Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 17—Dry-Cleaning Environmental Response Trust Fund

PROPOSED RULE

10 CSR 25-17.090 Application Procedures

PURPOSE: This rule describes the application procedures for the Dry-Cleaning Environmental Response Trust (DERT) Fund.

NOTE: This rule describes an environmental condition or standard, therefore, a Regulatory Impact Report was completed for this rule.

(1) Any owner or operator of an active or abandoned dry cleaning facility who wishes to participate in the Dry-Cleaning Environmental Response Trust (DERT) Fund shall apply to the DERT Fund on a form provided by the department.

(A) An application form shall be submitted for each site for which an owner or operator of an active or abandoned dry cleaning facility desires participation in the DERT Fund.

(B) Applications shall include information on all known environmental conditions that exist at the site. To be eligible, one (1) groundwater or one (1) soil sample shall provide proof that the level of contamination at the site exceeds the department's cleanup levels or other evidence confirming contamination must be provided.

(2) The department shall review applications within thirty (30) days of receipt of the application and respond to such application in writing with one (1) of the following options:

(A) A notice of acceptance of eligibility;

(B) If the response is a request for clarification or information, it shall specify a date by which the applicant shall respond; and

(C) If the response is a rejection, it shall list the reasons for the rejection.

AUTHORITY: section 260.905, RSMo 2000. Original rule filed Oct. 3, 2005.

PUBLIC COST: This proposed rule is estimated to cost state agencies or political subdivisions four thousand eight hundred sixty dollars to thirty-two thousand four hundred dollars ($4,860 to $32,400) in the aggregate of the estimated duration of the rule.

PRIVATE COST: This proposed rule is estimated to cost private entities eight hundred thirty-two thousand three hundred twenty dollars ($832,320) to $5,548,800 in the aggregate of the estimated duration of the rule.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 9:00 a.m. on December 9, 2005 at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri.

Any person wishing to speak at the hearing shall send a written request to the Secretary of the Hazardous Waste Management Commission at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written requests to speak must be postmarked by midnight on December 4, 2005. Faxed or e-mailed correspondence will not be accepted.

Any person may submit written comments on this rule action. Written comments shall be sent to the Director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written comments must be postmarked by midnight on December 16, 2005. Faxed or e-mailed correspondence will not be accepted.

Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program, at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

FISCAL NOTE
PUBLIC ENTITY COST

I. RULE NUMBER

Title: Department of Natural Resources

Division: Hazardous Waste Management Commission

Chapter: Drycleaning Environmental Response Trust Fund

Type of Rulemaking: Proposed Rule

Rule Number and Name: 10 CSR 25-17.090 Application Procedures

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Number likely to be affected[1]	Item	Itemized Cost[2,3]
Missouri Department of Natural Resources	45 to 300	Application review	$ 4,860 to $ 32,400
		Total public entity administrative cost	**$ 4,860 to $ 32,400**

[1]All privately-owned active and abandoned dry cleaning facilities that used solvents to clean garments are potentially affected by this rule. As of November 2003, the Missouri Department of Natural Resources has approximately 281 privately-owned dry cleaning facilities registered in the Hazardous Waste Fees and Taxes database. There are 335 abandoned sites known to exist. Of this entire universe, it is assumed for the purpose of this fiscal note that 45 to 300 privately-owned active and abandoned dry cleaner facilities may apply to participate in the Drycleaning Environmental Response Trust Fund. Public entities are excluded from this rule, therefore, the fiscal note includes only the costs associated with staff time for review and response time related to this rule.

[2]**This fiscal note reflects estimated costs at active and abandoned dry cleaning sites that voluntarily apply to the DERT Fund.**

[3] This fiscal note shows the costs of the rule action in the aggregate. The department's *Administrative Rulemakings Policy and Guidance Manual* interprets this to mean the costs over the entire lifetime of the rule action.

III. WORKSHEET

1. Personnel costs for merit employees are calculated using the Market Rate step of the fiscal year 2005 merit schedule produced by the Missouri Commission on Management and Productivity (COMAP). Monthly salaries are multiplied by 12 to obtain an annual cost. The annual cost is multiplied by a factor of 38.9% with the additional amount added to the annual salary to account for fringe benefits. $6,617 is added for expense and equipment costs. This sum is then multiplied by 21.03% and the additional amount added to account for indirect costs. Hourly costs are found by dividing the adjusted annual costs by 2080, the number of hours for a Full-Time Equivalent (FTE). All adjustment factors are based on current information confirmed by the hazardous waste program budget staff. Calculations for estimating the personnel costs of private entity employees are based on the same assumptions as for merit employees. Using this formula and the appropriate salaries, the following hourly rates are assumed to be the most accurate for purposes of this fiscal note:

Environmental Specialist IV hourly rate	–	$ 40.89
Geologist II hourly rate	–	$ 37.98
Environmental Specialist III hourly rate	=	$ 36.00
Management Analysis Specialist I hourly rate	–	$ 33.98
Administrative Office Support Assistant	–	$ 25.52

2. The universe of affected entities is based upon the experience of staff of the Missouri Department of Natural Resources. Entities affected are privately-owned active and abandoned dry cleaning facilities having contamination and desiring participation in the Drycleaning Environmental Response Trust Fund. Based upon the experience of department staff, it is assumed that 9% to 60% or 45 to 300 of the 500 privately-owned active and abandoned dry cleaning facilities may be applying to the Drycleaning Environmental Response Trust Fund and may be preparing the application form.

3. Based on task/time correlation, the department estimates it will take an environmental specialist III 3 hours to receive, analyze, and respond to the application form submitted by private entities in compliance with this rule. The private entity compliance costs are counted in the private entity fiscal note.

Environmental Specialist III salary	– $ 36.00 per hour
$ 36.00 x 3 hours	– $ 108.00 per application
45 application forms submitted x $ 108.00	$ 4,860
300 application forms submitted x $ 108.00	= $ 32,400

Total cost to Missouri Department of Natural Resources to receive, analyze, and respond to application forms submitted in compliance with this rule = $ 4,860 to $ 32,400.

IV. ASSUMPTIONS

1. The total estimated cost is provided based on the number of active and abandoned facilities known to the department.
2. The universe of affected entities is based upon the experience of staff of the Missouri Department of Natural Resources. Entities affected are active and abandoned dry cleaning facilities that used solvents to clean garments and having a reportable release or suspected release to the environment. Department staff assume that spill reports at dry cleaning facilities will increase. It is assumed that this information provides a fair and accurate estimate of the universe of active and abandoned dry cleaner facilities subject to the requirements of this rule.
3. Fiscal year 2005 dollars are used to estimate the costs.
4. Estimates assume a constant regulatory context, which requires no reporting standards beyond those currently required or imposed by this rulemaking.
5. Estimates assume there will be no new or sudden changes in technology, which would influence costs.
6. This fiscal note is not in lieu of the requirements or a model for compliance with this rule. The examples used for cost calculations are good faith estimates and averages using the department's professional judgement.
7. Affected entities are assumed to be in compliance with all applicable environmental laws and regulations.
8. Using the Drycleaning Environmental Response Trust Fund for remediation is voluntary, therefore, the number of sites that may enter the program are good faith estimates using the department's professional judgement.

FISCAL NOTE
PRIVATE ENTITY COST

I. RULE NUMBER

Title: Department of Natural Resources

Division: Hazardous Waste Management Commission

Chapter: Drycleaning Environmental Response Trust Fund

Type of Rulemaking: Proposed Rule

Rule Number and Name: 10 CSR 25-17.090 Application Procedures

II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Number likely to be affected[1]	Item	Itemized Cost[2,3]
Privately-owned active or abandoned dry cleaning facilities desiring participation in the Drycleaning Environmental Response Trust Fund	45 to 300	Application preparation	$ 1,620 to $ 10,800
	45 to 300	Site check	$ 830,700 to $ 5,538,000
		Total private entity compliance cost	**$ 832,320 to $ 5,548,800**

[1]All privately-owned active and abandoned dry cleaning facilities that used solvents to clean garments are potentially affected by this rule. As of November 2003, the Missouri Department of Natural Resources has approximately 281 privately-owned dry cleaning facilities registered in the Hazardous Waste Program Fees and Taxes database. There are 335 abandoned sites known to exist. Of this entire universe, it is assumed for the purpose of this fiscal note that 45 to 300 privately-owned active and abandoned dry cleaner facilities may apply to participate in the Drycleaning Environmental Response Trust Fund.

[2]**This fiscal note reflects estimated costs at active and abandoned dry cleaning sites that voluntarily apply to the DERT Fund.**

[3] This fiscal note shows the costs of the rule action in the aggregate. The department's *Administrative Rulemakings Policy and Guidance Manual* interprets this to mean the costs over the entire lifetime of the rule action.

III. WORKSHEET

1. Personnel costs for merit employees are calculated using the Market Rate step of the fiscal year 2005 merit schedule produced by the Missouri Commission on Management and Productivity (COMAP). Monthly salaries are multiplied by 12 to obtain an annual cost. The annual cost is multiplied by a factor of 38.9% with the additional amount added to the annual salary to account for fringe benefits. $6,617 is added for expense and equipment costs. This sum is then multiplied by 21.03% and the additional amount added to account for indirect costs. Hourly costs are found by dividing the adjusted annual costs by 2080, the number of hours for a Full-Time Equivalent (FTE). All adjustment factors are based on current information confirmed by the hazardous waste program budget staff. Calculations for estimating the personnel costs of private entity employees are based on the same assumptions as for merit employees.

Using this formula and the appropriate salaries, the following hourly rates are assumed to be the most accurate for purposes of this fiscal note:

Environmental Specialist IV hourly rate	=	$ 40.89
Geologist II hourly rate	=	$ 37.98
Environmental Specialist III hourly rate		$ 36.00
Management Analysis Specialist I hourly rate	=	$ 33.98
Administrative Office Support Assistant	=	$ 25.52

2. The universe of affected entities is based upon the experience of staff of the Missouri Department of Natural Resources. Entities affected are privately-owned active and abandoned dry cleaning facilities having contamination and desiring participation in the Drycleaning Environmental Response Trust Fund. Based upon the experience of department staff, it is assumed that 9% to 60% or 45 to 300 of the 500 privately-owned active and abandoned dry cleaning facilities may be applying to the Drycleaning Environmental Response Trust Fund and may be preparing the application form.

3. **Application preparation costs.** As noted in the assumption above, the department assumes that 45 to 300 of the 500 privately-owned active and abandoned dry cleaner facilities may be preparing the application form. Private entity costs for purposes of this fiscal note include the costs incurred by the private entity to comply with the requirements of the rule.

   Private entity compliance costs: The cost for an owner or operator of an active or abandoned dry cleaning facility to complete and submit the application form is estimated at an average of 1 hour. It is assumed that the application preparation will be performed by an individual equivalent to an Environmental Specialist III, with an appropriate hourly rate.

   Environmental Specialist III hourly rate = $ 36.00 per hour

   $ 36.00 x 1 hour = $ 36.00 estimated cost for application preparation

   $ 36.00 x 45 facilities = $ 1,620
   $ 36.00 x 300 facilities = $ 10,800

   Total application preparation cost for private entities = $ 1,620 to $ 10,800

4. **Site check costs.** As noted in the assumption above, the department assumes that 45 to 300 of the 500 privately-owned active and abandoned dry cleaner facilities may conduct a site check and submit a report. Based on research of cleanups of dry cleaning facilities conducted in other states, the estimated cost to complete a site check and prepare and submit a report is $ 18,460, as follows:

   Private entity compliance costs: Applications shall include information on all known environmental conditions that exist at the site. To be eligible for participation in the fund, at a minimum, one groundwater and one soil sample must be obtained to provide proof that the level of contamination at the site exceeds the department's cleanup levels. The cost for an owner or operator of an active or abandoned dry cleaning facility to collect and analyze the samples as required in this rule is estimated at an average of 10 hours.

Project manager = $ 95 per hour x 8 hours	= $ 760
Other labor = $ 25 per hour x 8 hours	= $ 200
Drilling equipment = $ 1,700 x 8 hours	= $ 13,600
Monitoring well installation–$ 500 x 1 well	= $ 500
Sampling analysis – $ 600 per sample x 4 samples	= $ 2,400
Final report $ 1,000 per report x 1	= $ 1,000

   Total site check costs = $ 18,460

$ 18,460 x 45 privately-owned active and abandoned dry cleaner facilities – $830,700
$ 18,460 x 300 privately-owned active and abandoned dry cleaner facilities = $ 5,538,000

Total private entity compliance cost for requirement to conduct a site check = $830,700 to $5,538,000

IV. ASSUMPTIONS

1. The total estimated cost is provided based on the number of active and abandoned facilities known to the department.
2. The universe of affected entities is based upon the experience of staff of the Missouri Department of Natural Resources. Entities affected are active and abandoned dry cleaning facilities that used solvents to clean garments and having a reportable release or suspected release to the environment. Department staff assume that spill reports at dry cleaning facilities will increase. It is assumed that this information provides a fair and accurate estimate of the universe of active and abandoned dry cleaner facilities subject to the requirements of this rule.
3. The department does not have previous cleanup costs documented for dry cleaning sites, therefore, our cost estimates are based on research of cleanups of dry cleaning facilities conducted in states bordering Missouri.
4. Estimates assume a constant regulatory context, which requires no reporting standards beyond those currently required or imposed by this rulemaking.
5. Estimates assume there will be no new or sudden changes in technology, which would influence costs.
6. This fiscal note is not in lieu of the requirements or a model for compliance with this rule. The examples used for cost calculations are good faith estimates and averages using the department's professional judgement.
7. Affected entities are assumed to be in compliance with all applicable environmental laws and regulations.
8. Using the Drycleaning Environmental Response Trust Fund for remediation is voluntary, therefore, the number of sites that may enter the program are good faith estimates using the department's professional judgement.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 17—Dry-Cleaning Environmental Response Trust Fund

PROPOSED RULE

10 CSR 25-17.100 Participation and Eligibility for Funding

PURPOSE: This rule describes eligibility requirements for participation and funding of the Dry-Cleaning Environmental Response Trust (DERT) Fund.

NOTE: This rule does not describe an environmental condition or standard, therefore, a Regulatory Impact Report was not completed for this rule.

(1) Any owner or operator of an active or the owner or operator of an abandoned dry cleaning facility may apply to participate in the Dry-Cleaning Environmental Response Trust (DERT) Fund.

(A) Dry cleaning facilities located in prisons, governmental entities, hotels, motels and industrial laundries are not eligible for participation in the DERT Fund. Facilities that use a non-chlorinated dry cleaning solvent are not eligible for participation in the DERT Fund.

(B) Governmental entities that own or are in possession and control of an abandoned facility otherwise eligible for coverage may apply to the DERT Fund as long as the governmental entity follows the procedures of 10 CSR 25-17.050 through 10 CSR 25-17.170.

(2) An active or abandoned dry cleaning facility may be considered ineligible if the owner or operator owes the annual dry cleaning facility registration surcharge or dry cleaning solvent surcharge, including any penalties or interest, at the time the application for the DERT Fund is submitted or contamination from dry cleaner solvents was discovered.

AUTHORITY: sections 260.905 and 260.925, RSMo 2000. Original rule filed Oct. 3, 2005.

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: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 9:00 a.m. on December 9, 2005 at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any person wishing to speak at the hearing shall send a written request to the Secretary of the Hazardous Waste Management Commission at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written requests to speak must be postmarked by midnight on December 4, 2005. Faxed or e-mailed correspondence will not be accepted.

Any person may submit written comments on this rule action. Written comments shall be sent to the Director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written comments must be postmarked by midnight on December 16, 2005. Faxed or e-mailed correspondence will not be accepted.

Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program, at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 17—Dry-Cleaning Environmental Response Trust Fund

PROPOSED RULE

10 CSR 25-17.110 Eligible Costs

PURPOSE: This rule describes eligible costs associated with the assessment, investigation, or remediation of dry cleaning sites.

NOTE: This rule does not describe an environmental condition or standard, therefore, a Regulatory Impact Report was not completed for this rule.

(1) Moneys from the Dry-Cleaning Environmental Response Trust (DERT) Fund shall be utilized to address contamination resulting from releases of chlorinated dry cleaning solvents in accordance with section 260.925, RSMo.

(A) Eligible payments from the DERT fund shall include:

1. Costs for investigation and assessment of releases from a dry cleaning facility, including costs of off-site investigations and assessments of contamination, which may have moved off of the dry cleaning facility;

2. Costs for necessary or appropriate emergency action, including but not limited to treatment, restoration or replacement of drinking water supplies, to assure that the human health or safety is not threatened by a release or potential release;

3. Costs for remediation of releases from dry cleaning facilities, including contamination which may have moved off of the dry cleaning facility, which remediation shall consist of the preparation of a corrective action plan, which may include activity and use limitations for the site, and the cleanup of affected soil, groundwater and surface waters, using an alternative that is cost-effective, technologically feasible and reliable, and provides adequate protection of human health and environment and to the extent practicable minimizes environmental damage. Costs for remediation beyond that necessary to achieve contaminant levels that are protective of human health and the environment are not eligible;

4. Costs for operation and maintenance of corrective action;

5. Costs for monitoring of releases from dry cleaning facilities including contamination which may have moved off of the dry cleaning facility;

6. Payment of reasonable costs incurred by the director in providing field and laboratory services;

7. Reasonable costs of restoring property as nearly as practicable to the condition that existed prior to activities associated with the investigation of a release or cleanup or remediation activities;

8. Costs of removal and proper disposal of wastes generated by a release of a dry cleaning solvent; and

9. Payment of costs of corrective action conducted by the department or by entities other than the department but approved by the department, whether or not such corrective action is set out in a corrective action plan; except that, there shall be no reimbursement for corrective action costs incurred before August 28, 2000. Costs, under this paragraph, are not eligible unless the department has declared a hazardous substance emergency and has provided an opportunity and/or requirement to the responsible party, if available, to conduct the corrective action activities.

(B) At any multi-source site, the department shall utilize the moneys in the fund to pay for the proportionate share of the liability for the assessment, investigation, and corrective action costs which is attributable to a release from one or more eligible dry cleaning facilities and for that proportionate share of the liability only. At any multi-source site, the director is authorized to make a determination of the relative liability of the fund for costs of corrective action, expressed as a percentage of the total cost of assessment,

investigation, and corrective action at a site, whether known or unknown. The director shall issue an order establishing such percentage of liability. Such order shall be binding and shall control the obligation of the fund until or unless amended by the director. In the event of an appeal from such order, such percentage of liability shall be controlling for costs incurred during the pendency of the appeal.

(2) Nothing in section (1) of this rule shall be construed to authorize the department to obligate moneys in the fund for payment of costs that are not integral to corrective action for a release of dry cleaning solvents from a dry cleaning facility. Moneys from the fund shall not be used:

(A) For corrective action at sites that are contaminated by solvents normally used in dry cleaning operations where the contamination did not result from the operation of a dry cleaning facility;

(B) For corrective action at sites, other than dry cleaning facilities, that are contaminated by dry cleaning solvents which were released while being transported to or from a dry cleaning facility;

(C) To pay any fine or penalty brought against a dry cleaning facility operator under state or federal law;

(D) To pay any costs related to corrective action at a dry cleaning facility that has been included by the United States Environmental Protection Agency on the national priorities list;

(E) For corrective action at sites with active dry cleaning facilities where the owner or operator is not in compliance with sections 260.900 to 260.960, RSMo rules and regulations adopted pursuant to sections 260.900 to 260.960, RSMo orders of the director pursuant to sections 260.900 to 260.960, RSMo or any other applicable federal or state environmental statutes, rules or regulations;

(F) For corrective action at sites with abandoned dry cleaning facilities that have been taken out of operation prior to July 1, 2009, and not documented by or reported to the department by July 1, 2009. Any person reporting such a site to the department shall include any available evidence that the site once contained a dry cleaning facility;

(G) Assessment, investigation, and remediation costs incurred prior to August 28, 2000;

(H) Compensating third parties for bodily injury or property damage caused by a release from a dry cleaning facility, other than property damage included in the corrective action plan under 10 CSR 25-17.110(1)(A)7;

(I) Costs necessary to remove an underground or aboveground storage tank system;

(J) Costs of demolition and removal of building, equipment, etc., except as required as a result of necessary cleanup activities and preapproved by the department;

(K) Costs of disposal of soil, groundwater, etc., that is not contaminated with contaminants associated with dry cleaning solvents at levels such that the Department of Natural Resources requires corrective action;

(L) Markup of costs charged by a treatment facility which is used for the disposal of contaminated soil, groundwater, etc.;

(M) Markup of costs charged by laboratory for analysis of soil, groundwater, surface water, etc., samples;

(N) Markup of costs by the environmental consultant or contractor of major subcontracted work done as part of the assessment, investigation, or remedial work, such as drilling, well installation, or push-probe investigations;

(O) Installation of new or repair and maintenance of existing dry cleaning equipment;

(P) Preparation of claim submittals;

(Q) Paving or resurfacing, except as required as a result of necessary cleanup activities. Costs for resurfacing shall be paid on the basis of the actual cash value of the surface which existed immediately prior to cleanup activities; and

(R) Other costs not relevant to the assessment, investigation, or remediation of contamination caused by dry cleaning solvents from eligible facilities, as determined by the department.

AUTHORITY: sections 260.905 and 260.925, RSMo 2000. Original rule filed Oct. 3, 2005.

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: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 9:00 a.m. on December 9, 2005 at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any person wishing to speak at the hearing shall send a written request to the Secretary of the Hazardous Waste Management Commission at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written requests to speak must be postmarked by midnight on December 4, 2005. Faxed or e-mailed correspondence will not be accepted.

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Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 17—Dry-Cleaning Environmental Response Trust Fund

PROPOSED RULE

10 CSR 25-17.120 Payment of Deductible and Limits on Payments

PURPOSE: This rule explains the deductible amounts and limits on expenditures from the Dry-Cleaning Environmental Response Trust (DERT) Fund.

NOTE: This rule does not describe an environmental condition or standard, therefore, a Regulatory Impact Report was not completed for this rule.

(1) The Dry-Cleaning Environmental Response Trust (DERT) Fund shall not be liable for the payment of costs in excess of one (1) million dollars at any one (1) contaminated dry cleaning site.

(2) The DERT Fund shall not be liable for the payment of costs for any one (1) site in excess of twenty-five percent (25%) of the total moneys in the fund during any fiscal year.

(3) The owner or operator of an active and the owner or operator of an abandoned dry cleaning facility shall be liable for the first twenty-five thousand dollars ($25,000) of corrective action costs incurred because of a release from an active or abandoned dry cleaning facility.

AUTHORITY: sections 260.905 and 260.925, RSMo 2000. Original rule filed Oct. 3, 2005.

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.

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Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 17—Dry-Cleaning Environmental Response Trust Fund

PROPOSED RULE

10 CSR 25-17.130 Suspension of Collection of Surcharges; Reinstatement

PURPOSE: This rule describes the procedures for suspension of collection of surcharges and the reinstatement of those surcharges.

NOTE: This rule does not describe an environmental condition or standard, therefore, a Regulatory Impact Report was not completed for this rule.

(1) If the unobligated principal of the Dry-Cleaning Environmental Response Trust (DERT) Fund equals or exceeds five (5) million dollars on April 1 of any year, the annual dry cleaning facility registration surcharge and the dry cleaning solvent surcharge imposed by sections 260.935 and 260.940, RSMo, shall not be collected on or after the next July 1 until such time as on April 1 of any year thereafter the unobligated principal balance of the fund equals two (2) million dollars or less, then the annual dry cleaning facility registration surcharge imposed by section 260.935, RSMo and the dry cleaning solvent surcharge imposed by section 260.940, RSMo shall again be collected on and after the next July 1.

AUTHORITY: sections 260.905 and 260.945, RSMo 2000. Original rule filed Oct. 3, 2005.

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: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 9:00 a.m. on December 9, 2005 at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any person wishing to speak at the hearing shall send a written request to the Secretary of the Hazardous Waste Management Commission at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written requests to speak must be postmarked by midnight on December 4, 2005. Faxed or e-mailed correspondence will not be accepted.

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Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 17—Dry-Cleaning Environmental Response Trust Fund

PROPOSED RULE

10 CSR 25-17.140 General Reimbursement Procedures

PURPOSE: This rule describes general reimbursement procedures for the Dry-Cleaning Environmental Response Trust (DERT) Fund.

NOTE: This rule describes an environmental condition or standard, therefore, a Regulatory Impact Report was completed for this rule.

(1) Dry-Cleaning Environmental Response Trust (DERT) Fund participants are required to seek pre-approval from the DERT Fund of site assessment, investigation, or remedial activities by following the procedures outlined below:

(A) Obtain proposals from qualified contractors or consultants to demonstrate that a fair and reasonable price will be paid; and

(B) Submit the bid(s) or proposal(s) to the director. The bids should contain the following:

1. Cost estimate for field activities;
2. Cost estimate for removal, treatment, and/or disposal of contaminated media, which includes but is not limited to soil, water, and air;
3. Cost estimate for project management, supervision, data analysis, reporting, and other activities necessary to comply with sections 260.900–260.960, RSMo and implementing regulations, as appropriate;
4. Cost estimate for collection and analysis of samples for contaminated media, which includes but is not limited to soil, water, and air;
5. Contingency costs, expressed as unit costs, for any additional costs which may be incurred if conditions warrant;
6. Cost estimate for any equipment purchased or rented to conduct remedial activities; and
7. Cost estimate for any anticipated work not described above that is necessary to comply with sections 260.900–260.960, RSMo and implementing regulations.

(2) The department will respond in writing within sixty (60) days after the work plan and cost estimate is received by the department. One (1) of the following responses will be made:

(A) The response will include a statement of whether the cost estimate(s) is eligible, reasonable, and necessary.

1.This response will be based on the information and reports submitted for the particular project and compared to a review of cost estimates for similar claims;

(B) If the cost estimate is incomplete or contains costs which are higher than the department deems reasonable, the director may:

1. Ask the participant to solicit additional cost estimates;
2. Ask the participant to justify the cost estimate in writing; and
3. Agree to pay a lesser cost deemed reasonable by the director; and

(C) The department reserves the right to reject a proposed cost estimate, that the department deems ineligible, unreasonable, and unnecessary. Any rejection shall be made in writing and shall contain the specific reasons for the rejection of the cost estimate.

