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SALUS POPULI SUPREMA LEX ESTO

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



JOHN R. ASHCROFT
SECRETARY OF STATE

MISSOURI
REGISTER

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SECRETARY OF STATE

JOHN R. ASHCROFT

Administrative Rules Division

James C. Kirkpatrick State Information Center

600 W. Main

Jefferson City, MO 65101

(573) 751-4015

EDITOR-IN-CHIEF

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•

MANAGING EDITOR

STEPHANIE MARTIN

•

PUBLICATION SPECIALIST II

JACQUELINE D. WHITE

•

EDITOR II

VONNE KILBOURN

•

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ADMINISTRATIVE AIDE III

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

HOW TO CITE RULES AND RSMO

RULES

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

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

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

Each department of state government is assigned a title. Each agency or division in the department is assigned a division number. The agency then groups its rules into general subject matter areas called chapters and specific areas called rules. Within a rule, the first breakdown is called a section and is designated as (1). Subsection is (A) with further breakdown into paragraphs 1., subparagraphs A., parts (I), subparts (a), items I. and subitems a.

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

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

Code and Register on the Internet

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

The *Code* address is sos.mo.gov/adrules/csr/csr

The *Register* address is sos.mo.gov/adrules/moreg/moreg

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

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

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

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

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

Division 20—Division of Community and Public Health Chapter 20—Communicable Diseases

EMERGENCY AMENDMENT

19 CSR 20-20.020 Reporting Infectious, Contagious, Communicable, or Dangerous Diseases. The department is amending sections (6) and (8).

PURPOSE: This amendment modifies COVID-19 test result reporting.

EMERGENCY STATEMENT: The Department of Health and Senior Services (DHSS) determined that this emergency amendment is necessary to protect the public health, safety, and welfare of Missouri residents and visitors.

This emergency amendment is necessary to help accurately track COVID-19 infection in the state of Missouri. In order to track positivity rates of COVID-19 tests and other trending information, the department needs to receive all negative test results in addition to positive test results. Additionally, and in order to be efficient, requiring all COVID-19 results (whether negative or positive) be sent to the department ensures that the results are compiled in an accurate and timely manner. Finally, the federal government requests daily uploads of the department's COVID-19 data, which includes both positive and negative test results reported for that specific day. This emergency

amendment allows the department to provide that data to the federal government in a timely manner.

DHSS needs this emergency amendment to ensure that COVID-19 testing results remain consistent with the protocol in place since the state of emergency was declared in March 2020. This emergency amendment requires that all test results for COVID-19 (whether negative or positive) be sent to the department.

DHSS finds that there is an immediate danger to the public health, safety, or welfare, which requires this emergency action. A proposed amendment, which covers the same material, is published in this issue of the *Missouri Register*. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the *Missouri* and *United States Constitutions*. DHSS believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed January 3, 2022, becomes effective January 18, 2022, and expires July 16, 2022.

(6) A physician, physician's assistant, nurse, hospital, clinic, or other private or public institution providing diagnostic testing, screening or care to any person with any disease, condition, or finding listed in sections (1)–(4) of this rule or who is suspected of having any of these diseases, conditions, or findings, shall make a case report to the local health authority or the Department of Health and Senior Services, or cause a case report to be made by their designee, within the specified time. **All testing results for COVID-19, whether negative or positive, shall be reported to the Department of Health and Senior Services.**

(8) Any person in charge of a public or private school, summer camp, or child or adult care facility shall report to the local health authority or the Department of Health and Senior Services the presence or suspected presence of any diseases or findings listed in sections (1)–(4) of this rule according to the specified time frames. **All testing results for COVID-19, whether negative or positive, shall be reported to the Department of Health and Senior Services.**

AUTHORITY: sections 192.006, 192.020, 210.040, and 210.050, RSMo 2016. This rule was previously filed as 13 CSR 50-101.020. Original rule filed July 15, 1948, effective Sept. 13, 1948. For intervening history, please consult the *Code of State Regulations*. Emergency amendment filed Jan. 3, 2022, effective Jan. 18, 2022, expires July 16, 2022. A proposed amendment covering the same material is published in this issue of the *Missouri Register*.

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

PRIVATE COST: This emergency amendment will cost private entities approximately four hundred two thousand six hundred forty dollars (\$402,640) in the time the emergency is effective.

**FISCAL NOTE
PRIVATE COST**

- I. Department Title:** Title 19 – Department of Health and Senior Services
Division Title: Division 20 – Division of Community and Public Health
Chapter Title: Chapter 20 – Communicable Diseases

Rule Number and Title:	19 CSR 20-20.020 Reporting Infectious, Contagious, Communicable, or Dangerous Diseases
Type of Rulemaking:	Emergency 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:
25,672	Hospitals, Laboratories, Clinics, Pharmacies, Schools	\$402,640

III. WORKSHEET

The proposed rule would have an estimated aggregate annual cost of \$805,280 across all laboratories or other entities (e.g. hospitals, clinics, and schools) that perform COVID-19 tests. This is derived from 542,585 negative tests reported to DHSS in FY21 with the estimation that each negative test reported took five minutes of staff time and that each lab tech is paid \$17.81 an hour. For the duration of the emergency amendment this would be approximately halved.

$$[(542,585 \times 5) / 60] = 45,215 \text{ hours (rounded)}$$

$$45,215 \times \$17.81 = \$805,280 \text{ (rounded up)}$$

$$\$805,280 / 2 = \$402,640$$

IV. ASSUMPTIONS

The proposed rule would require negative COVID-19 tests be submitted to the Missouri Department of Health and Senior Services (DHSS). Each negative test submitted that would otherwise not be submitted would require staff time for the laboratory or entity conducting the test. Although the time and cost for each individual test would be

negligible, as a whole the time would result in a total cost exceeding \$500 for Missouri businesses.

Each entity reporting test results to the department has the option of reporting via an electronic or manual paper submission method. The electronic method is estimated to take approximately five minutes per submission, while the manual paper method is estimated to take fifteen to twenty minutes per submission. As the electronic method is available to every entity and the proposed rule would allow for the least burdensome method of submission for every reported negative test, the department assumes for the purposes of this fiscal estimate that all submissions will be electronic.

