establishing a new practice location in a different enrollment jurisdiction or as a new provider type;

(II) Local education agencies, which are institutional providers consistent with the state plan; or

(JJ) Any other types of non-corporeal MO HealthNet Program providers consistent with the state plan, the Waiver Program, and CHIP Title XXI.]

(22) Indirect ownership interest means an ownership interest in an entity that has an ownership interest in the disclosing entity. This term includes an ownership interest in any entity that has an indirect ownership interest in the disclosing entity.

*[(19)]***(23)** Limited provider agreement means an agreement with an applying provider which has been accepted as a MO HealthNet Program provider by MMAC (defined below) conditional upon the applying provider performing services, delivering supplies, or otherwise participating in the program only in adherence to, or subject to, specially set out conditions agreed to by the applying provider prior to enrollment.

*[(20)]***(24)** Managed care entity *[has the same meaning as set forth in 42 CFR Section 455.101 (2011)]* **means managed care organizations (MCOs), pre-paid inpatient health plans (PIHPs), pre-paid ambulatory health plans (PAHPs), primary care case management (PCCMs), and health improvement organizations (HIOs) or any similar managed care program type created by the state Medicaid agency**.

*[(21)]***(25)** Managing employee means a**n owner, member, partner, director,** general manager, business manager, administrator, *[director,]* **school district superintendent,** or other individual who exercises operational or managerial control over, or who directly or indirectly conducts, the day-to-day operation of the provider, either under contract or through some other arrangement, whether or not the individual is a W–2 employee of the provider.

(26) Medicaid agency or the agency means the single state agency administering or supervising the administration of the state Medicaid plan.

*[(22)]***(27)** Missouri Medicaid Audit and Compliance Unit (MMAC) means the unit within the Department of Social Services that is responsible for *[the oversight and auditing of]* **program integrity and** compliance *[for]* **in** the Medicaid Title XIX, CHIP Title XXI, and Waiver Programs in Missouri, which includes the *[oversight]* **enrollment** and auditing *[of compliance]* of MO HealthNet providers and Medicaid participants through the lock-in program. MMAC is charged with the responsibility of detecting, investigating, and preventing fraud, waste, and abuse of the Missouri Medicaid Title XIX, CHIP Title XXI, and Waiver Programs.

*[(23)]***(28)** Medical assistance benefits means those benefits authorized to be provided by Chapter 208, RSMo.

*[(24)]***(29)** MO HealthNet Program means programs operated pursuant to Title XIX of the Social Security Act, Title XXI of the Social Security Act, and/or waiver programs authorized by the United States Department of Health and Human Services.

[(25) MO HealthNet Program provider means applying provider, billing provider, and/or performing provider.]

*[(26)]***(30)** MO HealthNet means the division within the department, pursuant to **sections** 208.001 and 208.201, RSMo that administers the Medicaid Title XIX, CHIP Title XXI, and waiver programs, approves claims from MO HealthNet providers for services or merchandise provided to eligible Medicaid participants, and authorizes and disburses payment for those services or merchandise accordingly.

[(27) Non-physician practitioner means any person other than a physician or dentist that provides medical, dental, or professional items or services such as, but not limited to, nurses, therapists, counselors, social workers, pharmacists, pharmacies, and dental hygienists. This does not include persons that provide nonmedical support services such as clerical staff, carpenters, janitorial staff, food service workers, home health aides, personal care aides, Adult Day Health Care employees and Adult Day Care waiver employees, community support workers and case managers, peer specialists, family support workers, family assistance workers, psychosocial rehabilitation workers, detox technicians/aides, residential technicians/aides, personal assistants, non-professional direct care staff and other secondary support services, but does include the organizations that bill for services provided by these persons.

(28) Owner means any individual or entity that has any partnership interest in, or that has five percent (5%) or more direct or indirect ownership of, the provider as defined in sections 1124 and 1124A(a) of the Social Security Act.

(29) Ownership or control interest means a person has a direct or indirect ownership of five percent (5%) or more, or is a managing employee, of a provider.]

(31) The National Provider Identifier (NPI) is a Health Insurance Portability and Accountability Act (HIPAA) Administrative Simplification Standard. The NPI is a unique identification number for covered health care providers. Covered health care providers and all health plans and health care clearinghouses must use NPIs in administrative and financial transactions adopted under HIPAA.

(32) Network Provider means any provider, group of providers, or entity that has a network provider agreement with a MCO, or a subcontractor, and receives Medicaid funding directly or indirectly to order, refer or render covered services as a result of the state's contract with an MCO. A network provider is not a subcontractor by virtue of the network provider agreement.

(33) Open-end provider agreement means an agreement that has no specific termination date and continues in force as long as it is agreeable to both the state Medicaid agency and the enrolled provider.

(34) Organizational provider is a non-corporeal provider. Individual physicians or other individually licensed practitioners are not institutional providers. Organizational provider includes, but is not limited to:

(A) Ambulance service suppliers, health clinics, hospitals, pharmacies, and skilled nursing facilities;

(B) Other organizational entities that bill the MO HealthNet Program on a fee-for-service basis, such as personal care agencies, nonemergency transportation providers, residential care

facilities, adult day care facilities, assisted living facilities, residential treatment centers, providers billing under the Consumer Directed Services Program or entities established under sections 205.968-205.973, RSMo; and

(C) Any other types of non-corporeal MO HealthNet Program providers consistent with the state plan, the Waiver Program, and CHIP Title XXI.

(35) Other disclosing entity means any other Medicaid disclosing entity and any entity that does not participate in Medicaid, but is required to disclose certain ownership and control information because of participation in any of the programs established under title V, XVIII, or XX of the Act. This includes:

(A) Any hospital, skilled nursing facility, home health agency, independent clinical laboratory, renal disease facility, rural health clinic, or health maintenance organization (meaning all MCOs) that participates in Medicare (title XVIII);

(B) Any Medicare intermediary or carrier; and

(C) Any entity (other than an individual practitioner or group of practitioners) that furnishes, or arranges for the furnishing of, health-related services for which it claims payment under any plan or program established under title V or title XX of the Act.

*[(30)]***(36)** Participant means a person who is eligible to receive benefits allocated through the department as part of the MO HealthNet Program.

(37) Participation means the ability and authority to provide services or merchandise to eligible MO HealthNet participants.

*[(31)]***(38)** Performing provider means a provider or supplier who provides items or services to Medicaid participants, but who does not directly bill **or receive payment from** the MO HealthNet Program *[for such items or services or does not directly receive payment from the MO HealthNet Program for such items or services]*. Performing provider **can** also include*[s]* referring *[and/or]***,** ordering**, prescribing, and/or attending** physicians*[, dentists]*, and non-physician practitioners.

*[(32)]***(39)** Person means any corporeal person or individual; or any legal or commercial entity, including but not limited to, any partnership, corporation, not-for-profit, professional corporation, business trust, estate, trust, limited liability company, association, joint venture, governmental agency, or public corporation.

(40) Person with an ownership or control interest, as defined in sections 1124 and 1124A(a) of the Social Security Act, means a person or corporation that—

(A) Has an ownership interest totaling five percent (5%) or more in a disclosing entity;

(B) Has an indirect ownership interest equal to five percent (5%) or more in a disclosing entity;

(C) Has a combination of direct and indirect ownership interests equal to five percent (5%) or more in a disclosing entity;

(D) Owns an interest of five percent (5%) or more in any mortgage, deed of trust, note, or other obligation secured by the disclosing entity if that interest equals at least five percent (5%) of the value of the property or assets of the disclosing entity;

(E) Is an officer or director of a disclosing entity that is organized as a corporation;

(F) Is a partner in a disclosing entity that is organized as a partnership; or

(G) Is a managing employee.

(41) Practitioner means a physician or other individual licensed under state law to practice his or her profession.

*[(33)]***(42)** Provider means billing and performing providers and includes any person that enters into a contract or provider agreement with MMAC for the purpose of providing items or services to Missouri Medicaid participants. Provider includes ordering *[and]***,** referring**, prescribing, and/or attending** physicians, *[dentists,]* and non-physician practitioners.

*[(34)]***(43)** Provider agreement means an agreement*[, no greater than five (5) years in duration, and no less than twelve (12) months in duration, requiring revalidation prior to expiration of the agreement,]* with MMAC which *[provides]* **authorizes** a provider *[with the authority]* to *[provide]* **furnish** items or services to eligible Missouri Medicaid participants.

*[(35)]***(44)** Provider application means the MMAC approved application and supplemental forms required to be submitted for the purpose of becoming a MO HealthNet Program provider, containing *[all]* information and documentation requested by MMAC.

*[(36)]***(45)** Provider direct deposit means a *[signed writing utilizing]* form*[s]* specified by MMAC *[containing all information requested by MMAC]* and submitted by a provider of Medicaid Title XIX, CHIP Title XXI, or Waiver Program services for the purpose of having Missouri Medicaid checks automatically deposited to an authorized bank account.

*[(37)]***(46)** Reject/*[R]***rejected means that the provider's enrollment application was not *[processed]* **approved** due to incomplete **or incorrect** information, failure to submit **an** application fee, *[or hardship waiver request,]* or *[that additional information or corrected information was not received from the provider in a timely manner]* **the applying provider is not eligible to participate in the MO HealthNet Program**.

*[(38)]***(47)** Revalidation means the requirement that all existing *[MO HealthNet Program]* providers must go through *[a revalidation]* **an** application process *[in accordance with this rule to continue to be a]* **to verify their enrollment information is current, and they are still eligible to participate in the** MO HealthNet Program *[provider]*.

*[(39)]***(48)** Revalidation application means an approved MMAC revalidation application and supplemental forms which are required to be submitted by all existing *[MO HealthNet Program]* providers**,** containing all information and documentation requested by MMAC under applicable federal or state laws and regulations**,** and submitted at the time revalidation is required pursuant to this rule.

*[(40)]***(49)** Site visit may include any or all of the following:

(A) Physical visit to, and inspection of, the premises of the provider or a beneficiary's home if the provider has no central operational facility;

(B) Obtaining photographs of the provider or the provider's business for inclusion in the provider's enrollment file;

(C) Full documentation of observations made at the provider's premises including such facts as:

1. The facility was vacant and free of all furniture;

2. A notice of eviction or similar documentation is posted at the facility; and

3. The premises are not occupied by the provider, but by another person;

(D) A written report of the findings regarding each site visit;

(E) Verification that the facility is operational, open for business, and staff is present;

(F) Verification that customers are present at the facility where appropriate for the provider type;

(G) Acceptance of attestation with documentation when deemed appropriate by MMAC and consistent with applicable federal or state laws and regulations; or

(H) Acceptance of proof of a recent site visit under the Medicare program or other state Medicaid program when deemed appropriate by MMAC and consistent with applicable federal or state laws and regulations.

*[(41)]***(50)** State plan means a document completed by the state of Missouri to tell the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) how the state will administer the MO HealthNet Program according to federal laws and regulations.

(51) Subcontractor means—

(A) An individual, agency, or organization to which a disclosing entity has contracted or delegated some of its management functions or responsibilities of providing medical care to its patients; or

(B) An individual, agency, or organization with which a fiscal agent has entered into a contract, agreement, purchase order, or lease (or leases of real property) to obtain space, supplies, equipment, or services provided under the Medicaid agreement.

(52) Supplier means an individual, agency, or organization from which a provider purchases goods and services used in carrying out its responsibilities under Medicaid (e.g., a commercial laundry, a manufacturer of hospital beds, or a pharmaceutical firm).

*[(42)]***(53)** Suspension from participation means *[an exclusion from being a provider]* **a provider is not authorized to provide MO HealthNet Program services** for a specified or indefinite period of time.

*[(43)]***(54)** Suspension of payments means withholding of **MO HealthNet Program** payments otherwise due to a provider for a specified or indefinite period of time.

*[(44)]***(55)** Termination means the department's *[non-temporary]* discontinuation of a provider's *[billing privileges and/or elimination of the provider's number]* **participation in the MO HealthNet program**.

*[(45)]***(56)** Voluntary termination means that a provider submits written confirmation to MMAC of its decision to discontinue *[enrollment]* **participation** in the MO HealthNet Program.

*[(46)]***(57)** Waiver program means programs authorized in section 1915 of the Social Security Act (or other waiver programs authorized by federal law). *[These programs permit states to furnish an array of services that complement and/or supplement the services that are available to participants through the state plan.]*

*[(47)]***(58)** Written notice means a notice to the address of the provider as listed in MMAC's system, in writing, transmitted via the US mail, other public or private service for the delivery of correspondence, packages**,** or other things, facsimile, e-mail, or any other method/mode of transmittal that is deemed by MMAC to be an efficient, cost-effective, verifiable**,** and reliable method/mode of communication with the provider or applying provider.

[(48) Except to the extent inconsistent with this rule, the requirements of 13 CSR 70-3.020 and 13 CSR 70-3.030 remain in force, including any provisions regarding denial of applications and termination, until those provisions are rescinded.]

AUTHORITY: sections 208.159 and 660.017, RSMo [2000] ***2016****. Original rule filed Dec. 12, 2013, effective July 30, 2014. Amended: Filed Aug. 20, 2021.*

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Social Services, Legal Services Division-Rulemaking, PO Box 1527, Jefferson City, MO 65102-1527, or by email to Rules.Comment@dss.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 65—Missouri Medicaid Audit and Compliance
Chapter 2—Medicaid

PROPOSED AMENDMENT

13 CSR 65-2.020 Provider Enrollment and Application. The department is amending sections (1)-(6) and (9), adding new sections (7), (11), and (12), and is renumbering accordingly.

PURPOSE: This amendment combines and clarifies the procedures found in this regulation and the procedure formerly found at 13 CSR 70-3.020, which is being rescinded. MO HealthNet providers will no longer have to look in two (2) locations to find Medicaid provider enrollment requirements. The amendment clarifies the circumstances under which the department may deny a provider's enrollment application or terminate the participation of an enrolled provider. Additionally, the regulation now mirrors federal Medicaid program integrity regulatory requirements that Missouri must follow as a condition of its federal Medicaid funding.

(1) Enrollment.

(C) *[As required by 42 CFR Section 455.440, a]***A**ll claims for payment for items and services that were ordered**, prescribed,** or referred must contain the National Provider Identifier (NPI) of the provider who ordered**, prescribed,** or referred such items or services.

(D) All persons enrolled as MO HealthNet providers shall abide by the policies and procedures set forth in the MO HealthNet provider manual(s) applicable to the provider's provider type(s). The MO HealthNet provider manuals are incorporated by reference and made a part of this rule as published by the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109, *[at the website dss.mo.gov/mhd, January 15, 2014]* **and available at http://manuals.momed.com/manuals/, August 20, 2021**. This rule does not incorporate any subsequent amendments or additions. A MO HealthNet provider's breach of any MO HealthNet provider manual may result in imposition of sanctions, including but not limited to, termination.

(2) Applications.

(A) All applying providers shall have a valid e-mail address and shall submit a*[n]* MMAC approved application and any supplemental forms, information**,** and documentation required by MMAC for the appropriate provider type for which the person is applying.

(B) All information and documentation requested in the application and supplemental forms must be provided to MMAC prior to the application being *[considered and screening being conducted pursuant to this rule]* **approved**.

(C) Specific application instructions are modified as necessary for efficient and effective administration of the MO HealthNet Program as required by federal or state laws and regulations. Providers applying on or after the promulgation of this rule should refer to the

appropriate MMAC *[provider bulletins and]* application filing instructions *[for specific application filing instructions and information]*, which are incorporated by reference and made a part of this rule as published by the Department of Social Services, Missouri Medicaid Audit and Compliance Unit, 205 Jefferson Street, Second Floor, Jefferson City, MO 65109, at its website mmac.mo.gov, *[January 15, 2014]* **August 20, 2021**. This rule does not incorporate any subsequent amendments or additions.

(D) The application shall include all information required in the mandatory disclosures pursuant to section (3) **of this rule**. Upon submission of any application(s), supplemental form(s), information and documentation requested in the application(s) and supplemental form(s), MMAC may, at its discretion, request additional or supplemental information and documentation from the applying provider prior to considering the application and/or conducting screening pursuant to this rule in order to clarify any information previously submitted and to verify that the provider meets all applicable requirements of state or federal laws and regulations.

(3) All providers, fiscal agents, *[and]* managed care entities**, and persons with an ownership or control interest in the provider** are required to disclose as follows:

(A) The following disclosures are mandatory:

1. The name and address of **the applying provider and** any person**(s)** with *[an]* ownership *[or control interest]* in the *[applying]* provider. The address *[for corporate entities]* must include *[as applicable]* **the provider's** primary business address, *[every business location,]* **each additional practice location(s),** and **any corresponding** PO Box address**es**;

2. Date**s** of birth and Social Security number**s** (in the case of a corporeal person);

3. Other tax identification number**(s)** of any person with *[an]* ownership *[or control interest]* in the *[applying]* provider or in any subcontractor in which the *[applying]* provider has a five percent (5%) or more interest;

4. Whether any person with *[an]* ownership *[or control interest]* in the *[applying]* provider is related to another person with ownership *[or control interest]* in the *[applying]* provider as a spouse, parent, child, or sibling;

5. Whether any person with *[an]* ownership *[or control interest]* in any subcontractor in which the *[applying]* provider has a five percent (5%) or more interest is related to another person with ownership *[or control interest]* in the *[applying]* provider as a spouse, parent, child, or sibling;

6. The name of any other provider**(s)** *[or applying provider]* in which an owner of the applying **or enrolled** provider has *[an]* ownership *[or control interest]*; and

7. The name, address, date of birth, and Social Security number of any managing employee of the *[applying]* provider;

(B) Disclosures from any provider *[or applying provider]* are due at the following times, and must be updated within *[thirty-five (35)]* **thirty (30)** days of any changes in information required to be disclosed:

1. Upon *[the provider or applying provider submitting an application]* **initial enrollment, reenrollment, or revalidation**; and

2. Upon request of MMAC;

(C) Disclosures from fiscal agents are due at the following times:

1. Upon the fiscal agent submitting *[the]* **a** proposal;

2. Upon request of MMAC;

3. Ninety (90) days prior to renewal or extension of *[the]* **a** contract; and

4. Within *[thirty-five (35)]* **thirty (30)** days after any change in ownership of the fiscal agent;

(D) Disclosures from managed care entities (managed care organizations, prepaid inpatient health plans, prepaid ambulatory health plans, and health insuring organizations), except primary care case management programs, are due at the following times:

1. Upon the managed care entity submitting *[the]* **a** proposal;

2. Upon request of MMAC; *[and]*

3. Ninety (90) days prior to renewal or extension of the contract; **and**

4. Within thirty (30) days after any change in ownership;

(F) All *[D]***d**isclosures *[M]***m**ust be *[P]***p**rovided to MMAC. Disclosures not made to MMAC will be deemed non-disclosed and not in compliance with this section; and

(G) *[Consequences for Failure to Provide Required Disclosures]* **Administrative action(s) for failure to provide required disclosures**.

1. Any person's failure to provide, or timely provide, disclosures pursuant to this section may result in deactivation, denial, rejection, suspension, or termination **of the provider's participation in the MO HealthNet Program**. If the failure is inadvertent or merely technical, MMAC may choose not to impose *[consequences]* **administrative actions** if, after notice, the *[person]* **provider** promptly corrects the failure.

(4) Provider Revalidation.

[(A) All enrolled MO HealthNet Program providers as of the effective date of this rule who are not on a closed-end provider agreement shall revalidate their enrollment as a MO HealthNet Program provider, on or before March 24, 2019, according to schedule as determined by MMAC, by submitting an MMAC-approved revalidation application, supplemental forms, information, and documentation requested by MMAC, along with any required application fee, hardship waiver request, or documentation showing that the provider has revalidated with Medicare or another state's Medicaid Program or CHIP within the previous twelve (12) months, if applicable.]

*[(B)]***(A)** All *[MO HealthNet Program]* providers shall revalidate their enrollment *[as]* **with the** MO HealthNet *[providers]* **Division at least** every five (5) calendar years from the effective date of the provider's most recently executed provider agreement, in order to remain a MO HealthNet provider. For example, a provider whose initial or revalidated provider agreement *[is]* **was** effective on March 1, *[2014]* **2020** is required to revalidate *[his/her/its]* **their** enrollment no later than March 1, *[2019]* **2025**. **MMAC may request that the provider revalidate on an off-cycle revalidation period.**

*[(C)]***(B)** The MMAC*[-]* approved revalidation application, supplemental forms, information, and documentation requested by MMAC, along with the application fee and/or hardship waiver request, if applicable, shall be submitted no later than one*[-]* hundred twenty (120) days prior to the expiration of the effective provider agreement.

*[(D)]***(C)** Revalidating providers must comply with the requirements of this rule and will be subject to the screening process noted in this rule *[upon revalidation]* in order to have their applications for revalidation approved.

[(E) MMAC may request that the provider revalidate on an off-cycle revalidation period as a result of information obtained by MMAC indicating documented patterns of local health care fraud, national initiatives, complaints, or other reasons that cause MMAC to question the compliance of the provider with MO HealthNet Program.

(F) All MO HealthNet provider agreements with effective dates on or before the effective date of this rule shall be terminated by MMAC pursuant to the terms of the provider agreement, effective March 25, 2016, if the provider has not revalidated or begun the process of revalidation.]