(3) Reimbursement of the DERT Fund moneys will be accomplished based on the site prioritization method described in 10 CSR 25-17.060.

(A) DERT Funds will be allocated to prioritized sites in the following proportions: high priority sites—sixty percent (60%); medium priority sites—thirty percent (30%); low priority sites—ten percent (10%). In any fiscal year, if the funding allocation in any priority category are not used, those funds may be reallocated to other priority categories, starting with any high priority sites and followed by medium and low priority sites.

(B) Owners, operators, or persons that are not allocated with moneys for a fiscal year, but wish to proceed with cleanup and remain eligible for future available funding, shall have assessment, investigation, and corrective action work plans and cost estimates preapproved by the department. Failure to obtain approval for these costs may subject the DERT Fund participant to reduction or denial of reimbursement of costs.

(4) Participants requesting payment from the DERT Fund shall send invoices for the work done along with any reports generated for the work to the DERT Fund address.

(A) Invoices shall be submitted within six (6) months of the date that the proposed work is completed. Failure to submit invoices within the time frame may result in a denial of payments.

(B) Original invoices are requested. Photocopies may be submitted with a signed statement that the copies are accurate and true.

(5) Eligible costs will be reduced by the applicable deductible, as outlined in 10 CSR 25-17.120, for the dry cleaning facility until such deductible amount is met.

(6) The department will respond in writing to every request for reimbursement within thirty (30) days of receipt of the request. If the response indicates that some or all of the costs are being denied, then the response will state the reasons for the denial of costs.

AUTHORITY: section 260.905, RSMo 2000. Original rule filed Oct. 3, 2005.

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: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 9:00 a.m. on December 9, 2005 at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any person wishing to speak at the hearing shall send a written request to the Secretary of the Hazardous Waste Management Commission at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written requests to speak must be postmarked by midnight on December 4, 2005. Faxed or e-mailed correspondence will not be accepted.

Any person may submit written comments on this rule action. Written comments shall be sent to the Director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written comments must be postmarked by midnight on December 16, 2005. Faxed or e-mailed correspondence will not be accepted.

Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program, at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 17—Dry-Cleaning Environmental Response Trust Fund

PROPOSED RULE

10 CSR 25-17.150 Claims

PURPOSE: This rule describes who can make claims against the Dry-Cleaning Environmental Response Trust (DERT) Fund, when and how such claims shall be made, how to request payment from the DERT Fund and describes claims appeals.

NOTE: This rule does not describe an environmental condition or standard, therefore, a Regulatory Impact Report was not completed for this rule.

(1) To ensure eligibility in the Dry-Cleaning Environmental Response Trust (DERT) Fund the owner or operator should submit a notice to the department as soon as reasonably possible after a dry cleaning facility becomes aware of contamination.

(2) After being accepted in the DERT Fund, prior to the initiation of any assessment, investigation, or cleanup activities, whether within the deductible or in excess of the deductible, the costs shall be first approved by the department. Failure to obtain approval for these costs may subject the DERT Fund participant to reduction or denial of reimbursement of costs.

(A) Fund participants are not required to obtain prior approval of the department for the reasonable costs of emergency response or of necessary first aid. The DERT Fund participant shall notify the department of such activities as soon as practical.

(3) Before the initiation of any assessment, investigation, or cleanup activities, the DERT Fund participant will provide a consent of access form that states the property's owners consent for the department or its agents or contractors to access the facility or property.

(4) The department and the commission retain the final authority to make a determination concerning all eligibility issues, including but not limited to whether costs for products and services were reasonable, and whether the costs incurred were necessary to achieve the cleanup activities required by the Department of Natural Resources.

(5) Claim Dispute Resolution.

(A) If a DERT Fund participant disagrees with a payment decision, he or she shall send or deliver the objection(s) or reason(s) for the disagreement in writing to the department within ninety (90) days of the date the check or claim denial is issued.

(B) The department will then review the claim considering the objections or reasons, and respond in writing to the DERT Fund participant within thirty (30) days of receipt. The director must—

1. Affirm the decision previously made;
2. Modify the decision previously made;

3. Refer the claim to the commission; or

4. Request additional information or clarification from the owner or operator making the appeal. Within thirty (30) days of receipt of the additional information or clarifications, the department shall take one (1) of the three (3) steps listed above. If no response is received, the department may terminate the dispute resolution process, which leaves in place the original decision.

(C) If the DERT Fund participant still disagrees with department's decision, he or she may request further review by sending a written request within sixty (60) days of receipt of the director's decision to the commission, in accordance with 10 CSR 25-1.010.

(D) The commission will then consider the disputed claim at one (1) of its two (2) next regularly scheduled meetings.

AUTHORITY: section 260.905, RSMo 2000. Original rule filed Oct. 3, 2005.

PUBLIC COST: This proposed rule is estimated to cost state agencies or political subdivisions nine thousand one hundred seventy-six dollars to sixty-one thousand one hundred sixty-four dollars ($9,176 to $61,164) in the aggregate of the estimated duration of the rule.

PRIVATE COST: This proposed rule is estimated to cost private entities four thousand eight hundred sixty dollars to thirty-two thousand four hundred dollars ($4,860 to $32,400) in the aggregate of the estimated duration of the rule.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 9:00 a.m. on December 9, 2005 at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri.

Any person wishing to speak at the hearing shall send a written request to the Secretary of the Hazardous Waste Management Commission at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written requests to speak must be postmarked by midnight on December 4, 2005. Faxed or e-mailed correspondence will not be accepted.

Any person may submit written comments on this rule action. Written comments shall be sent to the Director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written comments must be postmarked by midnight on December 16, 2005. Faxed or e-mailed correspondence will not be accepted.

Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program, at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

FISCAL NOTE
PUBLIC ENTITY COST

I. RULE NUMBER

Title: Department of Natural Resources

Division: Hazardous Waste Management Commission

Chapter: Drycleaning Environmental Response Trust Fund

Type of Rulemaking: Proposed Rule

Rule Number and Name: 10 CSR 25-17.150 Claims

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Number likely to be affected[1]	Item	Itemized Cost[2,3]
Missouri Department of Natural Resources	45 to 300	Claims review and processing	$ 9,176 to $ 61,164
		Total public entity administrative cost	**$ 9,176 to $ 61,164**

[1]All privately-owned active and abandoned dry cleaning facilities that used solvents to clean garments are potentially affected by this rule. As of November 2003, the Missouri Department of Natural Resources has approximately 281 privately-owned dry cleaning facilities registered in the Hazardous Waste Fees and Taxes database. There are 335 abandoned sites known to exist. Of this entire universe, it is assumed for the purpose of this fiscal note that 45 to 300 privately-owned active and abandoned dry cleaner facilities may request reimbursement from the Drycleaning Environmental Response Trust Fund. Public entities are excluded from this rule, therefore, the fiscal note includes only the costs associated with staff time for review and response time related to this rule.

[2]**This fiscal note reflects estimated costs at active and abandoned dry cleaning sites that voluntarily apply to the DERT Fund.**

[3] This fiscal note shows the costs of the rule action in the aggregate. The department's *Administrative Rulemakings Policy and Guidance Manual* interprets this to mean the costs over the entire lifetime of the rule action.

III. WORKSHEET

1. Personnel costs for merit employees are calculated using the Market Rate step of the fiscal year 2005 merit schedule produced by the Missouri Commission on Management and Productivity (COMAP). Monthly salaries are multiplied by 12 to obtain an annual cost. The annual cost is multiplied by a factor of 38.9% with the additional amount added to the annual salary to account for fringe benefits. $6,617 is added for expense and equipment costs. This sum is then multiplied by 21.03% and the additional amount added to account for indirect costs. Hourly costs are found by dividing the adjusted annual costs by 2080, the number of hours for a Full-Time Equivalent (FTE). All adjustment factors are based on current information confirmed by the hazardous waste program budget staff. Calculations for estimating the personnel costs of private entity employees are based on the same assumptions as for merit employees.

Using this formula and the appropriate salaries, the following hourly rates are assumed to be the most accurate for purposes of this fiscal note:

Environmental Specialist IV hourly rate	=	$ 40.89
Geologist II hourly rate	=	$ 37.98
Environmental Specialist III hourly rate	=	$ 36.00
Management Analysis Specialist I hourly rate	=	$ 33.98
Administrative Office Support Assistant	=	$ 25.52

2. The universe of affected entities is based upon the experience of staff of the Missouri Department of Natural Resources. Entities affected are privately-owned active and abandoned dry cleaning facilities having contamination and having been approved for participation in the Drycleaning Environmental Response Trust Fund. Based upon the experience of department staff, it is assumed that 9% to 60% or 45 to 300 of the 500 privately-owned active and abandoned dry cleaning facilities may be applying to the Drycleaning Environmental Response Trust Fund and may be requesting reimbursement from the fund.

3. Based on task/time correlation, the department estimates it will take a management analysis specialist I six hours to receive, analyze, and process receipts for reimbursement that have been submitted by private entities in compliance with this rule. The private entity compliance costs are counted in the private entity fiscal note.

Management Analysis Specialist I salary	=	$ 33.98 per hour
$ 33.98 x 6 hours	=	$ 203.88 per reimbursement request
45 reimbursements requests submitted x $ 203.88	=	$ 9,175
300 reimbursement requests submitted x $ 203.88	=	$ 61,164

Total cost to Missouri Department of Natural Resources to receive, analyze, and respond to reimbursement requests submitted in compliance with this rule = $ 9,175 to $ 61,164.

IV. ASSUMPTIONS

1. The total estimated cost is provided based on the number of active and abandoned facilities known to the department.
2. The universe of affected entities is based upon the experience of staff of the Missouri Department of Natural Resources. Entities affected are active and abandoned dry cleaning facilities that used solvents to clean garments and having a reportable release or suspected release to the environment. Department staff assume that spill reports at dry cleaning facilities will increase. It is assumed that this information provides a fair and accurate estimate of the universe of active and abandoned dry cleaner facilities subject to the requirements of this rule.
3. Fiscal year 2005 dollars are used to estimate the costs.
4. Estimates assume a constant regulatory context, which requires no reporting standards beyond those currently required or imposed by this rulemaking.
5. Estimates assume there will be no new or sudden changes in technology, which would influence costs.
6. This fiscal note is not in lieu of the requirements or a model for compliance with this rule. The examples used for cost calculations are good faith estimates and averages using the department's professional judgement.
7. Affected entities are assumed to be in compliance with all applicable environmental laws and regulations.
8. Using the Drycleaning Environmental Response Trust Fund for remediation is voluntary, therefore, the number of sites that may enter the program are good faith estimates using the department's professional judgement.

FISCAL NOTE
PRIVATE ENTITY COST

I. RULE NUMBER

Title: Department of Natural Resources

Division: Hazardous Waste Management Commission

Chapter: Drycleaning Environmental Response Trust Fund

Type of Rulemaking: Proposed Rule

Rule Number and Name: 10 CSR 25-17.150 Claims

II. SUMMARY OF FISCAL IMPACT

Classification by types of the business entities which would likely be affected:	Number likely to be affected[1]	Item	Itemized Cost[2][3]
Privately-owned active or abandoned dry cleaning facilities requesting reimbursement from the Drycleaning Environmental Response Trust Fund	45 to 300	Claims preparation and submittal	$ 4,860 to $ 32,400
		Total private entity compliance cost	**$ 4,860 to $ 32,400**

[1]All privately-owned active and abandoned dry cleaning facilities that used solvents to clean garments are potentially affected by this rule. As of November 2003, the Missouri Department of Natural Resources has approximately 281 privately-owned dry cleaning facilities registered in the Hazardous Waste Program Fees and Taxes database. There are 335 abandoned sites known to exist. Of this entire universe, it is assumed for the purpose of this fiscal note that 45 to 300 privately-owned active and abandoned dry cleaner facilities may request reimbursement from the Drycleaning Environmental Response Trust Fund.

[2]**This fiscal note reflects estimated costs at active and abandoned dry cleaning sites that voluntarily apply to the DERT Fund.**

[3] This fiscal note shows the costs of the rule action in the aggregate. The department's *Administrative Rulemakings Policy and Guidance Manual* interprets this to mean the costs over the entire lifetime of the rule action.

III. WORKSHEET

1. Personnel costs for merit employees are calculated using the Market Rate step of the fiscal year 2005 merit schedule produced by the Missouri Commission on Management and Productivity (COMAP). Monthly salaries are multiplied by 12 to obtain an annual cost. The annual cost is multiplied by a factor of 38.9% with the additional amount added to the annual salary to account for fringe benefits. $6,617 is added for expense and equipment costs. This sum is then multiplied by 21.03% and the additional amount added to account for indirect costs. Hourly costs are found by dividing the adjusted annual costs by 2080, the number of hours for a Full-Time Equivalent (FTE). All adjustment factors are based on current information confirmed by the hazardous waste program budget staff. Calculations for estimating the personnel costs of private entity employees are based on the same assumptions as for merit employees. Using this formula and the appropriate salaries, the following hourly rates are assumed to be the most accurate for

purposes of this fiscal note:

Environmental Specialist IV hourly rate	=	$ 40.89
Geologist II hourly rate	=	$ 37.98
Environmental Specialist III hourly rate	=	$ 36.00
Management Analysis Specialist I hourly rate	=	$ 33.98
Administrative Office Support Assistant	=	$ 25.52

2. The universe of affected entities is based upon the experience of staff of the Missouri Department of Natural Resources. Entities affected are privately-owned active and abandoned dry cleaning facilities having contamination and having been approved for participation in the Drycleaning Environmental Response Trust Fund. Based upon the experience of department staff, it is assumed that 9% to 60% or 45 to 300 of the 500 privately-owned active and abandoned dry cleaning facilities may be applying to the Drycleaning Environmental Response Trust Fund and may be requesting reimbursement from the fund.

3. **Claims preparation and submittal costs.** As noted in the assumption above, the department assumes that 45 to 300 of the 500 privately-owned active and abandoned cleaner facilities may be applying for participation in the Drycleaning Environmental Response Trust Fund and may be preparing request for claims reimbursement. Private entity costs for purposes of this fiscal note include the costs incurred by the private entity to comply with the requirements of the rule.

   Private entity compliance costs: The cost for an owner or operator of an active or abandoned dry cleaning facility to compile and submit their receipts requesting claims reimbursement as required in this rule is estimated at an average of 3 hours. It is assumed that the compilation of receipts for submittal to the department will be performed by an individual equivalent to an Environmental Specialist III, with an appropriate hourly rate.

   Environmental Specialist III hourly rate = $36.00 per hour

   $ 36.00 x 3 hours = $ 108.00 estimated cost per claims submittal

   $ 108.00 x 45 facilities = $ 4,860
   $ 108.00 x 300 facilities = $ 32,400

   Total cost of compliance for private entities = $ 4,860 to $ 32,400

IV. ASSUMPTIONS

1. The total estimated cost is provided based on the number of active and abandoned facilities known to the department.
2. The universe of affected entities is based upon the experience of staff of the Missouri Department of Natural Resources. Entities affected are active and abandoned dry cleaning facilities that used solvents to clean garments and having a reportable release or suspected release to the environment. Department staff assume that spill reports at dry cleaning facilities will increase. It is assumed that this information provides a fair and accurate estimate of the universe of active and abandoned dry cleaner facilities subject to the requirements of this rule.
3. The department does not have previous cleanup costs documented for dry cleaning sites, therefore, our cost estimates are based on research of cleanups of dry cleaning facilities conducted in states bordering Missouri.
4. Estimates assume a constant regulatory context, which requires no reporting standards beyond those currently required or imposed by this rulemaking.
5. Estimates assume there will be no new or sudden changes in technology, which would influence costs.
6. This fiscal note is not in lieu of the requirements or a model for compliance with this rule. The examples used for cost calculations are good faith estimates and averages using the department's professional judgement.
7. Affected entities are assumed to be in compliance with all applicable environmental laws and regulations.
8. Using the Drycleaning Environmental Response Trust Fund for remediation is voluntary, therefore, the number of sites that may enter the program are good faith estimates using the department's professional judgement.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 17—Dry-Cleaning Environmental Response Trust Fund

PROPOSED RULE

10 CSR 25-17.160 Notification of Abandoned Sites

PURPOSE: This rule describes the requirements for the notification of abandoned dry cleaning sites.

NOTE: This rule does not describe an environmental condition or standard, therefore, a Regulatory Impact Report was not completed for this rule.

(1) Owners or former operators of abandoned dry cleaners shall inform the department of the existence of an abandoned dry cleaning facility on a form provided by the department. Any available evidence that the property once contained a dry cleaning facility shall accompany the form.

(2) This form shall be postmarked by July 1, 2009.

AUTHORITY: sections 260.905 and 260.925, RSMo 2000. Original rule filed Oct. 3, 2005.

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: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 9:00 a.m. on December 9, 2005 at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any person wishing to speak at the hearing shall send a written request to the Secretary of the Hazardous Waste Management Commission at PO Box 176, Jefferson City, MO, 65102-0176. To be accepted, written requests to speak must be postmarked by midnight on December 4, 2005. Faxed or e-mailed correspondence will not be accepted.

Any person may submit written comments on this rule action. Written comments shall be sent to the Director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO, 65102-0176. To be accepted, written comments must be postmarked by midnight on December 16, 2005. Faxed or e-mailed correspondence will not be accepted.

Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program, at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management Commission
Chapter 17—Dry-Cleaning Environmental Response Trust Fund

PROPOSED RULE

10 CSR 25-17.170 Violations of Dry Cleaning Remediation Laws

PURPOSE: This rule describes the violations and penalties for violation of the dry cleaning regulations.

NOTE: This rule does not describe an environmental condition or standard, therefore, a Regulatory Impact Report was not completed for this rule.

(1) The department may bring civil damages not to exceed five hundred dollars ($500) for each violation, against a participant of a dry cleaning facility for the following:

(A) For operation of an active dry cleaning facility in violation of 10 CSR 25-17.010 through 10 CSR 25-17.170, or operate an active dry cleaning facility in violation of any other applicable federal or state environmental statutes, rules or regulations;

(B) Prevent or hinder a properly identified officer or employee of the department or other authorized agent of the director from entering, inspecting, sampling or responding to a release at reasonable times and with reasonable advance notice to the operator as authorized by section 260.910, RSMo;

(C) Knowingly make any false material statement or representation in any record, report or other document filed, maintained or used for the purpose of compliance with 10 CSR 25-17.040;

(D) Knowingly destroy, alter or conceal any record required to be maintained by 10 CSR 25-17.040; and

(E) Willfully allow a release in excess of a reportable quantity or knowingly fail to make an immediate response to a release in accordance with 10 CSR 25-17.050.

AUTHORITY: sections 260.905 and 260.910, RSMo 2000. Original rule filed Oct. 3, 2005.

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: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 9:00 a.m. on December 9, 2005 at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any person wishing to speak at the hearing shall send a written request to the Secretary of the Hazardous Waste Management Commission at PO Box 176, Jefferson City, MO 65102-0176. To be accepted, written requests to speak must be postmarked by midnight on December 4, 2005. Faxed or e-mailed correspondence will not be accepted.

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Please direct all inquiries to the Rules Coordinator of the Hazardous Waste Program, at 1738 E. Elm, Jefferson City, MO 65102, telephone (573) 751-3176.

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 30—Office of the Director
Chapter 10—Amber Alert

PROPOSED RULE

11 CSR 30-10.010 Definitions for the Amber Alert

PURPOSE: This rule defines terms used in the rules for activating an Amber Alert.

(1) Abducted child—a child age seventeen (17) or under whose whereabouts are unknown and who has been determined by local law enforcement to be:

(A) The victim of the crime of kidnapping as defined by section 565.110, RSMo, as determined by local law enforcement; or

(B) The victim of the crime of child kidnapping as defined by section 565.115, RSMo, the statutory age limit notwithstanding.

(2) Reporting agency—the law enforcement agency having jurisdiction where the child is abducted.

AUTHORITY: section 210.1014, RSMo Supp. 2004. Original rule filed Oct. 3, 2005.

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 Jill LaHue, General Counsel, Missouri Department of Public Safety, PO Box 749, 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 11—DEPARTMENT OF PUBLIC SAFETY
Division 30—Office of the Director
Chapter 10—Amber Alert

PROPOSED RULE

11 CSR 30-10.020 Law Enforcement Agency Procedures for Activating an Amber Alert

PURPOSE: This rule establishes guidelines for determining when an Amber Alert should be activated and the procedure for activating the alert.

(1) In the event of a missing child, the reporting agency must first determine that the following criteria are met:

(A) The missing child qualifies as an "abducted child," as defined in 11 CSR 30-10.010;

(B) The child is in the custody of someone other than a parent, guardian, or other official custodial entity, or sufficient evidence exists to indicate that harm may come to a child from a parent, guardian, or other official custodial entity;

(C) Sufficient descriptive information exists to enhance the possibility of recovery, such as—

1. The time and location of the incident;

2. A physical description of the abducted child and his or her clothing, if known;

3. A physical description and identity, if known, of the abductor and whether or not the abductor is armed; and

4. A vehicle description and direction of travel.

(2) The reporting agency must take a complete report and validate the information.

(3) The reporting agency shall next—

(A) Issue a local Amber Alert if the local agency has its own Amber Alert plan;

(B) If there is no local Amber Alert plan or if the alert should be expanded beyond the local plan, the agency should complete a Missouri Amber Alert Abduction Form and fax the form to Missouri State Highway Patrol (MSHP) Communications Division; and

(C) Enter the incident into the Missouri Uniform Law Enforcement System and the National Crime Information Center database.

(4) Upon receipt of the Amber Alert Abduction Form, MSHP Communications Division personnel shall contact the reporting agency to confirm the validity of the alert.

(5) After receiving confirmation, MSHP Communications Division will then disseminate the alert.

AUTHORITY: section 210.1014, RSMo Supp. 2004. Original rule filed Oct. 3, 2005.

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 Jill LaHue, General Counsel, Missouri Department of Public Safety, PO Box 749, 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 11—DEPARTMENT OF PUBLIC SAFETY
Division 50—Missouri State Highway Patrol
Chapter 2—Motor Vehicle Inspection Division

PROPOSED AMENDMENT

11 CSR 50-2.160 Brake Components. The division is amending subparagraph (2)(A)1.N.

PURPOSE: This amendment provides clarification to the rejection criteria for brake hoses or tubing.

(2) Drums, Discs and Internal Brake Components. At least one (1) front or one (1) rear wheel and drum must be removed on each passenger vehicle, one-half (1/2) ton and three-quarter (3/4) ton pickup trucks, or similar type vehicles not equipped with dual rear wheels. Only the wheel must be removed on vehicles equipped with disc brakes. Identification marks shall be made on the wheel and lug before removal so the wheel can be remounted in the same position to insure wheel balance. On drum brake systems, a new cotter pin must always be used when remounting a wheel and drum. The removal of a wheel and/or drum is not required if the brake performance test has been administered using an approved computerized brake testing machine. When an approved computerized brake testing machine is used, and no wheel is removed, the inspector shall mark through the space on the MVI-2 form provided for "Brake Inspected" with the letters "CBTM." When removal of a wheel is required, a wheel appearing to leak brake fluid or grease, shall be the wheel removed to inspect for contamination. Wheels on four (4)-wheel drive vehicles equipped exclusively with drum-type brakes are not required to be removed.

(A) Inspect drums, discs, calipers, linings, pads, wheel cylinders, hoses, lines and other internal brake components.

1. Reject vehicle if:

A. There are substantial cracks on the friction surface extending to open edge of drum or to the edge of a disc;

B. A brake drum or disc has external cracks;

C. Friction surface of disc brake pads, rotor, brake linings or brake drum is contaminated with oil, grease or brake fluid;

D. A brake lining is worn into the friction surface of the brake drum where the brake drum cannot be removed after loosening the adjusting screw (backing off of the self-adjusting mechanism);

E. Thinnest point of bonded lining is less than one-thirty-second inch (1/32");

F. Rivets are loose or missing or if lining or pad is not firmly attached to shoe;

G. Riveted lining is worn to less than one-thirty-second inch (1/32") above any rivet head at thinnest point;

H. Wire is visible on the friction surface of wire-backed linings;

I. Lining is broken or cracked, does not include heat cracks;

J. A primary or secondary shoe and lining is improperly installed;

K. Bonded pads are worn at any one (1) point to less than one-thirty-second inch (1/32");

L. Riveted pads are worn at any one (1) point to less than five-thirty-seconds inch (5/32"). If unable to determine if pads are riveted or bonded, pads will be considered to be bonded pads;

M. A wheel cylinder or caliper leaks a sufficient amount of hydraulic brake fluid to cause droplets. Do not mistake assembly fluid for hydraulic fluid;

N. Hoses or tubing leak or are cracked, chafed, flattened, restricted, bubbled**, improperly installed** or insecurely fastened;

O. Mechanical parts are missing, broken or badly worn;

P. There is excessive friction in brake pedal, linkage or other components;

Q. Pedal levers are improperly positioned or misaligned; or

R. Brake components are misaligned, binding, obstructed or will not function properly.

AUTHORITY: section 307.360, RSMo 2000. Original rule filed Nov. 4, 1968, effective Nov. 14, 1968. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed Oct. 3, 2005.*

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 Public Safety, Missouri State Highway Patrol, PO Box 568, Jefferson City, MO 65102-0568. 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 50—Missouri State Highway Patrol
Chapter 2—Motor Vehicle Inspection Division

PROPOSED AMENDMENT

11 CSR 50-2.200 Steering Mechanisms. The division is amending subparagraph (2)(E)1.C.

PURPOSE: This amendment provides clarification to the rejection criteria for steering mechanisms.

(2) Front and Rear Wheel Play.

(E) Inspect condition of all upper and lower control arms, pivot shafts, pivot shaft mountings, radius arms, and all bushings.