For the state fiscal year 2021 there were a total of 601,039 COVID tests reported to the DHSS. Of those test results, positive tests accounted for 58,454 results and 542,585 were negative results (these numbers are provisional and subject to change). The department cannot predict the number of COVID-19 tests that will be conducted in future months or years. As the last full fiscal year of data, the department assumes for the purposes of this estimate that future annual COVID-19 test numbers will be comparable to FY21.

Therefore, the department estimates that laboratories and other entities required to report tests in accordance with the proposed rule (such as hospitals, clinics, and schools) would expend approximately 45,215 additional hours in labor $(542,585 \times 5) / 60$. Based on information from a professional hiring platform, the average base pay of a laboratory technician in Missouri is approximately \$17.81 an hour. This would result in an estimated total salary cost across all Missouri laboratories and businesses of \$805,280 for reporting negative test results. For the duration of the emergency amendment this would be half of a year, resulting in a cost of \$402,640.

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

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

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

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

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

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

Proposed Amendment Text Reminder:

Boldface text indicates new matter.

[Bracketed text indicates matter being deleted.]

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 8—Wildlife Code: Trapping: Seasons, Methods**

PROPOSED AMENDMENT

3 CSR 10-8.515 Furbearers: Trapping Seasons. The commission proposes to amend section (1), add new subsections (1)(A)-(B), add a new section (2), renumber subsequent sections, and amend new section (3) of this rule.

PURPOSE: This amendment modifies the dates for which furbearers may be trapped, adds trapping opportunity on private lands, and clarifies when traps may be set and the possession of tagged otter and bobcat.

(1) Badger, bobcat, coyote, gray fox, mink, opossum, raccoon, red fox, and striped skunk may be taken in any numbers by trapping [from November 15 through January 31. Otter and muskrat

may be taken in any number by trapping from November 15 through February 20. Beaver and nutria may be taken in any number by trapping from November 15 through March 31. Traps may not be placed or set before November 15 and must be removed by midnight of the last day of the applicable trapping season.] only in accordance with the following:

(A) Statewide Seasons—

1. Badger, gray fox, and red fox from November 15 through January 31;

2. Bobcat, coyote, mink, muskrat, and river otter from November 15 through the last day of February;

3. Opossum, raccoon, and striped skunk from August 1 through October 15 and November 15 through the last day of February; and

4. Beaver and nutria from November 15 through March 31; and

(B) Special Harvest Season on Private Lands. Coyote, opossum, raccoon, and striped skunk may also be taken on private lands from March 1 through April 14.

(2) Traps may not be placed or set before midnight of the first day of the applicable trapping season and must be removed by midnight of the last day of the applicable trapping season.

*[(2)](3) Pelts of furbearers may be possessed, transported, consigned for processing, and sold only by the taker with a valid permit throughout the year. Bobcats and otters or their pelts shall be delivered by the taker to an agent of the department for registration or tagging. Bobcats and otters shall be registered or tagged before selling, transferring, tanning, or mounting but not later than April 10. **Tagged bobcats and otters or their pelts may be possessed by the taker throughout the year.** It shall be illegal to purchase or sell untagged bobcats and otters or their pelts. After tanning, pelts may be possessed, bought, or sold without permit. Skinned carcasses of legally taken furbearers may be sold by the taker throughout the year. (Certain Department of Health and Senior Services' rules also govern how furbearer carcasses might be utilized.)*

[(3)](4) Rabbits may be taken by trap from November 15 through January 31 within prescribed hunting limits, but carcasses may not be sold.

[(4)](5) Restrictions on possession shall not apply to tanned pelts, mounted specimens, or manufactured products.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.040, RSMo 2016. Original rule filed July 23, 1974, effective Dec. 31, 1974. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 10, 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 8—DEPARTMENT OF LABOR AND
INDUSTRIAL RELATIONS
Division 50—Division of Workers' Compensation
Chapter 5—Determination of Disability**

PROPOSED AMENDMENT

8 CSR 50-5.007 Evidence of Occupational Disease Exposure for First Responders. The division is removing section (5).

PURPOSE: This amendment removes the limitations created by the expiration of the state of emergency declared in the Governor's Executive Order 20-19 (originally Executive Order 20-02), thereby continuing to provide protections to first responders with regard to evidence of exposure to COVID-19 in proceedings under Chapter 287, RSMo.

[(5) The provisions of this rule shall cease to be in effect at the expiration of the state of emergency declared in Executive Order 20-19 (originally declared in Executive Order 20-02) or any successor executive order extending the state of emergency, whichever occurs later.]

AUTHORITY: section 287.650, RSMo 2016. Emergency rule filed Jan. 15, 2021, effective Feb. 1, 2021, expired July 30, 2021. Original rule filed Jan. 22, 2021, effective July 30, 2021. Amended: Filed Dec. 20, 2021.

PUBLIC COST: Due to the state of emergency caused by the COVID-19 pandemic and the difficulty of predicting the viral infection rates and the potential long-term health effects and the fatality rates of first responders, the fiscal impact of this amendment is unknown. Since determinations of benefits under Chapter 287 are decided on a case-by-case basis by an administrative law judge, precise estimates are unknowable. However, based on reports of first injury and claims filed during 2020, an estimate for the impact of this amendment may range from between zero dollars (\$0) and three hundred eighteen thousand seven hundred eighty dollars (\$318,780).

PRIVATE COST: The overwhelming majority, if not all, of the first responders covered by this amendment are employees of state or local governments. Due to the state of emergency caused by the COVID-19 pandemic and the difficulty of predicting the viral infection rates, the potential long-term health effects and the fatality rates of first responders, the fiscal impact of this amendment is unknown.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Workers' Compensation, Attn: Pamela Lewis, Acting Director, PO Box 58, Jefferson City, MO 65102-0058. 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 8 – DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**
Division Title: Division 50 – DIVISION OF WORKERS’ COMPENSATION
Chapter Title: Chapter 5 – DETERMINATION OF DISABILITY

Rule Number and Name:	8 CSR 50-5.007 Evidence of Occupational Disease Exposure for First Responders
Type of Rulemaking:	Proposed

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Political subdivisions providing workers’ compensation for first responders as defined in the proposed amendment.	Due to the state of emergency caused by the COVID-19 pandemic and the difficulty of predicting the viral infection rates and the potential long-term health effects and the fatality rates of First Responders, the fiscal impact of this proposed amendment is unknown. Since determinations of benefits under Chapter 287 are decided on a case-by-case basis by an administrative law judge, precise estimates are unknowable. However, based on reports of first injury and claims filed during 2020, an estimate for the impact of this amendment may range from between \$0 and \$318,780.