(5) Application Fee.

(A) An application fee, hardship waiver request, and/or an exemption reason **provided in this rule** must accompany every *[institutional]* **organizational** provider's application.

(C) Failure to submit the application fee in *[the form of a cashier's check, money order, or electronic payment acceptable to MMAC for the]* **an acceptable form and/or for the** correct amount *[will]* **may** result in the return of the fee to the provider

and rejection of the application.

(D) Applying *[providers]* and *[MO HealthNet]* **revalidating** providers *[that are revalidating with the Missouri Medicaid Audit and Compliance Unit (MMAC)]* must submit an application fee**,** *[subject to the requirements of 13 CSR 65-2.020. The application fee is]* determined as follows:

1. As of the effective date of this rule for calendar year *[2015]* **2021**, five hundred *[fifty-three dollars ($553)]* **ninety-nine dollars ($599.00)**; and

2. For calendar year *[2016]* **2022** and subsequent years—

A. The amount of the application fee shall be the amount for the preceding year adjusted by the percentage change in the consumer price index for all urban consumers for the twelve- (12-) month period ending with June of the previous year as published by the Bureau of Labor Statistics of the United States Department of Labor. *[If the adjustment sets the fee at an uneven dollar amount, MMAC will round the fee to the nearest whole dollar amount; and]*

[B. The application fee will be effective from January 1 to December 31 of a calendar year.

(E) An institutional provider shall submit provider type for which the institutional provider is applying. If an application is denied and the institutional provider submits another application, an additional application fee shall be included with each, all, and every subsequent application.]

*[(F)]***(E)** If **MMAC determines that** a person *[as defined herein]* is *[considered to be]* an *[institutional provider as defined herein]* **organizational provider**, that person is required to pay the **application** fee.

*[(G)]***(F)** Exemptions from Application Fee. *[Providers who are enrolled in, and paid the application fee required by CMS for Medicare or another state's Title XIX or Title XXI program within two (2) years of the date the application to enroll as a MO HealthNet Provider shall be exempt from paying an application fee. Providers seeking an exemption from the application fee are responsible for notifying MMAC, in writing, that they qualify for exemption and for providing proof of such qualification.]* **MMAC may waive the application fee under the following conditions:**

1. Providers who are enrolled in, and paid the application fee required by CMS for Medicare or another state's Title XIX or Title XXI program within two (2) years of the date the application to enroll as a MO HealthNet Provider shall be exempt from paying an application fee.

2. MMAC, in consultation with other state of Missouri departments, divisions and units, determines that imposition of the application fee would impede Missouri Medicaid participants' access to care;

3. A provider is submitting a provider application as a result of a national or state public health emergency situation as lawfully declared by a federal or state authority; and

4. The provider is owned and operated by the state of Missouri or an agency of the state of Missouri.

(G) Providers seeking an exemption from the application fee are responsible for notifying MMAC, in writing, that they qualify for exemption and for providing proof of such qualification.

(6) Hardship Waiver Request.

(A) *[Institutional providers may submit application fee hardship waiver requests when submitting their initial enrollment applications, their revalidation applications, and their applications to establish new practice locations.]* **Providers can request a hardship waiver of the application fee from the Centers for Medicare and Medicaid (CMS) when submitting their initial enrollment application or a revalidation application, but the request must be received by MMAC before the application will be processed by MMAC. A hardship waiver request will not be considered if it is received by MMAC after MMAC approves the application or revalidation. If CMS approves the hardship waiver, MMAC will refund the application fee to the provider.**

[(B) A hardship waiver request may be granted if any of the following exists:

1. The provider demonstrates, via authenticated financial and legal records, hardship and MMAC, at its discretion, determines that imposition of the application fee would result in a hardship for the provider subject to the following requirements:

A. All records submitted in support of a hardship waiver must be authenticated by an affidavit signed under oath by the applying provider's or provider's owner(s) and chief financial officer or chief executive officer. Records not meeting this requirement shall not be considered as evidence of hardship;

B. Providers applying for hardship waivers must permit, upon request, MMAC to inspect the provider's financial records and other records MMAC deems relevant to MMAC's determination of whether hardship exists, including, but not limited to, historical cost reports, recent financial reports such as balance sheets and income statements, cash flow statements, and tax returns. Any provider who does not permit MMAC to inspect such records upon MMAC's request shall be denied a hardship waiver. Any provider who is denied a hardship waiver request based upon the provider's failure to permit MMAC to inspect the provider's financial records and any other records MMAC deems relevant to MMAC's determination of whether a hardship exists, shall not be eligible for a waiver under paragraph (6)(B)1. for a period of five (5) years from the date of MMAC's letter notifying the provider that its hardship waiver request was denied due to the provider's failure to permit MMAC to inspect the provider's records; and

C. A provider who is granted a hardship waiver pursuant to paragraph (6)(B)1. shall not be granted a second waiver based upon paragraph (6)(B)1. for a period of five (5) years from the date of MMAC's letter notifying the provider that its most recent paragraph (6)(B)1. waiver request was granted;

2. MMAC, in consultation with other state of Missouri departments, divisions and units, determines that imposition of the application fee would impede Missouri Medicaid participants' access to care;

3. A provider is submitting a provider application as a result of a national or state public health emergency situation as lawfully declared by a federal or state authority; and

4. The provider is owned and operated by the state of Missouri or an agency of the state of Missouri.]

(B) A provider that requests a hardship waiver must submit a letter and supporting documentation that describes the hardship and why the hardship justifies an exception, including providing comprehensive documentation (which may include, but is not limited to, historical cost reports, recent financial statements such as balance sheets and income statements, cash flow statements, or tax returns).

(C) *[Application fee hardship waiver requests shall be considered by MMAC on a case-by-case basis.]* **Factors that may suggest a hardship exception is appropriate include, but are not limited to, the following:**

1. Considerable bad debt expenses;

2. Significant amount of charity care/financial assistance furnished to patients;

3. Presence of substantive partnerships with those who furnish care to a disproportionately low-income population;

4. Whether an institutional provider receives considerable amounts of funding through disproportionate share hospital payments; or

5. Whether the provider is enrolling in a geographic area that is a Presidentially-declared disaster area under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

(D) *[Application fee hardship waiver requests are subject to approval by CMS.]* **Upon receipt of a hardship waiver request with an application, MMAC will send the request and all accompanying documentation to CMS. CMS will determine if the request should be approved. CMS will communicate its decision to the institutional provider and MMAC via letter.**

(7) Appeal of the Denial of a Hardship Waiver Request. A provider may file a written reconsideration request with CMS within sixty (60) calendar days from the date of the notice of initial determination. The request must be signed by the individual provider, a legal representative, or any authorized official within the entity. The procedures for submitting an appeal will be provided on the denial letter from CMS.

*[(7)]***(8)** MMAC shall use the application fee to offset the costs associated with the provider screening program in its entirety. This includes, but is not limited to, the following:

(A) Implementation and augmentation of MMAC's provider enrollment system; and

(B) Any other administrative costs related to the provider screening program, which include costs associated with processing fingerprints and conducting criminal background checks. The application fee does not cover the cost associated with capturing fingerprints and a provider may be charged additional costs for this purpose in addition to the application fee.

*[(8)]***(9)** Refund of the Application Fee.

(A) If an institutional provider is granted a hardship exception pursuant to this rule or if the application is rejected because it was not properly signed or is missing other information required to be provided on the application itself, and an application fee was included with the application and the hardship waiver request, the application fee shall be returned to the applying provider.

(B) Once the screening process has begun, regardless whether the application goes through part or all of the screening process, the application fee is non-refundable.

*[(9)]***(10)** Screening.

(A) The screening requirements contained in this section apply to all applying providers and to all persons disclosed, or required to be disclosed, in the application.

(B) MMAC shall conduct pre-enrollment screening and post-enrollment monthly screenings. Screenings *[shall]* **may** include the following:

1. Screening pursuant to 42 CFR sections 455.410(a), (b); 42 CFR 455.412; 42 CFR 455.432; 42 CFR 455.436; and 42 CFR 455.452;

2. Screening to ensure that the providers meet all enrollment criteria for their provider type;

3. *[Unannounced]* **Announced or unannounced** pre- and post-approval site visits; and

4. For screening purposes, utilization of databases and other sources of information to prevent enrollment of *[non-existent]* **fictitious** providers, to ensure that spurious applications are not processed, and to prevent fraud, waste, and abuse in the MO HealthNet Program.

[(C) The screening procedures and requirements in this rule shall be implemented as of the effective date of this rule.

(D) The new screening procedures and requirements will be applicable to all enrolled MO HealthNet Program providers and applying providers as of the effective date of this rule. All enrolled MO HealthNet providers are required to revalidate according to the schedule of revalidation. After being screened pursuant to this rule, MO HealthNet Program providers will be required to revalidate every five (5) years from the date of their most recent revalidation.

(E) Upon the effective date of this rule, no provider shall be allowed to enroll or revalidate in the MO HealthNet Program without being screened pursuant to this rule. On or before March 25, 2016, all providers in, and applying providers to, the MO HealthNet Program shall be screened pursuant to this section. By operation of law, any provider who has not been screened pursuant to this section on or before March 25, 2016, shall have his/her/its provider number deactivated at 5:00 p.m. on March 25, 2016. Such deactivation shall remain in effect until the provider or applying provider has been screened pursuant to this rule.]

(C) The screening procedures and requirements are applicable to all enrolled or applying providers. All providers are required to revalidate their MO HealthNet enrollment(s) at least every five (5) years.

*[(F)]***(D)** The following screening categories are established for MO HealthNet providers, as required by federal law and regulation for Medicare and Medicaid providers under 42 CFR section 424.518 and section 1902(kk)(1) of the Social Security Act. There are three (3) levels of screening: limited, moderate, and high. Each provider type is assigned to one (1) of these screening levels. If a provider could fit within more than one (1) screening level described in this section, the highest risk category of screening is applicable.

1. Limited Risk Category.

A. The following providers pose a limited risk of fraud, waste, and abuse to the MO HealthNet Program and are subjected to limited category screening:

(I) Physicians*[, dentists,]* or non-physician practitioners (except as otherwise listed in another risk category) and medical groups or clinics *[with the exception of physical therapists and physical therapy(ist) groups]*;

(II) Ambulatory surgical centers (ASCs);

(III) Competitive acquisition program/Part B vendors;

(IV) End-stage renal disease (ESRD) facilities;

(V) Federally qualified health centers (FQHCs);

(VI) Histocompatibility laboratories;

(VII) Home infusion therapy suppliers;

*[(VII)]***(VIII)** Hospitals, including critical access hospitals (CAHs);

*[(VIII)]***(IX)** Health programs operated by an Indian Health Program (as defined in section 4(12) of the Indian Health Care Improvement Act) or an urban Indian organization (as defined in section 4(29) of the Indian Health Care Improvement Act) that receives funding from the Indian Health Service pursuant to Title V of the Indian Health Care Improvement Act *[(IHS)]*;

*[(IX)]***(X)** Mammography screening centers;

*[(X)]***(XI)** Mass immunization roster billers;

(XII) Opioid treatment programs (if 42 CFR 424.67(b)(3)(ii) applies);

*[(XI)]***(XIII)** Organ procurement organizations (OPOs);

*[(XII)]***(XIV)** Pharmacies;

(XV) Radiation therapy centers (RTCs);

*[(XIII)]***(XVI)** Religious nonmedical health care institutions (RNHCIs);

*[(XIV)]***(XVII)** Rural health clinics (RHCs); **and**

[(XV) Radiation therapy centers]

*[(XVI)]***(XVIII)** Skilled nursing facilities (SNFs).

[(XVII) Occupational therapists;

(XVIII) Speech language pathologists;

(XIX) Rehabilitation agencies; and

(XX) Community mental health centers (CMHC's)]

B. The providers in the limited category are subject to the following screening requirements:

(I) Verification that the *[applying]* provider, and all persons disclosed or required to be disclosed, meet all applicable federal

regulations and MO HealthNet Program requirements for the provider type;

(II) Verification that the *[applying]* provider, and all persons disclosed, have a valid license, operating certificate, or certification if required for the provider type, and that there are no current limitations on such licensure, operating certificate, or certification which would preclude enrollment;

(III) Verification that the *[applying]* provider's, and that of all persons disclosed, license(s) held in any other state has/have not expired and that there is/are no current limitations on such license(s) which would preclude enrollment;

(IV) Confirmation of the identity of the applying provider and determination of the exclusion status of the *[applying]* provider and any person with an ownership *[or control interest]* or who is an agent or managing employee of the provider through routine checks of the following federal databases:

(a) Social Security Administration's Death Master File;

(b) National Plan and Provider Enumeration System;

(c) List of Excluded Individuals/ Entities;

(d) The Excluded Parties List System;

(e) Medicare Exclusion Database; **and**

[(f) Department of the Treasury's Debt Check Database; and

(g) Department of Housing and Urban Development's (DHUD) Credit Alert System or Credit Interactive Voice Response System;

(V) Database checks of the Missouri Department of Revenue;]

(f) Any other databases CMS may prescribe;

*[(VI)]***(V)** Database check of the National Sex Offender Public Website;

*[(VII)]***(VI)** The information from these databases shall be used to determine eligibility of the MO HealthNet provider and for verification of*[:]* the identity of the applying person; the Social Security number; the National Provider Identifier (NPI); the National Practitioner Data Bank (NPDB) licensure; **and** any exclusion by the Department of Health and Human Services, Office of Inspector General; *[the taxpayer identification number; any Missouri tax delinquencies and death of the applying provider and all other persons disclosed in the applications and supplemental forms;]* and

*[(VIII)]***(VII)** MMAC may conduct preapproval site visits prior to acceptance of an applying provider's application.

2. Moderate Risk Category*[:]***.**

A. The following providers pose a moderate risk of fraud, waste, and abuse to the MO HealthNet Program and are subject to moderate screening requirements:

[(I) Comprehensive outpatient rehabilitation facilities (CORFs);

(II) Hospice organizations;

(III) Independent diagnostic testing facilities (IDTFs);

(IV) Independent clinical laboratories;

(V) Ambulance service suppliers;

(VI) Physical therapists including physical therapy groups;

(VII) Portable x-ray suppliers;

(VIII) Revalidating home health agencies;

(IX) Revalidating durable medical equipment providers;

(X) Adult day care waiver providers;

(XI) Personal care providers, including providers billing under the Consumer Directed Services program;

(XII) Entities established under sections 205.968-205.973, RSMo;

(XIII) Prosthetics, orthotics, and supplies suppliers (DMEPOS) (this includes an existing pharmacy durable medical equipment supplier that seeks to add a new DMEPOS supplier store, new practice locations, and those that are owned by occupational or physical therapists); or

(XIV) Non-emergency transportation providers; and]

(I) Adult Day Care providers (ADCs);

(II) Ambulance service suppliers;

(III) Community Mental Health Centers (CMHCs);

(IV) Comprehensive outpatient rehabilitation facilities (CORFs);

(V) Hospice organizations;

(VI) Independent clinical laboratories (ICLs);

(VII) Independent diagnostic testing facilities (IDTFs);

(VIII) Non-emergency transportation providers (NEMTs);

(IX) Personal care providers, including providers billing under the Consumer Directed Services program;

(X) Physical therapists including physical therapy groups;

(XI) Revalidating Diabetes Prevention Program providers (DPPs);

(XII) Portable x-ray suppliers (PXSs);

(XIII) Revalidating home health agencies (HHAs);

(XIV) Revalidating durable medical equipment suppliers (DMEPOS);

(XV) Revalidating opioid treatment programs; and

(XVI) Entities established under sections 205.968-205.973, RSMo.

B. In addition to the screening requirements for the limited risk category in paragraph *[(9)(F)]***(10)(D)**1., the providers in the moderate risk category shall be subject to *[pre-approval]* site visits prior to acceptance of an applying provider's application and are additionally subject to unannounced *[pre- and]* post-enrollment site visits*[—]***.**

[(I) To determine and ensure that the provider is operational at the practice location found on the enrollment application. For these purposes, "operational" means the provider has a qualified physical practice location, is open to the public for the purpose of providing health care related services, is prepared to submit valid Medicaid claims, and is properly staffed, equipped, and stocked (as applicable, based on the type of facility or organization, provider specialty, or the services or items being rendered), to furnish these items or services; and]

(II) To verify established provider standards or performance standards other than conditions of participation subject to survey and certification by MMAC, where applicable, to ensure that the provider remains in compliance with program requirements.]

3. High Risk Category.

A. The following providers pose a high risk of fraud, waste, and abuse to the MO HealthNet Program and are subject to high **risk** screening requirements:

(I) *[Prospective (n)]***N**ewly enrolling*[)]* **or reenrolling** home health agencies; *[and]*

(II) *[Prospective (n)]***N**ewly enrolling*[)]* **or reenrolling** DMEPOS suppliers; *[and]*

(III) Newly enrolling or reenrolling DPP suppliers; and

(IV) Newly enrolling or reenrolling opioid treatment programs that have not been fully and continuously certified by the Substance Abuse and Mental Health Services Administration (SAMHSA) since October 23, 2018.

B. In addition to the screening requirements for the limited **and moderate** risk *[category]* **categories** in paragraphs (9)(F)1. **and 2.** of this rule, *[and for the moderate risk category in paragraph (9)(F)2. Of this rule,]* the providers *[in the high risk category]* **and their owners** must submit to*[, or subject individuals with ownership or control interests to,]* a fingerprint-based criminal history report check of the Federal Bureau of Investigations (FBI) Integrated Automated Fingerprint Identification System—

(I) A revalidating provider who has already submitted fingerprints once will not be required to submit fingerprints a second time unless required by FBI protocols;

(II) Pursuant to 42 CFR section 455.434(b), the provider is responsible for the cost of *[taking]* **supplying** the fingerprints *[and supplying the fingerprints,]* and the state and federal government will share the cost of the processing of the fingerprints and the background check; and

(III) This fingerprint-based criminal history report check applies to all persons in this risk category applying to be a provider (whether as a billing or performing provider), or an individual with a five percent (5%) or greater direct or indirect ownership interest in such provider, or a managing employee*[;]***.**

*[(G)]***(E)** MMAC must adjust the categorical risk level from "limited" or "moderate" to "high" when any of the following occurs:

1. MMAC imposes a payment suspension on a provider based on a credible allegation of fraud, waste, or abuse by the provider; the provider has an existing Medicaid overpayment; or the provider has been excluded by the Department of Health and Human Services, Office of Inspector General or another state's Medicaid program within the previous ten (10) years. The upward adjustment of the provider's categorical risk level for a payment suspension or overpayment shall continue only so long as the payment suspension or overpayment continues; or

2. MMAC or CMS in the previous six (6) months lifted a temporary moratorium for the particular provider type and a provider that was prevented from enrolling based on the moratorium applies for enrollment as a provider at any time within six (6) months from the date the moratorium was lifted.

*[(H)]***(F)** If a person has been screened by Medicare or by another state Medicaid agency and paid Medicare or another state Medicaid agency's application fee, within two (2) years of the date of the application to MMAC, such person will not be subject to the screening requirements or application fee provided for by this rule except those screening requirements and application fee imposed pursuant to subsection *[(G)]* **(E)** of this section.

*[(I)]***(G)** Any MO HealthNet Program provider not categorized by this regulation as within the limited, moderate**,** or high risk category shall be a considered moderate risk and screened as a moderate risk.

*[(J)]***(H)** MMAC may request and consider additional information or documentation related to the eligibility criteria, if at any time during the application process it appears that*[:]* the enrollment application or supporting documentation is inaccurate, incomplete, or misleading; or it appears the applying person may be ineligible to become a MO HealthNet provider.

(11) The provider shall advise MMAC, in writing, on enrollment forms specified by MMAC, of any changes affecting the provider's enrollment records within ninety (90) days of the change, with the exception of change of ownership or control of any provider which must be reported within thirty (30) days.

(A) The Provider Enrollment Unit within MMAC is responsible for determining whether a current MO HealthNet provider record shall be updated or a new MO HealthNet provider record is created. A new MO HealthNet provider record is not created for any changes, including, but not limited to, change of ownership, change of operator, tax identification change, merger, bankruptcy, name change, address change, payment address change, Medicare number change, National Provider Identifier (NPI) change, or facilities/offices that have been closed and reopened at the same or different locations. This includes replacement facilities, whether they are at the same location or a different location, and whether the Medicare number is retained or if a new Medicare number is issued. A provider may be subject to administrative action if information is withheld at the time of application that results in a new provider number being created in error. The division shall issue payments to the entity identified in the current MO HealthNet provider enrollment application. Regardless of changes in control or ownership, MMAC shall recover from the entity identified in the current MO HealthNet provider enrollment application liabilities, sanctions, and penalties pertaining to the MO HealthNet program, regardless of when the services were rendered.

(12) MO HealthNet provider identifiers shall not be released to any non-governmental entity, except the enrolled provider, by the MO HealthNet Division or its agents.

*[(10)]***(13)** The provisions of this rule are declared severable. If any provision of this rule is held invalid by a court of competent jurisdiction, the remaining provisions of this rule shall remain in full force and effect, unless otherwise determined by a court of competent jurisdiction to be invalid.