1. Reject vehicle if:

A. Wheel bearing looseness allows relative movement between drum and backing plate (disc and splash shield) more than one-eighth inch (1/8") measured at the outer circumference of the tire for vehicles ten thousand pounds (10,000 lbs.) Gross Vehicle Weight Rating (GVWR) or less or one-quarter inch (1/4") for vehicles more than ten thousand pounds (10,000 lbs.) GVWR. A wheel bearing falls apart when a wheel is removed to inspect a brake or if the bearing is broken;

B. Front wheel movement is in excess of one-fourth inch (1/4") for wheels sixteen inches (16") or less, three-eighths inch (3/8") for wheels over sixteen inches (16") to and including eighteen inches (18") and one-half inch (1/2") for wheels over eighteen inches (18") (see Figures 3, 4 and 5, included herein). (An idler arm or king pin must meet this criteria before being rejected.);

C. Excessive vertical (up and down) or lateral (side) movement is evident in any of the steering linkage sockets**,** *[or if]* tapered studs are loose in their mounting holes*[. Any]*, **any** movable joints are locked*[. Any]***, any adjusting sleeves are loose, or any** joints are not secured with cotter pins or other devices;

D. A control arm or radius arm is badly bent or broken, or if a pivot shaft or a pivot shaft mounting or any control arm, radius arm, pivot shaft bushing is badly worn or missing; or

E. Stabilizer bar(s), links, connections are badly worn, missing, loose or broken.

(4) Ball Joints.

(D) Inspect ball joints with wear indicator, as shown in Figures 10 **and 14**, included herein. Wipe the grease fitting and boss free from dirt and grease. Observe if boss is flush or inside the cover surface.

(F) Inspect ball joints on front-wheel drive vehicles as illustrated in Figures 11, 12**, 15** and 16, included herein. Inspect vehicles equipped with MacPherson Strut Suspension System as illustrated in Figure 13, included herein.

AUTHORITY: section 307.360, RSMo 2000. Original rule filed Nov. 4, 1968, effective Nov. 14, 1968. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed Oct. 3, 2005.*

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 Public Safety, Missouri State Highway Patrol, PO Box 568, Jefferson City, MO 65102-0568. 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 50—Missouri State Highway Patrol
Chapter 2—Motor Vehicle Inspection Division

PROPOSED AMENDMENT

11 CSR 50-2.320 School Bus Inspection. The division is amending sections (2), (4), (13), (22), and (24), adding section (23) and renumbering existing section (23) of the rule.

PURPOSE: This amendment provides clarification regarding turn signals, rejection criteria for strobe lights, mirrors, aisle mats, runner and frames, out-of-service criteria for frames, and provides a newly created section regarding compartment condition.

(2) Lighting Equipment and Signalling Devices.

(E) Turn Signals. [*Type B, C and D school buses manufactured prior to January 1, 1993, shall be equipped with turn signals as originally equipped by the manufacturer. Type B, C and D school buses manufactured after January 1, 1993, shall be equipped with front and rear flashing turn signals amber in color at least seven inches (7") in diameter or if a shape other than round, a minimum of thirty-eight (38) square inches of illuminated area is required. Type A conversion vehicles must be equipped with front and rear turn signal lamps providing twenty-one (21) square inches of illuminated area in the manufacturer's standard color. If a school bus is equipped with side mounted turn signals, each must operate as intended.]* **All school buses shall be equipped with front turn signals as originally equipped by the manufacturer. If additional turn signal lamps are provided (front of body below windshield or top of fender), they shall be connected to the turn signal system without removal or disconnection of originally equipped front turn signals. All buses manufactured after July 1, 1993, shall be equipped with amber side-mounted turn signal lights. The turn signal lamp on the left side shall be mounted rearward of the stop signal arm, and the turn signal lamp on the right side shall be mounted rearward of the service door. Rear turn signals on Type A-2, B, C and D buses must be amber in color and at least seven inches (7") in diameter or, if a shape other than round, a minimum of thirty-eight (38) square inches of illuminated area. Rear turn signals on all Type A-1 conversion buses must be at least twenty-one (21) square inches in lens area and must be in the manufacturer's standard color.**

(J) Observe Function of Lights and Signalling Devices.

1. Reject vehicle if:

A. Not equipped with required lights, reflectors and signalling devices;

B. Any lighting device or reflector is obstructed;

C. Any required light, reflector or signalling device fails to function properly;

D. Any light, reflector or signalling device is not securely mounted;

E. Any light, reflector or signalling device shows a color contrary to these regulations;

F. A lens or reflector is badly broken or if any part is missing or is incorrectly installed; or

G. The strobe light is not mounted as prescribed, is not of the approved type, *[or]* **is not** white in color **or fails to function properly**.

(4) Mirrors.

(F) Reject vehicle if:

1. Not equipped with required mirrors;

2. A mirror is not mounted on stable support or is improperly mounted; or

3. A mirror is cracked, pitted**, obstructed** or clouded to the extent that vision is obscured.

(13) Step Treads, Aisle Mats or Runners.

(A) Types B, C and D School Buses Only.

1. The surface of step treads shall be of nonskid material. The aisle mats or runners shall be of an aisle-type fire-resistant rubber or equivalent, nonskid, wear-resistant and ribbed. The mats or runners shall be permanently bonded to the floor.

2. Inspect the general condition of step treads at the service door entrance and the general condition of the aisle mats or runners.

3. Reject vehicle if the:

A. Treads on the steps are not of nonskid material or if the surface material is loose; or

B. Mats or runners are loose, torn**,** *[or]* curled**, not permanently bonded to the floor, or are not of proper material**.

(22) Frame.

(B) Reject any school bus if there are any **unrepaired** visible cracks.

(23) Compartment Condition.

(A) The compartment will be in good repair, with no sharp-edged tears or holes in the compartment walls, floors, doors or ceiling.

(B) Inspect the compartment.

(C) Reject vehicle if compartment contains any sharp-edged tears or holes in the compartment walls, floors, doors or ceiling.

[(23)] **(24)** Out-of-Service Criteria. The following items will result in buses being put out-of-service until needed repairs are made. These criteria will be used only by Missouri State Highway Patrol personnel and are not applicable at official inspection stations:

(A) If there is a major exhaust leak in the exhaust system which dumps exhaust in front of the rear axle;

(B) If there are major steering or suspension defects;

(C) If there are major brake defects;

(D) If the stop signal arm is inoperative;

(E) If the front or rear tires have knots or exposed cord or the tread depth is less than four-thirty-seconds inch (4/32") on the front tires or less than two-thirty-seconds inch (2/32") on the rear tires when measured in any two (2) major grooves at three (3) locations spaced approximately equally around the outside of the tire;

(F) If any emergency door is inoperable from either the inside or outside or any other emergency exit fails to open;

(G) If the red overhead warning flashers are inoperative;

(H) If the one-half inch (1/2") hex nut attached to one (1) end of a one-eighth inch (1/8") drawstring catches on the handrail and lodges between the handrail mounting bracket and the sheet metal body of the bus or the drawstring catches during the handrail drawstring test;

(I) If not equipped with crossing arm as required or if the crossing arm does not operate when the stop signal arm and overhead warning flashers are activated; *[or]*

(J) If fuel is leaking from any part of the fuel system*[.]***; or**

(K) If the frame has any **unrepaired** visible cracks.

AUTHORITY: sections 307.360.2, RSMo 2000 and 307.375, RSMo Supp. 2004. Original rule filed Nov. 4, 1968, effective Nov. 14, 1968. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed Oct. 3, 2005.*

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 Public Safety, Missouri State Highway Patrol, PO Box 568, Jefferson City, MO 65102-0568. 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 16—Cigarette Tax

PROPOSED RESCISSION

12 CSR 10-16.010 Prior Rulings. This rule prescribed that all rulings issued prior to January 1, 1973, are withdrawn and canceled.

PURPOSE: This rule is being rescinded because it is outdated and no longer necessary.

AUTHORITY: sections 66.380, 149.015 and 210.320, RSMo Supp. 1993 and 136.030, 136.120 and 149.021, RSMo 1986. Cigarette Tax Regulation 15 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Amended: Filed Feb. 18, 1983, effective June 11, 1983. Rescinded: Filed Sept. 30, 2005.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, 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 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 16—Cigarette Tax

PROPOSED RESCISSION

12 CSR 10-16.020 Definitions. This rule specified that the terms defined in section 149.011, RSMo shall also apply to Chapters 66 and 210, RSMo and the rules thereunder.

PURPOSE: This rule is being rescinded because it is unnecessary and merely states what is true as a matter of law.

AUTHORITY: sections 66.380, 149.015 and 210. 320, RSMo Supp. 1993 and 136.030, 136.120, and 149.021, RSMo 1986. Cigarette Tax Regulation 1 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Amended: Filed Feb. 18, 1983, effective June 11, 1983. Rescinded: Filed Sept. 30, 2005.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, 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 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 16—Cigarette Tax

PROPOSED RESCISSION

12 CSR 10-16.030 Cigarette Tax Levied. This rule set forth the amount of tax levied for the state, St. Louis and Jackson Counties taxes levied upon the sale of cigarettes.

PURPOSE: This rule is being rescinded because it does not contain anything that is not expressly provided by statute.

AUTHORITY: sections 66.380, 149.015 and 210.320, RSMo Supp. 1993 and 136.030, 136.120 and 149.02, RSMo 1986. Cigarette Tax Regulation 2 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Amended: Filed Feb. 18, 1983, effective June 11, 1983. Emergency amendment filed Sept. 16, 1985, effective Sept. 26, 1985, expired Jan. 24, 1986. Amended: Filed Sept. 16, 1985, effective Dec. 26, 1985. Amended: Filed Jan. 31, 1994, effective July 30, 1994. Rescinded: Filed Sept. 30, 2005.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, 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 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 16—Cigarette Tax

PROPOSED AMENDMENT

12 CSR 10-16.040 Tax Evidenced by Stamps. The director proposes to add a new section (1), renumber existing sections, amend renumbered sections (1) and (2), and amend the authority section.

PURPOSE: This rule is being amended to address the purchase of tax stamps by wholesalers that purchase unstamped cigarettes from importers and to update the authority section.

(1) An "importer" is any person that first imports into the United States tobacco products manufactured outside of the United States and that is licensed under federal law as a tobacco importer.

[(1)] **(2)** The director of revenue will only furnish tax stamps to licensed Missouri wholesalers that purchase all unstamped cigarettes directly from the manufacturer **or importer, or from a Missouri licensed wholesaler**.

[(2)] **(3)** Cigarette tax stamps cannot be loaned, sold, exchanged or otherwise transferred by any wholesaler to any other wholesaler or any other person without prior **written** approval of the director of revenue.

[(3)] **(4)** A cigarette tax stamp is considered canceled when affixed to a package of cigarettes.

*AUTHORITY: sections 149.015, RSMo Supp. [1995] **2004** and 66.380, 136.030, 136.120, 149.021 **and** 210.320, **RSMo [1994] 2000**. Cigarette Tax Regulation 3 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Amended: Filed Feb. 9, 1996, effective Jan. 1, 1997. Amended: Filed Sept. 30, 2005.*

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, 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 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 16—Cigarette Tax

PROPOSED RESCISSION

12 CSR 10-16.050 Use of Tax Stamps. This rule prescribed where and in what quantity tax stamps might be purchased and set forth the minimum specifications for the manufacture of cigarette stamps.

PURPOSE: This rule is being rescinded because the matters contained in the rule can be addressed more efficiently through the public bidding process.

AUTHORITY: sections 66.380, 149.015 and 210.320, RSMo Supp. 1993 and 136.030, 136.120 and 149.021, RSMo 1986. Cigarette Tax Regulation 4 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Amended: Filed March 13, 1984, effective June 11, 1984. Rescinded: Filed Sept. 30, 2005.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, 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 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 16—Cigarette Tax

PROPOSED AMENDMENT

12 CSR 10-16.060 Sample Cigarettes. The director proposes to amend sections (1)–(3) and the authority section.

PURPOSE: This rule is being amended to clarify the language and to update the authority section.

(1) Cigarettes distributed in Missouri by manufacturers as samples must be so marked. *[A manufacturer's]* **The manufacturer must** report *[of nonstamped sample cigarettes shipped into Missouri giving]* the dates, locations and *[the]* number of sample cigarettes delivered *[must be filed with the director and the tax computed at the rate in 12 CSR 10-16.030, remitted therewith]*. The report *[shall be filed]* **and all tax due on the sample cigarettes are due** on the fifteenth day of *[each]* **the** month *[covering shipments made during the previous calendar month]* **following the month in which the shipments were made**.

(2) **The manufacturer must remit** *[C]*county cigarette tax *[shall be remitted]* to the *[director]* **department** if the sample cigarettes *[are to be]* **were** distributed in either Jackson County or St. Louis County.

(3) **The manufacturer must remit** *[C]*city cigarette tax *[shall be remitted]* to *[the respective cities]* **any city** levying a cigarette tax if cigarette samples *[are to be]* **were** distributed in the *[cities]* **city**.

*AUTHORITY: sections 149.015, RSMo Supp. [1993] **2004** and 66.380, 136.030, 136.120, [and] 149.021 **and** 210.320, RSMo [1986] **2000**. Cigarette Tax Regulation 5 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Amended: Filed Feb. 18, 1983, effective June 11, 1983. Amended: Filed Jan. 31, 1994, effective July 30, 1994. Amended: Filed Sept. 30, 2005.*

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, 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 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 16—Cigarette Tax

PROPOSED AMENDMENT

12 CSR 10-16.070 Discount Allowed. The director proposes to amend section (1) and the authority section.

PURPOSE: This rule is being amended to remove references to "meter impressions," to clarify the language of the rule, and to update the authority section.

(1) A wholesaler is generally entitled to a three percent (3%) discount off the face value of stamps. The discount is not allowed if a wholesaler:

(A) Purchases stamps on the deferred payment basis and fails to pay for the stamps when due; or

[(1)] **(B)** *[The three percent (3%) discount provided for under section 149.021, RSMo will not be allowed if the total deferment liability becomes delinquent as provided by subsection 2 of section 149.025, RSMo, or if the consolidated monthly report, provided for in subsection 2 of]* **Fails to timely file the report required by** section 149.041**.2**, RSMo, including all schedules *[required by the director is not properly filed, that is, it must be completed on the calendar month basis and filed by the fifteenth of the following month if stamps or meter impressions are purchased on the deferred payment basis as provided for in section 149.025, RSMo, and the*

twentieth of the following month if stamps or meter impressions are purchased on the cash basis].

*AUTHORITY: sections 149.015, RSMo Supp. [1993] **2004** and 66.380**,** 136.030, 136.120**,** [and] 149.021 **and** 210.320, RSMo [1986] **2000**. Cigarette Tax Regulation 6 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Amended: Filed Feb. 18, 1983, effective June 11, 1983. Amended: Filed Sept. 30, 2005.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, 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 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 16—Cigarette Tax

PROPOSED AMENDMENT

12 CSR 10-16.090 Purchase on Deferred Payment Basis. The director proposes to amend sections (1)–(4), and the authority section.

PURPOSE: This rule is being amended to remove references to "meter units," and to address bond requirements.

(1) All wholesalers who purchase tax stamps *[or meter units]* on the deferred payment basis must file the monthly report required by *[subsection 2 of]* section 149.041**.2**, RSMo**,** on the fifteenth day of *[each]* **the following** month *[covering the previous calendar month]*.

(2) All purchases of tax stamps *[or meter units]* on the deferred payment basis must have the prior approval of the director. The total amount of outstanding credit granted *[shall at no time]* **may not** exceed one hundred percent (100%) of the *[surety]* bond furnished by the wholesaler.

(3) The *[surety]* bond required *[under section 149.025, RSMo]* **to purchase stamps on the deferred payment basis may be in cash, certificate of deposit, irrevocable letter of credit, or surety bond. A surety bond** must be issued by an authorized corporate surety company on a bond form approved by the director. *[Any surety on a bond furnished by a cigarette wholesaler shall be released and discharged from any and all prospective liability to the state occurring after the expiration of ninety (90) days from the date upon which the surety shall have lodged with the director a written request to be released and discharged, but this provision shall not operate to relieve, release or discharge the surety from any liability already accrued or which shall accrue before the expiration of the ninety (90)-day period. The director, promptly upon receiving any request, shall notify the cigarette wholesaler who furnished the bond, and unless the wholesaler shall file, on or before the expiration of the ninety (90)-day period, with the director a new bond fully complying with the provisions of section 149.025, RSMo, the director shall forthwith revoke all credit privileges and notify the wholesaler that all purchases must be made in cash.]*

(4) The payment of the St. Louis County or Jackson County cigarette tax *[imposed by Chapters 66 and 210, RSMo respectively,]* may not be deferred.

*AUTHORITY: sections 149.015, RSMo Supp. [1993] **2004** and 66.380**,** 136.030, 136.120, [and] 149.021 **and** 210.320, RSMo [1986] **2000**. Cigarette Tax Regulation 8 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Amended: Filed Feb. 18, 1983, effective June 11, 1983. Amended: Filed Sept. 30, 2005.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, 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 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 16—Cigarette Tax

PROPOSED AMENDMENT

12 CSR 10-16.100 Payment on Deferred Payment Basis. The director proposes to amend sections (1) and (2) and the authority section and delete section (3).

PURPOSE: This rule is being amended to clarify the language and to remove reference to "meter units."

(1) All wholesalers who purchase tax stamps *[or meter units]* on the deferred payment basis *[shall]* **must** remit the total amount due on account of the purchases on or before the fifteenth day of the calendar month following the calendar month during which the purchases were made. Purchases of tax stamps are deemed to occur on the date the tax stamps are sent to the purchaser *[and purchases of meter units are deemed to occur on the date the purchases are set on meter machines]*.

(2) If the date for payment of the deferred liability falls *[upon]* **on** a Saturday, Sunday or legal holiday, or other date on which the United States postal service is not in operation, the payment *[shall]* **will** be considered timely if sent on the next business day or on the next day in which postal service is resumed. The postmark date appearing on the envelope will be deemed to be the time of payment of the deferred liability.

[(3) In the event a cigarette wholesaler's payment becomes delinquent, the wholesaler's credit privilege shall be discontinued at once and the three percent (3%) discount provided for in subsection 1 of section 149.021, RSMo, will be disallowed on the delinquent amount of tax.]

*AUTHORITY: sections 149.015, RSMo Supp. [1993] **2004** and 66.380**,** 136.030, 136.120**,** [and] 149.021 **and** 210.320**,** RSMo*

*[1986] **2000**. Cigarette Tax Regulation 9 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Amended: Filed Feb. 18, 1983, effective June 11, 1983. Amended: Filed Sept. 30, 2005.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, 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 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 16—Cigarette Tax

PROPOSED AMENDMENT

12 CSR 10-16.110 Unsaleable Packages of Cigarettes. The director proposes to amend sections (1)–(3) and the authority section.

PURPOSE: This rule is being amended to remove references to "meter impressions," to clarify the language, and to update the authority section.

(1) *[Whenever]* **If a wholesaler provides proof satisfactory to the department that** cigarettes on which the tax has been paid, as evidenced by tax stamps**,** *[and meter impressions, have become unfit for use or consumption; unsaleable or damaged or destroyed by fire, flood or similar causes,]* **are unsellable** the *[director, upon satisfactory proof being received from the cigarette wholesaler,]* **department** may issue new tax stamps *[or meter impressions]* to the wholesaler who affixed the tax stamps *[or meter impressions]*.

(2) *[The director shall be notified]* **The wholesaler must notify the department** prior to *[the destruction of damaged or partially damaged]* **destroying unsellable** cigarettes and **must keep** the cigarettes *[shall be kept]* available for inspection by *[his/her authorized representatives]* **the department**.

(3) When *[unsaleable packages of]* **a wholesaler intends to return** cigarettes *[are to be returned]* **that have tax stamps affixed** to a manufacturer, *[tax stamps must be affixed to the packages of cigarettes and they must be inspected by an authorized representative of the director. An inspection]* **the wholesaler must file with the department a** report signed by the wholesaler *[must also be filed. A refund in stamps or meter impressions will be made]* **identifying the number of cigarettes and verifying that stamps have been affixed to the cigarettes. The wholesaler must hold the cigarettes for inspection by the department until notified in writing by the department that the cigarettes may be returned to the manufacturer. The department will provide the wholesaler with stamps equal to the stamps affixed to the returned cigarettes** upon receipt of *[an affidavit]* **written confirmation** from the manufacturer that the *[cigarettes were received by the manufacturer Inspection of the unsaleable cigarettes may be waived at the discretion of the director]* **manufacturer received the cigarettes.**

*AUTHORITY: sections 149.015, RSMo Supp. [1993] **2004** and 66.380**,** 136.030, 136.120**,** [and] 149.021 **and** 210.320, RSMo [1986] **2000**. Cigarette Tax Regulation 10 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Amended: Filed Sept. 30, 2005.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, 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 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 16—Cigarette Tax

PROPOSED AMENDMENT

12 CSR 10-16.120 Missouri Cigarette Wholesaler's License. The director proposes to amend sections (1) and (2), delete sections (3) and (5), renumber existing sections, and amend the authority section.

PURPOSE: This amendment is necessary to address changes to the requirements to obtain a wholesaler's license, to clarify the language, to remove unnecessary provisions, and to update the authority section.

(1) *[Letters of recommendation from four (4) of the six (6) leading manufacturers, for example, American Tobacco Company, Brown & Williamson Tobacco Corporation, Liggett & Myers Incorporated, Lorillard, Philip Morris Tobacco Company and R.J. Reynolds Tobacco Company, must be on file with the director before a Missouri cigarette wholesaler's license will be issued. This requirement may be waived at the discretion of the director.]* **Before a wholesaler's license will be issued, the wholesaler must provide the department written confirmation from every manufacturer or importer from whom it expects to purchase cigarettes that the manufacturer or importer intends to sell cigarettes to the wholesaler for sale in Missouri.**

(2) A Missouri cigarette wholesaler's license will only be granted to **a** nonresident wholesaler **if the nonresident wholesaler is** duly registered as a cigarette wholesaler in the wholesaler's state of residence.

[(3) A nonresident wholesaler who is granted a Missouri cigarette wholesaler's license under section 149.035, RSMo, and is authorized to affix Missouri tax stamps or meter impressions shall agree to be bound by all cigarette tax rules issued by the director of revenue.]

[(4)] **(3)** The cigarette wholesaler's license must be prominently displayed in the wholesaler's principal place of business. Any cigarette wholesaler having more than one (1) place of business is required to display a copy of the license in each place of business owned or operated by him/her doing business in Missouri.

[(5) If a wholesaler violates any of the provisions of Chapters 66 and 210, RSMo, or Chapter 149, RSMo, or rules issued pursuant to the provisions, contingent upon the hearing provided for by section 149.035, RSMo, the director may revoke or suspend the cigarette wholesaler's license issued under the provisions of section 149.035, RSMo.]

*AUTHORITY: sections 149.015, RSMo Supp. [1993] **2004** and 66.380**,** 136.030, 136.120**,** [and] 149.021 **and** 210.320**,** RSMo [1986] **2000**. Cigarette Tax Regulation 11 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Amended: Filed Feb. 18, 1983, effective June 11, 1983. Amended: Filed Sept. 30, 2005.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, 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 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 16—Cigarette Tax

PROPOSED AMENDMENT

12 CSR 10-16.130 Record Keeping Requirements. The director proposes to amend sections (1)–(5), delete sections (6) and (7), and amend the authority section.

PURPOSE: This amendment is necessary to remove references to "meter impressions," to clarify the language, and to update the authority section.

(1) A cigarette wholesaler operating a retail place of business or vending machine *[shall use a distinctive title for the retail or vending machine operation and shall]* **must** keep records of the retail business and the vending machine business separate from the records of the wholesale cigarette business.

(2) In all cases where a wholesaler is selling, both as a retailer and a wholesaler at the same place of business, *[the retail business]* **any cigarettes that do not bear a Missouri tax stamp** must be kept *[separate and apart from the wholesale business]* in a room separated from the *[wholesale]* **retail** business by a wall or partition *[and, in addition, inventories and other matters covering the retail business shall be kept separate and distinct from the wholesale business]*.

(3) The name and address of the owner of any cigarette vending machine in operation within Missouri *[shall]* **must** be *[visibly]* displayed on each vending machine.

(4) Each owner and operator of cigarette vending machines *[shall]* **must** keep a record showing the business location of each vending machine currently being serviced, which *[shall]* **must** be available to the *[director or his/her authorized representatives]* **department** at the principal place of business in Missouri of the owner or operator.

(5) Operators of cigarette vending machines *[shall]* **must** load packages of cigarettes in vending machines so that if any packages are visible while in the machine the tax stamp *[affixed thereto or the meter impression thereon]* will be clearly visible.

[(6) Owners and operators of cigarette vending machines who are not licensed cigarette wholesalers shall only purchase tax-stamped or tax-imprinted packages of cigarettes. Owners and operators shall keep records indicating the wholesaler that affixed the tax stamps or meter impressions to packages of cigarettes.

(7) No manufacturer, wholesaler or retailer shall refuse to permit the director or his/her duly authorized representatives to examine records, papers, files and equipment pertaining to the person's business made taxable by Chapters 66, 149 and 210, RSMo. No person shall make an incomplete, false or fraudulent return, or attempt to do anything to evade full disclosure of the facts or to avoid payment in whole or in part of the tax imposed by Chapters 66, 149 and 210, RSMo.]

*AUTHORITY: sections 149.015, RSMo Supp. [1993] **2004** and 66.380, 136.030, 136.120**,** [and] 149.021 **and 210.320,** RSMo [1986] **2000**. Cigarette Tax Regulation 12 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Amended: Filed Feb. 18, 1983, effective June 11, 1983. Amended: Filed Sept. 30, 2005.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, 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 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 16—Cigarette Tax

PROPOSED AMENDMENT

12 CSR 10-16.140 Common Carriers, Bonded Warehousemen and Bailees. The director proposes to amend sections (1), (3), (4) and (5), delete section (2), amend the authority section, renumber all existing sections as necessary, and to remove the form following this rule in the *Code of State Regulations*.

PURPOSE: This amendment is necessary to clarify the language, to remove an outdated form, and to update the authority section.

(1) Common carriers transporting cigarettes to a point within Missouri other than the place of business of a licensed cigarette wholesaler *[shall]* **and bonded warehousemen or bailees having possession of cigarettes must file all** reports *[all deliveries]* **required by section 149.045, RSMo,** on forms prescribed *[and furnished]* by the director, on or before the twentieth day of *[each]* **the calendar** month *[covering]* **following** the *[previous calendar]* month **of delivery**.