III. WORKSHEET

- See below.

IV. ASSUMPTIONS

- **PUBLIC COST:** Due to the state of emergency caused by the COVID-19 pandemic and the difficulty of predicting the viral infection rates and the potential long-term health effects and the fatality rates of First Responders, the fiscal impact of this proposed amendment is unknown. Since determinations of benefits under Chapter 287 are decided on a case-by-case basis by an administrative law judge, precise estimates are unknowable. However, based on reports of first injury and claims filed during 2020, an estimate for the impact of this amendment may range from between \$0 and \$318,780.

**FISCAL NOTE
PRIVATE COST**

- I. Department Title: Title 8 – DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
Division Title: Division 50 – DIVISION OF WORKERS’ COMPENSATION
Chapter Title: Chapter 5 – DETERMINATION OF DISABILITY**

Rule Number and Title:	8 CSR 50-5.007 Evidence of Occupational Disease Exposure for First Responders
Type of Rulemaking:	Proposed

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:
Any private entity made up of first responders as defined in the proposed amendment.	Any private entity made up of first responders as defined in the proposed amendment.	Due to the state of emergency caused by the COVID-19 pandemic and the difficulty of predicting the viral infection rates, the potential long-term health effects and the fatality rates of First Responders, the fiscal impact of this propose amendment is unknown.

III. WORKSHEET

- See below

IV. ASSUMPTIONS

- **The overwhelming majority, if not all, of the First Responders covered by this proposed amendment are employees of state or local governments. Due to the state of emergency caused by the COVID-19 pandemic and the difficulty of predicting the viral infection rates, the potential long-term health effects and the fatality rates of First Responders, the fiscal impact of this proposed amendment is unknown.**

Title 12—DEPARTMENT OF REVENUE
Division 30—State Tax Commission
Chapter 4—Agricultural Land Productive Values

PROPOSED AMENDMENT

12 CSR 30-4.010 Agricultural Land Productive Values. The State Tax Commission proposes the amendment with no changes to the values stated in subsection (1)(A), paragraphs (1)(B)3., (1)(C)4., (1)(D)4., (1)(E)3., (1)(F)4., and (1)(G)5., and subsection (1)(H).

PURPOSE: Pursuant to the requirements of section 137.021, RSMo, in 2021, the State Tax Commission reviewed soil surveys, soil productivity indexes, production costs, crop yields, appropriate capitalization rates, and other pertinent factors and publishes the following values based on productive capability for each of the several grades of agricultural and horticultural land, which shall take effect on January 1, 2023, if such values are not disapproved by the general assembly within the first sixty (60) calendar days of the regular session beginning January 5, 2022.

(1) Agricultural Land Grades and Values. The following are definitions of agricultural land grades and the productive values of each:

(A) Grade #1. This is prime agricultural land. Condition of soils is highly favorable with no limitations that restrict their use. Soils are deep, nearly level (zero to two percent (0–2%) slope) or gently sloping with low erosion hazard and not subject to damaging overflow. Soils that are consistently wet and poorly drained are not placed in Grade #1. They are easily worked and produce dependable crop yields with ordinary management practices to maintain productivity—both soil fertility and soil structure. They are adapted to a wide variety of crops and suited for intensive cropping. Use value: one thousand thirty-five dollars (\$1,035);

(B) Grade #2. These soils are less desirable in one (1) or more respects than Grade #1 and require careful soil management, including some conservation practices on upland to prevent deterioration. This grade has a wide range of soils and minimum slopes (mostly zero to five percent (0–5%)) that result in less choice of either crops or management practices. Primarily bottomland and best upland soils. Limitations—

1. Low to moderate susceptibility to erosion;
2. Rare damaging overflows (once in five to ten (5–10) years); and
3. Wetness correctable by drainage. Use value: eight hundred fifty dollars (\$850);

(C) Grade #3. Soils have more restrictions than Grade #2. They require good management for best results. Conservation practices are generally more difficult to apply and maintain. Primarily good upland and some bottomland with medium productivity. Limitations—

1. Gentle slope (two to seven percent (2–7%));
2. Moderate susceptibility to erosion;
3. Occasional damaging overflow (once in three to five (3–5) years) of Grades #1 and #2 bottomland; and
4. Some bottomland soils have slow permeability, poor drainage, or both. Use value: six hundred forty-five dollars (\$645);

(D) Grade #4. Soils have moderate limitations to cropping that generally require good conservation practices. Crop rotation normally includes some small grain (for example, wheat or oats), hay, or both. Soils have moderately rolling slopes and show evidence of serious erosion. Limitations—

1. Moderate slope (four to ten percent (4–10%));
2. Grade #1 bottomland subject to frequent damaging flooding (more often than once in two (2) years), or Grades #2 and #3 bottomland subject to occasional damaging flooding (once every three to five (3–5) years);
3. Poor drainage in some cases; and
4. Shallow soils, possibly with claypan or hardpan. Use value:

four hundred five dollars (\$405);

(E) Grade #5. Soils are not suited to continuous cultivation. Crop rotations contain increasing proportions of small grain (for example, wheat or oats), hay, or both. Upland soils have moderate to steep slopes and require conservation practices. Limitations—

1. Moderate to steep slopes (eight to twenty percent (8–20%));
2. Grades #2 and #3 bottomland subject to frequent damaging flooding (more than once in two (2) years) and Grade #4 bottomland subject to occasional damaging flooding; and
3. Serious drainage problems for some soils. Use value: one hundred and ninety-one dollars (\$191);

(F) Grade #6. Soils are generally unsuited for cultivation and are limited largely to pasture and sparse woodland. Limitations—

1. Moderate to steep slopes (eight to twenty percent (8–20%));
2. Severe erosion hazards present;
3. Grades #3 and #4 bottomland subject to frequent damaging flooding (more than once in two (2) years), and Grade #5 bottomland subject to occasional damaging flooding (once every three to five (3–5) years); and
4. Intensive management required for crops. Use value: one hundred and forty-seven dollars (\$147);

(G) Grade #7. These soils are generally unsuited for cultivation and may have other severe limitations for grazing and forestry that cannot be corrected. Limitations—

1. Very steep slopes (over fifteen percent (15%));
2. Severe erosion potential;
3. Grades #5 and #6 bottomland subject to frequent damaging flooding (more than once in two (2) years);
4. Intensive management required to achieve grass or timber productions; and
5. Very shallow topsoil. Use value: seventy-three dollars (\$73);