*[(11)]***(14)** Except to the extent inconsistent with this rule, the requirements of *[13 CSR 70-3.020 and]* 13 CSR 70-3.030 remain in force, including any provisions regarding denial of applications and termination, until those provisions are rescinded.

AUTHORITY: sections 208.159 and 660.017, RSMo [2000] ***2016****. Original rule filed Dec. 12, 2013, effective July 30, 2014. Amended: Filed May 26, 2015, effective Nov. 30, 2015. Amended: Filed Aug.20, 2021.*

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Social Services, Legal Services Division-Rulemaking, PO Box 1527, Jefferson City, MO 65102-1527, or by email to Rules.Comment@dss.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 65—Missouri Medicaid Audit and Compliance
Chapter 2—Medicaid

PROPOSED AMENDMENT

13 CSR 65-2.030 Denial or Limitations of Applying Provider. The department is amending sections (1)-(4), adding a new section (3), and is renumbering accordingly.

PURPOSE: This amendment combines and clarifies the procedures found in this regulation and the procedure formerly found at 13 CSR 70-3.020, which is being rescinded. MO HealthNet providers will no longer have to look in two (2) locations to find the basis on which providers may be approved or denied as a new provider and/or revalidating provider, for the basis on which a new practice location may be approved or denied, or for the revalidation requirements. Additionally, this regulation now mirrors federal Medicaid program integrity regulatory requirements that Missouri must follow as a condition of its federal Medicaid funding.

(1) Missouri Medicaid Audit Compliance (MMAC) *[shall]* **may** terminate the provider's enrollment or deny enrollment—

(A) Where the provider *[or any person with a five percent (5%) or greater direct or indirect ownership interest in the provider]* did not submit timely and accurate information or did not

cooperate with screening methods required under applicable statutes and regulations unless the provider *[or person]* cures the failure to comply with this subsection within thirty (30) days of MMAC's notice that it intends to terminate the provider or deny enrollment;

(B) Where the provider or any person with *[a five percent (5%) or greater direct or indirect ownership interest in the provider]* **an ownership or control interest** has been convicted of **or pled guilty to** a criminal offense**, including any suspended imposition of sentence, any suspended execution of sentence, or any period of probation or parole,** related to *[that person's]* **their** involvement with the Medicare, Medicaid, or *[title]* **Title** XXI program in the last ten (10) years, unless MMAC determines that denial or termination of enrollment is not in the best interests of the MO HealthNet Program and MMAC documents that determination in writing;

(C) Where the provider or any person with an ownership or control interest has been convicted of or pled guilty to a misdemeanor or felony charge, including any suspended imposition of sentence, any suspended execution of sentence, or any period of probation or parole relating to:

1. Endangering the welfare of a child;

2. Abusing or neglecting a resident, patient, or client;

3. Misappropriating funds or property belonging to a resident, patient, or client; or

4. Falsifying documentation verifying delivery of services to a personal care assistance services consumer;

(D) Where the provider or any person with an ownership or control interest has been placed on the Family Care Safety Registry as mandated by sections 210.900–210.936, RSMo; or been placed on the Missouri Sex Offender Registry as mandated by sections 589.400–589.425 and 43.650, RSMo;

*[(C)]***(E)** *[Of any]* **Where the** provider *[that]* is terminated *[on or after January 1, 2011,]* under Title XVIII of the Social Security Act or under the Medicaid Program or Children's Health Insurance Program (CHIP) of any other state unless MMAC determines that the termination was not for cause, which may include, but is not limited to, fraud, integrity, or quality. Termination or denial of enrollment will not be required if MMAC determines it would not be in the best interests of the MO HealthNet Program and MMAC receives a waiver from the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services pursuant to 42 U.S.C. 1320a-7;

*[(D)]***(F)** *[If]* **Where** the provider or a person with an ownership or control interest or who is an agent or managing employee of the provider fails to submit timely or accurate information, unless MMAC determines that termination or denial of enrollment is not in the best interests of the MO HealthNet Program, and MMAC documents that determination in writing;

*[(E)]***(G)** *[If]* **Where** the provider**,** or any person with *[a five percent (5%) or greater direct or indirect]* ownership *[interest in the provider]* **or control interest**, fails to submit *[sets of]* fingerprints in a form and manner to be determined by MMAC within thirty (30) days of a request by **Centers for Medicare and Medicaid Services (**CMS**)** or MMAC, unless MMAC determines that termination or denial of enrollment is not in the best interests of the MO HealthNet Program, and MMAC documents that determination in writing; *[and]*

*[(F)]***(H)** *[If]* **Where** the provider fails to permit access to provider locations for any site visits under 13 CSR 65-2.020, unless MMAC determines that termination or denial of enrollment is not in the best interests of the MO HealthNet Program, and MMAC documents that determination in writing*[.]***;**

(I) Where the provider fails to complete an application for provider direct deposit as required by 13 CSR 70-3.140;

(J) Where the provider or a person with an ownership or control interest submitted false information to MMAC; or

(K) Where the identity of any provider or person with an ownership or control interest cannot be verified.

[(2) MMAC may terminate the provider's enrollment or deny enrollment if CMS or MMAC—

(A) Determines that the provider has falsified any information provided on the application; or

(B) Cannot verify the identity of any provider applicant.]

(2) Denial of enrollment shall preclude any provider or person from submitting claims for payment, either personally or through claims submitted by any clinic, group, corporation, affiliate, partner, or any other association to the single state agency or its fiscal agents for any services or supplies delivered under the MO HealthNet program whose enrollment as a MO HealthNet provider has been denied. Any claims submitted by a non-provider through any clinic, group, corporation, affiliate, partner, or any other association and paid shall constitute overpayments.

(3) No clinic, group, corporation, partnership, affiliate, or other association may submit claims for payment to the MO HealthNet Division or its fiscal agent for any services or supplies provided by a provider or person within each association who has been denied enrollment in the MO HealthNet program. Any claims for payment submitted and paid under these circumstances shall constitute overpayments.

*[(3)]***(4)** Except to the extent inconsistent with this rule, the requirements of *[13 CSR 70-3.020 and]* 13 CSR 70-3.030 remain in force, including any provisions regarding denial of applications and termination, until those provisions are rescinded.

*[(4)]***(5)** The provisions of this rule are declared severable. If any provision of this rule is held invalid by a court of competent jurisdiction, the remaining provisions of this rule shall remain in full force and effect, unless otherwise determined by a court of competent jurisdiction to be invalid.

*AUTHORITY: sections 208.159 and 660.017, RSMo [2000] **2016**. Original rule filed Dec. 12, 2013, effective July 30, 2014. Amended: Filed Aug. 20, 2021.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Social Services, Legal Services Division-Rulemaking, PO Box 1527, Jefferson City, MO 65102-1527, or by email to Rules.Comment@dss.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

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

PROPOSED RESCISSION

13 CSR 70-3.020 Title XIX Provider Enrollment. This rule established the basis on which providers and vendors of health care services under the MO HealthNet program may be admitted to or denied enrollment in the program, and listed the grounds upon which enrollment may be denied.

PURPOSE: This rule is being rescinded because MO HealthNet (Medicaid) provider enrollment functions were transferred from the

MO HealthNet Division to Missouri Medicaid Audit and Compliance (MMAC). This department is consolidating the provisions of this rule into 13 CSR 65-2.010, 13 CSR 65-2.020, and 13 CSR 65-2.030.

*AUTHORITY: sections 208.159, 208.164, and 210.924, RSMo 2000 and sections 208.153 and 208.201, RSMo Supp. 2009. This rule was previously filed as 13 CSR 40-81.165. Original rule filed June 14, 1982, effective Sept. 11, 1982. For intervening history, please consult the **Code of State Regulations**. Rescinded: Filed Aug. 20, 2021.*

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 Department of Social Services, Legal Services Division-Rulemaking, PO Box 1527, Jefferson City, MO 65102-1527, or by email to Rules.Comments@dss.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

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

PROPOSED AMENDMENT

13 CSR 70-3.140 Direct Deposit of Provider Reimbursement. The division is amending the purpose and sections (1)-(4).

PURPOSE: This proposed amendment reflects changes whereby the Missouri Medicaid Audit and Compliance Unit (MMAC) processes provider direct deposit applications and updates instead of a MO HealthNet Division unit.

*PURPOSE: [This rule describes the procedures for the direct deposit of MO HealthNet provider payments. This requirement is being implemented due to the reduction and consolidation of Department of Social Services' mail room staff with the Office of Administration; handling, cost for postage, printing, and mailing paper checks; and will eliminate the cost of returned or lost checks.] **This rule requires the direct deposit of MO HealthNet provider payments and describes the procedure by which those payments will be made.***

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) *[Effective October 1, 2010, the MO HealthNet Division will require e]***E**nrolled providers *[to]* **must** have their MO HealthNet *[checks]* **payments** automatically deposited *[to]* **into** an authorized bank account.

(2) **Unless otherwise agreed upon by the Department of Social Services,** MO HealthNet providers must complete the *[Application for Provider Direct Deposit Form MO 886-3089]* **Electronic Funds Transfer (EFT) Authorization Agreement, which is incorporated by reference and made a part of this rule as published by the Missouri Medicaid Audit and Compliance Unit (MMAC), 205 Jefferson Street, 2nd Floor, Jefferson City, MO 65102, and** available on the *[MO HealthNet Division]* **MMAC** website at *[www.dss.mo.gov/mhd, unless otherwise agreed upon by the Department of Social Services]* **https://mmac.mo.gov/providers/provider-enrollment/new-providers/provider-enrollment-forms/, August 27, 2021. This rule does not incorporate any subsequent amendments or additions**.

(C) Direct deposit will begin following:

1. Submission of a properly completed application form to the Department of Social Services, MO HealthNet Division;

2. *[The s]***S**uccessful processing of a test transaction through the banking system; and

3. Authorization to make payment using the direct deposit option by the MO Health-Net Division.

(3) All direct deposit applications must be signed *[with an original signature]* by the *[provider]* **person** enrolled in the MO HealthNet program when that provider is an individual. Applications on behalf of groups or businesses (except those described in this rule) must be signed *[with an original signature by the individual (officer) with fiscal responsibility for the group or business]* **by an owner or managing employee of the entity**. Signature stamps or other facsimiles will not be accepted.

(4) *[The MO HealthNet Division will]* **MMAC may** terminate or suspend the direct deposit option for administrative or legal actions, including, but not limited to, ownership change, duly executed liens or levies, legal judgments, notice of bankruptcy, administrative sanctions for the purpose of ensuring program compliance, death of a provider, and closure or abandonment of an account.

*AUTHORITY: sections 208.201 **and 660.017**, RSMo [Supp. 2009] **2016**. Original rule filed Oct. 4, 1993, effective June 6, 1994. Amended: Filed June 1, 2010, effective Dec. 30, 2010. Amended: Filed Aug. 27, 2021.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Social Services, Legal Services Division-Rulemaking, PO Box 1527, Jefferson City, MO 65102-1527, or by email to Rules.Comment@dss.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

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

PROPOSED AMENDMENT

13 CSR 70-3.200 Ambulance Service Reimbursement Allowance. The division is amending the purpose and adding subparagraph (1)(A)5.A.

PURPOSE: This amendment excludes certain revenues from the definition of "gross receipts" when used to calculate the Ambulance Service Reimbursement Allowance.

PURPOSE: This rule establishes the formula for determining the Ambulance Service Reimbursement Allowance ***that*** *each ground emergency ambulance service must pay, except for any ambulance service owned and operated by an entity owned or operated by the board of curators, as defined in Chapter 172, RSMo, or any department of the state, in addition to all other fees and taxes now required or paid, for the privilege of engaging in the business of providing ground emergency ambulance services in Missouri.*

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

(A) Definitions.

1. Ambulance. Ambulance shall have the same meaning as such term is defined in section 190.100, RSMo.

2. Department. Department of Social Services.

3. Director. Director of the Department of Social Services.

4. Division. MO HealthNet Division.

5. Gross receipts. Emergency ambulance revenue from Medicare, Medicaid, insurance, and private payments received by an ambulance service licensed under section 190.109, RSMo (or by its predecessor in interest following a change of ownership). Revenue from CPT Code A0427/A0425 ambulance service, advanced life support, emergency transport, level 1 (ALS1–emergency), and associated ground mileage; CPT Code A0429/A0425 ambulance services, basic life support, emergency transport (BLS–emergency), and associated ground mileage; and CPT Code A0433/A0425 advanced life support, level 2 (ALS2), and associated ground mileage.

A. Starting on October 1, 2021, gross receipts shall not include revenue from taxes collected under law, grants, subsidies received from governmental agencies, the value of charity care, or revenue received from supplemental reimbursement for ground emergency medical transportation under section 208.1030, RSMo.

6. Engaging in the business of providing ambulance services. Accepting payment for ambulance services as such term is defined in section 190.100, RSMo.

AUTHORITY: sections ***190.803, 190.815,*** *190.836 [and],* ***208.201, and 660.017,*** *RSMo [Supp. 2013]* ***2016****. Original rule filed March 19, 2010, effective Nov. 30, 2010. Amended: Filed Oct. 10, 2013, effective April 30, 2014. Emergency amendment filed Aug. 24, 2021, effective Sept. 8, 2021, expires March 6, 2021. Amended: Filed Aug. 24, 2021.*

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Social Services, Legal Services Division-Rulemaking, PO Box 1527, Jefferson City, MO 65102-1527, or by email to Rules.Comment@dss.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 4—Conditions of Participant Participation, Rights and Responsibilities

PROPOSED RESCISSION

13 CSR 70-4.050 Copayment and Coinsurance for Certain Medicaid-Covered Services. This rule implemented participant copayments and coinsurance charges for certain Missouri Medicaid (MO HealthNet) program areas.

PURPOSE: This rule is being rescinded because it is not compliant with federal cost sharing requirements at 42 CFR 447.50–447.57 (excluding 447.55–premiums). Per guidance from the Centers for Medicare and Medicaid Services (CMS), the state must correct the issues with the current copay requirements prior to implementing any changes in copay requirements. Therefore, the division is rescinding this rule.

AUTHORITY: sections 208.152, RSMo Supp. 2004 and as enacted by the 93rd General Assembly and 208.201, RSMo 2000. This rule was previously filed as 13 CSR 40-81.054. Emergency rule filed Oct. 21, 1981, effective Nov. 1, 1981, expired Feb. 10, 1982. Original rule filed Oct. 21, 1981, effective Feb. 11, 1982. For intervening history, please consult the ***Code of State Regulations****. Rescinded: Filed Aug. 20, 2021.*

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 Department of Social Services, Legal Services Division-Rulemaking, PO Box 1527, Jefferson City, MO 65102-1527, or by email to Rules.Comment@dss.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 15—Hospital Program

PROPOSED AMENDMENT

13 CSR 70-15.015 Direct Medicaid Payments. The division is amending subsections (1)(A) and (2)(B).

PURPOSE: This rule is being amended to remove outdated language and update the criteria used to determine safety net hospitals.

(1) Direct Medicaid Qualifying Criteria.

(A) An inpatient hospital provider may qualify as a Disproportionate Share Hospital (DSH) based on the following criteria. Hospitals shall qualify as a *[Disproportionate Share Hospital]* **DSH** for a period of only one (1) state fiscal year (SFY) and must requalify at the beginning of each SFY to continue their DSH classification*[—]***.**

1. If the facility offered nonemergency obstetric services as of December 21, 1987, there must be at least two (2) obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals entitled to these services under the Missouri Medicaid plan. In the case of a hospital located in a rural area (area outside of a metropolitan statistical area, as defined by the federal Executive Office of Management and Budget), the term obstetrician includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures. This section does not apply to hospitals either with inpatients predominantly under eighteen (18) years of age or which did not offer nonemergency obstetric services as of December 21, 1987*[;]***.**

2. As determined from the fourth prior year *[desk-reviewed]* **audited** cost report, the facility must have either—

A. A Medicaid inpatient utilization rate (MIUR) at least one (1) standard deviation above the state's mean MIUR for all Missouri hospitals. The MIUR will be expressed as the ratio of total Medicaid days (TMD) provided under a state plan divided by the provider's total number of inpatient days (TNID). The state's mean MIUR will be expressed as the ratio of the sum of the total number of the Medicaid days for all Missouri hospitals divided by the sum of the total patient days for the same Missouri hospitals. Data for hospitals no longer participating in the program will be excluded;

$$[MIUR = \frac{TMD}{TNID}]$$

MIUR = TMD / TNID

or

B. A low-income utilization rate (LIUR) in excess of twenty-five percent (25%). The LIUR shall be the sum (expressed as a percentage) of the fractions, calculated as follows:

(I) Total MO HealthNet patient revenues (TMPR) paid to the hospital for patient services under a state plan plus the amount of the cash subsidies (CS) directly received from state and local governments, divided by the total net revenues (TNR) (charges, minus contractual allowances, discounts, and the like) for patient services plus the CS; and

(II) The total amount of the hospital's charges for patient services attributable to charity care (CC) (care provided to individuals who have no source of payment, third-party, or personal resources) less CS directly received from state and local governments in the same period, divided by the total amount of the hospital's charges (THC) for patient services. The total patient charges attributed to CC shall not include any contractual allowances and discounts other than for indigent patients not eligible for MO HealthNet under a state plan*[;]***.**

$$[LIUR = \frac{TMPR + CS}{TNR + CS} + \frac{CC - CS}{THC}]$$

LIUR = ((TMPR + CS) / (TNR + CS)) + ((CC – CS) / (THC))

3. As determined from the fourth prior year *[desk-reviewed]* **audited** cost report, the hospital—

A. Has an unsponsored care ratio of at least ten percent (10%). The unsponsored care ratio is determined as the sum of bad debts and CC divided by TNR and also meets either of the criteria in paragraph (1)(A)2.; or

B. Ranks in the top fifteen (15) in the number of Medicaid inpatient days provided by that hospital compared to Medicaid patient days provided by all hospitals, and the hospitals also have a Medicaid nursery utilization ratio greater than thirty-five percent (35%) as computed by dividing Title XIX nursery and neonatal days by total nursery and neonatal days; or

C. Operated a neonatal intensive care unit with a ratio of Missouri Medicaid neonatal patient days to Missouri Medicaid total patient days in excess of nine percent (9%) reported or verified by the division from the fourth prior year cost report*[;]***.**

4. As determined from the fourth prior year *[desk-reviewed]* **audited** cost report—

A. The acute care hospital has an unsponsored care ratio of at least sixty-five percent (65%) and is licensed for less than fifty (50) inpatient beds; or

B. The acute care hospital has an unsponsored care ratio of at least sixty-five percent (65%) and is licensed for fifty (50) inpatient beds or more and has an occupancy rate of more than forty percent (40%); or

C. A public non-state governmental acute care hospital with an LIUR of at least fifty percent (50%) and an MIUR greater than one (1) standard deviation from the mean, and is licensed for fifty (50) inpatient beds or more and has an occupancy rate of at least forty percent (40%); or

*[C.]***D.** The hospital is owned or operated by the Board of Curators as defined in Chapter 172, RSMo, or their successors; or

*[D.]***E.** The hospital is a public hospital operated by the Department of Mental Health primarily for the care and treatment of mental disorders*[; and]***.**

5. As determined from the fourth prior year *[desk-reviewed]* **audited** cost report, hospitals which annually provide more than five thousand (5,000) Title XIX days of care and whose Title XIX nursery days represent more than fifty percent (50%) of the hospital's total nursery days.

(2) Direct Medicaid Payments.

(B) The MO HealthNet Division will calculate the Direct Medicaid payment as follows:

1. The MO HealthNet share of the inpatient FRA assessment will be calculated by dividing the hospital's inpatient Medicaid patient days by the total inpatient hospital patient days from the hospital's base cost report to arrive at the inpatient Medicaid utilization percentage. This percentage is then multiplied by the inpatient FRA assessment for the current SFY to arrive at the increased allowable MO HealthNet costs for the inpatient FRA assessment. The MO HealthNet share of the outpatient FRA assessment will be calculated by dividing the hospital's outpatient MO HealthNet charges by the total outpatient hospital charges from the base cost report to arrive at the MO HealthNet utilization percentage. This percentage is then multiplied by the outpatient FRA assessment for the current SFY to arrive at the increased allowable MO HealthNet costs for the outpatient FRA assessment.

A. Effective for payments made on or after May 1, 2017, only the Fee-for-Service **(FFS)** and Out-of-State **(OOS)** components of the MO HealthNet share of both the inpatient and outpatient FRA assessment will be included in the Direct Medicaid add-on payment*[.]***;**

2. The unreimbursed MO HealthNet costs are determined by subtracting the hospital's per diem rate from its trended per diem costs. The difference is multiplied by the estimated MO HealthNet patient days for the current SFY plus the out-of-state days from the fourth prior year cost report trended to the current SFY. The FFS days are determined from a regression analysis of the hospital's FFS days from February 1999 through December of the second prior SFY. The managed care days are based on the FFS days determined from the regression analysis, as follows: The FFS days are factored up by the percentage of FFS days to the total of FFS days plus managed care days from the hospital's fourth prior year cost report. The difference between the FFS days and the FFS days factored up by the FFS days' percentage are the managed care days.