[(2) A bonded warehouseman or bailee having possession of cigarettes shall file a report on forms prescribed and furnished by the director, on or before the twentieth day of each month covering the previous calendar month.]

[(3)] **(2) A consignee must keep** *[D]***d**etailed records *[indicating that]* **of any** cigarettes *[received by a consignee were]* either delivered to a common carrier, bonded warehouseman, bailee or wholesaler**,** or returned to the manufacturer**.** *[must be kept if the consignee is to be exempt from the cigarette tax levied on cigarettes by Chapters 66, 149 and 210, RSMo.]* **If a consignee fails to maintain adequate records, the consignee may be liable for all tax due on any cigarettes for which the consignee cannot account.**

[(4)] **(3)** Cigarettes returned to the manufacturer must be evidenced by an affidavit from the manufacturer that the *[cigarettes were received by the]* manufacturer **received the cigarettes**.

[(5)] **(4)** Prior to the destruction of damaged or partially damaged cigarettes by a consignee, **the consignee must notify** the *[director shall be notified and]* **department. The consignee must keep** the cigarettes *[shall be kept]* available for inspection by *[his/her authorized representative]* **the department until the department approves their destruction in writing**.

*AUTHORITY: sections 149.015, RSMo Supp. [1993] **2004** and 66.380**,** 136.030, 136.120**,** [and] 149.021 **and** 210.320, RSMo [1986] **2000**. Cigarette Tax Regulation 13 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Amended: Filed Feb. 18, 1983, effective June 11, 1983. Amended: Filed Sept. 30, 2005.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, 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 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 16—Cigarette Tax

PROPOSED AMENDMENT

12 CSR 10-16.150 Possession of Unstamped Cigarettes. The director proposes to amend sections (1), (2), (4), (5) and (7), amend the authority section, delete sections (3), (6) and (8), and to renumber sections of this rule as necessary.

PURPOSE: This amendment is necessary to remove references to "meter impressions," to clarify the language, to bring the rule in line with current statutes regarding unstamped cigarettes, and to update the authority section.

(1) Except as provided by section 149.045, RSMo, only licensed Missouri cigarette wholesalers *[can]* **may** possess unstamped cigarettes. Licensees *[are required to]* **must** affix proper amounts of tax stamps *[or meter impressions]* to each individual package of cigarettes before transferring the possession of any cigarettes **to a retailer, jobber, agent, or any other person who does not possess a Missouri cigarette wholesale license**.

(2) *[All cigarettes sold or delivered by one (1) licensed cigarette wholesaler to another licensed cigarette wholesaler in Missouri shall be stamped by the wholesaler making the sale or delivery.]* A cigarette wholesaler *[who]* **that** receives cigarettes already stamped *[from]* **by** another cigarette wholesaler *[is required to]* **must** report all *[the]* receipts **of such cigarettes** for each month.

[(3) A licensed cigarette wholesaler may possess packages of cigarettes designated for export if tax stamp or meter impression required by another state is affixed to the packages of cigarettes and the packages are stored separately and distinct from Missouri tax stamped cigarettes.]

[(4)] **(3)** *[Detailed]* **A wholesaler must keep** records of *[all]* **the number of** cigarettes distributed **for delivery or consumption outside Missouri, the date of distribution,** and to whom distribution is made*[, directly or by drop shipment for delivery or consumption outside Missouri must be kept if the cigarettes are to be exempt from the cigarette tax levied by Chapters 66, 149 and 210, RSMo]*.

[(5)] **(4)** Any person who fails to affix stamps to packages of cigarettes sold in St. Louis County or Jackson County within the time and manner required *[of him/her under the provisions of]* **by** Chapter 149, RSMo**,** *[shall]* **must** pay *[, as a part of the tax imposed by Chapters 66 and 210, RSMo respectively,]* a penalty equal to one hundred percent (100%) of the initial tax liability**.** *[and the]* **The** tax and penalty *[shall]* bear**s** interest at the rate *[of six percent (6%) per annum]* **determined by section 32.065, RSMo**.

[(6) No person, other than licensed wholesalers or other persons as specifically provided for in Chapter 149, RSMo, shall possess, for the purpose of the sale of cigarettes in St. Louis or Jackson County any packages of cigarettes to which the stamps or meter units required by Chapters 66, 149 and 210, RSMo are not affixed.]

[(7)] **(5)** *[Mere p]***P**ossession of an unstamped package of cigarettes in St. Louis or Jackson County by any person*[, except under circumstances specifically prescribed by Chapter 149, RSMo shall be]* **other than a licensed wholesaler is** *prima facie* evidence that the cigarettes are intended for sale in St. Louis or Jackson County.

[(8) In no case shall a Missouri cigarette wholesaler sell or transport unstamped cigarettes, as defined by section 149.011(11), RSMo, to a retailer unless such retailer is a post exchange, commissary or other instrumentality of the federal government pursuant to section 149.061.1., RSMo and has received a purchase order from the federal government for such sales and payment for such sales shall be made directly from the federal government to the wholesaler, pursuant to section 149.061.2., RSMo.]

*AUTHORITY: sections 149.015, RSMo Supp. [1993] **2004** and 66.380**,** 136.030, 136.120, [and] 149.021 **and** 210.320**,** RSMo [1986] **2000**. Cigarette Tax Regulation 14 was last filed Dec. 31, 1975 effective Jan. 10, 1976. Amended: Filed Feb. 18, 1983, effective June 11, 1983. Amended: Filed Feb. 16, 1988, effective May 26, 1988. Amended: Filed Sept. 30, 2005.*

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, 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 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 16—Cigarette Tax

PROPOSED RESCISSION

12 CSR 10-16.160 Release of Bonding Requirement. This rule set forth the procedures to be followed for obtaining release from bonding requirements and specified under what condition the director might revoke the license held by a wholesaler for a period of one (1) year.

PURPOSE: This rule is being rescinded because the procedures are adequately set forth in statute.

AUTHORITY: sections 66.380 and 210.320, RSMo Supp. 1993 and 136.030, 136.120 and 149.021, RSMo 1986. Original rule filed Nov. 18, 1986, effective March 12, 1987. Rescinded: Filed Sept. 30, 2005.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, 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 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 16—Cigarette Tax

PROPOSED AMENDMENT

12 CSR 10-16.170 Adjustments to the Distribution of St. Louis County Cigarette Tax Funds Pursuant to the Federal Decennial Census. The director proposes to amend sections (1) through (4).

PURPOSE: This rule is being amended to clarify the language and update the current statutory citations for this rule.

(1) *[The population used for]* **The department will base** the distribution of St. Louis County cigarette tax monies*[, pursuant to section 66.350, RSMo shall be]* **on the population determined in** the latest federal decennial census that determines the total population of the county and all the political subdivisions in the county.

(2) *[In the event that]* **If the United States Census Bureau amends** the *[latest]* decennial census *[is amended by the United States Census Bureau, due to a correction in the census],* the department *[shall]* **will** amend the population **used** for distribution purposes under the following conditions:

(A) *[Notification of the correction to the last decennial census shall be received from the county and/or political subdivision which is affected by the correction to the census]* **The county or political subdivision affected by the amendment to the census must notify the department of the amendment**;

(B) *[The notification of the population change shall be accompanied by]* **The county or political subdivision must provide the department a copy of** the official written notification **of the amendment** from the United States Census Bureau; and

(C) If the adjustment redistributes total population within the county, the *[population of those political subdivisions affected shall be indicated to]* **notification must** include any population change *[of]* **for** unincorporated St. Louis County.

(3) Upon receipt of *[the official]* **proper** written notification, the department *[shall]* **will** adjust population figures *[prospectively]* **for future distributions, but will not change any distribution made before notification was received by the department**.

(4) For adjustments to the St. Louis County population count as a result of annexations or consolidations—

(A) Each political subdivision *[shall]* **must** file with the *[director]* **department** a certified copy of the annexation or consolidation election results or a certified copy of the ordinance approving the annexation or consolidation;

(B) The political subdivision *[shall also file with]* **must provide** the *[director of revenue]* **department with** official written notification from the *[census bureau]* **United States Census Bureau** of the amount of population in the area annexed or consolidated;

(C) The official notification *[shall]* **must** also indicate which political subdivision(s) lost population through annexation or consolidation; and

(D) If the *[director of revenue]* **department** receives notification before the fifteenth day of the month, the tax *[imposed by section (4) shall]* **will** be distributed *[and allocated]* using the new information beginning with the next distribution. If notification is received after the fifteenth day of the month, the tax *[imposed by section (4) shall]* **will** be distributed *[and allocated]* using the new information beginning with the second distribution following receipt of the notification by the *[director]* **department**.

*AUTHORITY: section 66.350, RSMo [1986] **2000**. Original rule filed March 4, 1991, effective July 8, 1991. Amended: Filed Sept. 30, 2005.*

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, 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 70—Division of Medical Services
Chapter 28—Anesthesiologist Assistant Services

PROPOSED RULE

13 CSR 70-28.010 Medicaid Program Benefits for Anesthesiologist Assistant Services

PURPOSE: This rule establishes, via regulation, the Department of Social Services' Division of Medical Services' guidelines regarding Medicaid coverage and reimbursement for services provided by anesthesiologist assistants (AA). Specific details of provider participation, criteria and methodology for provider reimbursement, recipient eligibility, and amount, duration and scope of services covered are included in the anesthesiologist assistant section of the Physician Provider Program Manual, which is incorporated by reference in this rule and available at the website www.dss.mo.gov/dms.

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) Administration. The Missouri Medicaid Anesthesiologist Assistant (AA) Program shall be administered by the Department of Social Services, Division of Medical Services. The AA program services covered and not covered, and the limitations under which services are covered, shall be determined by the Division of Medical Services and shall be included in the Physician Provider Program Manual, which is incorporated by reference and made part of this rule as published by the Department of Social Services, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65102, at its website at www.dss.mo.gov/dms, October 3, 2005. This rule does not incorporate any subsequent amendments or additions. The division reserves the right to affect changes in services, limitations and fees with notification to anesthesiologist assistant providers.

(2) Persons Eligible. Any person who is eligible for Medical Assistance Program benefits from the Department of Social Services and is in need of medical services in accordance with the procedures described in this regulation.

(3) Provider Participation. To be eligible for participation in the Missouri Medicaid Anesthesiologist Assistant Program, a provider must meet the following criteria:

(A) An AA must be licensed by the Missouri State Board of Registration for the Healing Arts and provide a certificate of registration;

(B) Until certification is received, an AA must be certified to participate in the Title XVIII Medicare Program and must submit proof of Medicare enrollment; must submit their certification letter from the National Commission on Certification of Anesthesiologist Assistants; and a license must be submitted to the Division of Medical Services upon receipt;

(C) An AA shall practice only under the direct supervision of an anesthesiologist who is physically present or immediately available. A supervising anesthesiologist shall be allowed to supervise up to four (4) AAs concurrently. An AA must submit the name and mailing address of the anesthesiologist who will be supervising him/her;

(D) An AA must practice within their scope of practice referenced in section 334.402 of the *Missouri Revised Statutes*; and

(E) The enrolled Medicaid provider shall agree to:

1. Keep any records necessary to disclose the extent of services the provider furnishes to recipients; and

2. On request, furnish to the Medicaid agency or State Medicaid Fraud Control Unit any information regarding payments claimed by the provider for furnishing services under the plan.

(4) Prior Authorization. All non-emergency, Medicaid covered services that are to be performed or furnished out-of-state for eligible Missouri Medicaid recipients, and for which Missouri Medicaid is to be billed, must be prior authorized before the out-of-state services are provided. A prior authorization is not required for out-of-state emergency services.

(5) Covered Services. An AA may assist the supervising anesthesiologist in developing and implementing an anesthesia care plan for a patient. In providing assistance to the supervising anesthesiologist, an AA shall have the authority to:

(A) Obtain a comprehensive patient history, perform relevant elements of a physical exam and present the history to the supervising anesthesiologist;

(B) Pretest and calibrate anesthesia delivery systems and obtain and interpret information from the systems and monitors, in consultation with an anesthesiologist;

(C) Assist the supervising anesthesiologist with the implementation of medically accepted monitoring techniques;

(D) Establish basic and advanced airway interventions, including intubation of the trachea and performing ventilatory support;

(E) Administer intermittent vasoactive drugs and start and adjust vasoactive infusions;

(F) Administer anesthetic drugs, adjuvant drugs, and accessory drugs;

(G) Assist the supervising anesthesiologist with the performance of epidural anesthetic procedures, spinal anesthetic procedures, and other regional anesthetic techniques;

(H) Administer blood, blood products, and supportive fluids;

(I) Provide assistance to a cardiopulmonary resuscitation team in response to a life-threatening situation;

(J) Participate in administrative, research, and clinical teaching activities as authorized by the supervising anesthesiologist; or

(K) Perform other tasks not prohibited by law under the supervision of a licensed anesthesiologist that an anesthesiologist assistant has been trained and is proficient to perform.

(6) Non-covered Services. Anesthesiologist assistants are prohibited from the following:

(A) Prescribing any medications or controlled substances;

(B) Administering any drugs, medicines, devices, or therapies the supervising anesthesiologist is not qualified or authorized to prescribe;

(C) An anesthesiologist assistant shall not practice or attempt to practice without the supervision of a licensed anesthesiologist or in any location where the supervising anesthesiologist is not immediately available for consultation, assistance, and intervention.

(7) Reimbursement. Payment will be made in accordance with the fee per unit of service as defined and determined by the Division of Medical Services. Providers must bill their usual and customary charge for AA services. Reimbursement will not exceed the lesser of the maximum allowed or the provider's billed charges. Anesthesiology assistant services are only payable to the enrolled, eligible, participating provider. The Medicaid program cannot reimburse for services performed by non-enrolled providers.

(8) Other Source Payment. The Medicaid payment for anesthesiologist assistant services cannot duplicate or replace benefits available

to the recipient from any other source, public or private. A settlement received from private insurance or litigation as the result of an accident must be used toward payment of the bill. Medicaid shall be the last source of payment on any claim. Any payment received from a private insurance carrier or other acceptable source shall be listed on the claim form. If the settlement received is equal to or exceeds the fee that could be allowed by Medicaid, Medicaid shall make no payment.

(9) Documentation Requirements for the Anesthesiologist Assistant Program. All services must be adequately documented in the medical record. Adequate documentation means documentation from which services rendered and the amount of reimbursement received by a provider can be readily discerned and verified with reasonable certainty. Documentation includes hard copy documentation of the test results and interpretation, the medical necessity reason for performing the diagnostic tests, evidence of written orders from the referring or treating physician or qualified non-physician for each test performed. Documentation must be available upon request verifying the qualifications of the technicians performing the services.

(10) Records Retention. These records must be retained for five (5) years from the date of service. Fiscal and medical records coincide with and fully document services billed to the Medicaid agency. Providers must furnish or make the records available for inspection or audit by the Department of Social Services or its representative upon request. Failure to furnish, reveal or retain adequate documentation for services billed to the Medicaid program, as specified above, is a violation of this regulation.

(11) The Division of Medical Services is charged with establishing and administering the rate of payment for those medical services covered by the Missouri Title XIX Program. The division establishes a rate of payment that meets the following goals:

(A) Ensures access to quality medical care for all recipients by encouraging a sufficient number of providers;

(B) Allows for no adverse impact on private pay patients;

(C) Assures a reasonable rate to protect the interests of the taxpayers; and

(D) Provides incentives that encourage efficiency on the part of medical providers.

(12) Funds used to reimburse providers for services rendered to eligible recipients are received in part from federal funds and supplemented by state funds to cover the costs. The amount of funding by the federal government is based on a percentage of the allowable expenditures. The percentage varies from program to program and, in some cases, different percentages for some services within the same program may apply. Total expenditures for Medicaid must be within the appropriation limits established by the General Assembly. If the expenditures do not stay within the appropriation limits set by the General Assembly and funds are insufficient to pay the full amount, then the payment for services may be reduced pro rata in proportion to the deficiency.

(13) The Medicaid maximum allowable fee for a unit of service has been determined by the state Medicaid agency to be a reasonable fee, consistent with efficiency, economy, and quality of care. Medicaid payment for covered services is the lower of the provider's actual billed charge (should be the provider's usual and customary charge to the general public for the service), or the Medicaid maximum allowable per unit of service. Under a fee system each procedure, service, medical supply and equipment covered under a specific program has a maximum allowable fee established. In determining what this fee should be, the Division of Medical Services uses the following guidelines:

(A) Recommendations from the state medical consultant and/or the provider subcommittee of the Medical Advisory Committee;

(B) Medicare's allowable reasonable and customary charge payment or cost-related payment, if applicable;

(C) Charge information obtained from providers in different areas of the state. Charges refer to the usual and customary fees for various services that are charged to the general public. Implicit in the use of charges as the basis for fees is the objective that charges for services be related to the cost of providing the services.

(D) The Division of Medical Services then determines a maximum allowable fee for the service based upon the recommendations, charge information reviewed and current appropriated funds.

AUTHORITY: sections 208.153 and 208.201, RSMo 2000. Original rule filed Oct. 3, 2005.

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

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 50—General

PROPOSED AMENDMENT

15 CSR 30-50.040 Forms. The secretary is amending subsection (1)(C) and section (2).

PURPOSE: The secretary is amending subsection (1)(C) to include Form AI, Notice of Sale of Securities Pursuant to the Missouri Accredited Investor Exemption or any form which substantially comports with the specified form.

(1) The following forms have been adopted and approved for filing with the Securities Division:

(C) Exemptions from Registration, Exceptions from Definition, Federal Covered Securities—

1. Form SE-1—Statement of Claim for the Exemption of Securities of a New Generation Processing Entity revised August 2003;

2. Form SE-2—Statement of Claim for the Exemption of a Securities of a Missouri Agricultural Cooperative revised December 2004;

3. Form NF—Uniform Investment Company Notice Filing adopted by NASAA April 1997, or any form which substantially comports with the specified form; *[and]*

4. Form D—Notice of Sale of Securities Pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption approved in June 2002, OMB Approval Number 3235-0076, or any form which substantially comports with the specified form*[.]***; and**

5. Form AI—Notice of Sale of Securities Pursuant to the Missouri Accredited Investor Exemption, or any form which substantially comports with the specified form.

(2) The Securities Division on request will supply the forms listed in *[this rule]* **15 CSR 30-50.040(1)** in printed format**, which are incorporated by reference herein, as published by the Securities Division, 600 W. Main Street, PO Box 1276, Jefferson City, MO 65102. This rule does not incorporate any subsequent amendments or additions.** Accurate reproduction of the forms may be utilized for filing in lieu of the printed forms. All uniform forms are electronically available at http://www.sos.mo.gov/securities.

AUTHORITY: section 409.6-605, RSMo Supp. 2004. Original rule filed June 25, 1968, effective Aug. 1, 1968. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed Sept. 21, 2005.*

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 Secretary of State's Office, David B. Cosgrove, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. 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 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 54—Exemptions and Federal Covered Securities

PROPOSED AMENDMENT

15 CSR 30-54.215 ***Missouri*** **Accredited Investor Exemption**. The commissioner is amending the title of this rule and section (11).

PURPOSE: This amendment specifies that the notice of the transaction required by section (11) is to be made by Form AI and that the issuer shall pay a notice filing fee.

(11) The issuer shall file with the securities division a *[notice of transaction]* **Form AI**, a consent to service of process, a copy of the general announcement, and a *[registration]* **notice filing** fee in compliance with rule 15 CSR 30-50.030 within fifteen (15) days after the first sale in this state.

AUTHORITY: sections 409.2-203 and 409.6-605, RSMo Supp. ***[2003] 2004****. Original rule filed March 27, 1989, effective June 12, 1989. For intervening history, please consult the* ***Code of State Regulations****. Amended: Filed Sept. 21, 2005.*

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 Secretary of State's Office, David B. Cosgrove, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. 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 INSURANCE
Division 700—Licensing
Chapter 1—Insurance Producers

PROPOSED RULE

20 CSR 700-1.145 Standards of Commercial Honor and Principles of Trade in Variable Life and Variable Annuity Sales

PURPOSE: This rule implements the requirements of section 375.141.1(8), RSMo, with respect to the demonstration of incompetence, untrustworthiness or financial irresponsibility of producers in the offer, sale or exchange of variable life and variable annuity products.

(1) Grounds for the discipline or disqualification of producers shall include, in addition to other grounds specified in section 375.141, RSMo, failure to comply with or violation of the following professional standards of conduct:

(A) Producers, in the conduct of variable life and variable annuity business, shall observe high standards of commercial honor and just and equitable principles of trade. Implicit in a producer's relationship with customers is the fundamental responsibility of fair dealing. Practices that violate this responsibility of fair dealing include, but are not limited to, the following:

1. Inducing an exchange or switch of a variable life or variable annuity contract with insignificant benefit to the consumer, but for the purpose of accumulating commissions by the producer; and

2. Causing the execution of transactions that are not authorized by customers or the sending of confirmations in order to cause customers to accept transactions not actually agreed upon; and

(B) Producers shall not materially aid any other person in any violation or failure to comply with any standard set forth in this rule.

AUTHORITY: sections 374.040, 374.045 and 375.013, RSMo 2000. Emergency rule filed April 14, 2005, effective April 26, 2005, expires Jan. 1, 2006. Original rule filed Sept. 30, 2005.

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: A public hearing will be held on this proposed rule at 10:00 a.m. on December 2, 2005. The public hearing will be held at the Harry S Truman State Office Building, Room 530, 301 West High Street, Jefferson City, Missouri. Opportunities to be heard shall be afforded to any interested persons. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to the proposed rule, until 5:00 p.m. on December 2, 2005. Written statements shall be sent to Kevin Hall, Department of Insurance, PO Box 690, Jefferson City, MO 65102.

SPECIAL NEEDS: If you have any special needs addressed by the Americans With Disabilities Act, please notify us at (573) 751-6798 or (573) 751-2619 at least five (5) working days prior to the hearing.

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

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

Title 1—OFFICE OF ADMINISTRATION
Division 10—Commissioner of Administration
Chapter 8—Direct Deposit of Payroll Requirements

ORDER OF RULEMAKING

By the authority vested in the Office of Administration under section 33.155, RSMo 2000, the commissioner amends a rule as follows:

1 CSR 10-8.010 Direct Deposit of Payroll Requirements **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 1, 2005 (30 MoReg 1614). 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 1—OFFICE OF ADMINISTRATION
Division 70—Missouri Assistive Technology Advisory Council
Chapter 1—Assistive Technology Programs

ORDER OF RULEMAKING

By the authority vested in the Missouri Assistive Technology Advisory Council under section 209.253, RSMo 2000, the council amends a rule as follows:

1 CSR 70-1.010 Telecommunications Access Program **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 1, 2005 (30 MoReg 1441). 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 1—OFFICE OF ADMINISTRATION
Division 70—Missouri Assistive Technology Advisory Council
Chapter 1—Assistive Technology Programs

ORDER OF RULEMAKING

By the authority vested in the Missouri Assistive Technology Advisory Council under section 191.865, RSMo 2000, the council amends a rule as follows:

1 CSR 70-1.020 Assistive Technology Loan Program **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 1, 2005 (30 MoReg 1441). 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 1—Wildlife Code: Organization

ORDER OF RULEMAKING

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

3 CSR 10-1.010 Organization and Methods of Operation **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 15, 2005 (30 MoReg 1708). 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 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 95—Committee for Professional Counselors
Chapter 1—General Rules

ORDER OF RULEMAKING

By the authority vested in the Committee for Professional Counselors under sections 337.507, RSMo Supp. 2004 and 337.520.1(2), RSMo 2000, the committee amends a rule as follows:

4 CSR 95-1.020 Fees **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 1, 2005 (30 MoReg 1614–1616). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 150—State Board of Registration for the Healing Arts
Chapter 7—Licensing of Physician Assistants

ORDER OF RULEMAKING

By the authority vested in the Missouri State Board of Registration for the Healing Arts under section 334.735, RSMo 2000, the board amends a rule as follows:

4 CSR 150-7.135 Physician Assistant Supervision Agreements **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 1, 2005 (30 MoReg 1440). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 195—Division of Job Development and Training
Chapter 3—General Rules, Missouri Community College New Jobs Training Program

ORDER OF RULEMAKING

By the authority vested in the Department of Economic Development under section 178.895, RSMo Supp. 2000, the director rescinds a rule as follows:

4 CSR 195-3.010 New Jobs Training Program **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on June 15, 2005 (30 MoReg 1322–1323). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 195—Division of Workforce Development
Chapter 3—General Rules, Missouri Bond-Funded Industry Training Programs

ORDER OF RULEMAKING

By the authority vested in the Department of Economic Development under section 178.895, RSMo 2000, the director adopts a rule as follows:

4 CSR 195-3.010 New Jobs Training Program **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on June 15, 2005 (30 MoReg 1323–1327). 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 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 195—Division of Workforce Development
Chapter 3—General Rules, Missouri Bond-Funded Industry Training Programs

ORDER OF RULEMAKING

By the authority vested in the Department of Economic Development under section 178.763, RSMo Supp. 2004, the director adopts a rule as follows:

4 CSR 195-3.020 Job Retention Training Program **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on June 15, 2005 (30 MoReg 1328–1331). 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 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 100—Missouri Commission for the Deaf and Hard of Hearing
Chapter 200—Board for Certification of Interpreters

ORDER OF RULEMAKING

By the authority vested in the Missouri Commission for the Deaf and Hard of Hearing under sections 209.292(1), RSMo Supp. 2004 and 209.295(1), (3) and (8), and 209.309, RSMo 2000, the commission amends a rule as follows:

5 CSR 100-200.060 Written Test **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 1, 2005 (30 MoReg 1440–1441). 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 10—DEPARTMENT OF NATURAL RESOURCES
Division 10—Air Conservation Commission
Chapter 2—Air Quality Standards and Air Pollution Control Rules Specific to the Kansas City Metropolitan Area

ORDER OF RULEMAKING

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo 2000, the commission amends a rule as follows:

10 CSR 10-2.390 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 2, 2005, (30 MoReg 797–817). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Department of Natural Resources' Air Pollution Control Program received comments from the Missouri Department of Transportation (MODOT) and the U.S. Environmental Protection Agency (EPA).