(H) Grade #8. Land capable of only limited production of plant growth. It may be extremely dry, rough, steep, stony, sandy, wet, or severely eroded. Includes rivers, running branches, dry creek, and swamp areas. The lands do provide areas of benefit for wildlife or recreational purposes. Use value: thirty dollars (\$30); and

(I) Definitions. The following are definitions of flooding for purposes of this rule:

1. Damaging flooding. A damaging flood is one that limits or affects crop production in one (1) or more of the following ways:
 - A. Erosion of the soil;
 - B. Reduced yields due to plant damage caused by standing or flowing water;
 - C. Reduced crop selection due to extended delays in planting and harvesting; and
 - D. Soil damage caused by sand and rock being deposited on the land by flood waters;
2. Frequent damaging flooding. Flooding of bottomlands that is so frequent that normal row cropping is affected (reduces row crop selection); and
3. Occasional damaging flooding. Flooding of bottomland that is so infrequent that producing normal row crops is not compromised in most years.

(2) Forest Land and Horticultural Land. The following prescribes the treatment of forest land and horticultural land:

(A) Forest land, whose cover is predominantly trees and other woody vegetation, should not be assigned to a land classification grade based on its productivity for agricultural crops. Forest land of two (2) or more acres in area, which if cleared and used for agricultural crops, would fall into land grades #1–#5 should be placed in land grade #6; or if land would fall into land grades #6 or #7 should be placed in land grade #7. Forest land may or may not be in use for timber production, wildlife management, hunting, other outdoor recreation or similar uses; and

(B) Land utilized for the production of horticultural crops should be assigned to a land classification grade based on productivity of the land if used for agricultural crops. Horticultural crops include fruits,

ornamental trees and shrubs, flowers, vegetables, nuts, Christmas trees and similar crops which are produced in orchards, nurseries, gardens, or cleared fields.

AUTHORITY: section 137.021, RSMo Supp. [2019] 2021. Original rule filed Dec. 13, 1983, effective March 12, 1984. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 29, 2021.

PUBLIC COST: There is no additional cost to state agencies or political subdivisions.

PRIVATE COST: Because this proposed amendment does not change the use value per acre placed on agricultural land, the assessed value of agricultural property will remain the same, therefore there will be no increased cost to private entities as a result of this proposed amendment.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Stacey Jacobs, Administrative Secretary, State Tax Commission, PO Box 146, Jefferson City, Mo 65102, (573) 751-2414, stc@stc.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 18—PUBLIC DEFENDER COMMISSION
Division 10—Office of State Public Defender
Chapter 3—Guidelines for the Determination of
Indigence**

PROPOSED AMENDMENT

18 CSR 10-3.010 Guidelines for the Determination of Indigence. The Missouri Public Defender Commission/Office of State Public Defender is amending section (2), adding new sections (3) and (4), amending new sections (5) and (6), and renumbering as necessary.

PURPOSE: This amendment aligns the indigence guidelines with the coinciding statutes and provides for an efficient and consistent determination process to ensure only eligible applicants receive Missouri State Public Defender services.

(2) Public Assistance[, Unemployment Compensation and Income Maintenance Payments].

(A) [Unemployed defendants receiving public assistance are eligible for defense services provided by the Office of State Public Defender regardless of the amount of the benefits. If the defendant is receiving public assistance and has a part-time job, or other assets, the weekly amount of benefits and the additional source of income should be added together and compared to the maximum Qualifying Income Scale to Determine Indigence.] **Applicants receiving public assistance are eligible for defense services provided by Missouri State Public Defender. Food stamps, Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), Temporary Assistance for Needy Families (TANF), Medicaid, public housing payments, childcare assistance, Supplemental Security Income, and similar benefits are considered public assistance.**

(B) If [a defendant] **an applicant** is receiving disability payments, pension, unemployment compensation, **Veteran's benefits**, or Social Security **retirement or disability benefits**, this is considered income and the amount of the payment must be considered.

(3) **Ability to Make Bond.**

(A) **The ability of an applicant to make a cash bond shall be considered on the question of indigence. Any amount of cash bond posted directly to the court shall be considered as a means available to the applicant to obtain counsel, and compared directly to the probable expense and burden of defending the pending case. The ability of an applicant to make a surety bond in excess of forty-nine thousand nine hundred ninety-nine dollars (\$49,999) should be considered on the question of whether the applicant has the means at his/her disposal or available to him/her to obtain counsel in his/her behalf.**

(4) **Ability to Hire Private Counsel on a Pending Case.**

(A) **The ability of an applicant to hire private counsel on one case should be considered as evidence that the applicant has means available to obtain counsel on the subsequent case in which the applicant seeks services, unless the assumed cost of private counsel on the case(s) without representation greatly exceeds that of the case(s) with representation.**

[(3)](5) **Maximum Qualifying Income Scale.**

(A) A defendant may be considered indigent if his/her gross pay and other sources of income do not exceed **one hundred fifty percent (150%)** of the federal poverty guideline as issued in the *Federal Register* by the U.S. Department of Health and Human Services.

(B) When making the financial determination, the following factors should be taken into consideration:

[1. *Debts and Expenses—Debts should be taken into consideration to the extent that they are reasonable and necessary. Debts are considered only if actual payments are being made;*

[2.]1. **Spouse's Income—If the applicant is married and not separated from his/her spouse, [7]the spouse's financial status shall be considered unless the spouse is the alleged victim; and**

[3.]2. **Parent's Income—[The parent's income should be considered if they support the defendant and the defendant is under eighteen (18) years of age unless a parent is an alleged victim of the charged offense. Defendants eighteen (18) years or older shall be considered independent from family income unless they are full-time students or are dependent upon their parents or when one or both parents post bond; and] The income of a parent who is financially responsible for a child under eighteen (18) years of age must be considered, unless the parent is an alleged victim, or an alleged victim is a member of the family of the child or the family of the parent. Eligibility is not forfeited when the person financially responsible for the child is able to hire counsel but does not do so if the child does not have the means at his/her disposal to hire counsel. Children under eighteen (18) years of age without the means at their disposal to hire counsel are presumed to be indigent when in the legal custody of Missouri Department of Social Services/Children's Division, or when the child is detained and the parent or custodian cannot be located or does not comply with the application process.**