[A. Effective for payments made on or after May 1, 2017, the estimated MO HealthNet patient days for the SFY shall be determined by adjusting the FFS days from the state's MMIS for the second prior Calendar Year (CY) (i.e., for SFY 2017, second prior CY would be 2015) by—

(I) The trend determined from a regression analysis of the hospital's FFS days from February 1999 through December of the second prior CY; and

(II) The days estimated to shift from FFS to managed care effective May 1, 2017. The estimated managed care days for populations added to managed care beginning May 1, 2017 will be subtracted from the trended FFS days to yield the estimated MO HealthNet patient days.

B. Effective for payments made on or after July 1, 2018, the estimated MO HealthNet patient days for the SFY shall be determined by adjusting the FFS days from the state's MMIS for the second prior Calendar Year (CY) (i.e., for SFY 2019, second prior CY would be 2017) by—

(I) The trend determined from a regression analysis

of the hospital's FFS days from February 1999 through December of the second prior CY;

(II) A percentage adjustment shall be applied to the regression due to statewide managed care;

(III) The FFS days are factored up by the percentage of FFS days to the total of FFS days plus managed care days from the hospital's fourth prior year cost report to yield the estimated MO HealthNet patient days; and

(IV) From the total estimated MO HealthNet patient days, remove the SFY 2019 estimated managed care days to yield the estimated MO HealthNet FFS patient days.

C. Effective for payments made on or after July 1, 2019, the estimated MO HealthNet patient days for the SFY shall be determined by adjusting the FFS days from the state's MMIS for the second prior Calendar Year (CY) (i.e., for SFY 2020, second prior CY would be 2018) by—

(I) The trend determined from a regression analysis of the hospital's FFS days from February 1999 through December of the second prior CY;

(II) A percentage adjustment shall be applied to the regression due to statewide managed care;

(III) The FFS days are factored up by one (1) of the following:

(a) For hospitals that are in a managed care extension region or a Psychiatric hospital, the lower of the percentage of FFS days to the total of FFS days plus managed care days from the hospital's fourth prior year cost report or from the hospital's second prior year cost report to yield the estimated MO HealthNet patient days; or

(b) For hospitals that are not in a managed care extension region or a Psychiatric hospital, the percentage of FFS days to the total of FFS days plus managed care days from the hospital's fourth prior year cost report to yield the estimated MO HealthNet patient days; and

(IV) The difference between the FFS days and the FFS days factored up by the FFS days' percentage are the managed care days.]

*[D.]***A.** Effective for payments made on or after July 1, 2020, the estimated MO HealthNet patient days for the SFY shall be determined by adjusting the FFS days from the state's MMIS for the second prior *[C]***c**alendar *[Y]***y**ear (CY) (i.e., for SFY 2021, second prior CY would be 2019) by—

(I) The trend determined from a quadratic regression analysis of the hospital's FFS days from February 1999 through December of the second prior CY;

(II) The FFS days are factored up by one (1) of the following:

(a) For hospitals that are in a managed care extension region or a *[P]***p**sychiatric hospital, the lower of the percentage of FFS days to the total of FFS days plus managed care days from the hospital's fourth prior year cost report or from the hospital's third prior year cost report to yield the estimated MO HealthNet patient days; or

(b) For hospitals that are not in a managed care extension region or a *[P]***p**sychiatric hospital, the percentage of FFS days to the total of FFS days plus managed care days from the hospital's fourth prior year cost report to yield the estimated MO HealthNet patient days; and

(III) The difference between the FFS days and the FFS days factored up by the FFS days' percentage are the managed care days.

*[E.]***B.** The trended cost per day is calculated by trending the base year costs per day by the trend indices as defined in 13 CSR 70-15.010(3)(B), using the rate calculation in 13 CSR 70-15.010(3)(A).

*[F.]***C.** For hospitals that meet the requirements in paragraphs (1)(A)1., (1)(A)2., and (1)(A)4. of this rule (safety net hospitals), the base year cost report may be from the third *[prior year]*, *[the]* fourth *[prior year]*, or *[the]* fifth prior year. For hospitals that meet the requirements in paragraphs (1)(A)1. and (1)(A)3. of this rule (first tier *[Disproportionate Share Hospitals]* **DSH**), the base year cost report may be from the third *[prior year,]* or *[the]* fourth prior year. The MO HealthNet Division shall exercise its sole discretion as to which report is most representative of costs. For all other hospitals, the base year cost report is the fourth prior year. For any hospital that has both a twelve- (12-) month cost report and a partial year cost report, its base period cost report for that year will be the twelve- (12-) month cost report.

*[G.]***D.** The trended cost per day does not include the costs associated with the FRA assessment, the application of minimum utilization, the utilization adjustment, and the poison control costs computed in paragraphs (2)(B)1., 3., 4., and 5.;

3. The minimum utilization costs for capital and medical education is calculated by determining the difference in the hospital's cost per day when applying the minimum utilization, as identified in 13 CSR 70-15.010(5)(C)4., and without applying the minimum utilization. The difference in the cost per day is multiplied by the estimated MO HealthNet patient days for the SFY;

4. The utilization adjustment cost is determined by estimating the number of MO HealthNet inpatient days the hospital will not provide as a result of the managed care health plans limiting inpatient hospital services. These days are multiplied by the hospital's cost per day to determine the total cost associated with these days. This cost is divided by the remaining total patient days from its base period cost report to arrive at the increased cost per day. This increased cost per day is multiplied by the estimated MO HealthNet days for the current SFY to arrive at the MO HealthNet utilization adjustment.

A. Effective July 1, 2011, the utilization adjustment will no longer apply to any hospital other than safety net hospitals as defined in subsection (1)(B), children's hospitals as defined in 13 CSR 70-15.010(2)(Q), and specialty pediatric hospitals as defined in 13 CSR 70-15.010(2)(O). Children's hospitals and specialty pediatric hospitals will continue to receive fifty percent (50%) of the adjustment calculated in accordance with paragraph (2)(B)4. Safety net hospitals will continue to receive one hundred percent (100%) of the adjustment calculated in accordance with paragraph (2)(B)4.;

5. The poison control cost shall reimburse the hospital for the prorated MO HealthNet managed care cost. It will be calculated by multiplying the estimated MO HealthNet share of the poison control costs by the percentage of managed care participants to total MO HealthNet participants; and

6. Effective July 1, 2006, the costs for including out-of-state Medicaid days is calculated by subtracting the hospital's per diem rate from its trended per diem cost and multiplying this difference by the out-of-state Medicaid days as determined from the regression analysis performed using the out-of-state days from the fourth, fifth, and sixth prior year cost reports.

*AUTHORITY: sections 208.153, 208.201, and 660.017, RSMo 2016, and section 208.152, RSMo Supp. [2020] **2021**. This rule was previously filed as part of 13 CSR 70-15.010. Emergency rule filed April 30, 2020, effective May 15, 2020, expired Feb. 24, 2021. Original rule filed April 30, 2020, effective Nov. 30, 2020. Emergency amendment filed Aug. 26, 2021, effective Sept. 10, 2021, expires March 8, 2022. Amended: Filed Aug. 26, 2021.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate for SFY 2022.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate for SFY 2022.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Social Services, Legal Services Division-Rulemaking,

PO Box 1527, Jefferson City, MO 65102-1527, or by email to Rules.Comment@dss.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing will be scheduled.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 15—Hospital Program

PROPOSED AMENDMENT

13 CSR 70-15.110 Federal Reimbursement Allowance (FRA). The division is amending subparagraph (1)(A)13.G., removing sections (2) through (4), adding a new section (4), and renumbering as necessary.

PURPOSE: This amendment provides for the State Fiscal Year (SFY) 2022 trend factor to be applied to the inpatient and outpatient adjusted net revenues determined from the Federal Reimbursement Allowance (FRA) fiscal year cost report to determine the inpatient and outpatient adjusted net revenues subject to the FRA assessment. Additionally, this amendment establishes the FRA assessment effective July 1, 2021. Lastly, this amendment is removing outdated language regarding the FRA assessment.

(1) Federal Reimbursement Allowance (FRA). FRA shall be assessed as described in this section.

(A) Definitions.

1. Bad debts—Amounts considered to be uncollectible from accounts and notes receivable that were created or acquired in providing services. Allowable bad debts include the costs of caring for patients who have insurance, but their insurance does not cover the particular service procedures or treatment rendered.

2. Base cost report—Desk-reviewed Medicare/Medicaid cost report. The Medicare/Medicaid Cost Report version 2552-96 (CMS 2552-96) shall be used for fiscal years ending on or after September 30, 1996. The Medicare/Medicaid Cost Report version 2552-10 (CMS 2552-10) shall be used for fiscal years beginning on and after May 1, 2010. When a hospital has more than one (1) cost report with periods ending in the base year, the cost report covering a full twelve- (12-) month period will be used. If none of the cost reports covers a full twelve (12) months, the cost report with the latest period will be used. If a hospital's base cost report is less than or greater than a twelve- (12-) month period, the data shall be adjusted, based on the number of months reflected in the base cost report, to a twelve- (12-) month period.

3. Charity care—Those charges written off by a hospital based on the hospital's policy to provide health care services free of charge or at a reduced charge because of the indigence or medical indigence of the patient.

4. Contractual allowances—Difference between established rates for covered services and the amount paid by third-party payers under contractual agreements. The Federal Reimbursement Allowance (FRA) is a cost to the hospital, regardless of how the FRA is remitted to the MO HealthNet Division, and shall not be included in contractual allowances for determining revenues. Any redistributions of MO HealthNet payments by private entities acting at the request of participating health care providers shall not be included in contractual allowances or determining revenues or cost of patient care.

5. Department—Department of Social Services.

6. Director—Director of the Department of Social Services.

7. Division—MO HealthNet Division, Department of Social Services.

8. Engaging in the business of providing inpatient health care—Accepting payment for inpatient services rendered.

9. Federal Reimbursement Allowance (FRA)—The fee assessed to hospitals for the privilege of engaging in the business of providing inpatient health care in Missouri. The FRA is an allowable cost to the hospital.

10. Fiscal period—Twelve- (12-) month reporting period determined by each hospital.

11. Gross hospital service charges—Total charges made by the hospital for inpatient and outpatient hospital services that are covered under 13 CSR 70-15.010.

12. Hospital—A place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment, or care for not fewer than twenty-four (24) hours in any week of three (3) or more nonrelated individuals suffering from illness, disease, injury, deformity, or other abnormal physical conditions; or a place devoted primarily to provide, for not fewer than twenty-four (24) hours in any week, medical or nursing care for three (3) or more nonrelated individuals. The term hospital does not include convalescent, nursing, shelter, or boarding homes as defined in Chapter 198, RSMo.

13. Hospital revenues subject to FRA assessment effective July 1, 2008—Each hospital's inpatient adjusted net revenues and outpatient adjusted net revenues subject to the FRA assessment will be determined as follows:

A. Obtain "Gross Total Charges" from Worksheet G-2, Line 25, Column 3 from CMS 2552-96, or Worksheet G-2, Line 28, Column 3 from CMS 2552-10, of the third prior year cost report (i.e., FRA fiscal year cost report) for the hospital. Charges shall exclude revenues for physician services. Charges related to activities subject to the Missouri taxes assessed for outpatient retail pharmacies and nursing facility services shall also be excluded. "Gross Total Charges" will be reduced by the following:

(I) "Nursing Facility Charges" from Worksheet C, Part I, Line 35, Column 6 from CMS 2552-96, or Worksheet C, Part I, Line 45, Column 6 from CMS 2552-10;

(II) "Swing Bed Nursing Facility Charges" from Worksheet G-2, Line 5, Column 1 from CMS 2552-96, or Worksheet G-2, Line 6, Column 1 from CMS 2552-10;

(III) "Nursing Facility Ancillary Charges" as determined from the Department of Social Services, MO HealthNet Division, nursing home cost report. (Note: To the extent that the gross hospital charges, as specified in subparagraph (1)(A)13.A. above, include long-term care charges, the charges to be excluded through this step shall include all long-term care ancillary charges including skilled nursing facility, nursing facility, and other long-term care providers based at the hospital that are subject to the state's provider tax on nursing facility services.);

(IV) "Distinct Part Ambulatory Surgical Center Charges" from Worksheet G-2, Line 22, Column 2 from CMS 2552-96, or Worksheet G-2, Line 25, Column 2 from CMS 2552-10;

(V) "Ambulance Charges" from Worksheet C, Part I, Line 65, Column 7 from CMS 2552-96, or Worksheet C, Part I, Line 95, Column 7 from CMS 2552-10;

(VI) "Home Health Charges" from Worksheet G-2, Line 19, Column 2 from CMS 2552-96, or Worksheet G-2, Line 22, Column 2 from CMS 2552-10;

(VII) "Total Rural Health Clinic Charges" from Worksheet C, Part I, Column 7, Lines 63.50–63.59 from CMS 2552-96, or Worksheet C, Part I, Column 7, Line 88 and subsets from CMS 2552-10; and

(VIII) "Other Non-Hospital Component Charges" from Worksheet G-2, Lines 6, 8, 21, 21.02, 23, and 24 from CMS 2552-96, or Worksheet G-2, Lines 5, 7, 9, 21, 24, 26, and 27 from CMS 2552-10;

B. Obtain "Net Revenue" from Worksheet G-3, Line 3, Column 1. The state will ensure this amount is net of bad debts and other uncollectible charges by survey methodology;

C. "Adjusted Gross Total Charges" (the result of the computations in subparagraph (1)(A)13.A.) will then be further adjusted by a hospital-specific collection-to-charge ratio determined as follows:

(I) Divide "Net Revenue" by "Gross Total Charges"; and

(II) "Adjusted Gross Total Charges" will be multiplied by the result of part (1)(A)13.C.(I) to yield "Adjusted Net Revenue";

D. Obtain "Gross Inpatient Charges" from Worksheet G-2, Line 25, Column 1 from CMS 2552-96, or Worksheet G-2, Line 28, Column 1 from CMS 2552-10, of the most recent cost report that is available for a hospital;

E. Obtain "Gross Outpatient Charges" from Worksheet G-2, Line 25, Column 2 from CMS 2552-96, or Worksheet G-2, Line 28, Column 2 from CMS 2552-10, of the most recent cost report that is available for a hospital;

F. Total "Adjusted Net Revenue" will be allocated between "Net Inpatient Revenue" and "Net Outpatient Revenue" as follows:

(I) "Gross Inpatient Charges" will be divided by "Gross Total Charges";

(II) "Adjusted Net Revenue" will then be multiplied by the result to yield "Net Inpatient Revenue"; and

(III) The remainder will be allocated to "Net Outpatient Revenue"; and

G. The trend indices, if greater than 0%, will be determined based on the Health Care Costs index as published in *Healthcare Cost Review* by Institute of Health Systems (IHS), or equivalent publication, regardless of any changes in the name of the publication or publisher, for each State Fiscal Year (SFY). The trend indices listed below will be applied to the apportioned inpatient adjusted net revenue and outpatient adjusted net revenue in order to inflate or trend forward the adjusted net revenues from the FRA fiscal year cost report to the current state fiscal year to determine the inpatient and outpatient adjusted net revenues subject to the FRA assessment.

[(I) SFY 2016 =
(a) Inpatient Adjusted Net Revenues—0%
(b) Outpatient Adjusted Net Revenues—3.90%
(II) SFY 2017 =
(a) Inpatient Adjusted Net Revenues—0%
(b) Outpatient Adjusted Net Revenues—4.10%
(III) SFY 2018 =
(a) Inpatient Adjusted Net Revenues—0%
(b) Outpatient Adjusted Net Revenues—0%
(IV) SFY 2019 =
(a) Inpatient Adjusted Net Revenues—0%
(b) Outpatient Adjusted Net Revenues—0%]
*[V]***(I)** SFY 2020 =
(a) Inpatient Adjusted Net Revenues—0%
(b) Outpatient Adjusted Net Revenues—2.9%
*[VI]***(II)** SFY 2021 =
(a) Inpatient Adjusted Net Revenues—3.2%
(b) Outpatient Adjusted Net Revenues—0%
(III) SFY 2022 =
(a) Inpatient Adjusted Net Revenues—4.2%
(b) Outpatient Adjusted Net Revenues—0%

[(2) Beginning July 1, 2010, the FRA assessment shall be determined at the rate of five and forty-five hundredths percent (5.45%) of each hospital's inpatient adjusted net revenues and outpatient adjusted net revenues as set forth in paragraph (1)(A)13. The FRA assessment rate of five and forty-five hundredths percent (5.45%) will be applied individually to the hospital's inpatient adjusted net revenues and outpatient adjusted net revenues. The hospital's total FRA assessment is the sum of the assessment determined from its inpatient adjusted net revenue plus the assessment determined for its outpatient adjusted net revenue.

(3) Beginning October 1, 2011, the FRA assessment shall be determined at the rate of five and ninety-five hundredths percent (5.95%) of each hospital's inpatient adjusted net revenues and outpatient adjusted net revenues as set forth in paragraph (1)(A)13. The FRA assessment rate of five and ninety-five hundredths percent (5.95%) will be applied individually to the hospital's inpatient adjusted net revenues and outpatient adjusted net revenues. The hospital's total FRA assessment is the sum of the assessment determined from its inpatient adjusted net revenue plus the assessment determined for its outpatient adjusted net revenue.

(4) Beginning July 1, 2017, the FRA assessment shall be determined at the rate of five and seventy hundredths percent (5.70%) of each hospital's inpatient adjusted net revenues and outpatient adjusted net revenues as set forth in paragraph (1)(A)13. The FRA assessment rate of five and seventy hundredths percent (5.70%) will be applied individually to the hospital's inpatient adjusted net revenues and outpatient adjusted net revenues. The hospital's total FRA assessment is the sum of the assessment determined from its inpatient adjusted net revenue plus the assessment determined for its outpatient adjusted net revenue.

(A) If the reduction of disproportionate share hospital allotments for federal fiscal year 2018 is implemented as provided in section 1923(f)(7) of the Social Security Act, the FRA assessment shall be set, effective on the date of such reduction, at the rate of five and fifty hundredths percent (5.50%) of each hospital's inpatient adjusted net revenues and outpatient adjusted net revenues as set forth in paragraph (1)(A)13. The FRA assessment rate of five and fifty hundredths percent (5.50%) will be applied individually to the hospital's inpatient adjusted net revenues and outpatient adjusted net revenues. The hospital's total FRA assessment is the sum of the assessment determined from its inpatient adjusted net revenue plus the assessment determined for its outpatient adjusted net revenue.]

*[(5)]***(2)** Beginning July 1, 2018, the FRA assessment shall be determined at the rate of five and sixty hundredths percent (5.60%) of each hospital's inpatient adjusted net revenues and outpatient adjusted net revenues as set forth in paragraph (1)(A)13. The FRA assessment rate of five and sixty hundredths percent (5.60%) will be applied individually to the hospital's inpatient adjusted net revenues and outpatient adjusted net revenues. The hospital's total FRA assessment is the sum of the assessment determined from its inpatient adjusted net revenue plus the assessment determined for its outpatient adjusted net revenue.

*[(6)]***(3)** Beginning July 1, 2020, the FRA assessment shall be determined at a rate of five and seventy-five hundredths percent (5.75%) of each hospital's inpatient adjusted net revenues and outpatient adjusted net revenues as set forth in paragraph (1)(A)13. The FRA assessment rate will be applied individually to the hospital's inpatient adjusted net revenues and outpatient adjusted net revenues. The hospital's total FRA assessment is the sum of the assessment determined from its inpatient adjusted net revenue plus the assessment determined for its outpatient adjusted net revenue.

(4) Beginning July 1, 2021, the FRA assessment shall be determined at a rate of five and forty-eight hundredths percent (5.48%) of each hospital's inpatient adjusted net revenues and outpatient adjusted net revenues as set forth in paragraph (1)(A)13. The FRA assessment rate will be applied individually to the hospital's inpatient adjusted net revenues and outpatient adjusted net revenues. The hospital's total FRA assessment is the sum of the assessment determined from its inpatient adjusted net revenue plus the assessment determined for its outpatient adjusted net revenue.

AUTHORITY: sections 208.201, 208.453, 208.455, and 660.017, RSMo 2016. Emergency rule filed Sept. 21, 1992, effective Oct. 1, 1992, expired Jan. 28, 1993. Emergency rule filed Jan. 15, 1993, effective Jan. 25, 1993, expired May 24, 1993. Original rule filed

Sept. 21, 1992, effective June 7, 1993. For intervening history, please consult the ***Code of State Regulations****. Emergency amendment filed Aug. 26, 2021, effective Sept. 10, 2021, expires March 8, 2022. Amended: Filed Aug. 26, 2021.*

PUBLIC COST: For SFY 2022, this proposed amendment will result in FRA assessment cost to state agencies or political subdivisions of approximately three million seven hundred thousand dollars ($3,700,000).

PRIVATE COST: For SFY 2022, this proposed amendment will result in FRA assessment cost to private entities of approximately twenty-one million two hundred thousand dollars ($21,200,000).