COMMENT: MODOT commented that throughout the rule the *Federal Transit Administration Code* is referred to as the Federal Transit Law. MODOT advised that it should be revised to read Title 49 U.S.C.
RESPONSE AND EXPLANATION OF CHANGE: The department's Air Pollution Control Program has made the proposed reference change throughout the rule.

COMMENT: MODOT commented that section (2) of the rule should be revised to reflect the recent designation of the Kansas City area to attainment for the eight (8)-hour ozone standard.
RESPONSE AND EXPLANATION OF CHANGE: The department's Air Pollution Control Program has revised section (2) to reflect Kansas City's attainment of the eight (8)-hour ozone standard.

COMMENT: MODOT commented that the rule title is rather unwieldy and wordy in length and suggested revising it to reflect the metropolitan area and subject matter with more brevity for clarification.
RESPONSE AND EXPLANATION OF CHANGE: The department's Air Pollution Control Program has revised the rule title as suggested.

COMMENT: EPA suggested that in subsection (2)(C) of the rule that the *Code of Federal Regulations* references sections 93.114 and 93.114(b) be revised to section (14) and subsection (14)(B) for consistency as the *Code of Federal Regulations* references and the references within the rule are identically worded.
RESPONSE AND EXPLANATION OF CHANGE: The department's Air Pollution Control Program has made the recommended reference revision.

COMMENT: EPA suggested that in new section (23) Procedures for Determining Localized CO and PM_{10} Concentrations (Hot-Spot Analysis) should have the PM_{10} hot-spot analysis procedures added to the section to make the State Implementation Plan consistent with federal rules.
RESPONSE AND EXPLANATION OF CHANGE: The department's Air Pollution Control Program has made the recommended procedures addition to the rule section.

10 CSR 10-2.390 Kansas City Area Transportation Conformity Requirements

(1) Definitions.

(B) Additional definitions specific to this rule are as follows:

1. One (1)-hour ozone National Ambient Air Quality Standard (NAAQS)—the one (1)-hour ozone national ambient air quality standard codified at 40 CFR 50.9;

2. Eight (8)-hour ozone National Ambient Air Quality Standard (NAAQS)—the eight (8)-hour ozone national ambient air quality standard codified at 40 CFR 50.10;

3. Applicable implementation plan—defined in section 302(q) of the CAA, the portion (or portions) of the implementation plan for ozone, or most recent revision thereof, which has been approved under section 110, or promulgated under section 110(c), or promulgated or approved pursuant to regulations promulgated under section 301(d) and which implements the relevant requirements of the CAA;

4. CAA—the Clean Air Act, as amended (42 U.S.C., 7401 et seq.);

5. Cause or contribute to a new violation for a project—

A. To cause or contribute to a new violation of a standard in the area substantially affected by the project or over a region which would otherwise not be in violation of the standard during the future period in question, if the project were not implemented; or

B. To contribute to a new violation in a manner that would increase the frequency or severity of a new violation of a standard in such area;

6. Clean data—air quality monitoring data determined by EPA to meet the requirements of 40 *Code of Federal Regulations* (CFR) part 58 that indicate attainment of the national ambient air quality standards;

7. Consultation—in the transportation conformity process, one (1) party confers with another identified party, provides all information to that party needed for meaningful input, and considers the views of that party and responds to those views in a timely, substantive written manner prior to any final decision on such action. Such views and written response shall be made part of the record of any decision or action;

8. Control strategy implementation plan revision—the implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment (including implementation plan revisions submitted to satisfy CAA sections 172(c), 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 187(g), 189(a)(1)(B), 189(b)(1)(A), and 189(d); sections 192(a) and 192(b), for nitrogen dioxide; and any other applicable CAA provision requiring a demonstration of reasonable further progress or attainment);

9. Design concept—the type of facility identified by the project, e.g., freeway, expressway, arterial highway, grade-separated highway, reserved right-of-way rail transit, mixed traffic rail transit, exclusive busway, etc.;

10. Design scope—the design aspects which will affect the proposed facility's impact on regional emissions, usually as they relate to vehicle or person carrying capacity and control, e.g., number of lanes or tracks to be constructed or added, length of project, signalization, access control including approximate number and location of interchanges, preferential treatment for high-occupancy vehicles, etc.;

11. Donut areas—geographic areas outside a metropolitan planning area boundary, but inside the boundary of a nonattainment or maintenance area that contains any part of a metropolitan area(s). These areas are not isolated rural nonattainment and maintenance areas;

12. DOT—the United States Department of Transportation;

13. EPA—the Environmental Protection Agency;

14. FHWA—the Federal Highway Administration of DOT;

15. FHWA/FTA project—for the purpose of this rule, any highway or transit project which is proposed to receive funding assistance and approval through the Federal-Aid Highway Program or the Federal Mass Transit Program, or requires Federal Highway

Administration (FHWA) or Federal Transit Administration (FTA) approval for some aspect of the project, such as connection to an interstate highway or deviation from applicable design standards on the interstate system;

16. Forecast period—with respect to a transportation plan, the period covered by the transportation plan pursuant to 23 CFR part 450;

17. FTA—the Federal Transit Administration of DOT;

18. Highway project—an undertaking to implement or modify a highway facility or highway-related program. Such an undertaking consists of all required phases necessary for implementation. For analytical purposes, it must be defined sufficiently to—

A. Connect logical *termini* and be of sufficient length to address environmental matters on a broad scope;

B. Have independent utility or significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and

C. Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements;

19. Horizon year—a year for which the transportation plan describes the envisioned transportation system according to section (6) of this rule;

20. Hot-spot analysis—an estimation of likely future localized carbon monoxide (CO) and particulate matter (PM_{10}) pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. Hot-spot analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality;

21. Increase the frequency or severity—to cause a location or region to exceed a standard more often or to cause a violation at a greater concentration than previously existed and/or would otherwise exist during the future period in question, if the project were not implemented;

22. Isolated rural nonattainment and maintenance areas—areas that do not contain or are not part of any metropolitan planning area as designated under the transportation planning regulations. Isolated rural areas do not have federally required metropolitan transportation plans or transportation improvement programs (TIPs) and do not have projects that are part of the emissions analysis of any metropolitan planning organization's (MPO's) metropolitan transportation plan or TIP. Projects in such areas are instead included in statewide transportation improvement programs. These areas are not donut areas;

23. Lapse—the conformity determination for a transportation plan or transportation improvement program (TIP) has expired, and thus there is no currently conforming transportation plan and TIP;

24. Limited maintenance plan—a maintenance plan that EPA has determined meets EPA's limited maintenance plan policy criteria for a given NAAQS and pollutant. To qualify for a limited maintenance plan, for example, an area must have a design value that is significantly below a given NAAQS, and it must be reasonable to expect that a NAAQS violation will not result from any level of future motor vehicle emissions growth;

25. Maintenance area—any geographic region of the United States previously designated nonattainment pursuant to the CAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under section 175A of the CAA, as amended;

26. Maintenance plan—an implementation plan under a section 175A of the CAA, as amended;

27. Metropolitan planning area—the geographic area in which the metropolitan transportation planning process required by 23 U.S.C. 134 and section 8 of the Federal Transit Act must be carried out;

28. Metropolitan planning organization (MPO)—that organization designated as being responsible, together with the state, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and Title 49 U.S.C. 5303. It is the forum for cooperative transportation decision-making. The Mid-America Regional Council is the MPO for the Kansas City metropolitan area and the organization responsible for conducting the planning required under section 174 of the CAA;

29. Milestone—the meaning given in CAA sections 182(g)(1) and 189(c) for serious and above ozone nonattainment areas and PM_{10} nonattainment areas, respectively. For all other nonattainment areas, a milestone consists of an emissions level and the date on which that level is to be achieved as required by the applicable CAA provision for reasonable further progress towards attainment;

30. Motor vehicle emissions budget—that portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the National Ambient Air Quality Standards (NAAQS), for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions. For purposes of meeting the conformity test required under sections (18) and/or (19) of this rule, the motor vehicle emissions budget in the applicable Missouri State Implementation Plan shall be combined with the motor vehicle emissions budget for the same pollutant in the applicable Kansas State Implementation Plan;

31. National Ambient Air Quality Standards (NAAQS)—those standards established pursuant to section 109 of the CAA;

32. NEPA—the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.);

33. NEPA process completion—for the purposes of this rule, with respect to FHWA or FTA, the point at which there is a specific action to make a determination that a project is categorically excluded, to make a Finding of No Significant Impact, or to issue a record of decision on a Final Environmental Impact Statement under NEPA;

34. Nonattainment area—any geographic region of the United States which has been designated as nonattainment under section 107 of the CAA for any pollutant for which a national ambient air quality standard exists;

35. Project—a highway project or transit project;

36. Protective finding—a determination by EPA that a submitted control strategy implementation plan revision contains adopted control measures or written commitments to adopt enforceable control measures that fully satisfy the emissions reductions requirements relevant to the statutory provision for which the implementation plan revision was submitted, such as reasonable further progress or attainment;

37. Recipient of funds designated under Title 23 U.S.C. or Title 49 U.S.C.—any agency at any level of state, county, city, or regional government that routinely receives Title 23 U.S.C. or Title 49 U.S.C. funds to construct FHWA/FTA projects, operate FHWA/FTA projects or equipment, purchase equipment, or undertake other services or operations via contracts or agreements. This definition does not include private landowners or developers, or contractors or entities that are only paid for services or products created by their own employees;

38. Regionally significant project—a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals, as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum: all principal arterial highway and all fixed guideway transit facilities that offer an alternative to regional highway travel;

39. Safety margin—the amount by which the total projected emissions from all sources of a given pollutant are less than the total

emissions that would satisfy the applicable requirement for reasonable further progress, attainment, or maintenance;

40. Standard—a national ambient air quality standard;

41. Statewide transportation improvement program (STIP)—a staged, multi-year, intermodal program of transportation projects which is consistent with the statewide transportation plan and planning processes and metropolitan transportation plans, transportation improvement programs (TIPs) and processes, developed pursuant to 23 CFR part 450;

42. Statewide transportation plan—the official statewide, intermodal transportation plan that is developed through the statewide transportation planning process, pursuant to 23 CFR part 450;

43. Transit—mass transportation by bus, rail, or other conveyance which provides general or special service to the public on a regular and continuing basis. It does not include school buses or charter or sightseeing services;

44. Transit project—an undertaking to implement or modify a transit facility or transit-related program; purchase transit vehicles or equipment; or provide financial assistance for transit operations. It does not include actions that are solely within the jurisdiction of local transit agencies, such as changes in routes, schedules, or fares. It may consist of several phases. For analytical purposes, it must be defined inclusively enough to—

A. Connect logical *termini* and be of sufficient length to address environmental matters on a broad scope;

B. Have independent utility or independent significance, i.e., be a reasonable expenditure even if no additional transportation improvements in the area are made; and

C. Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements;

45. Transportation control measure (TCM)—any measure that is specifically identified and committed to in the applicable implementation plan that is either one (1) of the types listed in section 108 of the CAA, or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the first sentence of this definition, vehicle technology-based, fuel-based, and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of this rule;

46. Transportation improvement program (TIP)—a staged, multiyear, intermodal program of transportation projects covering a metropolitan planning area which is consistent with the metropolitan transportation plan, and developed pursuant to 23 CFR part 450;

47. Transportation plan—the official intermodal metropolitan transportation plan that is developed through the metropolitan planning process for the metropolitan planning area, developed pursuant to 23 CFR part 450;

48. Transportation project—a highway project or a transit project; and

49. Written commitment—for the purposes of this rule, a written commitment that includes a description of the action to be taken; a schedule for the completion of the action; a demonstration that funding necessary to implement the action has been authorized by the appropriating or authorizing body; and an acknowledgement that the commitment is an enforceable obligation under the applicable implementation plan.

(2) Applicability. After EPA revokes the one (1)-hour ozone standard, if any Missouri portion of the Kansas City metropolitan area is redesignated as a nonattainment area for any transportation-related criteria pollutant, the provisions of this rule shall apply to the Missouri counties and the portions of Missouri counties located within the redesignated nonattainment area.

(B) Emissions Applicability.

1. The provisions of this rule apply with respect to emissions of the following criteria pollutant: ozone, carbon monoxide (CO), nitrogen dioxide (NO_2), particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}); and particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers ($PM_{2.5}$).

2. The provisions of this rule also apply with respect to emissions of the following precursor pollutants:

A. Volatile organic compounds (VOC) and nitrogen oxides (NO_x) in ozone areas;

B. NO_x in NO_2 areas; and

C. VOC and/or NO_x in PM_{10} areas if the EPA regional administrator or the director of the state air agency has made a finding that transportation-related emissions of one (1) or both of these precursors within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT, or if applicable implementation plan (or implementation plan submission) establishes an approved (or adequate) budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy.

3. The provisions of this rule apply to $PM_{2.5}$ nonattainment and maintenance areas with respect to $PM_{2.5}$ from re-entrained road dust if the EPA regional administrator or the director of the state air agency has made a finding that re-entrained road dust emissions within the area are a significant contributor to the $PM_{2.5}$ nonattainment problem and has so notified the MPO and DOT, or if the applicable implementation plan (or implementation plan submission) includes re-entrained road dust in the approved (or adequate) budget as part of the reasonable further progress, attainment or maintenance strategy. Re-entrained road dust emissions are produced by travel on paved and unpaved roads (including emissions from anti-skid and deicing materials).

4. The provisions of this rule apply to the Clay, Jackson and Platte Counties maintenance area for twenty (20) years from the date EPA approves the area's request under section 107(d) of the CAA for redesignation to attainment, unless the applicable implementation plan specifies that the provisions of this rule shall apply for more than twenty (20) years.

(C) Limitations. In order to receive any FHWA/FTA approval or funding actions, including NEPA approvals, for a project phase subject to this subpart, a currently conforming transportation plan and TIP must be in place at the time of project approval as described in section (14), except as provided by subsection (14)(B).

1. Projects subject to this rule for which the NEPA process and a conformity determination have been completed by DOT may proceed toward implementation without further conformity determinations unless more than three (3) years have elapsed since the most recent major step (NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates) occurred. All phases of such projects which were considered in the conformity determination are also included, if those phases were for the purpose of funding final design, right-of-way acquisition, construction, or any combination of these phases.

2. A new conformity determination for the project will be required if there is a significant change in project design concept and scope, if a supplemental environmental document for air quality purposes is initiated, or if three (3) years have elapsed since the most recent major step to advance the project occurred.

(5) Consultation.

(C) Interagency Consultation Procedures: Specific Processes. Interagency consultation procedures shall also include the following specific processes:

1. An interagency consultation process in accordance with subsection (5)(B) of this rule involving the MPO, the regional transportation policy advisory committee, the regional air quality advisory organization, the state transportation and air quality agencies, EPA, FHWA and FTA shall be undertaken for the following:

A. Evaluating and choosing a model (or models) and associated methods and assumptions to be used in hot-spot analyses and regional emissions analyses;

B. Determining which minor arterials and other transportation projects should be considered "regionally significant" for the purposes of regional emissions analysis (in addition to those functionally classified as principal arterial or higher or fixed guideway systems or extensions that offer an alternative to regional highway travel), and which projects should be considered to have a significant change in design concept and scope from the transportation plan or TIP. This process shall be initiated by the MPO and conducted in accordance with paragraph (5)(B)3. of this rule regarding changes in planning assumptions;

C. Evaluating whether projects otherwise exempted from meeting the requirements of this rule (see sections (26) and (27)) should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason. This process shall be initiated by the MPO and conducted in accordance with paragraph (5)(B)2. of this rule in the context of the transportation planning and TIP programming processes;

D. Developing a list of TCMs to be included in the applicable implementation plan. This process shall be initiated by the MPO and conducted in accordance with paragraph (5)(B)2. of this rule in the context of the state air quality implementation plan development process;

E. Making a determination, as required by paragraph (13)(C)1., whether past obstacles to implementation of TCMs which are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether state and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs. This process shall be initiated by the MPO and conducted in accordance with paragraph (5)(B)2. of this rule in the context of the transportation planning and TIP programming processes. This process shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures;

F. Notification of transportation plan or TIP revisions or amendments which merely add or delete exempt projects listed in section (26) or section (27). This process shall be initiated by the MPO and conducted in accordance with paragraph (5)(B)2. of this rule in the context of the transportation planning and TIP programming processes. The MPO shall notify all conformity consulting agencies in writing within seven (7) calendar days after taking action to approve such exempt projects. The notification shall include enough information about the exempt projects for the consulting agencies to determine their agreement or disagreement that the projects are exempt under section (26) or section (27) of this rule;

G. Determining whether the project is included in the regional emissions analysis supporting the current conforming TIP's conformity determination, even if the project is not strictly included in the TIP for purposes of MPO project selection or endorsement, and whether the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility. This process shall be initiated by the MPO and conducted in accordance with paragraph (5)(B)2. of this rule in the context of the TIP programming process;

H. Determining what forecast of vehicle miles traveled (VMT) to use in establishing or tracking emissions budgets, developing transportation plans, TIPs, or applicable implementation plans, or making conformity determinations. This process shall be initiated by the MPO and conducted in accordance with paragraph (5)(B)3. of this rule regarding planning assumptions;

I. Determining the definition of reasonable professional practice for the purposes of section (22). This process shall be initiated by the MPO and conducted in accordance with paragraph (5)(B)3. of this rule regarding planning assumptions;

J. Determining whether the project sponsor or the MPO has demonstrated that the requirements of section (18) are satisfied without a particular mitigation or control measure, as provided in subsection (25)(D). This process shall be initiated by the MPO and conducted in accordance with paragraph (5)(B)2. of this rule in the context of the transportation planning and TIP programming processes;

K. Identifying, as required by subsection (23)(B), projects located at sites in PM_{10} nonattainment areas which have vehicle and roadway emission and dispersion characteristics which are essentially identical to those at sites which have violations verified by monitoring, and therefore require quantitative PM_{10} hot-spot analysis; and

L. Choosing conformity tests and methodologies for isolated rural nonattainment and maintenance areas, as required by paragraph (9)(L)2.

2. An interagency consultation process in accordance with subsection (5)(B) of this rule involving the MPO, the regional air quality advisory organization, the regional transportation policy advisory committee and the state air quality and transportation agencies for the following:

A. Evaluating events which will trigger new conformity determinations in addition to those triggering events established in section (4). This process shall be initiated by the MPO and conducted in accordance with paragraph (5)(B)3. of this rule regarding planning assumptions when there is a significant change in any planning assumption (examples: new regional forecast of population and employment, actual vehicle miles traveled (VMT) estimates significantly different from planning projections, etc.); and

B. Consulting on emissions analysis for transportation activities which cross the borders of the MPOs or nonattainment or maintenance area or air basin. This process shall be initiated by the MPO and conducted in accordance with paragraph (5)(B)2. of this rule.

3. Prior to establishing a metropolitan planning area for transportation planning that does not include the entire nonattainment or maintenance area, the interagency consultation process described in subsection (5)(B) of this rule shall be supplemented by a formal memorandum of agreement, incorporated in the applicable state implementation plan, executed by the MPO and the state air quality and transportation agencies for cooperative planning and analysis. This executed memorandum of agreement shall specify procedures for determining conformity of all regionally significant transportation projects outside the metropolitan planning boundary for transportation planning and within the nonattainment or maintenance area.

A. The interagency consultation process established by the executed memorandum of agreement for such an area shall apply in addition to all other consultation requirements.

B. At a minimum, any memorandum of agreement establishing a state transportation planning area outside of the MPO metropolitan planning area for transportation planning, but within the nonattainment or maintenance area, shall provide for state air quality agency concurrence in conformity determinations for areas outside of the metropolitan planning boundary for transportation planning, but within the nonattainment or maintenance area. Such agreement shall also establish a process involving the MPO and the state transportation agency in cooperative planning and analysis for determining conformity of all projects outside the metropolitan planning area for transportation planning and within the nonattainment or maintenance area in the context of the total regional transportation system that serves the nonattainment or maintenance area.

4. An interagency consultation process shall be undertaken to ensure that plans for construction of regionally significant projects which are not FHWA/FTA projects (including projects for which alternative locations, design concept and scope, or the no-build option are still being considered), including those by recipients of funds designated under Title 23 U.S.C. or Title 49 U.S.C., are disclosed to the MPO on a regular basis, and to ensure that any changes to those plans are immediately disclosed. This process shall be initiated by the MPO and conducted in accordance with paragraph (5)(B)2. of this rule in the context of the transportation planning and

TIP programming processes. At a minimum, the disclosure procedures shall meet the requirements of subparagraphs (5)(B)4.A.–C. of this rule.

A. The sponsor of any such regionally significant project, and any agency that becomes aware of any such project through applications for approval, permitting or funding shall disclose such project to the MPO in a timely manner. Such disclosure shall be made not later than the first occasion when any of the following actions is sought: any policy board action necessary for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to design or construct the facility, the execution of any indebtedness for the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with design, permitting or construction of the project, or the execution of any contract to design or construct or any approval needed for any facility that is dependent on the completion of a regionally significant project. The sponsor of any potential regionally significant project shall disclose to the MPO each project for which alternatives have been identified through the NEPA process, and, in particular, any preferred alternative that may be a regionally significant project. This information shall be provided to the MPO in accordance with the time sequence and procedures established under paragraph (5)(B)2. of this rule for each transportation planning and TIP development process.

B. In the case of any such regionally significant project that has not been disclosed to the MPO and other agencies participating in the consultation process before action is taken to adopt or approve, such regionally significant project shall be deemed not to be included in the regional emissions analysis supporting the currently conforming TIP's conformity determination and not to be consistent with the motor vehicle emissions budget in the applicable implementation plan, for the purposes of section (21).

C. For the purposes of paragraph (5)(C)4. of this rule, the phrase adopt or approve of a regionally significant project means the first time any action necessary to authorizing a project occurs, such as any policy board action necessary for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to construct the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with construction of the project, or any written decision or authorization from the MPO that the project may be adopted or approved.

5. This interagency consultation process shall be undertaken in accordance with subsection (5)(B) of this rule involving the MPO and other recipients of funds designated under Title 23 U.S.C. or Title 49 U.S.C. for assuming the location and design concept and scope of projects which are disclosed to the MPO as required by paragraph (5)(C)4. of this rule but whose sponsors have not yet decided these features in sufficient detail to perform the regional emissions analysis according to the requirements of section (22). This process shall be initiated by the MPO and conducted in accordance with paragraph (5)(B)3. of this rule as it relates to planning assumptions.

6. This interagency consultation process outlined in subsection (5)(B) of this rule involves the MPO, the regional transportation policy advisory committee, the regional air quality advisory organization, and the state transportation and air quality agencies shall be undertaken for the design, schedule, and funding of research and data collection efforts and regional transportation model development by the MPO (e.g., household/travel transportation surveys). This process shall be initiated by the MPO and conducted in accordance with paragraph (5)(B)3. of this rule as it relates to planning assumptions.

7. This process insures providing final documents (including applicable implementation plans and implementation plan revisions) and supporting information to each agency after approval or adoption. This process is applicable to all agencies described in paragraph (A)1. of this section, including federal agencies.

(D) Resolving Conflicts.

1. Any conflict among state agencies or between state agencies and the MPO regarding a final action on any conformity determination by the MPO on a plan or program subject to these consultation requirements shall be escalated to the governor(s), if the conflict cannot be resolved by the heads of the involved agencies. Such agencies shall make every effort to resolve any differences, including personal meetings between the heads of such agencies or their policy-level representatives, to the extent possible.

2. After the MPO has notified the state air quality agencies in writing of the disposition of all air quality agency comments on a proposed conformity determination, state air quality agencies shall have fourteen (14) calendar days from the date that the written notification is received to appeal such proposed determination of conformity to the governor of Missouri. If the Missouri air quality agency appeals to the governor of Missouri, the final conformity determination will automatically become contingent upon concurrence of the governor of Missouri. If the Kansas air quality agency presents an appeal to the governor of Missouri regarding a conflict involving both Kansas and Missouri agencies or the MPO, the final conformity determination will automatically become contingent upon concurrence of both the governor of Missouri and the governor of Kansas. The Missouri air quality agency shall provide notice of any appeal under this subsection to the MPO, and the state transportation agencies, and the Kansas air quality agency. If neither state air quality agency appeals to the governor(s) within fourteen (14) days of receiving written notification, the MPO may proceed with the final conformity determination.

(9) Criteria and Procedures for Determining Conformity of Transportation Plans, Programs, and Projects—General.

(L) Isolated Rural Nonattainment and Maintenance Areas. This subsection applies to any nonattainment or maintenance area (or portion thereof) which does not have a metropolitan transportation plan or TIP and whose projects are not part of the emissions analysis of any MPO's metropolitan transportation plan or TIP. This subsection does not apply to "donut" areas which are outside the metropolitan planning boundary and inside the nonattainment/maintenance area boundary.

1. FHWA/FTA projects in all isolated rural nonattainment and maintenance areas must satisfy the requirements of sections (10), (11), (12), (16), and (17) and subsection (13)(D). Until EPA approves the control strategy implementation plan or maintenance plan for a rural CO nonattainment or maintenance area, FHWA/FTA projects must also satisfy the requirements of subsection (16)(B) ("Localized CO and PM_{10} Violations (Hot Spots)").

2. Isolated rural nonattainment and maintenance areas are subject to the budget and/or interim emissions tests as described in subsections (C) through (K) of this section, with the following modifications—

A. When the requirements of sections (18) and (19) apply to isolated rural nonattainment and maintenance areas, references to "transportation plan" or "TIP" should be taken to mean those projects in the statewide transportation plan or statewide TIP which are in the rural nonattainment or maintenance area.

B. In isolated rural nonattainment and maintenance areas that are subject to section (18), FHWA/FTA projects must be consistent with motor vehicle emissions budget(s) for the years in the time frame of the attainment demonstration or maintenance plan. For years after the attainment year (if a maintenance plan has not been submitted) or after the last year of the maintenance plan, FHWA/FTA projects must satisfy one (1) of the following requirements—

(I) Section (18);

(II) Section (19) (including regional emissions analysis for NO_x in all ozone nonattainment and maintenance areas, nonwithstanding paragraph (19)(F)2.); or

(III) As demonstrated by the air quality dispersion model or other air quality modeling technique used in the attainment demonstration or maintenance plan, the FHWA/FTA project, in

combination with all other regionally significant projects expected in the area in the time frame of the statewide transportation plan, must not cause or contribute to any new violation of any standard in any areas; increase the frequency or severity of any existing violation of any standard in any area; or delay timely attainment of any standard or any required interim emission reductions or other milestones in any area. Control measures assumed in the analysis must be enforceable.