[4. *Assets—If the person owns or is buying a home, the equity must be determined and considered on the question of indigence. Bank accounts, stocks, bonds, jewelry, equity in insurance and any other financial assets must be considered.*

[(4)](6) **Discretionary Aspects of Determining Indigence.**

(A) The previously mentioned financial criteria are to be applied in all cases and considered with the probable expense and burden of defending the case. *[If a person is determined to be eligible for the services provided by the State Public Defender System and if, at the time such determination is made, s/he is able to provide a limited cash contribution toward the cost of representation without imposing a substantial hardship upon himself/herself or his/her dependents, such contribution shall*

be required as a condition of his/her representation by the State Public Defender System. If at any time, either during or after the disposition of his/her case, such defendant becomes financially able to meet all or some part of the cost of services rendered to him/her, he shall be required to reimburse the commission in such amounts as s/he can reasonably pay, either by a single payment or by installments of reasonable amounts, in accordance with a schedule of charges for public defender services prepared by the commission; and]

(B) An applicant who is currently receiving services from the public defender, or who has received those services within the last twelve (12) months shall be presumed indigent and eligible for services unless the applicant's application indicates a change in circumstances which would make the applicant not indigent.

[(B)](C) An individual requesting public defender service shall complete and sign an Application for Public Defender Services.

AUTHORITY: sections 600.017(10), 600.086, and 600.090, RSMo [2000] 2016. Original rule filed Nov. 12, 1985, effective Feb. 13, 1986. Amended: Filed Feb. 14, 2002, effective Aug. 30, 2002. Amended: Filed July 24, 2006, effective Jan. 30, 2007. Amended: Filed Dec. 29, 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 Public Defender Commission/Office of State Public Defender, Woodrail Centre, 1000 W. Nifong, Bldg. 7, Ste. 100, Columbia, MO 65203. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 20—Division of Community and Public Health
Chapter 20—Communicable Diseases

PROPOSED AMENDMENT

19 CSR 20-20.020 Reporting Infectious, Contagious, Communicable, or Dangerous Diseases. The department is amending sections (6) and (8).

PURPOSE: This regulation is being amended to require that both positive and negative test results of COVID-19 be sent directly to the department.

(6) A physician, physician's assistant, nurse, hospital, clinic, or other private or public institution providing diagnostic testing, screening or care to any person with any disease, condition, or finding listed in sections (1)–(4) of this rule or who is suspected of having any of these diseases, conditions, or findings, shall make a case report to the local health authority or the Department of Health and Senior Services, or cause a case report to be made by their designee, within the specified time. **All testing results for COVID-19, whether negative or positive, shall be reported to the Department of Health and Senior Services.**

(8) Any person in charge of a public or private school, summer camp, or child or adult care facility shall report to the local health

authority or the Department of Health and Senior Services the presence or suspected presence of any diseases or findings listed in sections (1)–(4) of this rule according to the specified time frames. **All testing results for COVID-19, whether negative or positive, shall be reported to the Department of Health and Senior Services.**

AUTHORITY: sections 192.006, 192.020, 210.040, and 210.050, RSMo 2016. This rule was previously filed as 13 CSR 50-101.020. Original rule filed July 15, 1948, effective Sept. 13, 1948. For intervening history, please consult the *Code of State Regulations*. Emergency amendment filed Jan. 3, 2022, effective Jan. 18, 2022, expires July 16, 2022. Amended: Filed Jan. 3, 2022.

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

PRIVATE COST: This proposed amendment will cost private entities approximately eight hundred five thousand two hundred eighty dollars (\$805,280) annually in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Adam Crumbliss, Director, Department of Health and Senior Services, Division of Community and Public Health, PO Box 570, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**FISCAL NOTE
PRIVATE COST**

- I. Department Title:** Title 19 – Department of Health and Senior Services
Division Title: Division 20 – Division of Community and Public Health
Chapter Title: Chapter 20 – Communicable Diseases

Rule Number and Title:	19 CSR 20-20.020 Reporting Infectious, Contagious, Communicable, or Dangerous Diseases
Type of Rulemaking:	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:
25,672	Hospitals, Laboratories, Clinics, Pharmacies, Schools	\$805,280

III. WORKSHEET

The proposed rule would have an estimated aggregate annual cost of \$805,280 across all laboratories or other entities (e.g. hospitals, clinics, and schools) that perform COVID-19 tests. This is derived from 542,585 negative tests reported to DHSS in FY21 with the estimation that each negative test reported took five minutes of staff time and that each lab tech is paid \$17.81 an hour.

$$[(542,585 \times 5) / 60] = 45,215 \text{ hours (rounded)}$$

$$45,215 \times \$17.81 = \$805,280 \text{ (rounded up)}$$

IV. ASSUMPTIONS

The proposed rule would require negative COVID-19 tests be submitted to the Missouri Department of Health and Senior Services (DHSS). Each negative test submitted that would otherwise not be submitted would require staff time for the laboratory or entity conducting the test. Although the time and cost for each individual test would be negligible, as a whole the time would result in a total cost exceeding \$500 for Missouri businesses.

Each entity reporting test results to the department has the option of reporting via an electronic or manual paper submission method. The electronic method is estimated to take approximately five minutes per submission, while the manual paper method is estimated to take fifteen to twenty minutes per submission. As the electronic method is available to every entity and the proposed rule would allow for the least burdensome method of submission for every reported negative test, the department assumes for the purposes of this fiscal estimate that all submissions will be electronic.

For the state fiscal year 2021 there were a total of 601,039 COVID tests reported to the DHSS. Of those test results, positive tests accounted for 58,454 results and 542,585 were negative results (these numbers are provisional and subject to change). The department cannot predict the number of COVID-19 tests that will be conducted in future months or years. As the last full fiscal year of data, the department assumes for the purposes of this estimate that future annual COVID-19 test numbers will be comparable to FY21.

Therefore, the department estimates that laboratories and other entities required to report tests in accordance with the proposed rule (such as hospitals, clinics, and schools) would expend approximately 45,215 additional hours in labor $(542,585 \times 5) / 60$. Based on information from a professional hiring platform, the average base pay of a laboratory technician in Missouri is approximately \$17.81 an hour. This would result in an estimated total salary cost across all Missouri laboratories and businesses of \$805,280 for reporting negative test results.