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Social Services, Legal Services Division-Rulemaking, PO Box 1527, Jefferson City, MO 65102-1527, or by email to Rules.Comment@dss.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

FISCAL NOTE
PUBLIC COST

I. Department Title: Title 13–Department of Social Services
Division Title: Division 70–MO HealthNet Division
Chapter Title: Chapter 15–Hospital Program

Rule Number and Title:	13 CSR 70-15.110 Federal Reimbursement Allowance (FRA)
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Other Government (Public) & State Hospitals - 38	Estimated cost for: SFY 2022 - $3.7 million

III. WORKSHEET

Estimated Assessment at 5.48% for SFY 2022:

	No. of Facilities	Inpatient Revenues	Outpatient Revenues	Total
Public Facilities Revenues	38	$1,624,869,222	$1,927,269,724	$3,552,138,946
FRA Assessment Rate		5.48%	5.48%	5.48%
Total Assessment without Trend		$89,042,833	$105,614,381	$194,657,214
Revenue Trend for SFY 2022		4.20%	0.00%	
Total Revenues Trended		$1,693,113,729	$1,927,269,724	$3,620,383,453
FRA Assessment Rate		5.48%	5.48%	5.48%
Total Assessment with Trend		$92,782,632	$105,614,381	$198,397,013

Impact of Trend (Assessment with trend less Assessment without trend)	$3,739,799
Prior SFY Total Assessment using Prior Year Methodology	$201,926,637
Increase of Total Assessment over Prior SFY	($3,529,624)

IV. ASSUMPTIONS

This fiscal note reflects the total FRA Assessment of 5.48% for July 1, 2021 through June 30, 2022. The FRA Assessment to be collected during SFY 2022 is estimated at approximately $198.4 million, which is an FRA Assessment decrease to the public facilities of approximately $3.5 million as compared to the SFY 2020 FRA Assessment.

The fiscal note is based on establishing the FRA Assessment rate as noted above and a trend of 4.2% on inpatient revenues and 0% on outpatient revenues beginning July 1, 2021. The FRA Assessment rate is levied upon Missouri hospitals' trended inpatient and outpatient net adjusted revenues in accordance with the Missouri Partnership Plan.

FISCAL NOTE
PRIVATE COST

I. Department Title: Title 13–Department of Social Services
Division Title: Division 70–MO HealthNet Division
Chapter Title: Chapter 15–Hospital Program

Rule Number and Title:	13 CSR 70-15.110 Federal Reimbursement Allowance (FRA)
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
99	Hospitals	Estimated cost for: SFY 2022 - $21.2 million

III. WORKSHEET

Estimated Assessment at 5.48% for SFY 2022:

	No. of Facilities	Inpatient Revenues	Outpatient Revenues	Total
Private Facilities Revenues	99	$9,217,689,383	$10,177,645,106	$19,395,334,489
FRA Assessment Rate		5.48%	5.48%	5.48%
Total Assessment without Trend		$505,129,378	$557,734,952	$1,062,864,330
Revenue Trend for SFY 2022		4.20%	0.00%	
Total Revenues Trended		$9,604,832,337	$10,177,645,106	$19,782,477,443
FRA Assessment Rate		5.48%	5.48%	5.48%
Total Assessment with Trend		$526,344,812	$557,734,952	$1,084,079,764

Impact of Trend (Assessment with trend less Assessment without trend) $21,215,434

Prior SFY Total Assessment using Prior Year Methodology $1,078,068,174
Increase of Total Assessment over Prior SFY $6,011,590

IV. ASSUMPTIONS

This fiscal note reflects the total FRA Assessment of 5.48% for July 1, 2021 through June 30, 2022. The FRA Assessment to be collected during SFY 2022 is estimated at approximately $1,084 million, which is an FRA Assessment increase to the private facilities of approximately $6 million as compared to the SFY 2020 FRA Assessment.

The fiscal note is based on establishing the FRA Assessment rate as noted above and a trend of 4.2% on inpatient revenues and 0% on outpatient revenues beginning July 1, 2021. The FRA Assessment rate is levied upon Missouri hospitals' trended inpatient and outpatient net adjusted revenues in accordance with the Missouri Partnership Plan.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 30—Division of Regulation and Licensure
Chapter 82—General Licensure Requirements

PROPOSED AMENDMENT

19 CSR 30-82.050 Transfer and Discharge Procedures. The department is amending sections (4), (6), (7), and (8).

PURPOSE: This amendment transitions transfer and discharge hearings from the Department of Social Services to the Department of Health and Senior Services, updates the mailing address and adds a fax number, a phone number and email address about where to send transfer or discharge appeals and motions, and where to contact the Department of Health and Senior Services.

(4) Before a facility transfers or discharges a resident, the facility shall*[:]***—**

(A) Send written notice to the resident in a language and manner reasonably calculated to be understood by the resident. The notice must also be sent to any legally authorized representative of the resident and to at least one **(1)** family member. In the event that there is no family member known to the facility, the facility shall send a copy of the notice to the appropriate regional coordinator of the Missouri State Ombudsman's office;

(B) Include in the written notice the following information:

1. The reason for the transfer or discharge;

2. The effective date of transfer or discharge;

3. The resident's right to appeal the transfer or discharge notice to the director of the *[Division of Aging]* **Department of Health and Senior Services** or his/her designated hearing official within thirty (30) days of the receipt of the notice;

4. *[The address to which the]* **That a** request for a hearing should be sent*[: Administrative Hearings Unit, Division of Legal Services, P.O. Box 1527, Jefferson City, MO 65102-1527]* **to Department of Health and Senior Services Appeals Unit, PO Box 570, 912 Wildwood Drive 3rd floor, Jefferson City, Missouri 65102-0570, by fax to (573) 751-0247, or by email to DHSS.Appeals@health.mo.gov and the phone number for the appeals unit is (573) 522-1699**;

5. That filing an appeal will allow a resident to remain in the facility until the hearing is held unless a hearing official finds otherwise;

6. The location to which the resident is being transferred or discharged;

7. The name, address**,** and telephone number of the designated regional long-term care ombudsman office;

8. For Medicare and Medicaid certified facility residents with developmental disabilities, the mailing address and telephone number of the Missouri Protection and Advocacy Agency, 925 South Country Club Drive, Jefferson City, MO 65109, (573) 893-3333, or the current address and telephone number of the protection advocacy agency if it has changed. The protection and advocacy agency is responsible for the protection and advocacy of developmentally disabled individuals established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act. For Medicare and Medicaid certified facility residents with mental illness, the address and telephone number of Missouri Protection and Advocacy Agency, the agency responsible for persons with mental illness under the Protection and Advocacy for Mentally Ill Individuals Act; and

(6) Any resident of a facility who receives notice of discharge from the facility in which he/she resides may file an appeal of the notice with the *[Administrative Hearings Section, Division of Legal Services, P.O. Box 1527, Jefferson City, MO 65102-1527]* **Department of Health and Senior Services Appeals Unit, PO Box 570, 912 Wildwood Drive 3rd floor, Jefferson City, Missouri 65102-0570, by fax to (573) 751-0247, or by email to DHSS.Appeals@health.mo.gov** within thirty (30) days of the date the resident received the discharge notice from the facility. The resident's legal guardian, the resident's attorney-in-fact appointed under sections 404.700–404.725, RSMo (Durable Power of Attorney Law of Missouri) or pursuant to sections 404.800–404.865, RSMo (Durable Power of Attorney for Health Care Act) or any other individual may file an appeal on the resident's behalf. A Nursing Facility Transfer or Discharge Hearing Request form (MO Form 886-3245) to request a hearing may be obtained from the *[Division of Aging]* **Department of Health and Senior Services** or the regional ombudsman. However, the use of a form is not required in order to file a request for a hearing. The request for a hearing shall be verified in writing by the resident, his/her legal guardian, attorney-in-fact, or any other party requesting a hearing on the resident's behalf by attesting to the truth of the resident's request for a hearing.

(7) The director of the Department of *[Social Services]* **Health and Senior Services** shall designate a hearing official to hear and decide the resident's appeal.

(8) The discharge of the resident shall be stayed at the time the request for a hearing was filed unless the facility can show good cause why the resident should not remain in the facility until a written hearing decision has been issued by the designated hearing official. Good cause shall include, but is not limited to, those exceptions when the facility may notify the resident of a discharge from the facility with less than thirty (30) days notice as set forth in section (5) of this rule.

(A) The facility may show good cause for discharging the resident prior to a hearing decision being issued by the designated hearing official by filing a written Motion to Set Aside the Stay with the *[Administrative Hearings Unit]* **Department of Health and Senior Services Appeals Unit** at the address**, fax number, or email address** in paragraph (4)(B)4. The facility must provide a copy of the Motion to Set Aside the Stay to the resident, or to the resident's legally authorized representative and to at least one (1) family member, if one is known. In the event that a resident has no legally authorized representative and no known family members, then a copy of the Motion to Set Aside the Stay must be provided to the Missouri State Long-Term Care Ombudsman's Office.

(B) Within five (5) days after a written Motion to Set Aside the Stay has been filed with the *[Administrative Hearings Unit,]* **Department of Health and Senior Services Appeals Unit** the designated hearing official shall schedule a hearing to determine whether the facility has good cause to discharge the resident prior to a written hearing decision being issued. Notice of the good cause hearing need not be in writing. All parties and representatives who received a copy of the Motion to Set Aside the Stay under subsection (8)(A) of this rule shall also be notified of the good cause hearing.

1. The designated hearing official shall have the discretion to consolidate the facility's good cause hearing with the discharge hearing requested by the resident. In the case of an emergency discharge, an expedited hearing shall be held upon the request of the resident, legally authorized representative, family member, and in a case where notice was required to be sent to the regional ombudsman, to the state long-term care ombudsman, so long as the parties waive the ten**-** (10-)*[-]* day notice requirement specified in section (9).

2. Subsequent to the good cause hearing, the designated hearing official shall issue an order granting or denying the facility's Motion to Set Aside the Stay. If the facility's good cause hearing and the resident's discharge hearing were consolidated, the order shall also set forth whether the facility may discharge the resident.

AUTHORITY: sections ***192.2000, 198.009, and*** *198.088, RSMo [1994 and 660.050, RSMo Supp. 1997]* ***2016****. This rule was originally filed as 13 CSR 15-10.050. Original rule filed Feb. 13, 1998, effective Sept. 30, 1998. Moved to 19 CSR 30-82.050, effective*

Aug. 28, 2001. Amended: Filed Sept. 1, 2021.

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 Carmen Grover-Slattery, Regulation Unit Manager, Section for Long-Term Care Regulation, PO Box 570, Jefferson City, MO 65102-0570 or at RegulationUnit@health.mo.gov. 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 20—DEPARTMENT OF COMMERCE AND INSURANCE
Division 200—Insurance Solvency and Company Regulation
Chapter 2—Reinsurance and Assumptions

PROPOSED AMENDMENT

20 CSR 200-2.100 Credit for Reinsurance. The director is amending 20 CSR 200-2.100 by inserting a new section (7), renumbering subsequent sections, and amending sections (5), (6), and (8)-(14).

PURPOSE: The director is adding a new section (7) regarding reciprocal jurisdictions and reinsurance credit. Additional amendments were necessary to update internal references. This amendment effectuates section 375.246, RSMo, as amended by SB 6 (2021).

(5) Credit for Reinsurance—Reinsurers Maintaining Trust Funds.

(F) A specific security provided to a ceding insurer by an assuming insurer pursuant to section *[(7)]* **(8)** of this rule shall be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer pursuant to section (5) of this rule.

(6) Credit for Reinsurance—Certified Reinsurers.

(A) Pursuant to section 375.246.1(5), RSMo, the director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in this state at all times for which statutory financial statement credit for reinsurance is claimed under section (6) of this rule. The credit allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the director. The security shall be in a form consistent with the provisions of sections 375.246.1(5) and 375.246.2, RSMo, and sections *[(9)]* **(10)**, *[(10)]* **(11)**, or *[(11)]* **(12)** of this rule. The amount of security required in order for full credit to be allowed shall correspond with the following requirements:

1. Ratings	Security Required
Secure – 1	0%
Secure – 2	10%
Secure – 3	20%
Secure – 4	50%
Secure – 5	75%
Vulnerable – 6	100%

2. Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions.

3. The director shall require the certified reinsurer to post one hundred percent (100%), for the benefit of the ceding insurer or its estate, security upon the entry of an order or rehabilitation, liquidation, or conservation against the ceding insurer.

4. In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverables for a period of one (1) year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence as recognized by the director. The one (1) year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as reported on the NAIC annual financial statement related specifically to the catastrophic occurrence will be included in the deferral:

A. Line 1: Fire;
B. Line 2: Allied Lines;
C. Line 3: Farmowners multiple peril;
D. Line 4: Homeowners multiple peril;
E. Line 5: Commercial multiple peril;
F. Line 9: Inland Marine;
G. Line 12: Earthquake; and
H. Line 21: Auto physical damage.

5. Credit for reinsurance under section (6) of this rule shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, shall only be subject to section (6) of this rule with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.

6. Nothing in section (6) of this rule shall prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under section (6) of this rule.

(B) Certification Procedure.

1. The director shall post notice on the department's website promptly upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The director may not take final action on the application until at least thirty (30) days after posting the notice required by paragraph (6)(B)1. of this rule.

2. The director shall issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer. Included in such notice shall be the rating assigned the certified reinsurer in accordance with subsection (6)(A) of this rule. The director shall publish a list of all certified reinsurers and their ratings.

3. In order to be eligible for certification, the assuming insurer shall meet the following requirements:

A. The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a Qualified Jurisdiction, as determined by the director pursuant to subsection (6)(C) of this rule.

B. The assuming insurer must maintain capital and surplus, or its equivalent, of no less than two hundred*[-]* fifty (250) million dollars calculated in accordance with subparagraph (6)(B)4.H. of this rule. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least two hundred*[-]* fifty (250) million dollars and a central fund containing a balance of at least two hundred*[-]* fifty (250) million dollars.

C. The assuming insurer must maintain financial strength ratings from two (2) or more rating agencies deemed acceptable by the director. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings will be one (1) factor used by the director in determining the rating that is assigned to the assuming insurer. Acceptable

rating agencies include the following: Standard & Poor's, Moody's Investors Service, Fitch Ratings, A.M. Best Company, or any other nationally recognized statistical rating organization.

D. The certified reinsurer must comply with any other requirements reasonably imposed by the director.

4. Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include, but are not limited to, the following:

A. The certified reinsurer's financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table below. The director shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two (2) financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification—

Ratings	Best	S & P	Moody's	Fitch
Secure – 1	A++	AAA	Aaa	AAA
Secure – 2	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-
Secure – 3	A	A+, A	A1, A2	A+, A
Secure – 4	A-	A-	A3	A-
Secure – 5	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-
Vulnerable – 6	B, B-, C++, C+, C, C-, D, E, F	BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD

B. The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;

C. For certified reinsurers domiciled in the United States, a review of the most recent applicable NAIC Annual Statement Blank, either Schedule F (for property/casualty reinsurers) or Schedule S (for life and health reinsurers);

D. For certified reinsurers not domiciled in the United States, a review annually of the NAIC Form CR-F (for property/casualty reinsurers) or Form CR-S (for life and health reinsurers)*[.]***;**

E. The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers' Schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than ninety (90) days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership;

F. Regulatory actions against the certified reinsurer;

G. The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subparagraph (6)(B)4.H. of this rule;

H. For certified reinsurers not domiciled in the United States, audited financial statements *[(audited United States GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a United States GAAP basis, or, with the permission of the state insurance commissioner, audited IFRS statements with reconciliation to United States GAAP certified by an officer of the company)]*, regulatory filings, and actuarial opinion (as filed with the non-United States jurisdiction supervisor **with a translation in English**). Upon the initial application for certification, the director will consider audited financial statements for the last *[three (3)]* **two (2)** years filed with its non-United States jurisdiction supervisor;

I. The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;

J. A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves United States ceding insurers. The director shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and

K. Any other information deemed relevant by the director.

5. Based on the analysis conducted under subparagraph (6)(B)4.E. of this rule of a certified reinsurer's reputation for prompt payment of claims, the director may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to United States ceding insurers, provided that the director shall, at a minimum, increase the security the certified reinsurer is required to post by one (1) rating level under subparagraph (6)(B)4.A. of this rule if the director finds that—

A. More than fifteen percent (15%) of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of ninety (90) days or more which are not in dispute and which exceed one hundred thousand dollars ($100,000) for each cedent; or

B. The aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by ninety (90) days or more exceeds fifty (50) million dollars.

6. The assuming insurer must submit a properly executed Form CR-1, the form of which is included herein as Exhibit 6 of this rule, revised September 23, 2013, or any form which substantially comports with the specified form, as evidence of its submission to the jurisdiction of this state, appointment of the director as an agent for service of process in this state, and agreement to provide security for one hundred percent (100%) of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if it resists enforcement of a final United States judgment. The director shall not certify any assuming insurer that is domiciled in a jurisdiction that the director has determined does not adequately and promptly enforce final United States judgments or arbitration awards.

7. The certified reinsurer must agree to meet applicable information filing requirements as determined by the director, both with respect to an initial application for certification and on an ongoing basis. The applicable information filing requirements are as follows:

A. Notification within ten (10) days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing such changes and the reasons therefore;

B. Annually, the NAIC Form CR-F or CR-S, the forms of which are included herein as Exhibits 7 and 8, respectively, of this rule, revised September 23, 2013, or any form which substantially comports with the specified form as applicable;

C. Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subparagraph (6)(B)7.D. of this rule;

D. Annually, audited financial statements *[(audited United States GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a United States GAAP basis, or, with the permission of the state insurance commissioner, audited IFRS statements with reconciliation to United States GAAP certified by an officer of the company)]*, regulatory filings, and actuarial opinion (as filed with the certified reinsurer's supervisor **with a translation in English**). Upon the initial certification, audited financial statements for the last *[three (3) years]* **two (2) years** filed with the certified reinsurer's supervisor;

E. At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from United States domestic ceding insurers;

F. A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level;

G. Includes with the documents required to be filed under preceding provisions of section (6) of this rule the appropriate filing fees as set forth in section 374.230, RSMo; and

H. Any other information that the director may reasonably require.

8. The information required to be filed pursuant to paragraph (6)(B)7. of this rule shall be deemed records which are open to the inspection of the public in accordance with sections 374.070 and 610.011, RSMo. Any insurance company claiming that such filings are trade secrets or proprietary information shall comply with the procedures as set forth in 20 CSR 10-2.400(8).

9. Change in Rating or Revocation of Certification.

A. In the case of a downgrade by a rating agency or other disqualifying circumstance, the director shall, upon written notice, assign a new rating to the certified reinsurer in accordance with the requirements of subparagraph (6)(B)4.A. of this rule.

B. The director shall have the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time, if the certified reinsurer fails to meet or maintain its obligations or security requirements under section (6) of this rule, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the director to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.

C. If the rating of a certified reinsurer is upgraded by the director, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the director shall require the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the director, the director shall require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.

D. Upon revocation of the certification of a certified reinsurer by the director, the assuming insurer shall be required to post security in accordance with section *[(8)]* **(9)** of this rule in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust in accordance with section (5) of this rule, the director may allow additional credit equal to the ceding insurer's *pro rata* share of such funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for a period of three (3) months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the director to be at high risk of uncollectibility.

(C) Qualified Jurisdictions.

1. If, upon conducting an evaluation under section (6) of this rule with respect to the reinsurance supervisory system of any non-United States assuming insurer, the director determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the director shall publish notice and evidence of such recognition in an appropriate manner. The director may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.

2. In order to determine whether the domiciliary jurisdiction of a non-United States assuming insurer is eligible to be recognized as a qualified jurisdiction, the director shall evaluate the reinsurance supervisory system of the non-United States jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and the extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the United States. The director shall determine the appropriate approach for evaluating the qualifications of such jurisdictions, and create and publish a list of jurisdictions whose reinsurers may be approved by the director as eligible for certification. A qualified jurisdiction must agree to share information and cooperate with the director with respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the director, include**,** but are not limited to**,** the following:

A. The framework under which the assuming insurer is regulated;

B. The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance;

C. The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction;

D. The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used;

E. The domiciliary regulator's willingness to cooperate with United States regulators in general and the director in particular;

F. The history of performance by assuming insurers in the domiciliary jurisdiction;

G. Any documented evidence of substantial problems with the enforcement of final United States judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the director has determined that it does not adequately and promptly enforce final United States judgments or arbitration awards;

H. Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or successor organization; and

I. Any other matters deemed relevant by the director.

3. A list of qualified jurisdictions shall be published through the NAIC Committee Process. The director may consider this list in determining qualified jurisdictions. If the director approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the director shall provide thoroughly documented justification with respect to the criteria provided under subsection *[(8)]***(6)**(C) of this rule.

4. United States jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions.

(D) Recognition of Certification Issued by an NAIC Accredited Jurisdiction

1. If an applicant for certification has been certified as a reinsurer in an NAIC-accredited jurisdiction, the director has the discretion to defer to that jurisdiction's certification, and to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed Form CR-1, the form of which is included herein as Exhibit 6 of this rule, revised September 23, 2013, or any form which substantially comports with the specified form, and such additional information as the director requires. The assuming insurer shall be considered to be a certified reinsurer in this state.

2. Any change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in this state as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the director of any change in its status or rating within ten (10) days after receiving notice of the change.