C. The choice of requirements in subparagraph (L)2.B. of this section and the methodology used to meet the requirements of part (L)2.B.III. of this section must be determined through the interagency consultation process required in subparagraph (5)(C)1.G. through which the relevant recipients of Title 23 U.S.C. or Title 49 U.S.C. funds, the local air quality agency, the state air quality agency, and the state Department of Transportation should reach consensus about the option and methodology selected. EPA and DOT must be consulted through this process as well. In the event of unresolved disputes, conflicts may be escalated to the governor consistent with the procedure in subsection (5)(D), which applies for any state air agency comments on a conformity determination.

(21) Requirements for Adoption or Approval of Projects by Other Recipients of Funds Designated under Title 23 U.S.C. or Title 49 U.S.C.

(A) Except as provided in subsection (B) of this section, no recipient of federal funds designated under Title 23 U.S.C. or Title 49 U.S.C. shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one (1) of the following are met:

1. The project comes from the currently conforming transportation plan and TIP, and the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis for that transportation plan and TIP;

2. The project is included in the regional emissions analysis for the currently conforming transportation plan and TIP conformity determination (even if the project is not strictly included in the transportation plan or TIP for the purpose of MPO project selection or endorsement) and the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis; or

3. A new regional emissions analysis including the project and the currently conforming transportation plan and TIP demonstrates that the transportation plan and TIP would still conform if the project were implemented (consistent with the requirements of sections (18) and/or (19) for a project not from a conforming transportation plan and TIP).

(B) In isolated rural nonattainment and maintenance areas subject to subsection (9)(A), no recipient of federal funds designated under Title 23 U.S.C. or Title 49 U.S.C. shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one (1) of the following are met:

1. The project was included in the regional emissions analysis supporting the most recent conformity determination that reflects the portion of the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area, and the project's design concept and scope has not changed significantly; or

2. A new regional emissions analysis including the project and all other regionally significant projects expected in the nonattainment or maintenance area demonstrates that those projects in the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area would still conform if the project was implemented (consistent with the requirements of sections (18) and/or (19) for projects not from a conforming transportation plan and TIP).

(C) Notwithstanding subsections (A) and (B) of this section, in nonattainment and maintenance areas subject to subsection (9)(J) or (K) for a given pollutant/precursor and NAAQS, no recipient of federal funds designated under Title 23 U.S.C. or Title 49 U.S.C. shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one (1) of the following are met for that pollutant/precursor and NAAQS:

1. The project was included in the most recent conformity determination for the transportation plan and TIP and the project's design concept and scope has not changed significantly; or

2. The project was included in the most recent conformity determination that reflects the portion of the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area, and the project's design concept and scope has not changed significantly.

(23) Procedures for Determining Localized CO and PM_{10} Concentrations (Hot-Spot Analysis).

(A) CO Hot-Spot Analysis.

1. The demonstrations required by section (16) must be based on quantitative analysis using air quality models, databases, and other requirements specified in 40 CFR part 51, Appendix W (Guideline on Air Quality Models). These procedures shall be used in the following cases, unless different procedures developed through the interagency consultation process required in section (5) and approved by the EPA regional administrator are used:

A. For projects in or affecting locations, areas, or categories of sites which are identified in the applicable implementation plan as sites of violation or possible violation;

B. For projects affecting intersections that are at Level-of-Service D, E, or F, or those that will change to Level-of-Service D, E, or F because of increased traffic volumes related to the project;

C. For any project affecting one (1) or more of the top three (3) intersections in the nonattainment or maintenance area with highest traffic volumes, as identified in the applicable implementation plan; and

D. For any project affecting one (1) or more of the top three (3) intersections in the nonattainment or maintenance area with the worst level-of-service, as identified in the applicable implementation plan.

2. In cases other than those described in paragraph (A)1. of this section, the demonstrations required by section (16) may be based on either—

A. Quantitative methods that represent reasonable and common professional practice; or

B. A quantitative consideration of local factors, if this can provide a clear demonstration that the requirements of section (16) are met.

(B) PM_{10} Hot-Spot Analysis.

1. The hot-spot demonstration required by section (16) must be based on quantitative analysis methods for the following types of projects:

A. Projects which are located at sites at which violations have been verified by monitoring;

B. Projects which are located at sites which have vehicle and roadway emission and dispersion characteristics that are essentially identical to those of sites with verified violations (including sites near one at which a violation has been monitored); and

C. New or expanded bus and rail terminals and transfer points which increase the number of diesel vehicles congregating at a single location.

2. Where quantitative analysis methods are not required, the demonstration required by section (16) may be based on a qualitative consideration of local factors.

3. The identification of the sites described in subparagraphs (B)1.A. and B. of this section, and other cases where quantitative methods are appropriate, shall be determined through the interagency consultation process required in section (5). DOT may choose to make a categorical conformity determination on bus and rail terminals or transfer points based on appropriate modeling of various terminal sizes, configurations, and activity levels.

4. The requirements for quantitative analysis contained in subsection (23)(B) will not take effect until EPA releases modeling guidance on this subject and announces in the *Federal Register* that these requirements are in effect.

(C) General Requirements.

1. Estimated pollutant concentrations must be based on the total emissions burden which may result from the implementation of the project, summed together with future background concentrations. The total concentrations must be estimated and analyzed at appropriate receptor locations in the area substantially affected by the project.

2. Hot-spot analyses must include the entire project, and may be performed only after the major design features which will significantly impact concentrations have been identified. The future background concentration should be estimated by multiplying current background by the ratio of future to current traffic and the ratio of future to current emission factors.

3. Hot-spot analysis assumptions must be consistent with those in the regional emissions analysis for those inputs which are required for both analyses.

4. PM_{10} or CO mitigation or control measures shall be assumed in the hot-spot analysis only where there are written commitments from the project sponsor and/or operator to implement such measures, as required by subsection (25)(A).

5. CO and PM_{10} hot-spot analyses are not required to consider construction-related activities which cause temporary increases in emissions. Each site which is affected by construction-related activities shall be considered separately, using established "Guideline" methods. Temporary increases are defined as those which occur only during the construction phase and last five (5) years or less at any individual site.

(25) Enforceability of Design Concept and Scope and Project-Level Mitigation and Control Measures.

(A) Prior to determining that a transportation project is in conformity, the MPO, other recipient of funds designated under Title 23 U.S.C. or Title 49 U.S.C., FHWA, or FTA must obtain from the project sponsor and/or operator written commitments to implement in the construction of the project and operation of the resulting facility or service any project-level mitigation or control measures which are identified as conditions for NEPA process completion with respect to local PM_{10} or CO impacts. Before a conformity determination is made, written commitments must also be obtained for project-level mitigation or control measures which are conditions for making conformity determinations for a transportation plan or TIP and are included in the project design concept and scope which is used in the regional emissions analysis required by sections (18) Motor Vehicle Emissions Budget and (19) Interim Emissions in Areas Without Motor Vehicle Emission Budgets or used in the project-level hot-spot analysis required by section (16).

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

ORDER OF RULEMAKING

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo 2000, the commission amends a rule as follows:

10 CSR 10-5.480 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 2, 2005, (30 MoReg 817–838). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Department of Natural Resources' Air Pollution Control Program received comments from the Missouri Department of Transportation (MODOT) and the U.S. Environmental Protection Agency (EPA).

COMMENT: MODOT commented that throughout the rule the Federal Transit Administration Code is referred to as the Federal Transit Laws. MODOT advised that it should be revised to read Title 49 U.S.C.
RESPONSE AND EXPLANATION OF CHANGE: The department's Air Pollution Control Program has made the proposed reference change throughout the rule.

COMMENT: MODOT commented that the rule title is rather unwieldy and wordy in length and suggested revising it to reflect the metropolitan area and subject matter with more brevity for clarification.
RESPONSE AND EXPLANATION OF CHANGE: The department's Air Pollution Control Program has revised the rule title as suggested.

COMMENT: EPA suggested that in subsection (2)(C) of the rule that the *Code of Federal Regulations* references sections 93.114 and 93.114(b) be revised to section (14) and subsection (14)(B) for consistency as the *Code of Federal Regulations* references and the references within the rule are identically worded.
RESPONSE AND EXPLANATION OF CHANGE: The department's Air Pollution Control Program has made the recommended reference revision.

COMMENT: EPA suggested that in original section (22) Procedures for Determining Localized CO and PM_{10} Concentrations (Hot-Spot Analysis) should have the PM_{10} hot-spot analysis procedures added to the section to make the State Implementation Plan consistent with federal rules.
RESPONSE AND EXPLANATION OF CHANGE: The department's Air Pollution Control Program has made the recommended procedures addition to the rule section.

10 CSR 10-5.480 St. Louis Area Transportation Conformity Requirements

(1) Definitions.

(B) Additional definitions specific to this rule are as follows:

1. One (1)-hour ozone National Ambient Air Quality Standard (NAAQS)—the one (1)-hour ozone national ambient air quality standard codified at 40 CFR 50.9;

2. Eight (8)-hour ozone National Ambient Air Quality Standard (NAAQS)—the eight (8)-hour ozone national ambient air quality standard codified at 40 CFR 50.10;

3. Applicable implementation plan—defined in section 302(q) of the CAA, the portion (or portions) of the state implementation plan for ozone or carbon monoxide (CO), or most recent revision thereof, which has been approved under section 110, or promulgated under section 110(c), or promulgated or approved pursuant to regulations promulgated under section 301(d) and which implements the relevant requirements of the CAA;

4. CAA—the Clean Air Act, as amended (42 U.S.C. 7401 et seq.);

5. Cause or contribute to a new violation for a project—

A. To cause or contribute to a new violation of a standard in the area substantially affected by the project or over a region which would otherwise not be in violation of the standard during the future period in question, if the project were not implemented; or

B. To contribute to a new violation in a manner that would increase the frequency or severity of a new violation of a standard in such area;

6. Clean data—air quality monitoring data determined by EPA to meet the requirements of 40 *Code of Federal Regulations* (CFR) part 58 that indicate attainment of the national ambient quality standard;

7. Consultation—in the transportation conformity process, one (1) party confers with another identified party, provides all information to that party needed for meaningful input, and considers the views of that party and responds to those views in a timely, substantive written manner prior to any final decision on such action. Such views and written response shall be made part of the record of any decision or action;

8. Control strategy implementation plan revision—the implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment (including implementation plan revisions submitted to satisfy CAA sections 172(c), 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 187(g), 189(a)(1)(B), 189(b)(1)(A), and 189(d); sections 192(a) and 192(b), for nitrogen dioxide; and any other applicable CAA provision requiring a demonstration of reasonable further progress or attainment);

9. Design concept—the type of facility identified by the project, e.g., freeway, expressway, arterial highway, grade-separated highway, reserved right-of-way rail transit, mixed traffic rail transit, exclusive busway, etc.;

10. Design scope—the design aspects which will affect the proposed facility's impact on regional emissions, usually as they relate to vehicle or person carrying capacity and control, e.g., number of lanes or tracks to be constructed or added, length of project, signalization, access control including approximate number and location of interchanges, preferential treatment for high-occupancy vehicles, etc.;

11. Donut areas—geographic areas outside a metropolitan planning area boundary, but inside the boundary of a nonattainment or maintenance area that contains any part of a metropolitan area(s). These areas are not isolated rural nonattainment and maintenance areas;

12. DOT—the United States Department of Transportation;

13. EPA—the Environmental Protection Agency;

14. FHWA—the Federal Highway Administration of DOT;

15. FHWA/FTA project—for the purpose of this rule, any highway or transit project which is proposed to receive funding assistance and approval through the Federal-Aid Highway Program or the Federal Mass Transit Program, or requires Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) approval for some aspect of the project, such as connection to an interstate highway or deviation from applicable design standards on the interstate system;

16. Forecast period—with respect to a transportation plan, the period covered by the transportation plan pursuant to 23 CFR part 450;

17. FTA—the Federal Transit Administration of DOT;

18. Highway project—an undertaking to implement or modify a highway facility or highway-related program. Such an undertaking consists of all required phases necessary for implementation. For analytical purposes, it must be defined sufficiently to—

A. Connect logical *termini* and be of sufficient length to address environmental matters on a broad scope;

B. Have independent utility or significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and

C. Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements;

19. Horizon year—a year for which the transportation plan describes the envisioned transportation system according to section (6) of this rule;

20. Hot-spot analysis—an estimation of likely future localized carbon monoxide (CO) and particulate matter (PM_{10}) pollutant concentrations and a comparison of those concentrations to the national ambient air quality standard(s). Hot-spot analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality;

21. Increase the frequency or severity—to cause a location or region to exceed a standard more often or to cause a violation at a greater concentration than previously existed and/or would otherwise exist during the future period in question, if the project were not implemented;

22. Isolated rural nonattainment and maintenance areas—areas that do not contain or are not part of any metropolitan planning area as designated under the transportation planning regulations. Isolated rural areas do not have federally required metropolitan transportation plans or transportation improvement programs (TIPs) and do not have projects that are part of the emissions analysis of any metropolitan planning organization's (MPO's) metropolitan transportation plan or TIP. Projects in such areas are instead included in statewide transportation improvement programs. These areas are not donut areas;

23. Lapse—the conformity determination for a transportation plan or transportation improvement program (TIP) has expired, and thus there is no currently conforming transportation plan and TIP;

24. Limited maintenance plan—a maintenance plan that EPA has determined meets EPA's limited maintenance plan policy criteria for a given NAAQS and pollutant. To qualify for a limited maintenance plan, for example, an area must have a design value that is significantly below a given NAAQS, and it must be reasonable to expect that a NAAQS violation will not result from any level of future motor vehicle emissions growth;

25. Maintenance area—any geographic region of the United States previously designated nonattainment pursuant to the CAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under section 175A of the CAA, as amended;

26. Maintenance plan—an implemention plan under section 175A of the CAA, as amended;

27. Metropolitan planning area—the geographic area in which the metropolitan transportation planning process required by 23 U.S.C. 134 and section 8 of the Federal Transit Act must be carried out;

28. Metropolitan planning organization (MPO)—that organization designated as being responsible, together with the state, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 5303. It is the forum for cooperative transportation decision-making. The East-West Gateway Council of Governments is the MPO for the St. Louis metropolitan area and the organization responsible for conducting the planning required under section 174 of the CAA;

29. Milestone—the meaning given in CAA sections 182(g)(1) and 189(c) for serious and above ozone nonattainment areas and PM_{10} nonattainment areas, respectively. For all other nonattainment areas, a milestone consists of an emissions level and the date on which that level is to be achieved as required by the applicable CAA provision for reasonable further progress towards attainment;

30. Motor vehicle emissions budget—that portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the National Ambient Air Quality Standards (NAAQS), for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions. For purposes of meeting the conformity test required under sections (18) and/or (19) of this rule, the motor vehicle emissions budget in the applicable Missouri State Implementation Plan shall be combined with the motor vehicle emissions budget for the same pollutant in the applicable Illinois State Implementation Plan;

31. National Ambient Air Quality Standards (NAAQS)—those standards established pursuant to section 109 of the CAA;

32. NEPA—the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.);

33. NEPA process completion—for the purposes of this rule, with respect to FHWA or FTA, the point at which there is a specific action to make a determination that a project is categorically excluded, to make a Finding of No Significant Impact, or to issue a record of decision on a Final Environmental Impact Statement under NEPA;

34. Nonattainment area—any geographic region of the United States which has been designated as nonattainment under section 107 of the CAA for any pollutant for which a national ambient air quality standard exists;

35. Not classified area—any carbon monoxide (CO) nonattainment area which EPA has not classified as either moderate or serious;

36. Project—a highway project or transit project;

37. Protective finding—a determination by EPA that a submitted control strategy implementation plan revision contains adopted control measures or written commitments to adopt enforceable control measures that fully satisfy the emissions reductions requirements to the statutory provision for which the implementation plan revision was submitted, such as reasonable further progress or attainment;

38. Recipient of funds designated under Title 23 U.S.C. or Title 49 U.S.C.—any agency at any level of state, county, city, or regional government that routinely receives Title 23 U.S.C. or Title 49 U.S.C. funds to construct FHWA/FTA projects, operate FHWA/FTA projects or equipment, purchase equipment, or undertake other services or operations via contracts or agreements. This definition does not include private landowners or developers, or contractors or entities that are only paid for services or products created by their own employees;

39. Regionally significant project—a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals, as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum: all principal arterial highways and all fixed guideway transit facilities that offer an alternative to regional highway travel;

40. Safety margin—the amount by which the total projected emissions from all sources of a given pollutant are less than the total emissions that would satisfy the applicable requirement for reasonable further progress, attainment, or maintenance;

41. Standard—a national ambient air quality standard;

42. Statewide transportation improvement program (STIP)—a staged, multiyear, intermodal program of transportation projects which is consistent with the statewide transportation plan and planning processes and metropolitan transportation plans, TIPs and processes, developed pursuant to 23 CFR part 450;

43. Statewide transportation plan—the official statewide, intermodal transportation plan that is developed through the statewide transportation planning process, pursuant to 23 CFR part 450;

44. Transit—mass transportation by bus, rail, or other conveyance which provides general or special service to the public on a regular and continuing basis. It does not include school buses or charter or sightseeing services;

45. Transit project—an undertaking to implement or modify a transit facility or transit-related program; purchase transit vehicles or equipment; or provide financial assistance for transit operations. It does not include actions that are solely within the jurisdiction of local transit agencies, such as changes in routes, schedules, or fares. It may consist of several phases. For analytical purposes, it must be defined inclusively enough to—

A. Connect logical *termini* and be of sufficient length to address environmental matters on a broad scope;

B. Have independent utility or independent significance, i.e., be a reasonable expenditure even if no additional transportation improvements in the area are made; and

C. Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements;

46. Transportation control measure (TCM)—any measure that is specifically identified and committed to in the applicable implementation plan that is either one (1) of the types listed in section 108 of the CAA, or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the first sentence of this definition, vehicle technology-based, fuel-based, and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of this rule;

47. Transportation improvement program (TIP)—a staged, multiyear, intermodal program of transportation projects covering a metropolitan planning area which is consistent with the metropolitan transportation plan, and developed pursuant to 23 CFR part 450;

48. Transportation plan—the official intermodal metropolitan transportation plan that is developed through the metropolitan planning process for the metropolitan planning area, developed pursuant to 23 CFR part 450;

49. Transportation project—a highway project or a transit project; and

50. Written commitment—for the purposes of this rule, a written commitment that includes a description of the action to be taken; a schedule for the completion of the action; a demonstration that funding necessary to implement the action has been authorized by the appropriating or authorizing body; and an acknowledgement that the commitment is an enforceable obligation under the applicable implementation plan.

(2) Applicability.

(C) Limitations. In order to receive any FHWA/FTA approval or funding actions, including NEPA approvals, for a project phase subject to this subpart, a currently conforming transportation plan and TIP must be in place at the time of project approval as described in section (14), except as provided by subsection (14)(B).

1. Projects subject to this rule for which the NEPA process and a conformity determination have been completed by DOT may proceed toward implementation without further conformity determinations unless more than three (3) years have elapsed since the most recent major step (NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates) occurred. All phases of such projects which were considered in the conformity determination are also included, if those phases were for the purpose of funding final design, right-of-way acquisition, construction, or any combination of these phases.

2. A new conformity determination for the project will be required if there is a significant change in project design concept and scope, if a supplemental environmental document for air quality purposes is initiated, or if three (3) years have elapsed since the most recent major step to advance the project occurred.

(5) Consultation.

(C) Interagency Consultation Procedures—Specific Processes. Interagency consultation procedures shall also include the following specific processes:

1. An interagency consultation process in accordance with subsection (5)(B) of this rule involving the MPO, state and local air quality planning agencies, state and local transportation agencies, the EPA and the DOT shall be undertaken for the following (except where otherwise provided, the MPO shall be responsible for initiating the consultation process):

A. Evaluating and choosing a model (or models) and associated methods and assumptions to be used in hot-spot analyses and regional emissions analyses;

B. Determining which minor arterials and other transportation projects should be considered "regionally significant" for the purposes of regional emissions analysis (in addition to those functionally classified as principal arterial or higher or fixed guideway systems or extensions that offer an alternative to regional highway travel), and which projects should be considered to have a significant change in design concept and scope from the transportation plan or TIP;

C. Evaluating whether projects otherwise exempted from meeting the requirements of this rule under sections (26) and (27) should be treated as nonexempt in cases where potential adverse emissions impacts may exist for any reason;

D. Making a determination, required by paragraph (13)(C)1., whether past obstacles to implementation of TCMs which are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether state and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs over other projects within their control. This process shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures;

E. Notification of transportation plan or TIP revisions or amendments which merely add or delete exempt projects listed in section (26) or section (27). In any year when it is intended to prepare a transportation plan revision, TIP or TIP amendment that merely adds or deletes exempt projects, the MPO shall notify all consulting agencies in writing within seven (7) calendar days after taking action to approve such exempt projects. The notification shall include enough information about the exempt projects for the consulting agencies to determine their agreement or disagreement that the projects are exempt under section (26) or section (27) of this rule;

F. Determining whether a project is considered to be included in the regional emissions analysis supporting the currently conforming TIP's conformity determination, even if the project is not strictly included in the TIP for the purposes of MPO project selection or endorsement, and whether the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility;

G. Advising on the horizon years to be used for conformity determinations, in accordance with section (6) of this rule;

H. Advising whether the modeling methods and functional relationships used in the model are consistent with acceptable professional practice and are reasonable for the purposes of emission estimation, as specified in section (22) of this rule;

I. Reviewing the models, databases and other requirements specified in section (23) of this rule and advising if there are grounds for recommending to the EPA regional administrator that these models, databases or requirements are inappropriate. In such an event, the consulting agencies shall propose alternative methods to satisfy the requirements for conformity in accordance with section (23);

J. Determining what forecast of vehicle miles traveled to use in establishing or tracking motor vehicle emissions budgets, developing transportation plans, TIPs or applicable implementation plans, or in making conformity determinations;

K. Determining whether the project sponsor or the MPO has demonstrated that the requirements of sections (16)–(19) are satisfied without a particular mitigation or control measure, as provided in section (25);

L. Developing a list of TCMs to be included in the applicable implementation plan;

M. Identifying, as required by subsection (23)(B), projects located at sites in PM_{10} nonattainment areas which have vehicle and roadway emission and dispersion characteristics which are essentially identical to those at sites which have violations verified by monitoring, and therefore require quantitative PM_{10} hot-spot analysis; and

N. Choosing conformity tests and methodologies for isolated rural nonattainment and maintenance areas, as required by paragraph (9)(L)2.;

2. An interagency consultation process in accordance with subsection (5)(B) involving the MPO, state and local air quality planning agencies and state and local transportation agencies for the following (except where otherwise provided, the MPO shall be responsible for initiating the consultation process):

A. Evaluating events which will trigger new conformity determinations in addition to those triggering events established in section (4). Any of the consulting agencies listed in paragraph (5)(B)3. may request that the MPO initiate the interagency consultation process to evaluate an event which should, in the opinion of the consulting agency, trigger a need for a conformity determination. The MPO shall initiate appropriate consultation with the other consulting agencies in response to such request, and shall notify the consulting agencies and the requesting agency in writing of its proposed action in response to this evaluation and consultation; and

B. Consulting on the procedures to be followed in performing emissions analysis for transportation activities which cross the borders of the MPO's region or the St. Louis nonattainment area or air basin;

3. Consultation on nonfederal projects.

A. An interagency consultation process in accordance with subsection (5)(B) involving the MPO, state and local air quality agencies and state and local transportation agencies shall be undertaken to ensure that plans for construction of regionally significant projects which are not FHWA/FTA projects (including projects for which alternative locations, design concept and scope, or the no-build option are still being considered), including all those by recipients of funds designated under Title 23 U.S.C. or Title 49 U.S.C., are disclosed to the MPO on a regular basis, and to assure that any changes to those plans are immediately disclosed.

B. Notwithstanding the provisions of subparagraph (5)(C)3.A., it shall be the responsibility of the sponsor of any such regionally significant project, and of any agency that becomes aware of any such project through applications for approval, permitting or funding, to disclose such project to the MPO in a timely manner. Such disclosure shall be made not later than the first occasion on which any of the following actions is sought: any policy board action necessary for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to design or construct the facility, the execution of any indebtedness for the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with design, permitting or construction of the project, or the execution of any contract to design or construct or any approval needed for any facility that is dependent on the completion of the regionally significant project.

C. Any such regionally significant project that has not been disclosed to the MPO in a timely manner shall be deemed not to be included in the regional emissions analysis supporting the conformity determination for the TIP and shall not be consistent with the motor vehicle emissions budget in the applicable implementation plan, for the purposes of section (21) of this rule.

D. For the purposes of this section and of section (21) of this rule, the phrase adopt or approve of a regionally significant project means the first time any action necessary to authorizing a project occurs, such as any policy board action necessary for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to construct the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with construction of the project, or any written decision or authorization from the MPO that the project may be adopted or approved;

4. This interagency consultation process involving the agencies specified in paragraph (5)(B)3. shall be undertaken for assuming the location and design concept and scope of projects which are disclosed to the MPO as required by paragraph (5)(C)3. but whose sponsors have not yet decided these features in sufficient detail to perform the regional emissions analysis according to the requirements of section (22) of this rule. This process shall be initiated by the MPO;

5. The MPO shall undertake an on-going process of consultation with the agencies listed in paragraph (5)(B)3. for the design, schedule, and funding of research and data collection efforts and regional transportation model development by the MPO. This process shall, as far as practicable, be integrated with the cooperative development of the Unified Planning Work Program under 23 CFR section 450.314; and

6. This process insures providing final documents (including applicable implementation plans and implementation plan revisions) and supporting information to each agency after approval or adoption. This process is applicable to all agencies described in paragraph (A)1. of this section, including federal agencies.