**Title 20—DEPARTMENT OF COMMERCE AND
INSURANCE
Division 2245—Real Estate Appraisers
Chapter 3—Applications for Certification and Licensure**

PROPOSED AMENDMENT

20 CSR 2245-3.020 Certification and Licensure Examinations.
The commission is deleting section (6) and renumbering as necessary.

PURPOSE: The amendment removes the waiting period to take the examination after failing the exam for the third time.

[(6) Any applicant for certification and licensure who fails an examination for the third time shall wait at least six (6) months prior to taking an examination for the fourth time and an additional six (6) months for each subsequently failed examination unless otherwise authorized by the commission.]

[(7)](6) Any applicant for certification and licensure who fails to take an examination within one (1) year from the original date the application was submitted shall reapply to the commission and pay all appropriate fees. The commission may waive these requirements as deemed necessary.

[(8)](7) After failing an examination, any applicant for certification and licensure who does not reapply to take the examination and pay the applicable examination fee within ninety (90) days shall be required to apply for the certificate or license from the beginning, including the application fee.

AUTHORITY: sections 339.509, [RSMo 2000 and] 339.515, and 339.517, RSMo [Supp. 2006] 2016. This rule originally filed as 4 CSR 245-3.020. Emergency rule filed Dec. 6, 1990, effective Dec. 16, 1990, expired April 14, 1991. Emergency rule filed April 4, 1991, effective April 14, 1991, expired Aug. 11, 1991. Original rule filed Jan. 3, 1991, effective April 29, 1991. Amended: Filed July 21, 1992, effective April 8, 1993. Moved to 20 CSR 2245-3.020, effective Aug. 28, 2006. Amended: Filed Nov. 21, 2006, effective July 30, 2007. Amended: Filed Dec. 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 TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Real Estate Appraisers Commission, PO Box 1335, Jefferson City, MO 65102, by facsimile at 573-526-3489, or via email at reacom@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.*

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

The agency is also required to make a brief summary of the general nature and extent of comments submitted in support of or opposition to the proposed rule and a concise summary of the testimony presented at the hearing, if any, held in connection with the rulemaking, together with a concise summary of the agency's findings with respect to the merits of any such testimony or comments which are opposed in whole or in part to the proposed rule. The ninety-(90-) day period during which an agency shall file its order of rulemaking for publication in the *Missouri Register* begins either: 1) after the hearing on the proposed rulemaking is held; or 2) at the end of the time for submission of comments to the agency. During this period, the agency shall file with the secretary of state the order of rulemaking, either putting the proposed rule into effect, with or without further changes, or withdrawing the proposed rule.

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

ORDER OF RULEMAKING

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo 2016, the commission rescinds a rule as follows:

10 CSR 10-6.300 Conformity of General Federal Actions to State Implementation Plans **is rescinded.**

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on August 16, 2021 (46 MoReg 1590). No changes have been made in the proposed rescission, so it is not reprinted here. This rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Department of Natural Resources' Air Pollution Control Program received no comments on the proposed rescission.

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

ORDER OF RULEMAKING

By the authority vested in the Missouri Gaming Commission (MGC)

under section 313.805, RSMo Supp. 2021, the commission adopts a rule as follows:

11 CSR 45-9.123 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on October 1, 2021 (46 MoReg 1759). Changes have been made to the text of the proposed revision of the *Minimum Internal Control Standards* (MICS) as incorporated by reference in Chapter W, and those changes are explained below. Changes have been made to the text of the proposed rule, so it is reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing was held on this proposed rule on November 1, 2021. No one attended the public hearing. No written comments were received. The MGC staff commented on the rule.

COMMENT #1: W §2.01—A staff member requested that MICS, Chapter W §2.01 be revised to have the Class B Licensee identify the manufacturer of the hybrid table game system in the Internal Control System (ICS).

RESPONSE AND EXPLANATION OF CHANGE: Staff revised MICS, Chapter W §2.01 to add the following sentence at the end: "The Class B Licensee shall identify in the ICS the manufacturer of each hybrid table game system to be used."

COMMENT #2: W §8.03 and §8.04—A staff member requested that MICS, Chapter W §8.03 and §8.04 be revised to include "Drop" in the title for the form that is used for the drop report.

RESPONSE AND EXPLANATION OF CHANGE: Staff revised MICS, Chapter W §8.03 to read "When all assets from the player terminals have been counted, a count team member shall prepare a separate Hybrid Table Game System Drop Report in the count room listing the correct count for the total coupon drop, the total ticket drop, the total bill drop for each player terminal, and the correct grand total for each drop type." Staff also revised the first sentence of MICS, Chapter W §8.04 to read "Each member of the count team present at the time the Hybrid Table Game System Drop Report is generated shall sign the report on the page that contains the grand total attesting to the accuracy of the information recorded."

COMMENT #3: A staff member noted that since changes have been made to the text of the proposed MICS, Chapter W to address these comments, the language in section (1) to incorporate this chapter by reference needs to be revised to reflect the date the commission adopted the revised MICS, Chapter W.

RESPONSE AND EXPLANATION OF CHANGE: The staff concurs and revised the date of adoption accordingly.

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

(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 a part of this rule as adopted by the commission on December 1, 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.

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

ORDER OF RULEMAKING

By the authority vested in the Department of Social Services, MO HealthNet Division, under sections 208.201, and 660.017, RSMo 2016, the division amends a rule as follows:

13 CSR 65-2.010 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 1, 2021 (46 MoReg 1763-1767). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Medicaid Audit and Compliance Unit received two (2) comments on the proposed amendment.

COMMENT #1: Trudith Douglas, Vice President, Corporate Compliance Department, BJC HealthCare, commented that “I’m writing you today on behalf of BJC HealthCare in St. Louis, an integrated health system comprised of thirteen acute care hospitals, a large multi-specialty physician practice, and post-acute, corporate, home health, and behavioral health services. BJC’s Corporate Compliance Department (“CCD”) holds responsibility for maintaining the enrollment of our member providers with public payers and is very familiar with current enrollment policies and practices, including for the Missouri HealthNet program (“MHN” or “the Program”). We understand and appreciate the Agency’s obligation to comply with Provider Enrollment requirements mandated by the Center for Medicare and Medicaid Services (“CMS”).¹ We recognize that the definitions and policies proposed in the Rule mirror those same policies proscribed by CMS. However, we are concerned with the operational implications of the Missouri Medicaid Audit and Compliance Division’s (“MMAC,” “the Agency”) Proposed Rule (“the Rule”) to revise and formalize definitions and related protocols for MHN provider enrollment.