3. The director may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with subparagraph (6)(B)7.A. of this rule.

4. The director may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer. Unless the director suspends or revokes the certified reinsurer's certification in accordance with subparagraph (6)(B)7.B. of this rule, the certified reinsurer's certification shall remain in good standing in this state for a period of three (3) months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this state.

(E) Mandatory Funding Clause. In addition to the clauses required under section *[(12)]* **(13)** of this rule, reinsurance contracts entered

into or renewed under section (6) of this rule shall include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under section (6) of this rule for reinsurance ceded to the certified reinsurer.

(F) The director shall comply with all reporting and notification requirements that may be established by the NAIC with respect to certified reinsurers and qualified jurisdictions.

(7) Credit for Reinsurance—Reciprocal Jurisdictions.

(A) Pursuant to section 375.246.1(6), RSMo, the director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is licensed to write reinsurance by, and has its head office or is domiciled in, a reciprocal jurisdiction, and which meets the other requirements of this regulation.

(B) A "Reciprocal Jurisdiction" is a jurisdiction, as designated by the director pursuant to subsection (7)(D) of this rule, that meets one (1) of the following:

1. A non-U.S. jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and the European Union, is a member state of the European Union. For purposes of this subsection, a "covered agreement" is an agreement entered into pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. sections 313 and 314, that is currently in effect or in a period of provisional application and addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this state or for allowing the ceding insurer to recognize credit for reinsurance;

2. A U.S. jurisdiction that meets the requirements for accreditation under the NAIC financial standards and accreditation program; or

3. A qualified jurisdiction, as determined by the director pursuant to section 375.246.1(5), RSMo and subsection (6)(C) of this rule, which is not otherwise described in subparagraph (7)(B)1. or (7)(B)2. of this rule and which the director determines meets all of the following additional requirements:

A. Provides that an insurer which has its head office or is domiciled in such qualified jurisdiction shall receive credit for reinsurance ceded to a U.S. domiciled assuming insurer in the same manner as credit for reinsurance is received for reinsurance assumed by insurers domiciled in such qualified jurisdiction;

B. Does not require a U.S. domiciled assuming insurer to establish or maintain a local presence as a condition for entering into a reinsurance agreement with any ceding insurer subject to regulation by the non-U.S. jurisdiction or as a condition to allow the ceding insurer to recognize credit for such reinsurance;

C. Recognizes the U.S. state regulatory approach to group supervision and group capital, by providing written confirmation by a competent regulatory authority, in such qualified jurisdiction, that insurers and insurance groups that are domiciled or maintain their headquarters in this state or another jurisdiction accredited by the NAIC shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the director or the commissioner of the domiciliary state and will not be subject to group supervision at the level of the worldwide parent undertaking of the insurance or reinsurance group by the qualified jurisdiction; and

D. Provides written confirmation by a competent regulatory authority in such qualified jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the director in accordance with a memorandum of understanding or similar document between the director and such qualified jurisdiction, including, but not limited to, the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC.

(C) Credit shall be allowed when the reinsurance is ceded from an insurer domiciled in this state to an assuming insurer meeting each of the conditions set forth below—

1. The assuming insurer must be licensed to transact reinsurance by, and have its head office or be domiciled in, a reciprocal jurisdiction;

2. The assuming insurer must have and maintain on an ongoing basis minimum capital and surplus, or its equivalent, calculated on at least an annual basis as of the preceding December 31 or at the annual date otherwise statutorily reported to the reciprocal jurisdiction, and confirmed as set forth in paragraph (7)(C)7. of this rule according to the methodology of its domiciliary jurisdiction, in the following amounts:

A. No less than $250 million; or

B. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters:

(I) Minimum capital and surplus equivalents (net of liabilities) or own funds of the equivalent of at least $250 million; and

(II) A central fund containing a balance of the equivalent of at least $250 million;

3. The assuming insurer must have and maintain on an ongoing basis a minimum solvency or capital ratio, as applicable, as follows:

A. If the assuming insurer has its head office or is domiciled in a reciprocal jurisdiction as defined in paragraph (7)(B)1. of this rule, the ratio specified in the applicable covered agreement;

B. If the assuming insurer is domiciled in a reciprocal jurisdiction as defined in paragraph (7)(B)2. of this rule, a risk-based capital (RBC) ratio of three hundred percent (300%) of the authorized control level, calculated in accordance with the formula developed by the NAIC; or

C. If the assuming insurer is domiciled in a reciprocal jurisdiction as defined in paragraph (7)(B)3. of this rule, after consultation with the reciprocal jurisdiction and considering any recommendations published through the NAIC Committee Process, such solvency or capital ratio as the director determines to be an effective measure of solvency;

4. The assuming insurer must agree to and provide adequate assurance, in the form of a properly executed Form RJ-1, the form of which is included herein as Exhibit 9 of this rule, of its agreement to the following:

A. The assuming insurer must agree to provide prompt written notice and explanation to the director if it falls below the minimum requirements set forth in paragraphs (7)(B)2. or 3. of this rule, or if any regulatory action is taken against it for serious noncompliance with applicable law;

B. The assuming insurer must consent in writing to the jurisdiction of the courts of this state and to the appointment of the director as agent for service of process.

(I) The director may also require that such consent be provided and included in each reinsurance agreement under the director's jurisdiction.

(II) Nothing in this provision shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws;

C. The assuming insurer must consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer, that have been declared enforceable in the territory where the judgment was obtained;

D. Each reinsurance agreement must include a provision requiring the assuming insurer to provide security in an amount

equal to one hundred percent (100%) of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its estate, if applicable;

E. The assuming insurer must confirm that it is not presently participating in any solvent scheme of arrangement, which involves this state's ceding insurers, and agrees to notify the ceding insurer and the director and to provide one hundred percent (100%) security to the ceding insurer consistent with the terms of the scheme, should the assuming insurer enter into such a solvent scheme of arrangement. Such security shall be in a form consistent with the provisions of section 375.246.1(5) and section 375.246.2, RSMo, and section (10), (11), or (12) of this rule. For purposes of this rule, the term "solvent scheme of arrangement" means a foreign or alien statutory or regulatory compromise procedure subject to requisite majority creditor approval and judicial sanction in the assuming insurer's home jurisdiction either to finally commute liabilities of duly noticed classed members or creditors of a solvent debtor, or to reorganize or restructure the debts and obligations of a solvent debtor on a final basis, and which may be subject to judicial recognition and enforcement of the arrangement by a governing authority outside the ceding insurer's home jurisdiction; and

F. The assuming insurer must agree in writing to meet the applicable information filing requirements as set forth in paragraph (7)(C)5. of this rule;

5. The assuming insurer or its legal successor must provide, if requested by the director, on behalf of itself and any legal predecessors, the following documentation to the director:

A. For the two (2) years preceding entry into the reinsurance agreement and on an annual basis thereafter, the assuming insurer's annual audited financial statements, in accordance with the applicable law of the jurisdiction of its head office or domiciliary jurisdiction, as applicable, including the external audit report;

B. For the two (2) years preceding entry into the reinsurance agreement, the solvency and financial condition report or actuarial opinion, if filed with the assuming insurer's supervisor;

C. Prior to entry into the reinsurance agreement and not more than semi-annually thereafter, an updated list of all disputed and overdue reinsurance claims outstanding for ninety (90) days or more, regarding reinsurance assumed from ceding insurers domiciled in the United States; and

D. Prior to entry into the reinsurance agreement and not more than semi-annually thereafter, information regarding the assuming insurer's assumed reinsurance by the ceding insurer, ceded reinsurance by the assuming insurer, and reinsurance recoverable on paid and unpaid losses by the assuming insurer to allow for the evaluation of the criteria set forth in paragraph (7)(C)6. of this rule;

6. The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements. The lack of prompt payment will be evidenced if any of the following criteria is met:

A. More than fifteen percent (15%) of the reinsurance recoverables from the assuming insurer are overdue and in dispute as reported to the director;

B. More than fifteen percent (15%) of the assuming insurer's ceding insurers or reinsurers have overdue reinsurance recoverable on paid losses of ninety (90) days or more which are not in dispute and which exceed for each ceding insurer one hundred thousand dollars ($100,000), or as otherwise specified in a covered agreement; or

C. The aggregate amount of reinsurance recoverable on paid losses which are not in dispute, but are overdue by ninety (90) days or more, exceeds $50 million or as otherwise specified in a covered agreement;

7. The assuming insurer's supervisory authority must confirm to the director on an annual basis that the assuming insurer complies with the requirements set forth in paragraphs (7)(C)2. and 3. of this rule; and

8. Nothing in this provision precludes an assuming insurer from providing the director with information on a voluntary basis.

(D) The director shall timely create and publish a list of reciprocal jurisdictions.

1. A list of reciprocal jurisdictions is published through the NAIC Committee Process. The director's list shall include any reciprocal jurisdiction as defined under paragraphs (7)(B)1. and 2. of this rule, and shall consider any other reciprocal jurisdiction included on the NAIC list. The director may approve a jurisdiction that does not appear on the NAIC list of reciprocal jurisdictions as provided by applicable law, regulation, or in accordance with criteria published through the NAIC Committee Process.

2. The director may remove a jurisdiction from the list of reciprocal jurisdictions upon a determination that the jurisdiction no longer meets one (1) or more of the requirements of a reciprocal jurisdiction, as provided by applicable law, regulation, or in accordance with a process published through the NAIC Committee Process, except that the director shall not remove from the list a reciprocal jurisdiction as defined under paragraphs (7)(B)1. and 2. of this rule. Upon removal of a reciprocal jurisdiction from this list credit for reinsurance ceded to an assuming insurer domiciled in that jurisdiction shall be allowed, if otherwise allowed pursuant to section 375.246, RSMo, or 20 CSR 200-2.100.

(E) The director shall timely create and publish a list of assuming insurers that have satisfied the conditions set forth in this section and to which cessions shall be granted credit in accordance with this subsection.

1. If an NAIC-accredited jurisdiction has determined that the conditions set forth in subsection (7)(C) of this rule have been met, the director has the discretion to defer to that jurisdiction's determination, and add such assuming insurer to the list of assuming insurers to which cessions shall be granted credit in accordance with this subsection. The director may accept financial documentation filed with another NAIC-accredited jurisdiction or with the NAIC in satisfaction of the requirements of subsection (7)(C) of this rule.

2. When requesting that the director defer to another NAIC-accredited jurisdiction's determination, an assuming insurer must submit a properly executed Form RJ-1 and additional information as the director may require. A state that has received such a request will notify other states through the NAIC Committee Process and provide relevant information with respect to the determination of eligibility.

(F) If the director determines that an assuming insurer no longer meets one (1) or more of the requirements under this subsection, the director may revoke or suspend the eligibility of the assuming insurer for recognition under this subsection.

1. While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended, or renewed after the effective date of the suspension qualifies for credit except to the extent that the assuming insurer's obligations under the contract are secured in accordance with section (9).

2. If an assuming insurer's eligibility is revoked, no credit for reinsurance may be granted after the effective date of the revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into prior to the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the director and consistent with

the provisions of section (9) of this rule.

(G) Before denying statement credit or imposing a requirement to post security with respect to subsection (7)(F) of this rule or adopting any similar requirement that will have substantially the same regulatory impact as security, the director shall—

1. Communicate with the ceding insurer, the assuming insurer, and the assuming insurer's supervisory authority that the assuming insurer no longer satisfies one of the conditions listed in subsection (7)(C) of this rule;

2. Provide the assuming insurer with thirty (30) days from the initial communication to submit a plan to remedy the defect, and ninety (90) days from the initial communication to remedy the defect, except in exceptional circumstances in which a shorter period is necessary for policyholder and other consumer protection;

3. After the expiration of ninety (90) days or less, as set out in paragraph (7)(G)2. of this rule, if the director determines that no or insufficient action was taken by the assuming insurer, the director may impose any of the requirements as set out in this subsection; and

4. Provide a written explanation to the assuming insurer of any of the requirements set out in this subsection.

(H) If subject to a legal process of rehabilitation, liquidation, or conservation, as applicable, the ceding insurer, or its representative, may seek and, if determined appropriate by the court in which the proceedings are pending, may obtain an order requiring that the assuming insurer post security for all outstanding liabilities.

*[(7)]***(8)** Credit for Reinsurance Required by Law. Pursuant to section 375.246.1*[(6)]*, RSMo, the director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of section 375.246.1(1), (2), (3), (4), *[or]* (5), **or (6),** RSMo, but only as to the insurance of risks located in jurisdictions where the reinsurance is required by the applicable law or regulation of that jurisdiction. As used in this section, "jurisdiction" means state, district, or territory of the United States and any lawful national government.

*[(8)]***(9)** Asset or Reduction From Liability for Reinsurance Ceded to an Unauthorized Assuming Insurer not Meeting the Requirements of Sections (2) through *[(7)]* **(8)** of this Rule.

(A) Pursuant to section 375.246.2., RSMo, the director shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of section 375.246.1., RSMo, in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations under the reinsurance contract. The security shall be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution as defined in section 375.246.3(2), RSMo. This security may be in the form of any of the following:

1. Cash;

2. Securities listed by the Securities Valuation Office of the NAIC, including those deemed exempt from filing as defined by the Purpose and Procedures Manual of the Securities Valuation Office, and qualifying as admitted assets;

3. Clean, irrevocable, unconditional, and "evergreen" letters of credit issued or confirmed by a qualified United States institution, as defined in section 375.246.3(1), RSMo, effective no later than December 31 of the year for which filing is being made, and in the possession of, or in trust for, the ceding insurer on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation)*[,]* shall, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification**,** or amendment, whichever first occurs; or

4. Any other form of security acceptable to the director.

(B) An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to section *[(8)]* **(9)** of this rule shall be allowed only when the requirements of section *[(12)]* **(13)** and the applicable portions of sections *[(9)]* **(10)**, *[(10)]* **(11)**, or *[(11)]* **(12)** of this rule have been satisfied.

*[(9)]***(10)** Trust Agreements Qualified Under Section *[(8)]* **(9)**.

(A) As used in section *[(9)]* **(10)** of this rule—

1. "Beneficiary" means the entity for whose sole benefit the trust has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes, and is limited to, the court-appointed domiciliary receiver (including conservator, rehabilitator, or liquidator);

2. "Grantor" means the entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited assuming insurer; and

3. "Obligations," as used in paragraph *[(9)]***(10)**(B)11. of this rule, means—

A. Reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;

B. Reserves for reinsured losses reported and outstanding;

C. Reserves for reinsured losses incurred but not reported; and

D. Reserves for allocated reinsured loss expenses and unearned premiums.

(B) Required Conditions.

1. The trust agreement shall be entered into between the beneficiary, the grantor, and a trustee, which shall be a qualified United States financial institution as defined in section 375.246.3(2), RSMo.

2. The trust agreement shall create a trust account into which assets shall be deposited.

3. All assets in the trust account shall be held by the trustee at the trustee's office in the United States.

4. The trust agreement shall provide that—

A. The beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;

B. No other statement or document is required to be presented in order to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;

C. It is not subject to any conditions or qualifications outside of the trust agreement; and

D. It shall not contain references to any other agreements or documents except as provided for in paragraphs *[(9)]***(10)**(B)11. and *[(9)]***(10)**(B)12. of this rule.

5. The trust agreement shall be established for the sole benefit of the beneficiary.

6. The trust agreement shall require the trustee to—

A. Receive assets and hold all assets in a safe place;

B. Determine that all assets are in the form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary negotiate any such assets, without consent or signature from the grantor or any other person or entity;

C. Furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;

D. Notify the grantor and the beneficiary within ten (10) days*[,]* of any deposits to or withdrawals from the trust account;

E. Upon written demand of the beneficiary, immediately take

any and all steps necessary to transfer absolutely and unequivocally all right, title, and interest in the assets held in the trust account to the beneficiary and deliver physical custody of these assets to the beneficiary; and

F. Allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset withdraw such asset upon condition that the proceeds are paid into the trust account.

7. The trust agreement shall provide that at least thirty (30) days, but not more than forty-five (45) days, prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary.

8. The trust agreement shall be made subject to and governed by the laws of the state in which the trust is domiciled.

9. The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying commission to, or reimbursing the expenses of, the trustee. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the director), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

10. The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct, or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence and/or willful misconduct.

11. Notwithstanding other provisions of this rule, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

A. To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;

B. To make payment to the assuming insurer of any amounts held in the trust account that exceed one hundred*[-]* two percent (102%) of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or

C. Where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten (10) days prior to that termination date, to withdraw amounts equal to those obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution as defined in section 375.246.3(2), RSMo, apart from its general assets, in trust for those uses and purposes specified in subparagraphs *[(9)]***(10)**(B)11.A. and B. of this rule as may remain executory after such withdrawal and for any period after the termination date.

12. Notwithstanding other provisions of this rule, when a trust agreement is established to meet the requirements of section *[(8)]* **(9)** of this rule in conjunction with a reinsurance agreement covering life, annuities, or accident and health risks, where it is customary to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

A. To pay or reimburse the ceding insurer for—

(I) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies; and

(II) The assuming insurer's share under the specific reinsurance agreement of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurer, under the terms and provisions of the policies reinsured under the reinsurance agreement;

B. To pay to the assuming insurer amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; or

C. Where the ceding insurer has received notification of termination of the trust and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer, and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution apart from its general assets, in trust for the uses and purposes specified in subparagraphs *[(9)]***(10)**(B)12.A. and *[(9)]***(10)**(B)12.B. of this rule as may remain executory after withdrawal and for any period after the termination date.

13. Either the reinsurance agreement or the trust agreement must stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States bank and payable in United States dollars, and investments permitted by the Insurance Code or any combination of the above, provided investments in or issued by an entity controlling, controlled by, or under common control with either the grantor or the beneficiary of the trust shall not exceed five percent (5%) of total investments. The agreement may further specify the types of investments to be deposited. If the reinsurance agreement covers life, annuities, or accident and health risks, then the provisions required by paragraph *[(9)]***(10)**(B)13. of this rule must be included in the reinsurance agreement.

(C) Permitted Conditions.

1. The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than ninety (90) days after the beneficiary and grantor receive the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than ninety (90) days after the trustee and the beneficiary receive the notice, provided that no such resignation or removal shall be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee.

2. The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time-to-time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any interest or dividends either shall be forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.

3. The trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution shall be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest those funds and to accept substitutions that the trustee determines are at least equal in current fair market value to the assets withdrawn and that are consistent with the restrictions in subparagraph *[(9)]***(10)**(D)1.B. of this rule.

4. The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are

to be transferred. Transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.

5. The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary shall, with written approval by the beneficiary, be delivered over to the grantor.

(D) Additional Conditions Applicable to Reinsurance Agreements.

1. A reinsurance agreement may contain provisions that—

A. Require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specifying what the agreement is to cover;

B. Require the assuming insurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations**,** or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate these assets without consent or signature from the assuming insurer or any other entity;

C. Require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and

D. Stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including, without limitation, any liquidator, rehabilitator, receiver, or conservator of such company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

(I) To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement because of cancellation of such policies;

(II) To pay or reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement;

(III) To pay or reimburse the ceding insurer for any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; and

(IV) To make payment to the assuming insurer of amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

2. The reinsurance agreement also may contain provisions that—

A. Give the assuming insurer the right to seek approval from the ceding insurer, which shall not be unreasonably or arbitrarily withheld, to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided—

(I) The assuming insurer shall, at the time of that withdrawal, replace the withdrawn assets with other qualified assets having a current fair market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount; or

(II) After withdrawal and transfer, the current fair market value of the trust account is no less than one hundred*[-]* two percent (102%) of the required amount*[.]***;**

B. Provide for the return of any amount withdrawn in excess of the actual amounts required for parts *[(9)]***(10)**(D)1.D.(I)–(IV) of this rule, and for interest payments at a rate not in excess of the prime rate of interest on such amounts*[.]***;**

C. Permit the award by any arbitration panel or court of competent jurisdiction of—

(I) Interest at a rate different from that provided in subparagraph *[(9)]***(10)**(D)2.B. of this rule;

(II) Court or arbitration costs;

(III) Attorney's fees; and

(IV) Any other reasonable expenses.

(E) Financial reporting. A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with this department in compliance with the provisions of this rule when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but such reduction shall be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

(F) Existing agreements. Notwithstanding the effective date of this rule, any trust agreement or underlying reinsurance agreement in existence prior to January 1, 2013, will continue to be acceptable until December 31, 2013, at which time the agreements will have to be in full compliance with this rule for the trust agreement to be acceptable.

(G) The failure of any trust agreement to specifically identify the beneficiary as defined in subsection *[(9)]***(10)**(A) of this rule shall not be construed to affect any actions or rights which the director may take or possess pursuant to the provisions of the laws of this state.

*[(10)]***(11)** Letters of Credit Qualified Under Section *[(8)]* **(9)**.

(A) The letter of credit must be clean, irrevocable, unconditional and issued or confirmed by a qualified United States financial institution as defined in section 375.246.3(1), RSMo. The letter of credit shall contain an issue date and expiration date and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit also shall indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself shall not contain reference to any other agreements, documents or entities, except as provided in paragraph *[(10)]***(11)**(H)1. of this rule. As used in section *[(10)]* **(11)** of this rule, "beneficiary" means the domestic insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes, and is limited to, the court-appointed domiciliary receiver (including conservator, rehabilitator, or liquidator).