(9) Criteria and Procedures for Determining Conformity of Transportation Plans, Programs, and Projects—General.

(L) Isolated Rural Nonattainment and Maintenance Areas. This subsection applies to any nonattainment or maintenance area (or portion thereof) which does not have a metropolitan transportation plan or TIP and whose projects are not part of the emissions analysis of any MPO's metropolitan transportation plan or TIP. This subsection does not apply to "donut" areas which are outside the metropolitan planning boundary and inside the nonattainment/maintenance area boundary.

1. FHWA/FTA projects in all isolated rural nonattainment and maintenance areas must satisfy the requirements of sections (10), (11), (12), (16), and (17) and subsection (13)(D). Until EPA approves the control strategy implementation plan or maintenance plan for a rural CO nonattainment or maintenance area, FHWA/FTA projects must also satisfy the requirements of subsection (16)(B) ("Localized CO and PM_{10} Violations (Hot Spots)").

2. Isolated rural nonattainment and maintenance areas are subject to the budget and/or interim emissions tests as described in subsections (C) through (K) of this section, with the following modifications—

A. When the requirements of sections (18) and (19) apply to isolated rural nonattainment and maintenance areas, references to "transportation plan" or "TIP" should be taken to mean those projects in the statewide transportation plan or statewide TIP which are in the rural nonattainment or maintenance area.

B. In isolated rural nonattainment and maintenance areas that are subject to section (18), FHWA/FTA projects must be consistent with motor vehicle emissions budget(s) for the years in the time frame of the attainment demonstration or maintenance plan. For years after the attainment year (if a maintenance plan has not been submitted) or after the last year of the maintenance plan, FHWA/FTA projects must satisfy one (1) of the following requirements—

(I) Section (18);

(II) Section (19) (including regional emissions analysis for NO_x in all ozone nonattainment and maintenance areas, notwithstanding paragraph (19)(F)2.); or

(III) As demonstrated by the air quality dispersion model or other air quality modeling technique used in the attainment demonstration or maintenance plan, the FHWA/FTA project, in combination with all other regionally significant projects expected in the area in the time frame of the statewide transportation plan, must not cause or contribute to any new violation of any standard in any areas; increase the frequency or severity of any existing violation of any standard in any area; or delay timely attainment of any standard or any required interim emission reductions or other milestones in any area. Control measures assumed in the analysis must be enforceable.

C. The choice of requirements in subparagraph (L)2.B. of this section and the methodology used to meet the requirements of part (L)2.B.(III) of this section must be determined through the interagency consultation process required in subparagraph (5)(C)1.G. through which the relevant recipients of Title 23 U.S.C. or Title 49 U.S.C. funds, the local air quality agency, the state air quality agency, and the state Department of Transportation should reach consensus about the option and methodology selected. EPA and DOT must be consulted through this process as well. In the event of unresolved disputes, conflicts may be escalated to the governor consistent with the procedure in subsection (5)(D), which applies for any state air agency comments on a conformity determination.

(21) Requirements for Adoption or Approval of Projects by Other Recipients of Funds Designated Under Title 23 U.S.C. or Title 49 U.S.C.

(A) Except as provided in subsection (B) of this section, no recipient of federal funds designated under Title 23 U.S.C. or Title 49 U.S.C. shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one (1) of the following are met:

1. The project comes from the currently conforming transportation plan and TIP, and the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis for that transportation plan and TIP;

2. The project is included in the regional emissions analysis for the currently conforming transportation plan and TIP conformity determination (even if the project is not strictly included in the transportation plan or TIP for the purpose of MPO project selection or endorsement) and the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis; or

3. A new regional emissions analysis including the project and the currently conforming transportation plan and TIP demonstrates that the transportation plan and TIP would still conform if the project were implemented (consistent with the requirements of sections (18) and/or (19) for a project not from a conforming transportation plan and TIP).

(B) In isolated rural nonattainment and maintenance areas subject to subsection (9)(A), no recipient of federal funds designated under Title 23 U.S.C. or Title 49 U.S.C. shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one (1) of the following are met:

1. The project was included in the regional emissions analysis supporting the most recent conformity determination that reflects the portion of the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area, and the project's design concept and scope has not changed significantly; or

2. A new regional emissions analysis including the project and all other regionally significant projects expected in the nonattainment or maintenance area demonstrates that those projects in the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area would still conform if the project was implemented (consistent with the requirements of sections (18) and/or (19) for projects not from a conforming transportation plan and TIP).

(C) Notwithstanding subsections (A) and (B) of this section, in nonattainment and maintenance areas subject to subsection (9)(J) or (K) for a given pollutant/precursor and NAAQS, no recipient of federal funds designated under Title 23 U.S.C. or Title 49 U.S.C. shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one (1) of the following are met for that pollutant/precursor and NAAQS:

1. The project was included in the most recent conformity determination for the transportation plan and TIP and the project's design concept and scope has not changed significantly; or

2. The project was included in the most recent conformity determination that reflects the portion of the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area, and the project's design concept and scope has not changed significantly.

(23) Procedures for Determining Localized CO and PM_{10} Concentrations (Hot-Spot Analysis).

(A) CO Hot-Spot Analysis.

1. The demonstrations required by section (16) must be based on quantitative analysis using air quality models, databases, and other requirements specified in 40 CFR part 51, Appendix W (Guideline on Air Quality Models). These procedures shall be used in the following cases, unless different procedures developed through the interagency consultation process required in section (5) and approved by the EPA regional administrator are used:

A. For projects in or affecting locations, areas, or categories of sites which are identified in the applicable implementation plan as sites of violation or possible violation;

B. For projects affecting intersections that are at Level-of-Service D, E, or F, or those that will change to Level-of-Service D, E, or F because of increased traffic volumes related to the project;

C. For any project affecting one (1) or more of the top three (3) intersections in the nonattainment or maintenance area with highest traffic volumes, as identified in the applicable implementation plan; and

D. For any project affecting one (1) or more of the top three (3) intersections in the nonattainment or maintenance area with the worst level-of-service, as identified in the applicable implementation plan.

2. In cases other than those described in paragraph (A)1. of this section, the demonstrations required by section (16) may be based on either—

A. Quantitative methods that represent reasonable and common professional practice; or

B. A quantitative consideration of local factors, if this can provide a clear demonstration that the requirements of section (16) are met.

(B) PM_{10} Hot-Spot Analysis.

1. The hot-spot demonstration required by section (16) must be based on quantitative analysis methods for the following types of projects:

A. Projects which are located at sites at which violations have been verified by monitoring;

B. Projects which are located at sites which have vehicle and roadway emission and dispersion characteristics that are essentially identical to those of sites with verified violations (including sites near one at which a violation has been monitored); and

C. New or expanded bus and rail terminals and transfer points which increase the number of diesel vehicles congregating at a single location.

2. Where quantitative analysis methods are not required, the demonstration required by section (16) may be based on a qualitative consideration of local factors.

3. The identification of the sites described in subparagraphs (B)1.A. and B. of this section, and other cases where quantitative methods are appropriate, shall be determined through the interagency consultation process required in section (5). DOT may choose to make a categorical conformity determination on bus and rail terminals or transfer points based on appropriate modeling of various terminal sizes, configurations, and activity levels.

4. The requirements for quantitative analysis contained in subsection (23)(B) will not take effect until EPA releases modeling guidance on this subject and announces in the *Federal Register* that these requirements are in effect.

(C) General Requirements.

1. Estimated pollutant concentrations must be based on the total emissions burden which may result from the implementation of the project, summed together with future background concentrations. The total concentrations must be estimated and analyzed at appropriate receptor locations in the area substantially affected by the project.

2. CO hot-spot analyses must include the entire project, and may be performed only after the major design features which will significantly impact CO concentrations have been identified. The future background concentration should be estimated by multiplying current background by the ratio of future to current traffic and the ratio of future to current emission factors.

3. Hot-spot analysis assumptions must be consistent with those in the regional emissions analysis for those inputs which are required for both analyses.

4. CO mitigation or control measures shall be assumed in the hot-spot analysis only where there are written commitments from the project sponsor and/or operator to implement such measures, as required by subsection (25)(A).

5. CO hot-spot analyses are not required to consider construction-related activities which cause temporary increases in emissions. Each site which is affected by construction-related activities shall be considered separately, using established "Guideline" methods. Temporary increases are defined as those which occur only during the construction phase and last five (5) years or less at any individual site.

(25) Enforceability of Design Concept and Scope and Project-Level Mitigation and Control Measures.

(A) Prior to determining that a transportation project is in conformity, the MPO, other recipient of funds designated under Title 23 U.S.C. or Title 49 U.S.C., FHWA, or FTA must obtain from the project sponsor and/or operator written commitments to implement in the construction of the project and operation of the resulting facility or service any project-level mitigation or control measures which are identified as conditions for NEPA process completion with respect to local CO impacts. Before a conformity determination is made, written commitments must also be obtained for project-level mitigation or control measures which are conditions for making conformity determinations for a transportation plan or TIP and are included in the project design concept and scope which is used in the regional emissions analysis required by sections (18) Motor Vehicle Emissions Budget and (19) Interim Emissions in Areas Without Motor Vehicle Emissions Budgets or used in the project-level hot-spot analysis required by section (16).

(28) Traffic Signal Synchronization Projects. Traffic signal synchronization projects may be approved, funded, and implemented without satisfying the requirements of this section. However, all subsequent regional emissions analyses required by sections (18) and (19) for transportation plans, TIPs, or projects not from a conforming plan and TIP must include such regionally significant traffic signal synchronization projects.

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 2000, the commission amends a rule as follows:

10 CSR 10-6.110 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 15, 2005 (30 MoReg 1336–1344). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Department of Natural Resources' Air Pollution Control Program received comments on the proposed amendment from thirteen (13) sources: Associated Electric Cooperative, City of St. Louis Department of Health, City Utilities, Empire District Electric Company, Hercules Incorporated, Kansas City Health Department, Laclede Gas Company, Missouri Ag Industries Council, Inc., OsageSolutions, L.L.C., Regulatory Environmental Group for Missouri (REGFORM), St. Louis County Health Department, Springfield-Greene County Health Department Air Quality Control Program, and U.S. Environmental Protection Agency (EPA).

REGFORM provided both oral and written testimony relative to the proposed amendment of the emissions fee rule. Hercules Incorporated, Laclede Gas Company, and Missouri Ag Industries Council, Inc. stated their support of REGFORM's testimony given at the Missouri Air Conservation Commission (MACC) public hearing on July 21, 2005 held in Poplar Bluff, Missouri in their comment letters.

Due to the similarity of the following eight (8) comments, one (1) response that addresses these comments can be found at the end of these eight (8) comments.

COMMENT: REGFORM supports the proposed move to delay the due date for some emissions fee payers to June, rather than April. REGFORM strongly supports the Air Program and appreciates its services and commitment to excellence and cooperation. REGFORM believes setting the emissions fee is important because it's the law and the law says we have got to get the number right. The Missouri Clean Air Law says we have got to protect and preserve air quality in the state of Missouri and maximize economic benefits to the people as well. Without the Air Program, the companies that REGFORM represents would not have access to the vital services they need to continue to do the business they do in Missouri.

However, REGFORM does not support the proposed emissions fee increase to $35.50 from the present level of $33. REGFORM proposes that the MACC adopt a $34.50 per ton emission fee which is more reflective of the Consumer Price Index (CPI) increases applied over the years. REGFORM believes that starting back in 1993 at $25 per ton and increasing that $25 per ton rate every year by the CPI for that year that a number approximately equal to $34.50 per ton would be arrived at today in 2005.

REGFORM believes that last year Title V fees generated seventy-three percent (73%) of revenues used to operate the Air Program. However, REGFORM believes something less than seventy-three percent (73%) is the actual amount of work that was performed on Title V projects. To put it plainly, REGFORM believes that Title V emissions fee payers are subsidizing other non-Title V beneficiaries.

There is also a related issue that REGFORM believes should be studied and that is industrial emissions are going down which indicates that industry is doing what it is supposed to do. The problem is as emissions go down so do the emissions fee generated. The only way to maintain revenues is to raise the emissions fee thus penalizing industry for reducing their emissions.

In addition, REGFORM desired to provide a clarification on two (2) issues. The first is that the proposed emissions fee of $35.50 is a product of an internal set of calculations developed by the Air Program not by a consensus process involving a broad representative group of emissions fee payers. Most, if not all, of the permitted emissions fee payers who participate in the Air Program Advisory Forum (APAF) are REGFORM members. If APAF members did not speak out against the proposed emissions fee increase in those APAF meetings, it should not be construed that they support the emissions fee increase to $35.50.

Second, REGFORM represents companies that pay nearly 80% of the fees generated by the annual per ton emissions fee. The fact that the MACC may not have received individual comment letters from electric utilities, cement kilns, auto assembly plants, chemical manufacturers, breweries, and other industrial emissions fee payers from around the state does not mean that they tacitly support an emissions fee increase to $35.50 per ton. Rather, they have joined forces, pooled their resources, and hired a staff to represent them on these issues. The function of REGFORM is to present the MACC/Air Program a unified perspective that has the broadest support from industry and that perspective is not supportive of the proposed $35.50 emissions fee.

COMMENT: Hercules Incorporated supports the testimony given by REGFORM on July 21, 2005 at the public hearing held in Poplar Bluff, Missouri (See REGFORM's general summary of testimony above). Hercules supports moving the payment date for emissions fee from April 1 to June 1 for all fee payers not just the utilities industry.

COMMENT: Laclede Gas Company (LGC) supports the testimony given by REGFORM on July 21, 2005 at the public hearing held in Poplar Bluff, Missouri (See REGFORM's general summary of testimony above). LGC does not support the proposed emissions fee increase, or at a minimum, only a modest increase. LGC is concerned that in addition to the financial impact of the proposed emissions fee increase on its organization that such an emission fees increase will act to discourage economic development in Missouri. LGC supports moving the emissions fee payment due date for some payers to better coincide with the state fiscal year.

COMMENT: Missouri Ag Industries Council, Inc. (Mo-Ag) supports the testimony given by REGFORM on July 21, 2005 at the public hearing held in Poplar Bluff, Missouri (See REGFORM's general summary of testimony above). Mo-Ag does not support the proposed emissions fee increase to $35.50 because they believe it is out-of-line with the growth of the economy. It can support a fees increase from $33 to $34.50 more in line with the CPI. Mo-Ag recognizes and appreciates the positive changes that the Air Program has made over the past few years.

COMMENT: Associated Electric Cooperative supports the proposed change to move the payment of emissions fee for utilities from April to June and eventually to June for all emissions fee payers. The Cooperative supports a $34.50 per ton emissions fee. The $1.50 fee increase from the present $33 emissions fee represents an increase of about 4.5% and is greater than the CPI increase last year. The Cooperative states that the electric utility industry is the primary source of Title V emissions fee for the department's Air Pollution Control Program and is subsidizing the Air Program's operations. The Cooperative also states that mobile sources pay no emissions fee to the Air Program. As emissions from the electric utility industry are decreasing, the Cooperative believes discussions should be considered as to alternate sources to fund the Air Program in an equitable manner. The Cooperative stated that it recognizes the importance and value of the Air Program and that it is a professional organization that provides critical services to the businesses and citizens of Missouri.

COMMENT: City Utilities does not support the proposed emissions fee increase to $35.50 per ton from the present fee of $33 per ton. City Utilities believes that the proposed $2.50 increase in the emissions fee, representing a 7.6% increase, is excessive. The Utility pointed out that other than the proposed emissions fee increase they recognize the positive changes that the Air Program has made over the past few years.

COMMENT: Empire District Electric supports the proposed change to move the payment of emissions fee for utilities from April to June and eventually to June for all emissions fee payers. Empire does not support the proposed emissions fee increase to $35.50 per ton from the present fee of $33 per ton. Empire believes that the proposed

$2.50 increase in the emissions fee, representing a 7.6% increase, is excessive. Empire supports a $34.50 emissions fee because starting with an emissions fee of $25 per ton in 1990 and increasing that fee by the CPI would bring the emissions fee to approximately $34.50 per ton. As emissions from the electric utility industry are decreasing, the Empire believes discussions should be considered as to alternate sources to fund the Air Program in an equitable manner.

COMMENT: OsageSolutions believes in these times of strained state government finances that it is not prudent to bypass legislative restraint to propose higher emissions fee through the administrative rulemaking process even though the Air Program has the authority to do so. OsageSolutions believes there are strong arguments that the emissions fee should be kept at the current $33 level. However, OsageSolutions is supportive of the argument and analysis suggested by Kevin Perry of REGFORM relative to an alternate proposed $34.50 emissions fee related to the CPI. OsageSolutions urges the MACC to consider a minimum emissions fee increase with $34.50 as the maximum increase.

RESPONSE: The Missouri Department of Natural Resources' Air Pollution Control Program is appreciative of industry's recognition of the vital services the Air Program provides to the regulated community. The department's Air Program is also pleased with industry's support of changing the emissions fee payment due date from April to June for the Electric Services Industry. The Air Program remains committed to eventually changing all emissions fee payers to the June date in the least disruptive manner to all stakeholders.

By state statute, the emission fee is set annually to fund the reasonable cost of administering the program. The Air Program maintained the fee at $25.70 for almost a decade before requesting an adjustment to the rate. Last year in 2004, the fee was reduced 3% to demonstrate the department's commitment to keep the fee in line with the revenue required to operate the program.

A financial presentation was provided to the Air Advisory Forum March 10, 2005 and again April 28, 2005. Financial issues were discussed in an open forum and industry comments and concerns were addressed. Using the best information and estimates available, the Air Program proposed the $35.50 per ton emissions fee required to generate enough cash flow to operate the Program through March 2007 when fees would be due again.

The Air Program is continually evaluating the program's financial situation and the program streamlining efforts and efficiencies that are being implemented will continue to be reflected in the spending numbers. Reducing the fee an additional $1 as REGFORM suggests would result in a $257,000 loss of revenue. If the commission adopts the fee proposed by REGFORM, et al., it will require a re-evaluation of projected expenditures. The expenditures over which the Air Program has control are limited. They include not filling vacancies, limiting travel and training, reducing procurements and contracting professional services such as permit contracting.

In comparison to the proposed emission fee, if EPA were to administer Missouri's Title V Program, the federal emissions fee would be $39.61 per ton as calculated by the federal EPA. EPA's emissions fee of $39.61 represents the original $25 per ton fee from 1990 with yearly adjustments for the changes in the CPI. The Air Program's proposed $35.50 emissions fee is 10.4% less than EPA's current emissions fee of $39.61 if they were to administer Missouri's Title V Program.

The discrepancy between REGFORM'S suggested $34.50 fee rate and EPA's $39.61 fee rate resulted by using 1993 rather 1990 for the beginning year. Although 1993 is the year that Missouri began collecting emission fees, the federal EPA calculates the federal fee rate based on 1990 which is the year that the Title V program was established.

Regarding REGFORM comments on the percentages of Title V fees used to operate the program, the Air Program provided information during the April 28, 2005, Air Advisory Forum presentation of revenue which excluded the Asbestos and Inspection Maintenance programs. Sixty-two percent (62%) of emission fee revenue is used to operate the program. Of this revenue fifty-nine and a half percent (59.5%) is Title V and two and a half (2.5%) is Non-title V emission fees.

The Air Program recognizes the importance of these issues to the future funding of the Program and the equitable resolution for the Program and the regulated community. The Air Program believes the appropriate forum to initiate discussion of these issues is the Air Program Advisory Forum and is open to begin initial discussion of these important issues.

No changes have been made to the proposed amendment language as a result of these comments.

Due to the similarity of the following five (5) comments, one (1) response that addresses these comments can be found at the end of these five (5) comments.

COMMENT: The City of St. Louis Department of Health is supportive of the proposed $35.50 emissions fee. Funding to the City of St. Louis Air Pollution Control Program has remained constant for the past four (4) years, while the city has been asked to perform additional monitoring duties relative to $PM_{2.5}$ and PM_{10} requiring sampling and the appropriate equipment. For Fiscal Year 2006, new monitoring activities are planned for nitrogen oxide, sulfur dioxide, formaldehyde, and ammonia.

COMMENT: The Kansas City Health Department is supportive of the proposed $35.50 emissions fee. The fiscal funding has remained essentially constant or level for the past three (3) years. Yet, there have been increases in the direct costs related to personnel and fringe benefits. Our professional staff provides the Kansas City metropolitan area assistance with permitting, monitoring, inspection, and enforcement issues. Any loss of state revenues would have a serious and adverse impact on the ability of the Health Department to protect the air quality and health of the Kansas City area. The Health Department considers itself as part of an essential partnership among the U.S. EPA, the Missouri Department of Natural Resources' Air Pollution Control Program, other metropolitan air programs in Missouri, and the regulated community to control air pollution for the citizens of Missouri.

COMMENT: The St. Louis County Health Department is supportive of the proposed $35.50 emissions fee. A large part of the success of the Health Department in providing the county's citizens with air pollution control is directly related to the agency receiving adequate funding for staff and operating expenses from the state. These funds provide the foundation for a number of air related activities, including interaction with our regulated community, assisting industry with permit applications, helping troubleshoot equipment and manufacturing processes, and streamlining the Environmental Inventory Questionnaire while providing cost effective and efficient service to the community and maintaining an air monitoring network used for determining attainment status in St. Louis County.

COMMENT: The Springfield-Greene County Health Department is supportive of the proposed $35.50 emissions fee. Local agency resources have experienced level funding for several years. With the cost of equipment continuing to rise at a rapid rate, insurance and fringe costs steadily rising, we are now having to pick and choose between training and meetings. In addition, the local agencies are an important part of the state's air program and if the state's air program is underfunded, the citizens of the metro areas of the state will be underserved.

COMMENT: The U.S. EPA is supportive of the proposed $35.50 emissions fee. We believe Missouri has shown that the proposed fee increase is necessary for them to maintain the integrity of their air program and provide necessary services to their stakeholders. In addition, as noted in the Executive Summary of the 2004 program review conducted by EPA, with the elimination of general revenue funds with the 2004 budget action, additional funds may be needed.

RESPONSE: The Air Program appreciates the cities', counties', and EPA's support of the proposed emissions fee of $35.50 to maintain the financial integrity of the program to provide a viable program for the benefit of Missouri's citizens and their children. The

proposed emission fee of $35.50 per ton of regulated air pollutant will support a quality air pollution control program and assure federal obligations can be met. No wording changes have been made to the proposed rulemaking as a result of this comment.

COMMENT: After the comments and responses were presented to the commission at the August 25, 2005 Missouri Air Conservation Commission meeting held in Jefferson City, Missouri, one (1) of the commissioners proposed that the proposed emissions fee of $35.50 be reduced to $34.50 for calendar year 2005 recognizing the decreasing emissions from the regulated community and the need to explore other revenue possibilities to fund the Air Program in future years. The commission members then all voted in favor of reducing the proposed emissions fee of $35.50 to $34.50 for calendar year 2005 with one (1) commission member abstaining from the vote.
RESPONSE AND EXPLANATION OF CHANGE: As a result of the commissioners' action, the proposed emissions fee was changed from $35.50 to $34.50 for calendar year 2005.

10 CSR 10-6.110 Submission of Emission Data, Emission Fees and Process Information

(3) General Provisions.

(D) Emission Fees.

1. Any air contaminant source required to obtain a permit under sections 643.010–643.190, RSMo, except sources that produce charcoal from wood, shall pay an annual emission fee, regardless of their EIQ reporting frequency, of thirty-four dollars and fifty cents ($34.50) per ton of regulated air pollutant emitted starting with calendar year 2005 in accordance with the conditions specified in paragraph (3)(D)2. of this rule. Sources which are required to file reports once every five (5) years may use the information in their most recent EIQ to determine their annual emission fee.

2. General requirements.

A. The fee shall apply to the first four thousand (4,000) tons of each regulated air pollutant emitted. However, no air contaminant source shall be required to pay fees on total emissions of regulated air pollutants in excess of twelve thousand (12,000) tons in any calendar year. A permitted air contaminant source which emitted less than one (1) ton of all regulated pollutants shall pay a fee equal to the amount of one (1) ton.

B. The fee shall be based on the information provided in the facility's EIQ.

C. An air contaminant source which pays emissions fees to a holder of a certificate of authority issued pursuant to section 643.140, RSMo, may deduct those fees from the emission fee due under this section.

D. The fee imposed under paragraph (3)(D)1. of this rule shall not apply to carbon oxide emissions.

E. The fees for emissions produced during the previous calendar year shall be due April 1 each year for all United States Department of Labor Standard Industrial Classifications except for Standard Industrial Classification 4911 Electric Services which shall be due June 1 each year. The fees shall be payable to the Department of Natural Resources.

F. All Emissions Inventory Questionnaire forms or equivalent approved by the director shall be due April 1 each year for all United States Department of Labor Standard Industrial Classifications except for Standard Industrial Classification 4911 Electric Services which shall be due June 1 each year.

G. For the purpose of determining the amount of air contaminant emissions on which the fees are assessed, a facility shall be considered one (1) source under the definition of section 643.078.2, RSMo, except that a facility with multiple operating permits shall pay emission fees separately for air contaminants emitted under each individual permit.

3. Fee collection. The annual changes to this rule to establish emission fees for a specific year do not relieve any source from the payment of emission fees for any previous year.

REVISED PUBLIC COST: This proposed amendment will result in an annualized aggregate gain in revenue of two hundred ten thousand six hundred fifty-four dollars ($210,654) for the Department of Natural Resources. This gain in revenue takes into account an annualized aggregate cost of one hundred ninety-four thousand five hundred eight dollars ($194,508) for other public entities.

REVISED PRIVATE COST: This proposed amendment will result in an annualized aggregate cost of sixteen thousand one hundred forty-six dollars ($16,146) for private entities.

REVISED FISCAL NOTE
PUBLIC ENTITY COST

I. RULE NUMBER

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

Type of Rulemaking: Proposed Amendment

Rule Number and Name: 10 CSR 10 - 6.110 Submission of Emission Data, Emission Fees and Process Information

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Misc. Public Entities (listed below)	$ 194,508 Cost For This Amendment
Missouri Department of Natural Resources	$ 210,654 Increase in Revenue

Cost estimates are reported as annualized aggregates.