Key definitions and policies in the Rule

The Rule establishes time frames for notifying MMAC of certain types of changes. The 90/30-day timetables are longstanding and proscribed by Congress and CMS and CCD is used to managing enrollment work to that schedule. However, in our experience MMAC has operationalized the 30-day requirement for board member changes in a manner that creates unnecessary work. Specifically, when we report a leadership change via the Business Organizational Structure (BOS) form, it’s currently triggering a full revalidation event. We suspect this is an MMAC internal policy to address the fact that providers are not keeping up with all of the reporting standards, causing MMAC records to become outdated. While we understand the state’s concern, we believe we should be able to submit a BOS form updating our corporate officer/directors without having to go through the full revalidation process, given that we (BJC) have a proven track record of complying with these standards, having completed full revalidations for all BJC-member providers as recently as 2019.

Similarly, when MMAC does notice certain changes, in particular the death of a board member, they are quick to require a full revalidation solely on that basis, or even terminate the enrollment without warning when we do not file an amended BOS within thirty days of the death. We understand the state is querying a federal mortality database to find deceased owners/directors/etc., and they’re doing so faster than our internal reporting process yields the information to us, meaning we sometimes miss the deadline by accident. We recommend the state establish a notice policy, formal or informal, whereby

a provider receives prior notice that a deceased board member has been identified and an updated BOS (rather than a full revalidation) is required within thirty days.

Lastly, the definitions for some terms are a bit muddled, as is the case with the federal definitions, including “Organizational provider,” “Other disclosing entity,” and “Indirect ownership interest.” For “Organizational provider” it’s not clear whether practitioner group practices are included in that definition and therefore subject to the application fee. Individual practitioners are excluded explicitly, but the “non-corporeal” term would suggest that provider group practices (which are typically an LLC, i.e. a legal fiction), are organizational providers and therefore subject to the fee. Medicare regulation carves these out from “institutional” providers and excludes them from the fee payment requirements. We believe MMAC should do likewise.

For the other two terms, particularly “other disclosing entity,” it’s not clear how that would apply to health systems. Consider the following example. ABC Health System and its member hospitals are non-profit corporations. ABC is the sole corporate member of Hospital X which is the Sole Corporate Member of both Hospital Y and Hospital Z. Would we need to report all four entities and all of their board members on an application for Hospital Y or Hospital Z? The “5%” threshold might preclude that, but again it’s not clear whether/how that 5% calculation applies to corporate offices/directors who do not actually “own” their institutions. Our current practice for Medicare and other public payers is to report all officers/directors/managing employees for the applicant hospital and report the other organizations as managing/control interests, but we do not report their individual officers/directors. MMAC should draft definitions in manner that will permit that continued practice.

Conclusion

BJC appreciates MMAC’s efforts to comply with federal mandates regarding provider enrollment in Medicaid programs like Missouri HealthNet. In our experience the Agency does a fine job carrying out those responsibilities. We believe some clarification of key definitions, as well as formal or informal policies related to enforcement of certain timely reporting requirements, would benefit both providers and the Agency in fulfilling their enrollment-related duties.

BJC greatly appreciates the opportunity to provide public commentary on this proposal and thanks the Agency in advance for its consideration.”

RESPONSE: Thank you for your comments. Missouri Medicaid Audit and Compliance (MMAC) takes into account the unique circumstances of providers and based on the facts of those providers, MMAC takes appropriate action that fits their individual scenario. A leadership change via the Business Organizational Structure (BOS) form does not trigger a full revalidation. MMAC agrees that a provider should be able to submit a BOS form updating corporate officers/directors without having to be fully revalidated as a Medicaid provider. MMAC practice has been and will continue to be, to notify providers to update their BOS. MMAC tries to work with providers to update changes but it does not immediately require a revalidation. As per your points regarding the definitions of “Other Disclosing Entity” 13 CSR 65-2.010(35) and “Indirect Ownership Interest” 13 CSR 65-2.010(22), these definitions mirror the federal definitions of these Medicaid terms under 42 CFR 455.101. To clarify, under the definition of “Organizational Provider” 13 CSR 65-2.010(34) group practices are legal entities required to register with the Missouri Secretary of State. Therefore, they are subject to application fees. No further changes will be made.

COMMENT #2: Brian Kinkade, Vice President of Children’s Health and Medicaid Advocacy, Missouri Hospital Association, commented that “On behalf of its 142 members, the Missouri Hospital Association submits the following comments on the proposed amendment to 13

CSR 65-2.010 published in the *Missouri Register* on October 1, 2021.

13 CSR 65-2.010(17) - Provider Exclusion Definition

The proposed amendment includes a new subsection (17) pertaining to the exclusion of providers from the Medicaid program. It is noted that the construction of this subsection differs from others in the section. Further, the purpose of highlighting a “defaulting on health education loans” a reason for exclusion is unnecessary and concerning in that it implies a priority in imposing this permissive standard. Unnecessarily emphasizing this point may discourage physicians and other practitioners who have incurred debt to finance their education from practicing in locations where their earning potential may be diminished. MHA recommends the following language for this new subsection: (17) Exclusion from participation in a federal health care program means imposition of a penalty by the Office of the Inspector General under Section 1128 or 1128A of the Social Security Act, or by the state pursuant to state law or 42 CFR 1002.2.

13 CSR 65-2.010(34) - Organization Provider Definition

The inclusion of “non-corporeal” providers in the definition of “organization provider” suggests group practices could be included. Medicare carves group practices out from “institutional” providers. MHA recommends MMAC adopt Medicare’s definitions for these entities.

13 CSR 65-2.010(22) - Indirect Ownership Interest, and (35) - Other Disclosing Entity

It is not clear how the proposed new regulations would affect the reporting of directors, officers and managing employees of the applicant hospital and its related entities for health systems with complex owner relationships, or whether and how the 5% limit for persons with ownership interests defined in subsection (40) of the proposed rule would apply to the directors, officers and managing employees of a health system’s component companies.”

RESPONSE AND EXPLANATION OF CHANGE: Thank you for your comments. MMAC updated section (17) by removing the sentence: “Individuals and entities may be excluded by the OIG for misconduct ranging from fraud convictions, to patient abuse, to defaulting on health education loans.”