(B) The heading of the letter of credit may include a boxed section which contains the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section shall be clearly marked to indicate that such information is for internal identification purposes only.

(C) The letter of credit shall contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.

(D) The term of the letter of credit shall be for at least one (1) year and shall contain an "evergreen clause" that prevents the expiration of the letter of credit without due notice from the issuer. The "evergreen clause" shall provide for a period of no less than thirty (30) days' notice prior to expiration date or nonrenewal.

(E) The letter of credit shall state whether it is subject to and governed by the laws of this state or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 600) (UCP 600) or International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98), or any successor publication, and all drafts drawn thereunder shall be presentable at an office in the United States of a qualified United States financial institution.

(F) If the letter of credit is made subject to the Uniform Customs

and Practice for Documentary Credits of the International Chamber of Commerce (Publication 500), or any successor publication, then the letter of credit shall specifically address and provide for an extension of time to draw against the letter of credit in the event that one (1) or more of the occurrences specified in Article 17 of Publication 500 or any other successor publication, occur.

(G) If the letter of credit is issued by a financial institution authorized to issue letters of credit, other than a qualified United States financial institution as described in subsection *[(10)]***(11)**(A) of this rule, then the following additional requirements shall be met:

1. The issuing financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts; and

2. The "evergreen clause" shall provide for thirty (30) days' notice prior to expiration date for nonrenewal.

(H) Reinsurance Agreement Provisions.

1. The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions that—

A. Require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover;

B. Stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and shall be utilized by the ceding insurer or its successors in interest only for one (1) or more of the following reasons:

(I) To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurers, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of those policies;

(II) To pay or reimburse the ceding insurer for the assuming insurer's share, under the specific reinsurance agreement, of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurers, under the terms and provisions of the policies reinsured under the reinsurance agreement;

(III) To pay or reimburse the ceding insurer for any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; and

(IV) Where the letter of credit will expire without renewal or be reduced or replaced by a letter of credit for a reduced amount and where the assuming insurer's entire obligations under the reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of the liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer and exceed the amount of any reduced or replacement letter of credit, and deposit those amounts in a separate account in the name of the ceding insurer in a qualified United States financial institution apart from its general assets, in trust for such uses and purposes specified in part *[(10)]***(11)**(H)1.B.(I) of this rule as may remain after withdrawal and for any period after the termination date.

C. All of the provisions of paragraph *[(10)]***(11)**(H)1. of this rule shall be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

2. Nothing contained in paragraph *[(10)]***(11)**(H)1. of this rule shall preclude the ceding insurer and assuming insurer from providing for—

A. An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to part *[(10)]***(11)**(H)1.B.(III) of this rule; or

B. The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or any amounts that are subsequently determined not to be due.

*[(11)]***(12)** Other Security. A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.

*[(12)]***(13)** Reinsurance Contract. Credit will not be granted, nor an asset or reduction from liability allowed, to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of sections (2), (3), (4), (5), (6), or *[(7)]* **(9)** of this rule or otherwise in compliance with section 375.246.1., RSMo after the adoption of this rule unless the reinsurance agreement includes:

(A) A proper insolvency clause which stipulates that reinsurance is payable directly to the liquidator or successor without diminution regardless of the status of the ceding company consistent with section 375.246.5(2), RSMo, or is substantially similar to the following:

1. In the event of the insolvency of the company, this reinsurance shall be payable directly to the ceding company, or to its liquidator, receiver, conservator, or statutory successor on the basis of the liability of the company without diminution because of the because the liquidator, receiver, conservator, or statutory successor of the company has failed to pay all or a portion of any claim. However, the liquidator, receiver, conservator, or statutory successor of the company shall give written notice to the reinsurers of the pendency of a claim against the company indicating the policy or bond reinsurance which claim would involve a possible liability on the part of the reinsurers within a reasonable time after that claim is filed in the conservation or liquidation proceeding or in the receivership, and that during the pendency of that claim the reinsurers may investigate that claim and interpose, at their own expense, in the proceeding where that claim is to be adjudicated any defense(s) they may deem available to the company or its liquidator, receiver, conservator, or statutory successor. This expense incurred by the reinsurers shall be chargeable, subject to the approval of the court, against the company as part of the expense of conservation or liquidation to the extent of a *pro rata* share of the benefit which may accrue to the company solely as a result of the defense undertaken by the reinsurers;

2. Where two (2) or more reinsurers are involved in the same claim and a majority in interest elect to interpose defense to that claim, the expense shall be apportioned in accordance with the terms of the reinsurance agreement as though that expense had been incurred by the company; and

3. This insolvency clause shall not preclude the reinsurer from asserting any excuse or defense to payment of this reinsurance other than the excuses or defenses of the insolvency of the company and the failure of the company's liquidator, receiver, conservator, or statutory successor to pay all or a portion of any claim;

(B) A provision pursuant to section 375.246.1*[(7)]***(8)**, RSMo, whereby the assuming insurer, if an unauthorized assuming insurer*[,]* has submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States, has agreed to comply with all requirements necessary to give that court or panel jurisdiction, has designated an agent upon whom service of process may be effected, and has agreed to abide by the final decision of that court or panel; and

(C) A proper reinsurance intermediary clause, if applicable, which stipulates that the credit risk for the intermediary is carried by the assuming insurer.

*[(13)]***(14)** Contracts Affected. All new and renewal reinsurance transactions entered into after January 1, *[2014]* **2022,** shall conform to the requirements of the Act and this rule if credit is to be given to the ceding insurer for such reinsurance.

EXHIBIT 9

FORM RJ-1

CERTIFICATE OF REINSURER DOMICILED IN RECIPROCAL JURISDICTION

I, _____,
_____
(name of officer) (title of officer)

of_____
___, the assuming insurer.(name of assuming insurer)

under a reinsurance agreement with one or more insurers domiciled in _____, in order to
(name of state)

be considered for approval in this state, hereby certify that
_____ ("Assuming Insurer"):
(name of assuming insurer)

1. **Submits to the jurisdiction of any court of competent jurisdiction in [Name of State] for the adjudication of any issues arising out of the reinsurance agreement, agrees to comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal. The assuming insurer agrees that it will include such consent in each reinsurance agreement, if requested by the director. Nothing in this paragraph constitutes or should be understood to constitute a waiver of assuming insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. This paragraph is not intended to conflict with or override the obligation of the parties to the reinsurance agreement to arbitrate their disputes if such an obligation is created in the agreement, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws.**

2. **Designates the Director of the Department of Commerce and Insurance of the state of Missouri as its lawful attorney in and for the state of Missouri upon whom may be served any lawful process in any action, suit or proceeding in this state arising out of the reinsurance agreement instituted by or on behalf of the ceding insurer.**

3. **Agrees to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer, that have been declared enforceable in the territory where the judgment was obtained.**

4. **Agrees to provide prompt written notice and explanation if it falls below the minimum capital and surplus or capital or surplus ratio, or if any regulatory action is taken against it for serious noncompliance with applicable law.**

5. **Confirms that it is not presently participating in any solvent scheme of arrangement, which involves insurers domiciled in the state of Missouri. If the assuming insurer enters into such an arrangement, the assuming insurer agrees to notify the ceding insurer and the commissioner, and to provide 100% security to the ceding insurer consistent with the terms of the scheme.**

6. **Agrees that in each reinsurance agreement it will provide security in an amount equal to 100% of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final U.S. judgment, that is enforceable under the law of the territory in which it was obtained, or a properly enforceable arbitration award whether obtained by the ceding insurer or by its resolution estate, if applicable.**

7. **Agrees to provide the documentation in accordance with 20 CSR 200-2.100(7), if requested by the director.**

Dated: _____

_____
(name of assuming insurer)

BY: _____
(name of officer)

_____
(title of officer)

*AUTHORITY: section[s] 374.045, **RSMo 2016, and sections** 374.230 and 375.246, RSMo Supp. [2013] **2021, S.B. 6 (2021)**. This rule was previously filed as 4 CSR 190-11.350. Original rule filed Jan. 8, 1991, effective Jan. 1, 1992. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Aug. 30, 2021.*

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 OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Commerce and Insurance, Attorney Shelley A. Woods, 301 West High St., PO Box 690, Jefferson City, Missouri 65102-0690. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. A public hearing is scheduled for 9:30 am, November 3, 2021, in the Truman State Office Building, Room 530, Missouri Conference Room, 301 West High Street, Jefferson City, Missouri 65101.*

Title 20—DEPARTMENT OF COMMERCE AND INSURANCE
Division 200—Insurance Solvency and Company Regulation
Chapter 2—Reinsurance and Assumptions

PROPOSED RULE

20 CSR 200-2.900 Term and Universal Life Insurance Reserve Financing

PURPOSE: This rule sets forth rules and procedural requirements which the director deems necessary to carry out the provisions of the Law on Credit for Reinsurance, specifically, the provisions of section 375.246, RSMo. The actions and information required by this rule are declared to be necessary and appropriate in the public interest and for the protection of the ceding insurers in this state.

(1) If any provision of this rule, or the application of the provision to any person or circumstance, is held invalid, the remainder of this rule, and the application of the provision to persons or circumstances other than those to which it is held invalid, shall not be affected.

(2) The purpose and intent of this regulation is to establish uniform, national standards governing reserve financing arrangements pertaining to life insurance policies containing guaranteed nonlevel gross premiums, guaranteed nonlevel benefits, and universal life insurance policies with secondary guarantees; and to ensure that, with respect to each such financing arrangement, funds consisting of primary security and other security, as defined in section (5) of this rule, are held by or on behalf of ceding insurers in the forms and amounts required herein. In general, reinsurance ceded for reserve financing purposes has one (1) or more of the following characteristics: some or all of the assets used to secure the reinsurance treaty or to capitalize the reinsurer—1) are issued by the ceding insurer or its affiliates; or 2) are not unconditionally available to satisfy the general account obligations of the ceding insurer; or 3) create a reimbursement, indemnification, or other similar obligation on the part of the ceding insurer or any if its affiliates (other than a payment obligation under a derivative contract acquired in the normal course and used to support and hedge liabilities pertaining to the actual risks in the policies ceded pursuant to the reinsurance treaty).

(3) Application. This regulation shall apply to reinsurance treaties that cede liabilities pertaining to covered policies, as that term is defined in subsection (5)(B) of this rule, issued by any life insurance company domiciled in this state. This rule and section 375.246, RSMo, shall both apply to such reinsurance treaties, provided that in the event of a direct conflict between the provisions of this regulation and 20 CSR 200-2.100, the provisions of 20 CSR 200-2.900 shall apply, but only to the extent of the conflict.

(4) Exemptions from this Regulation. This regulation does not apply to the situations described in the following subsections:

(A) Reinsurance of—

1. Policies that satisfy the criteria for exemption set forth in 20 CSR 200-1.160(4)(F) or 20 CSR 200-1.160(4)(G), and which are issued before the later of—

A. The effective date of this regulation; and

B The date on which the ceding insurer begins to apply the provisions of VM-20 to establish the ceded policies' statutory reserves;

2. Portions of policies that satisfy the criteria for exemption set forth in 20 CSR 200-1.160(4)(E) and which are issued before the later of—

A. The effective date of this regulation; and

B. The date on which the ceding insurer begins to apply the provisions of VM-20 to establish the ceded policies' statutory reserves;

3. Any universal life policy that meets all of the following requirements:

A. Secondary guarantee period, if any, is five (5) years or less;

B. Specified premium for the secondary guarantee period is not less than the net level reserve premium for the secondary guarantee period based on the Commissioners Standard Ordinary (CSO) valuation tables and valuation interest rate applicable to the issue year of the policy; and

C. The initial surrender charge is not less than one hundred percent (100%) of the first year annualized specified premium for the secondary guarantee period;

4. Credit life insurance;

5. Any variable life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts; or

6. Any group life insurance certificate unless the certificate provides for a stated or implied schedule of maximum gross premiums required in order to continue coverage in force for a period in excess of one (1) year;

(B) Reinsurance ceded to an assuming insurer that meets the applicable requirements of section 375.246.1(4), RSMo; or

(C) Reinsurance ceded to an assuming insurer that meets the applicable requirements of section 375.246.1(1), (2), or (3) and that, in addition—

1. Prepares statutory financial statements in compliance with the NAIC Accounting Practices and Procedures Manual, without any departures from NAIC statutory accounting practices and procedures pertaining to the admissibility or valuation of assets or liabilities that increase the assuming insurer's reported surplus and are material enough that they need to be disclosed in the financial statement of the assuming insurer pursuant to Statement of Statutory Accounting Principles No. 1 (SSAP 1); and

2. Is not in a company action level event, regulatory action level event, authorized control level event, or mandatory control level event as those terms are defined in sections 375.1255, 375.1257, 375.1260, or 375.1262, RSMo, when its Risk-Based Capital (RBC) is calculated in accordance with the life risk-based capital report including overview and instructions for companies, as the same may be amended by the NAIC from time to time, without deviation; or

(D) Reinsurance ceded to an assuming insurer that meets the applicable requirements of section 375.246.1(1), (2), or (3), RSMo, and that, in addition—

1. Is not an affiliate, as that term is defined in section 382.010(1), RSMo, of—

A. The insurer ceding the business to the assuming insurer; or

B. Any insurer that directly or indirectly ceded the business to that ceding insurer;

2. Prepares statutory financial statements in compliance with the NAIC Accounting Practices and Procedures Manual;

3. Is both—

A. Licensed or accredited in at least ten (10) states (including its state of domicile); and

B. Not licensed in any state as a captive, special purpose vehicle, special purpose financial captive, special purpose life reinsurance company, limited purpose subsidiary, or any other similar licensing regime; and

4. Is not, or would not be, below five hundred percent (500%) of the Authorized Control Level RBC as that term is defined in section 375.1260, RSMo when its RBC is calculated in accordance with the life risk-based capital report including overview and instructions for companies, as the same may be amended by the NAIC from time to time, without deviation, and without recognition of any departures from NAIC statutory accounting practices and procedures pertaining to the admission or valuation of assets or liabilities that increase the assuming insurer's reported surplus; or

(E) Reinsurance ceded to an assuming insurer that meets the requirements of either section 375.246.4(2)(d), RSMo; or

(F) Reinsurance not otherwise exempt under subsections (4)(A) through (4)(E) of this rule if the director, after consulting with the NAIC Financial Analysis Working Group (FAWG) or other group of regulators designated by the NAIC, as applicable, determines under all the facts and circumstances that all of the following apply:

1. The risks are clearly outside of the intent and purpose of this regulation (as described in section (2)) of this rule;

2. The risks are included within the scope of this regulation only as a technicality; and

3. The application of this regulation to those risks is not necessary to provide appropriate protection to policyholders. The director shall publicly disclose any decision made pursuant to subsection (4)(F) of this rule to exempt a reinsurance treaty from this regulation, as well as the general basis therefore (including a summary description of the treaty).

(5) Definitions.

(A) "Actuarial method" means the methodology used to determine the required level of primary security, as described in section (7) of this rule.

(B) "Covered policies" means those policies that are subject to the exemptions described in section (4) of this rule. Covered policies are those policies, other than grandfathered policies, of the following policy types:

1. Life insurance policies with guaranteed nonlevel gross premiums and/or guaranteed nonlevel benefits, except for flexible premium universal life insurance policies; or

2. Flexible premium universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period.

(C) "Grandfathered policies" means policies of the types described in paragraphs (5)(B)1. and (5)(B)2. of this rule that were—

1. Issued prior to January 1, 2015; and

2. Ceded, as of December 31, 2014, as part of a reinsurance treaty that would not have met one (1) of the exemptions set forth in section (4) of this rule had that section then been in effect.

(D) "Non-covered policies" means any policy that does not meet the definition of covered policies, including grandfathered policies.

(E) "Required level of primary security" means the dollar amount determined by applying the actuarial method to the risks ceded with respect to covered policies, but not more than the total reserve ceded.

(F) "Primary security" means the following forms of security:

1. Cash meeting the requirements of section 375.246.1(1), RSMo;

2. Securities listed by the Securities Valuation Office meeting the requirements of section 375.246.2(2), RSMo, but excluding any synthetic letter of credit, contingent note, credit-linked note or other similar security that operates in a manner similar to a letter of credit, and excluding any securities issued by the ceding insurer or any of its affiliates; and

3. For security held in connection with funds-withheld and modified coinsurance reinsurance treaties—

A. Commercial loans in good standing of CM3 quality and higher;

B. Policy loans; and

C. Derivatives acquired in the normal course and used to support and hedge liabilities pertaining to the actual risks in the policies ceded pursuant to the reinsurance treaty.

(G) "Other security" means any security acceptable to the director other than security meeting the definition of primary security.

(H) "Valuation manual" means the valuation manual adopted by the NAIC as described in section 376.380.6(2)(a), RSMo, with all amendments adopted by the NAIC that are effective for the financial statement date on which credit for reinsurance is claimed.

(I) "VM-20" means "requirements for principle-based reserves for life products," including all relevant definitions, from the valuation manual.

(6) The Actuarial Method.

(A) The actuarial method to establish the required level of primary security for each reinsurance treaty subject to this regulation shall be VM-20, applied on a treaty-by-treaty basis, including all relevant definitions, from the valuation manual as then in effect, applied as follows:

1. For covered policies described in paragraph (5)(B)1. of this rule, the actuarial method is the greater of the deterministic reserve or the net premium reserve (NPR) regardless of whether the criteria for exemption testing can be met. However, if the covered policies do not meet the requirements of the stochastic reserve exclusion test in the valuation manual, then the actuarial method is the greatest of the deterministic reserve, the stochastic reserve, or the NPR. In addition, if such covered policies are reinsured in a reinsurance treaty that also contains covered policies described in paragraph (5)(B)2. of this rule, the ceding insurer may elect to instead use paragraph (6)(A)2. of this rule as the actuarial method for the entire reinsurance agreement. Whether paragraph (6)(A)1. or 2. of this rule is used, the actuarial method must comply with any requirements or restrictions that the Valuation Manual imposes when aggregating these policy types for purposes of principle-based reserve calculations;

2. For covered policies described in paragraph (5)(B)2. of this rule, the actuarial method is the greatest of the deterministic reserve, the stochastic reserve, or the NPR regardless of whether the criteria for exemption testing can be met;

3. Except as provided in paragraph (6)(A)4. of this rule, the actuarial method is to be applied on a gross basis to all risks with respect to the covered policies as originally issued or assumed by the ceding insurer;

4. If the reinsurance treaty cedes less than one hundred percent (100%) of the risk with respect to the covered policies then the required level of primary security may be reduced as follows:

A. If a reinsurance treaty cedes only a quota share of some or all of the risks pertaining to the covered policies, the required level of primary security, as well as any adjustment under subparagraph (6)(A)4.C. of this rule, may be reduced to a *pro rata* portion in accordance with the percentage of the risk ceded;

B. If the reinsurance treaty in a non-exempt arrangement cedes only the risks pertaining to a secondary guarantee, the required level of primary security may be reduced by an amount determined by applying the actuarial method on a gross basis to all risks, other than risks related to the secondary guarantee, pertaining to the covered policies, except that for covered policies for which the ceding insurer did not elect to apply the provisions of VM-20 to establish

statutory reserves, the required level of primary security may be reduced by the statutory reserve retained by the ceding insurer on those covered policies, where the retained reserve of those covered policies should be reflective of any reduction pursuant to the cession of mortality risk on a yearly renewable term basis in an exempt arrangement;

C. If a portion of the covered policy risk is ceded to another reinsurer on a yearly renewable term basis in an exempt arrangement, the required level of primary security may be reduced by the amount resulting by applying the actuarial method including the reinsurance section of VM-20 to the portion of the covered policy risks ceded in the exempt arrangement, except that for covered policies issued prior to January 1, 2017, this adjustment is not to exceed [c_x/(2 * number of reinsurance premiums per year)] where c_x is calculated using the same mortality table used in calculating the net premium reserve; and

D. For any other treaty ceding a portion of risk to a different reinsurer, including, but not limited to, stop loss, excess of loss and other non-proportional reinsurance treaties, there will be no reduction in the required level of primary security;

5. It is possible for any combination of subparagraphs (6)(A)4.A., B., C., and D. of this rule to apply. Such adjustments to the required level of primary security will be done in the sequence that accurately reflects the portion of the risk ceded via the treaty. The ceding insurer should document the rationale and steps taken to accomplish the adjustments to the required level of primary security due to the cession of less than one hundred percent (100%) of the risk;

6. The adjustments for other reinsurance will be made only with respect to reinsurance treaties entered into directly by the ceding insurer. The ceding insurer will make no adjustment as a result of a retrocession treaty entered into by the assuming insurers;

7. In no event will the required level of primary security resulting from application of the actuarial method exceed the amount of statutory reserves ceded;

8. If the ceding insurer cedes risks with respect to covered policies, including any riders, in more than one (1) reinsurance treaty subject to this regulation, in no event will the aggregate required level of primary security for those reinsurance treaties be less than the required level of primary security calculated using the actuarial method as if all risks ceded in those treaties were ceded in a single treaty subject to this regulation; and

9. If a reinsurance treaty subject to this regulation cedes risk on both covered and non-covered policies, credit for the ceded reserves shall be determined as follows:

A. The actuarial method shall be used to determine the required level of primary security for the covered policies, and section (7) of this rule shall be used to determine the reinsurance credit for the covered policy reserves; and

B. Credit for the non-covered policy reserves shall be granted only to the extent that security, in addition to the security held to satisfy the requirements of subparagraph (6)(A)7.A. of this rule is held by or on behalf of the ceding insurer in accordance with sections 375.246.1 and .2, RSMo. Any primary security used to meet the requirements of this subparagraph may not be used to satisfy the required level of primary security for the covered policies.