As per your points regarding the definitions of “Other Disclosing Entity” 13 CSR 65-2.010(35) and “Indirect Ownership Interest” 13 CSR 65-2.010(22), these definitions mirror the federal definitions of these Medicaid terms under 42 CFR 455.101. To clarify, under the definition of “Organizational Provider” 13 CSR 65-2.010(34) group practices are legal entities required to register with the Missouri secretary of state. Therefore, they are subject to application fees. No further changes will be made.

13 CSR 65-2.010 Definitions

(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. States may also exclude providers from their Medicaid Programs under state law or pursuant to 42 CFR section 1002.2.

Title 13—DEPARTMENT OF SOCIAL SERVICES Division 70—MO HealthNet Division Chapter 1—Organization

ORDER OF RULEMAKING

By the authority vested in the Department of Social Services, MO HealthNet Division, under sections 208.201 and 660.017, RSMo 2016, the division amends a rule as follows:

13 CSR 70-1.010 Organization and Description is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 2021 (46 MoReg 1858-1864). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 13—DEPARTMENT OF SOCIAL SERVICES Division 70—MO HealthNet Division Chapter 10—Nursing Home Program

ORDER OF RULEMAKING

By the authority vested in the Department of Social Services, MO HealthNet Division, under sections 208.153, 208.159, 208.201, and 660.017, RSMo 2016, the division amends a rule as follows:

13 CSR 70-10.016 Global Per Diem Adjustments to Nursing Facility and HIV Nursing Facility Reimbursement Rates is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 2021 (46 MoReg 1868-1873). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

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

ORDER OF RULEMAKING

By the authority vested in the Department of Social Services, MO HealthNet Division, under sections 208.201 and 660.017, RSMo 2016, the division amends a rule as follows:

13 CSR 70-25.150 Payment Policy for Asthma Education and In-Home Environmental Assessments is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 2021 (46 MoReg 1865-1868). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 16—RETIREMENT SYSTEMS Division 10—The Public School Retirement System of Missouri Chapter 4—Membership and Creditable Service

ORDER OF RULEMAKING

By the authority vested in the board of trustees under section 169.020, RSMo Supp. 2021, the board of trustees hereby adopts a rule of The Public School Retirement System of Missouri as follows:

16 CSR 10-4.007 Part-Time Election is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 1, 2021 (46 MoReg 1622). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 16—RETIREMENT SYSTEMS
Division 10—The Public School Retirement System of
Missouri
Chapter 6—The Public Education Employee Retirement
System of Missouri**

ORDER OF RULEMAKING

By the authority vested in the board of trustees under section 169.020, RSMo Supp. 2021, the board of trustees hereby adopts a rule of The Public School Retirement System of Missouri as follows:

16 CSR 10-6.015 Part-Time Election is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 1, 2021 (46 MoReg 1622–1623). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 19—DEPARTMENT OF HEALTH AND SENIOR
SERVICES
Division 30—Division of Regulation and Licensure
Chapter 82—General Licensure Requirements**

ORDER OF RULEMAKING

By the authority vested in the Missouri Department of Health and Senior Services under sections 192.2000, 198.009, and 198.088, RSMo 2016, the department amends a rule as follows:

**19 CSR 30-82.050 Transfer and Discharge Procedures
is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 1, 2021 (46 MoReg 1785-1786). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 20—DEPARTMENT OF COMMERCE AND
INSURANCE
Division 2030—Missouri Board for Architects,
Professional Engineers, Professional Land Surveyors,
and Professional Landscape Architects
Chapter 6—Fees**

ORDER OF RULEMAKING

By the authority vested in the Missouri Board for Architects,

Professional Engineers, Professional Land Surveyors, and Professional Landscape Architects under section 327.041, RSMo 2016, the board amends a rule as follows:

20 CSR 2030-6.020 Reexamination Fees is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 15, 2021 (46 MoReg 1874). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

This section may contain notice of hearings, correction notices, public information notices, rule action notices, statements of actual costs, and other items required to be published in the *Missouri Register* by law.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

**Division 20—Division of Community and Public Health
Chapter 20—Communicable Diseases**

**IN ADDITION
NOTICE OF TERMINATION FOR PORTIONS OF
RULES**

ACTION TAKEN: This NOTICE OF TERMINATION FOR PORTIONS OF RULES follows a judgment signed by The Honorable Daniel J. Green of Cole County on November 22, 2021 in the matter of Shannon Robinson, et al. v. Missouri Department of Health and Senior Services (cause number 20AC-CC00515). The judgment contained nine (9) paragraphs. Three (3) of these paragraphs that have a direct impact on the regulations within this chapter have been copied verbatim below.

1) *This court declares that 19 CSR 20-20.040(2)(G)-(I), 19 CSR 20-20.040(6), including references to discretionary control measures contained in 19 CSR 20-20.010 et seq., violate the Missouri Constitution and Revised Statutes of Missouri and are therefore invalid.*

2) *This court declares that 19 CSR 20-20.050(3) violates the Missouri Constitution and Missouri statutes and is therefore invalid.*

5) *Consistent with Plaintiffs' request for relief that this Court deems just and proper, DHSS and local health authorities are ordered to refrain from taking actions pursuant to 19 CSR 20-20.010 et seq. that require independent discretion in a manner inconsistent with this opinion and inconsistent with the constitution's limitation on legislative delegations and the APA's limitations on rulemaking authority. This includes discretionary verbal or written orders for which the legislature has failed to provide specific standards or guidelines, and to the extent that standards or guidelines for a particular action have been provided, they must be followed.*

As a result of these ordered paragraphs, the following rule provisions of this chapter are hereby terminated:

19 CSR 20-20.040 Measures to Determine the Prevalence and Prevent the Spread of Diseases which are Infectious, Contagious, Communicable, or Dangerous in their Nature

- (2)(G)—in its entirety*
- (2)(H)—in its entirety*
- (2)(I)—in its entirety*
- (6)—in its entirety*

19 CSR 20-20.050 Quarantine or Isolation Practices and Closing of Schools and Places of Public and Private Assembly

- (3)—in its entirety*

EMERGENCY STATEMENT: Pursuant to a judgment entered in the Circuit Court of Cole County, cause number 20 AC-CC00515, dated November 22, 2021, the abovementioned portions of the rules within this chapter are terminated effective December 22, 2021.

The termination of the text will appear in the February 28, 2022, update to the Code of State Regulations.