(B) Valuation used for Purposes of Calculations. For the purposes of both calculating the required level of primary security pursuant to the actuarial method and determining the amount of primary security and other security, as applicable, held by or on behalf of the ceding insurer, the following shall apply:

1. For assets, including any such assets held in trust, that would be admitted under the NAIC Accounting Practices and Procedures Manual if they were held by the ceding insurer, the valuations are to be determined according to statutory accounting procedures as if such assets were held in the ceding insurer's general account and without taking into consideration the effect of any prescribed or permitted practices; and

2. For all other assets, the valuations are to be those that were assigned to the assets for the purpose of determining the amount of reserve credit taken. In addition, the asset spread tables and asset default cost tables required by VM-20 shall be included in the actuarial method if adopted by the NAIC's Life Actuarial (A) Task Force no later than Dec. 31 on or immediately preceding the valuation date for which the required level of primary security is being calculated. The tables of asset spreads and asset default costs shall be incorporated into the actuarial method in the manner specified in VM-20.

(7) Requirements Applicable to Covered Policies to Obtain Credit for Reinsurance; Opportunity for Remediation.

(A) Requirements. Subject to the exemptions described in section (4) of this rule and the provisions of subsection (7)(B) of this rule, credit for reinsurance shall be allowed with respect to ceded liabilities pertaining to covered policies pursuant to section 375.246.1 or .2, RSMo, if, and only if, in addition to all other requirements imposed by law or regulation, the following requirements are met on a treaty-by-treaty basis:

1. The ceding insurer's statutory policy reserves with respect to the covered policies are established in full and in accordance with the applicable requirements of sections 376.370-376.380, RSMo, and related regulations and actuarial guidelines, and credit claimed for any reinsurance treaty subject to this regulation does not exceed the proportionate share of those reserves ceded under the contract; and

2. The ceding insurer determines the required level of primary security with respect to each reinsurance treaty subject to this regulation and provides support for its calculation as determined to be acceptable to the director; and

3. Funds consisting of primary security, in an amount at least equal to the required level of primary security, are held by or on behalf of the ceding insurer, as security under the reinsurance treaty within the meaning of section 375.246.2, RSMo, on a funds withheld, trust, or modified coinsurance basis; and

4. Funds consisting of other security, in an amount at least equal to any portion of the statutory reserves as to which primary security is not held pursuant to paragraph (7)(A)3. of this rule, are held by or on behalf of the ceding insurer as security under the reinsurance treaty within the meaning of section 375.246.2, RSMo; and

5. Any trust used to satisfy the requirements of section (7) of this rule shall comply with all of the conditions and qualifications of 20 CSR 200-2.100(10), except that—

A. Funds consisting of primary security or other security held in trust, shall for the purposes identified in subsection (6)(B) of this rule, be valued according to the valuation rules set forth in subsection (6)(B) of this rule, as applicable; and

B. There are no affiliate investment limitations with respect to any security held in such trust if such security is not needed to satisfy the requirements of paragraph (7)(A)3. of this rule; and

C. The reinsurance treaty must prohibit withdrawals or substitutions of trust assets that would leave the fair market value of the primary security within the trust (when aggregated with primary security outside the trust that is held by or on behalf of the ceding insurer in the manner required by paragraph (7)(A)3. of this rule) below one hundred two percent (102%) of the level required by paragraph (7)(A)3. of this rule at the time of the withdrawal or substitution; and

D. The determination of reserve credit under 20 CSR 200-2.100(10)(E) shall be determined according to the valuation rules set forth in subsection (6)(B) of this rule, as applicable; and

6. The reinsurance treaty has been approved by the director.

(B) Requirements at Inception Date and on an Ongoing Basis; Remediation.

1. The requirements of subsection (7)(A) of this rule must be satisfied as of the date that risks under covered policies are ceded (if such date is on or after the effective date of this regulation) and on an ongoing basis thereafter. Under no circumstances shall a ceding insurer take or consent to any action or series of actions that would result in a deficiency under paragraphs (7)(A)3. or (7)(A)4. of this rule with respect to any reinsurance treaty under which covered policies have

been ceded, and in the event that a ceding insurer becomes aware at any time that such a deficiency exists, it shall use its best efforts to arrange for the deficiency to be eliminated as expeditiously as possible.

2. Prior to the due date of each quarterly or annual statement, each life insurance company that has ceded reinsurance within the scope of section (3) of this rule shall perform an analysis on a treaty-by-treaty basis to determine as to each reinsurance treaty under which covered policies have been ceded whether as of the end of the immediately preceding calendar quarter (the valuation date) the requirements of paragraphs (7)(A)3. and (7)(A)4. of this rule were satisfied. The ceding insurer shall establish a liability equal to the excess of the credit for reinsurance taken over the amount of primary security actually held pursuant to paragraph (7)(A)3. of this rule, unless either—

A. The requirements of paragraphs (7)(A)3. and (7)(A)4. were fully satisfied as of the valuation date as to such reinsurance treaty; or

B. Any deficiency has been eliminated before the due date of the quarterly or annual statement to which the valuation date relates through the addition of primary security and/or other security, as the case may be, in such amount and in such form as would have caused the requirements of paragraphs (7)(A)3. and (7)(A)4. of this rule to be fully satisfied as of the valuation date.

3. Nothing in paragraph (7)(B)2. of this rule shall be construed to allow a ceding company to maintain any deficiency under paragraphs (7)(A)3. or (7)(A)4. of this rule for any period of time longer than is reasonably necessary to eliminate it.

(8) Prohibition against Avoidance. No insurer that has covered policies as to which this regulation applies (as set forth in section (2)) shall take any action or series of actions, or enter into any transaction or arrangement or series of transactions or arrangements if the purpose of such action, transaction, or arrangement or series thereof is to avoid the requirements of this regulation, or to circumvent its purpose and intent, as set forth in section (2).

AUTHORITY: section 374.045, RSMo 2016, and sections 374.230 and 375.246, RSMo Supp. 2021. Original rule filed Aug. 30, 2021.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Commerce and Insurance, Attorney Shelley A. Woods, 301 West High St., PO Box 690, Jefferson City, Missouri 65102-0690. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. A public hearing is scheduled for 9:30 am, November 3, 2021, in the Truman State Office Building, Room 530, Missouri Conference Room, 301 West High Street, Jefferson City, Missouri 65101.*

Title 20—DEPARTMENT OF COMMERCE AND INSURANCE
Division 200—Insurance Solvency and Company Regulation
Chapter 11—Control and Management of Insurance Companies

PROPOSED AMENDMENT

20 CSR 200-11.101 Insurance Holding Company System Regulation *[W]*with Reporting Forms and Instructions. The director is amending the rule by adding a new section (21).

PURPOSE: The director is adding a new section (21) dealing with the group capital calculation.

(21) Group Capital Calculation.

(A) Where an insurance holding company system has previously filed the annual group capital calculation at least once, the lead state director has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation if the lead state director makes a determination based upon that filing that the insurance holding company system meets all of the following criteria:

1. Has annual direct written and unaffiliated assumed premium (including international direct and assumed premium), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than one billion dollars ($1,000,000,000);

2. Has no insurers within its holding company structure that are domiciled outside of the United States or one (1) of its territories;

3. Has no banking, depository, or other financial entity that is subject to an identified regulatory capital framework within its holding company structure;

4. The holding company system attests that there are no material changes in the transactions between insurers and non-insurers in the group that have occurred since the last filing of the annual group capital; and

5. The non-insurers within the holding company system do not pose a material financial risk to the insurer's ability to honor policyholder obligations.

(B) Where an insurance holding company system has previously filed the annual group capital calculation at least once, the lead state director has the discretion to accept in lieu of the group capital calculation a limited group capital filing if—

1. The insurance holding company system has annual direct written and unaffiliated assumed premium (including international direct and assumed premium), but excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of less than one billion dollars ($1,000,000,000); and all of the following additional criteria are met:

A. Has no insurers within its holding company structure that are domiciled outside of the United States or one (1) of its territories;

B. Does not include a banking, depository, or other financial entity that is subject to an identified regulatory capital framework; and

C. The holding company system attests that there are no material changes in transactions between insurers and non-insurers in the group that have occurred since the last filing of the report to the lead state director and the non-insurers within the holding company system do not pose a material financial risk to the insurers' ability to honor policyholder obligations.

(C) For an insurance holding company system that has previously met an exemption with respect to the group capital calculation pursuant to subsection (21)(A) or (21)(B) of this rule, the lead state director may require at any time the ultimate controlling person to file an annual group capital calculation, completed in accordance with the NAIC Group Capital Calculation Instructions, if any of the following criteria are met:

1. Any insurer within the insurance holding company system is in a risk-based capital action level event as set forth in sections 375.1255-375.1262, RSMo, or a similar standard for a non-U.S. insurer; or

2. Any insurer within the insurance holding company system

meets one (1) or more of the standards of an insurer deemed to be in hazardous financial condition as defined in section 375.539, RSMo; or

3. Any insurer within the insurance holding company system otherwise exhibits qualities of a troubled insurer as determined by the lead state director based on unique circumstances including, but not limited to, the type and volume of business written, ownership and organizational structure, federal agency requests, and international supervisor requests.

(D) A non-U.S. jurisdiction is considered to "recognize and accept" the group capital calculation if it satisfies the following criteria:

1. With respect to section 382.176.1(4), RSMo—

A. The non-U.S. jurisdiction recognizes the U.S. state regulatory approach to group supervision and group capital, by providing confirmation by a competent regulatory authority, in such jurisdiction, that insurers and insurance groups whose lead state is accredited by the NAIC under the NAIC Accreditation Program shall be subject only to worldwide prudential insurance group supervision including worldwide group governance, solvency and capital, and reporting, as applicable, by the lead state and will not be subject to group supervision, including worldwide group governance, solvency and capital, and reporting, at the level of the worldwide parent undertaking of the insurance or reinsurance group by the non-U.S. jurisdiction; or

B. Where no U.S. insurance groups operate in the non-U.S. jurisdiction, that non-U.S. jurisdiction indicates formally in writing to the lead state with a copy to the International Association of Insurance Supervisors that the group capital calculation is an acceptable international capital standard. This will serve as the documentation otherwise required in subparagraph (21)(D)1.A.; and

2. The non-U.S. jurisdiction provides confirmation by a competent regulatory authority in such jurisdiction that information regarding insurers and their parent, subsidiary, or affiliated entities, if applicable, shall be provided to the lead state director in accordance with a memorandum of understanding or similar document between the director and such jurisdiction, including, but not limited to, the International Association of Insurance Supervisors Multilateral Memorandum of Understanding or other multilateral memoranda of understanding coordinated by the NAIC. The director shall determine, in consultation with the NAIC Committee Process, if the requirements of the information sharing agreements are in force.

(E) A list of non-U.S. jurisdictions that "recognize and accept" the group capital calculation will be published through the NAIC Committee Process:

1. A list of jurisdictions that "recognize and accept" the group capital calculation pursuant to section 382.176.1(4), RSMo, is published through the NAIC Committee Process to assist the lead state director in determining which insurers shall file an annual group capital calculation. The list will clarify those situations in which a jurisdiction is exempted from filing under section 382.176.1(4), RSMo. To assist with a determination under section 382.176.2, RSMo, the list will also identify whether a jurisdiction that is exempted under either section 382.176.1(3), RSMo, or 382.176.1(4), RSMo, requires a group capital filing for any U.S. based insurance group's operations in that non-U.S. jurisdiction;

2. For a non-U.S. jurisdiction where no U.S. insurance groups operate, the confirmation provided to meet the requirement of subparagraph (21)(D)1.B. will serve as support for recommendation to be published as a jurisdiction that "recognizes and accepts" the group capital calculation through the NAIC Committee Process;

3. If the lead state director makes a determination pursuant to section 382.176.1(4), RSMo, that differs from the NAIC List, the lead state director shall provide thoroughly documented justification to the NAIC and other states; and

4. Upon determination by the lead state director that a non-U.S. jurisdiction no longer meets one (1) or more of the requirements to "recognize and accept" the group capital calculation, the lead state director may provide a recommendation to the NAIC that the non-U.S. jurisdiction be removed from the list of jurisdictions that "recognize and accept" the group capital calculation.

*AUTHORITY: sections 374.045[, RSMo Supp. 2013 and section] **and** 382.240, RSMo [2000] **2016, section 382.176, RSMo Supp. 2021, S.B.6 (2021)**. Original rule filed April 29, 1992, effective Dec. 3, 1992. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Aug 30, 2021.*

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 OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Commerce and Insurance, Shelley A. Woods, Legal Counsel, PO Box 690, Jefferson City, MO 65102-0690; by fax at (573) 526-5492; or electronically at Shelley.Woods@insurance.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. A public hearing is scheduled for 9:30 am, November 3, 2021, Missouri Conference Room, Room 530, Harry S Truman State Office Building, 301 W. High Street, Jefferson City, Missouri 65101.*

Title 20—DEPARTMENT OF COMMERCE AND INSURANCE
Division 500—Property and Casualty
Chapter 2—Automobile Insurance

PROPOSED AMENDMENT

20 CSR 500-2.600 Rate *[Increases] **Modifications***. The director is amending the rule title, amending and renumbering sections (1) and (2), deleting section (3), and renumbering as necessary.

PURPOSE: This amendment provides a definition for insured as used in this regulation, prohibits the increase in insurance premium due to claims for which the insured was not "at fault," and simplifies some restrictions.

(1) Definition. For purposes of 20 CSR 500-2.600 "insured" shall mean an insured, the named insured, a policyholder, or an applicant.

*[(1)]***(2)** *[Rate Modification Prohibited]* **Use of Not-at-Fault Accidents in Rating Prohibited**. Any rating plan or rating system shall be considered unfairly discriminatory within the meaning of section 379.470, RSMo**,** if the rating plan or rating system *[increases the insured's automobile insurance premium]* **results in the insured paying a higher premium by the application of a surcharge, the elimination or reduction of a discount, tier placement or movement, or by any other means** as a result of an accident for which a claim *[is]* **was** made upon the insured's **current** policy **or any prior policy with any insurer** under the following circumstances:

(A) The insured automobile was lawfully parked (an automobile rolling from a parked position shall not be considered as lawfully

parked, but shall be considered as being operated by the last operator);

(B) The insured or other operator residing in the same household or owner has been reimbursed by or on behalf of a person responsible for the accident or has judgment against that person;

(C) The insured automobile was struck in the rear by another vehicle and the insured operator has not been convicted of a moving traffic violation in connection with the accident;

(D) The operator of the other automobile involved in the accident was convicted of a moving traffic violation and the insured operator was not convicted of a moving traffic violation in connection with the accident*[s]*;

(E) The insured automobile was damaged as a result of contact with a hit-and-run driver if the insured or other operator so reports the accident to the proper authorities within twenty-four (24) hours after discovery of the accident;

(F) Accidents involving damage by contact with animals or fowl;

(G) Accidents involving physical damage limited to and caused by flying gravel, missiles**,** or falling objects; or

(H) Accidents occurring as a result of the operation of any automobile in response to an emergency if the operator at the time of the accident was responding to a call of duty as a paid or volunteer member of any police or fire department, first-aid squad**,** or any law enforcement agency.

(3) Accidents for which a claim is made as a result of the circumstances set out in subsections (2)(A)-(2)(H) shall not be used to modify rates regardless of whether such accidents are predictive of future losses.

*[(2)]***(4)** Any premium notice sent by an insurer which **documents an** increase*[s the]* **in the** premium payable under policies of automobile insurance as a result of accident claims made under these policies shall be accompanied by a notice which shall specifically state the reasons for the increase in premiums *[and the percentage or dollar amount of this increase which is applicable to accident claims made under these policies. All these notices as required shall be submitted to this department prior to their use in this state to assure compliance with this regulation]*.

[(3) In no event shall an insurer request an increase in premium from any insured in connection with any claim, arising out of any accident for which the insured was not at fault. In connection with any accident caused by the insured an insurer may request an increase in premium as a result of payment by an insurer to or on behalf of the insured in settlement of any claim made by or against the insured.]

*AUTHORITY: sections 374.045 and 379.470, RSMo [1986] **2016**. This rule was previously filed as 4 CSR 190-17.100. Original rule filed April 13, 1978, effective Aug. 11, 1978. Amended: Filed Aug. 16, 1979, effective Nov. 15, 1979. Amended: Filed Aug. 30, 2021.*

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 OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Commerce and Insurance, Attention: Shelley A. Woods, PO Box 690, Jefferson City, Missouri 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. A public hearing is scheduled for 9:30 am, November 3, 2021, at 301 W. High Street, Room 530, Missouri Conference Room, Jefferson City, MO 65101.*

Title 20—DEPARTMENT OF COMMERCE AND INSURANCE
Division 2220—State Board of Pharmacy
Chapter 2—General Rules

PROPOSED AMENDMENT

20 CSR 2220-2.650 Standards of Operation for a Class J: Shared Services Pharmacy. The Board of Pharmacy is amending sections (1), adding new section (3), and renumbering as necessary.

PURPOSE: This amendment updates licensing and policy/procedure requirements for Class J Shared Services pharmacies.

(1) Class J*[:]* Shared Services*[:]***.** A Class J Shared Services permit is required if two (2) or more pharmacies are engaged in, or have an arrangement to provide, functions related to the practice of pharmacy for or on behalf of the other pharmacy. These functions may include, but are not limited to*[:]***,** prescription/order receipt, prescription/order clarification or modification, obtaining prescriber authorization, data entry, compounding, dispensing, pharmacist verification, patient counseling, patient profile maintenance, medication therapy services, medication administration, drug utilization review (DUR), and obtaining refill authorization. *[Both]* **All** pharmacies participating in the shared services arrangement must have a Class J permit.

(A) Pharmacies may perform Class*[-]* J Shared Services provided the parties—

1. Have the same owner*[,]* or have a written contract outlining the services to be provided and the responsibilities of each party in fulfilling the terms of said contract in compliance with federal and state laws and regulations;

2. Maintain a separate Class*[-]* J classification for each location involved in providing shared services; and

3. Either share a common database or *[allow access to each pharmacy's electronic medication or prescription records. The access must provide real-time, online access to the patient's complete profile for the pharmacies involved]* **have access to each pharmacy's prescription records and patient profiles and records, as needed to safely and properly perform the shared services activities**.

(C) The parties performing Class*[-]* J Shared *[s]***S**ervices shall maintain a detailed written description of authorized shared services that includes the name, address, and permit number(s) of all pharmacies involved. The parties must maintain a current and accurate policy and procedure manual that includes, but is not limited to, the following:

1. Policies and procedures that identify the duties **and responsibilities** of each pharmacy including any functions identified in section (1). **The required policies and procedures must also identify the pharmacy responsible for—**

A. Verifying prescription/medication order accuracy and validity;

B. Data entry verification;

C. Drug utilization review as required by 20 CSR 2220-2.195;

D. Final product verification; and

E. Patient counseling;

2. A mechanism for tracking the prescription or medication order during each step in the process;

3. Security provisions for protecting the confidentiality and integrity of patient information;

4. Policies and procedures to ensure the safe and appropriate delivery of prescription drugs in compliance with 20 CSR 2220-2.013; and

5. A designation of the pharmacy responsible for offering patient counseling as required by 20 CSR 2220-2.190 and federal law. For purposes of section 338.059, RSMo, *[either]* the name and

address of **either** the pharmacy responsible for offering patient counseling or the pharmacy responsible for dispensing to the patient may be listed on the label as designated by the pharmacies by contract.

(3) A Class J Shared Services permit is not required for pharmacies that have an arrangement to provide only initial dispensing services for a Class C pharmacy, as allowed under 20 CSR 2220-2.120(4).

*[(3)]***(4)** A pharmacy participating in Class*[-]* J *[s]***S**hared *[s]***S**ervices with a pharmacy that is not under common ownership must notify patients that his/her prescription or medication order may be filled or compounded by another pharmacy.

*[(4)]***(5)** All records required by this rule including all policy and procedure manuals, contracts, quality assurance documentation, or other agreements must be maintained for two (2) years and must be made available to the board or its representative upon request.

*AUTHORITY: sections [338.140, 338.210, 338.220,] 338.240[,] and 338.280, RSMo 2016, **and sections 338.140, 338.210, and 338.220, RSMo Supp. 2021**. This rule originally filed as 4 CSR 220-2.650. Original rule filed Nov. 30, 2001, effective June 30, 2002. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Aug. 23, 2021.*

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 Board of Pharmacy, PO Box 625, 3605 Missouri Boulevard, Jefferson City, MO 65102, by facsimile at (573) 526-3464, or via email at pharmacy@pr.mo.gov. 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.*