III. WORKSHEET

	EIQ Fee Costs		
	FY2006	FY2007**	Annualized Aggregate
EIQ Fees ($34.50 Fee)	$1,477,823	$1,467,226	$1,431,037

	EIQ Fee Costs		
	FY2006	FY2007**	Annualized Aggregate
EIQ Fees ($33.00 Fee)	$1,181,900	$1,193,719	$1,236,529

Aggregate EIQ Fee Cost For This Amendment***	$194,508
Increase In Public Entity Fee Revenue For This Amendment***	$210,654
Resulting Gain In Public Entity Fee Revenue For This Amendment***	$16,146

*See Assumption 3.
**The first full fiscal year for this rulemaking is FY2007.
***Difference in annualized aggregate costs when raising $33.00 fee to $34.50 .

List of Affected Entities:

Source Description	Number of Facilities
Gas & Electric	47
Sanitary Services	32
Hospitals	21
Rehabilitation Centers	2
Schools	9
Correctional Facility	8
National Security	6
Post Office	2
Transportation	3
Other	14
Totals	144

IV. ASSUMPTIONS

1. For the convenience of calculating this fiscal note over a reasonable time frame, the life of the rule is assumed to be ten (10) years although the duration of the rule is indefinite. If the life of the rule extends beyond ten years, the annual costs for additional years will be consistent with the assumptions used to calculate annual costs as identified in this fiscal note.

2. The public entity costs are fee collection estimates. The costs are based on the most recent data available to the department and are expected to be more accurate than previous fiscal notes for the same fiscal years.

3. The fees for emissions produced during the previous calendar year shall be due April 1 each year for all United States Department of Labor Standard Industrial Classifications except for Standard Industrial Classification 4911 Electric Services which shall be due June 1 each year. For example, costs for all calendar year 2005 emission fees are received by the Missouri Department of Natural Resources between January 1, 2006 and June 30, 2006.

4. Cost and affected entity estimates are based on data presently entered in the tracking systems of the Missouri Department of Natural Resources' Air Pollution Control Program. This data is subject to change as additional information is reviewed, updated, and entered.

5. Fees for public entities are based on $34.50 per ton of regulated air pollutant for calendar 2005. This fee represents an $1.50 dollar increase from the emissions fee of $33.00 per ton of regulated air pollutant for calendar year 2004.

6. The emission fees paid by public entities may vary depending on their current information and their chargeable emissions with fees remaining relatively constant. However, new controls decrease the amount of their emission fees.

7. The percent difference between the two most recent years of actual facility emissions is used to project future year facility emissions.

8. Compliance and EIQ preparation costs reported on EIQs are not included in this fiscal note because these costs are not a result of this rulemaking. Compliance and preparation costs have been included in fiscal notes for the rulemakings that implemented these requirements.

9. The aggregate gain in public entity fee revenue for the Missouri Department of Natural Resources' Air Pollution Control Program is directly related to the difference in emission fees. The net gain in revenue is equivalent to the amount of gain realized by both public and private entities paying emission fees.

REVISED FISCAL NOTE
PRIVATE ENTITY COST

I. RULE NUMBER

Title: 10 - Department of Natural Resources

Division: 10 - Air Conservation Commission

Chapter: Air Quality Standards, Definitions, Sampling and Reference Methods and Air Pollution Control Regulations for the Entire State of Missouri

Type of Rulemaking: Proposed Amendment

Rule Number and Name: 10 CSR 10 - 6.110 Submission of Emission Data, Emission Fees and Process Information

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
2,340 Facilities (listed below)	Listed below	$ 16,146 Cost For This Amendment

Cost estimates are reported as annualized aggregates.

III. WORKSHEET

	EIQ Fee Costs		
	FY2006	FY2007**	Annualized Aggregate
EIQ Fees ($34.50 Fee)	$7,923,700	$7,866,882	$7,672,848

	EIQ Fee Costs		
	FY2006	FY2007**	Annualized Aggregate
EIQ Fees ($33.00 Fee)	$7,318,435	$7,391,619	$7,656,702

Total Aggregate Cost For This Amendment***	$16,146

*See Assumption 3.
**The first full fiscal year for this rulemaking is FY2007.
***Difference in annualized aggregate costs when raising $33.00 fee to $34.50 .

List of Affected Entities:

SIC Code	SIC Description	Number of Facilities
01	AGRICULTURAL PRODUCTION-CROPS	0
02	AGRICULTURAL PRODUCTION-LIVESTOCK AND ANIMAL SPECIALTIES	1
07	AGRICULTURAL SERVICES	50

SIC Code	SIC Description	Number of Facilities
08	FORESTRY	0
09	FISHING, HUNTING AND TRAPPING	0
10	METAL MINING	6
12	COAL MINING	4
13	OIL AND GAS EXTRACTION	0
14	MINING AND QUARRYING OF NONMETALLIC MINERALS, EXCEPT FUELS	303
15	BUILDING CONSTRUCTION-GENERAL CONTRACTORS AND OPERATIVE	1
16	HEAVY CONSTRUCTION OTHER THAN BUILDING CONSTRUCTION	0
17	CONSTRUCTION-SPECIAL TRADE CONTRACTORS	2
20	FOOD AND KINDRED PRODUCTS	114
21	TOBACCO PRODUCTS	0
22	TEXTILE MILL PRODUCTS	1
23	APPAREL AND OTHER FINISHED PRODUCTS MADE FROM FABRICS	0
24	LUMBER AND WOOD PRODUCTS, EXCEPT FURNITURE	59
25	FURNITURE AND FIXTURES	23
26	PAPER AND ALLIED PRODUCTS	22
27	PRINTING, PUBLISHING, AND ALLIED INDUSTRIES	61
28	CHEMICALS AND ALLIED PRODUCTS	129
29	PETROLEUM REFINING AND RELATED INDUSTRIES	120
30	RUBBER AND MISCELLANEOUS PLASTICS PRODUCTS	62
31	LEATHER AND LEATHER PRODUCTS	6
32	STONE, CLAY, GLASS, AND CONCRETE PRODUCTS	343
33	PRIMARY METAL INDUSTRIES	46
34	FABRICATED METAL PRODUCTS, EXCEPT MACHINERY AND TRANSPORTATION	77

SIC Code	SIC Description	Number of Facilities
35	INDUSTRIAL AND COMMERCIAL MACHINERY AND COMPUTER EQUIPMENT	46
36	ELECTRONIC AND OTHER ELECTRICAL EQUIPMENT AND COMPONENTS	35
37	TRANSPORTATION EQUIPMENT	66
38	MEASURING, ANALYZING, AND CONTROLLING INSTRUMENTS	3
39	MISCELLANEOUS MANUFACTURING INDUSTRIES	17
40	RAILROAD TRANSPORTATION	0
41	LOCAL AND SUBURBAN TRANSIT AND INTERURBAN HIGHWAY PASSENGER	1
42	MOTOR FREIGHT TRANSPORTATION AND WAREHOUSING	11
43	UNITED STATES POSTAL SERVICE	0
44	WATER TRANSPORTATION	3
45	TRANSPORTATION BY AIR	2
46	PIPELINES, EXCEPT NATURAL GAS	24
47	TRANSPORTATION SERVICES	4
48	COMMUNICATIONS	5
49	ELECTRIC, GAS, SANITARY SERVICES, AND LANDFILLS	94
50	WHOLESALE TRADE-DURABLE GOODS	18
51	WHOLESALE TRADE-NON-DURABLE GOODS	144
52	BUILDING MATERIALS, HARDWARE, GARDEN	0
53	GENERAL MERCHANDISE STORES	0
54	FOOD STORES	0
55	AUTOMOTIVE DEALERS AND GASOLINE SERVICE STATIONS	1
56	APPAREL AND ACCESSORY STORES	0
57	HOME FURNITURE, FURNISHINGS, AND EQUIPMENT STORES	0
58	EATING AND DRINKING PLACES	0
59	MISCELLANEOUS RETAIL	1
60	DEPOSITORY INSTITUTIONS	0

SIC Code	SIC Description	Number of Facilities
61	NONDEPOSITORY CREDIT INSTITUTIONS	0
62	SECURITY & COMMODITY BROKERS, DEALERS	0
63	INSURANCE CARRIERS	0
64	INSURANCE AGENTS, BROKERS AND SERVICES	0
65	REAL ESTATE	2
67	HOLDING AND OTHER INVESTMENT OFFICES	1
70	HOTELS, ROOMING HOUSES, CAMPS, AND OTHER LODGING PLACES	1
72	PERSONAL SERVICES AND DRY CLEANERS	331
73	BUSINESS SERVICES	4
75	AUTOMOTIVE REPAIR, SERVICES, AND PARKING	6
76	MISCELLANEOUS REPAIR SERVICES	1
78	MOTION PICTURES	0
79	AMUSEMENT AND RECREATION SERVICES	1
80	HEALTH SERVICES	36
81	LEGAL SERVICES	0
82	EDUCATIONAL SERVICES	6
83	SOCIAL SERVICES	1
84	MUSEUMS, ART GALLERIES, AND BOTANICAL AND ZOOLOGICAL GARDENS	0
86	MEMBERSHIP ORGANIZATIONS	0
87	ENGINEERING, ACCOUNTING, RESEARCH, MANAGEMENT, AND RELATED	4
88	PRIVATE HOUSEHOLDS	0
89	SERVICES NOT ELSEWHERE CLASSIFIED	0
91	EXECUTIVE, LEGISLATIVE, AND GENERAL GOVERNMENT, EXCEPT FINANCE	0
92	JUSTICE, PUBLIC ORDER AND SAFETY	3
93	PUBLIC FINANCE, TAXATION & MONETARY	0
95	ADMINISTRATION OF HUMAN RESOURCE PERSONNEL	0
95	ADMINISTRATION OF ENVIRONMENTAL QUALITY AND HOUSING PROGRAMS	0

SIC Code	SIC Description	Number of Facilities
96	ADMINISTRATION OF ECONOMIC PROGRAMS	1
97	NATIONAL SECURITY AND INTERNATIONAL AFFAIRS	1
99	UNKNOWN	36
	Total Facilities	2,340

IV. ASSUMPTIONS

1. For the convenience of calculating this fiscal note over a reasonable time frame, the life of the rule is assumed to be ten (10) years although the duration of the rule is indefinite. If the life of the rule extends beyond ten years, the annual costs for additional years will be consistent with the assumptions used to calculate annual costs as identified in this fiscal note.

2. The private entity costs are fee collection estimates. The costs are based on the most recent data available to the department and are expected to be more accurate than previous fiscal notes for the same fiscal years.

3. The fees for emissions produced during the previous calendar year shall be due April 1 each year for all United States Department of Labor Standard Industrial Classifications except for Standard Industrial Classification 4911 Electric Services which shall be due June 1 each year. For example, costs for all calendar year 2005 emission fees are received by the Missouri Department of Natural Resources between January 1, 2006 and June 30, 2006.

4. Cost and affected entity estimates are based on data presently entered in the tracking systems of the Missouri Department of Natural Resources' Air Pollution Control Program. This data is subject to change as additional information is reviewed, updated, and entered.

5. Fees for private entities are based on $34.50 per ton of regulated air pollutant for calendar 2005. This fee represents an $1.50 dollar increase from the emissions fee of $33.00 per ton of regulated air pollutant for calendar year 2004.

6. The emission fees paid by private entities may vary depending on their current information and their chargeable emissions with fees remaining relatively constant. However, new controls decrease the amount of their emission fees.

7. The percent difference between the two most recent years of actual facility emissions is used to project future year facility emissions.

8. Compliance and EIQ preparation costs reported on EIQs are not included in this fiscal note because these costs are not a result of this rulemaking. Compliance and preparation costs have been included in fiscal notes for the rulemakings that implemented these requirements.

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 23—Motor Vehicle

ORDER OF RULEMAKING

By the authority vested in the director of revenue under sections 301.700, 301.714, 307.198 and 577.065, RSMo 2000, and 304.013, RSMo Supp. 2004, the director rescinds a rule as follows:

12 CSR 10-23.428 All-Terrain Vehicles Modified for Highway Use **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on July 15, 2005 (30 MoReg 1539–1540). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 40—Family Support Division
Chapter 2—Income Maintenance

ORDER OF RULEMAKING

By the authority vested in the Department of Social Services, Family Support Division under sections 207.020, RSMo 2000, the division rescinds a rule as follows:

13 CSR 40-2.240 Medicaid Eligibility in General Relief Prior to Application **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on July 15, 2005 (30 MoReg 1540–1541). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 40—Family Support Division
Chapter 2—Income Maintenance

ORDER OF RULEMAKING

By the authority vested in the Department of Social Services, Family Support Division under sections 207.020 and 208.145, RSMo 2000, the division amends a rule as follows:

13 CSR 40-2.375 Medical Assistance for Families **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 1, 2005 (30 MoReg 1441–1443). 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 40—Family Support Division
Chapter 2—Income Maintenance

ORDER OF RULEMAKING

By the authority vested in the Department of Social Services, Family Support Division under sections 207.020, RSMo 2000 and 453.322 and 453.325, RSMo Supp. 2004, the division rescinds a rule as follows:

13 CSR 40-2.380 Grandparents as Foster Parents **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on July 15, 2005 (30 MoReg 1542). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 2—General Scope of Medical Service Coverage

ORDER OF RULEMAKING

By the authority vested in the director of the Division of Medical Services under section 208.201, RSMo 2000, the director hereby rescinds a rule as follows:

13 CSR 70-2.020 Scope of Medical Services for General Relief Recipients **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on July 15, 2005 (30 MoReg 1542–1543). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 4—Conditions of Recipient Participation, Rights and Responsibilities

ORDER OF RULEMAKING

By the authority vested in the director of the Division of Medical Services under sections 208.040, RSMo Supp. 2004 and 208.201 and 660.017, RSMo 2000, the director hereby amends a rule as follows:

13 CSR 70-4.090 Uninsured Women's Health Program **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 15, 2005 (30 MoReg 1544–1548). 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—Division of Medical Services
Chapter 15—Hospital Program

ORDER OF RULEMAKING

By the authority vested in the Division of Medical Services under sections 208.152, 208.153, and 208.201, RSMo 2000 and 208.471, RSMo Supp. 2004, the director amends a rule as follows:

13 CSR 70-15.010 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 15, 2005 (30 MoReg 1549–1553). Some changes have been made in the text of the proposed amendment, so 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 division received one (1) comment on the proposed amendment.

COMMENT: The Missouri Hospital Association requested that the division change the wording in subparagraph (18)(D)2.A. as follows: Determine each individual hospital's uninsured add-on payment by dividing the individual hospital's uninsured cost as determined from the three (3)-year average of the fourth, fifth, and sixth prior base-year cost reports by the total uninsured cost for all hospitals as determined from the three (3)-year average of the fourth, fifth, and sixth prior base-year cost reports, multiplied by either the total annual projected cost of the uninsured population that is related to hospital services or the DSH cap for hospitals, whichever is lower.

Missouri Hospital Association feels that using the three (3)-year average of the fourth, fifth and sixth prior base-year cost reports as the basis to determine each hospital's share of the total uninsured cost for all hospitals would be more consistent with the methodology that has been used historically.

RESPONSE AND EXPLANATION OF CHANGE: Subparagraph (18)(D)2.A. has been changed as recommended.

13 CSR 70-15.010 Inpatient Hospital Services Reimbursement Plan; Outpatient Hospital Services Reimbursement Methodology

(18) In accordance with state and federal laws regarding reimbursement of unreimbursed costs and the costs of services provided to uninsured patients, reimbursement for each State Fiscal Year (SFY) (July 1—June 30) shall be determined as follows:

(D) Uninsured add-ons effective July 1, 2005 for all facilities except DMH safety net facilities as defined in subparagraph (6)(A)4.D. DMH safety net facilities will continue to be calculated in accordance with subsection (18)(B). The uninsured add-on for all facilities except DMH safety net facilities will be based on the following:

1. Determination of the cost of the uninsured:

A. Allocate the uninsured population as determined from the Current Population Survey (CPS), Annual Social and Economic Supplement (Table HI05) as published by the U.S. Census Bureau, to the same categories of age (COA) and age groups as the managed care rate cells as determined by the Managed Care Unit of the Division of Medical Services;

B. Determine the total annual projected cost of the uninsured population by multiplying the number of uninsured for each rate cell by the average contract per member per month (PMPM) for that individual managed care rate cell multiplied by twelve (12); and

C. Determine the amount of the total annual projected cost of the uninsured population that is related to hospital services by multiplying the total annual projected cost of the uninsured population as calculated in (18)(D)2. above by the percentage of the contract PMPM for each individual rate cell that is related to hospital services. This would be the maximum amount of uninsured add-on payments that could be made to hospitals. This amount is also subject to the DSH cap;

2. Proration to individual hospitals of the cost of the uninsured calculated in paragraph (18)(D)1.

A. Determine each individual hospital's uninsured add-on payment by dividing the individual hospital's uninsured cost as determined from the three (3)-year average of the fourth, fifth, and sixth prior base-year cost reports by the total uninsured cost for all hospitals as determined from the three (3)-year average of the fourth, fifth, and sixth prior base-year cost reports, multiplied by either the total annual projected cost of the uninsured population that is related to hospital services or the DSH cap for hospitals whichever is lower; and

3. For new hospitals that do not have a base cost report, uninsured payments shall be estimated as follows:

A. Hospitals receiving uninsured payments shall be divided into quartiles based on total beds;

B. Uninsured payments shall be individually summed by quartile and then divided by the total beds in the quartile to yield an average uninsured payment per bed; and

C. The number of beds for the new hospital without the base cost report shall be multiplied by the average uninsured payment per bed.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 15—Hospital Program

ORDER OF RULEMAKING

By the authority vested in the Division of Medical Services under sections 208.153, 208.162 and 208.201, RSMo 2000, the director amends a rule as follows:

13 CSR 70-15.030 Limitations of Payment for Inpatient Hospital Care **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 15, 2005 (30 MoReg 1554–1555). 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—Division of Medical Services
Chapter 15—Hospital Program

ORDER OF RULEMAKING

By the authority vested in the Division of Medical Services under sections 208.162 and 208.201, RSMo 2000 and Senate Substitute for Senate Bill 539 as enacted by the 93rd General Assembly, the director rescinds a rule as follows:

13 CSR 70-15.080 Payment Method for General Relief Recipient Hospital Outpatient Services **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on July 15, 2005 (30 MoReg 1556–1557). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 15—Hospital Program

ORDER OF RULEMAKING

By the authority vested in the Division of Medical Services under sections 208.201, 208.453, and 208.455, RSMo 2000, the director amends a rule as follows:

13 CSR 70-15.110 Federal Reimbursement Allowance (FRA) **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 15, 2005 (30 MoReg 1558–1559). 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—Division of Medical Services
Chapter 15—Hospital Program

ORDER OF RULEMAKING

By the authority vested in the Division of Medical Services under sections 208.152, 208.153, 208.162 and 208.201, RSMo 2000 and 208.471, RSMo Supp. 2004, the director amends a rule as follows:

13 CSR 70-15.160 Prospective Outpatient Hospital Services Reimbursement Methdology **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 15, 2005 (30 MoReg 1560–1561). 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—Division of Medical Services
Chapter 60—Durable Medical Equipment Program

ORDER OF RULEMAKING

By the authority vested in the Division of Medical Services under sections 208.153 and 208.201, RSMo 2000, the director amends a rule as follows:

13 CSR 70-60.010 Durable Medical Equipment Program **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 15, 2005 (30 MoReg 1566–1568). 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—Division of Medical Services
Chapter 90—Home Health Program

ORDER OF RULEMAKING

By the authority vested in the director of the Division of Medical Services under sections 208.153 and 208.201, RSMo 2000, and Senate Substitute for Senate Bill 539 enacted by the 93rd General Assembly, 2005, the director amends a rule as follows:

13 CSR 70-90.010 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 1, 2005 (30 MoReg 1450). 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. However, when reviewing the *Missouri Register* of July 1, 2005, page 1450, the division discovered the private cost statement was incorrect. A revised fiscal note is attached that details a private cost of seven hundred fifty-one thousand three hundred forty-five dollars ($751,345) based on the state fiscal year 2004 utilization of physical, occupational and speech therapy.
RESPONSE AND EXPLANATION OF CHANGE: The Private Cost statement will be corrected.

13 CSR 70-90.010 Home Health-Care Services

REVISED PRIVATE COST: This proposed amendment will cost private entities seven hundred fifty-one thousand three hundred forty-five dollars ($751,345) based on state fiscal year 2004 utilization of physical, occupational and speech therapy.

FISCAL NOTE

PRIVATE COST

I. RULE NUMBER

Rule Number and Name:	13 CSR 70-90.010 Home Health – Care Services
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 count of compliance with the rule by the affected entities:
370,000	All Medicaid recipients, excluding eligible needy children, pregnant women, or blind persons	Services will be systematically denied and providers will not be reimbursed

Number impacted is net after adjusting for eligibles who no longer qualify for Medicaid coverage based on other Senate Bill 539 provisions.

III. WORKSHEET

The private cost of this proposed amendment is $741,345 based on the state fiscal year 2004 utilization of physical, occupational and speech therapy.

IV. ASSUMPTIONS

The proposed rule eliminates coverage of physical, occupational and speech therapy for adult Medicaid recipients excluding pregnant women or blind persons as approved through Senate Substitute for Senate Bill 539 enacted by the 93rd General Assembly, 2005.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 60—Missouri Health Facilities Review Committee
Chapter 50—Certificate of Need Program

ORDER OF RULEMAKING

By the authority vested in the Missouri Health Facilities Review Committee (committee) under section 197.320, RSMo 2000, the committee amends a rule as follows:

19 CSR 60-50.430 Application Package **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 15, 2005 (30 MoReg 1569). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed amendment was held August 15, 2005. The Certificate of Need Program (CONP) staff, on behalf of the committee, received one (1) comment on this rule.

COMMENT: Thomas R. Piper, representing the Missouri Certificate of Need Program staff, commented that, in subsections 19 CSR 60-50.450(1)(A) and (4)(D), the "Year 2005 population" reference in these need formulas should have also been changed to "Year 2010 population."
RESPONSE: This change cannot be made since it is outside of the affected rule. No changes have been made as a result of this comment.

Title 20—DEPARTMENT OF INSURANCE
Division 400—Life, Annuities and Health
Chapter 10—Health Carrier Utilization Review Activities

ORDER OF RULEMAKING

By the authority vested in the director of the Department of Insurance under section 374.045, RSMo 2000, the director adopts a rule as follows:

20 CSR 400-10.100 Minimum Time Allowed for a Consumer to File a Grievance **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on June 1, 2005 (30 MoReg 1159–1160). 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 the publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed rule was held on July 6, 2005, and the public comment period ended July 6, 2005. At the public hearing, the Department of Insurance staff explained the proposed rule and one (1) comment was received.

COMMENT: Carlene M. K. Marra with Humana, Inc. requested that the department reduce the time frame allowed to file a second level grievance to ninety (90) days.
RESPONSE: The department has reviewed the suggestion and taken this comment into consideration. The department maintains that one hundred eighty (180) days is consistent with similar federal rules. Therefore, no changes have been made to the rule as a result of this comment.

Title 21—MISSOURI FAMILY TRUST
Division 10—Director and Board of Trustees
Chapter 1—General Organization

ORDER OF RULEMAKING

By the authority vested in the Missouri Family Trust under sections 402.210 and 402.225, RSMo 2000 and 402.215, RSMo Supp. 2004, the Missouri Family Trust amends a rule as follows:

21 CSR 10-1.010 General Organization **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 1, 2005 (30 MoReg 1161). 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 21—MISSOURI FAMILY TRUST
Division 10—Director and Board of Trustees
Chapter 1—General Organization

ORDER OF RULEMAKING

By the authority vested in the Missouri Family Trust under sections 402.210, RSMo 2000 and 402.215, RSMo Supp. 2004, the Missouri Family Trust amends a rule as follows:

21 CSR 10-1.020 Definitions **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 1, 2005 (30 MoReg 1161–1162). 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 21—MISSOURI FAMILY TRUST
Division 10—Director and Board of Trustees
Chapter 1—General Organization

ORDER OF RULEMAKING

By the authority vested in the Missouri Family Trust under sections 402.210, RSMo 2000 and 610.010–610.030, RSMo 2000 and Supp. 2004, the Missouri Family Trust amends a rule as follows:

21 CSR 10-1.030 Meetings of the Board of Trustees **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 1, 2005 (30 MoReg 1162). 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 21—MISSOURI FAMILY TRUST
Division 10—Director and Board of Trustees
Chapter 2—Missouri Family Trust

ORDER OF RULEMAKING

By the authority vested in the Missouri Family Trust under sections 402.210, RSMo 2000 and 402.215, RSMo Supp. 2004, the Missouri Family Trust amends a rule as follows:

21 CSR 10-2.010 Terms and Conditions of the Missouri Family Trust **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 1, 2005 (30 MoReg 1162–1167). 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 21—MISSOURI FAMILY TRUST
Division 10—Director and Board of Trustees
Chapter 3—Charitable Trust

ORDER OF RULEMAKING

By the authority vested in the Missouri Family Trust under sections 402.210, RSMo 2000 and 402.215, RSMo Supp. 2004, the Missouri Family Trust amends a rule as follows:

21 CSR 10-3.010 Charitable Trust Regulations **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 1, 2005 (30 MoReg 1167–1168). 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 21—MISSOURI FAMILY TRUST
Division 10—Director and Board of Trustees
Chapter 4—Fees

ORDER OF RULEMAKING

By the authority vested in the Missouri Family Trust under section 402.210, RSMo 2000, the Missouri Family Trust amends a rule as follows:

21 CSR 10-4.010 Administrative Fees for Missouri Family Trust Accounts **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 1, 2005 (30 MoReg 1168). 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 21—MISSOURI FAMILY TRUST
Division 10—Director and Board of Trustees
Chapter 4—Fees

ORDER OF RULEMAKING

By the authority vested in the Missouri Family Trust under section 402.210, RSMo 2000, the Missouri Family Trust amends a rule as follows:

21 CSR 10-4.020 Administrative Fees for the Charitable Trust **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on June 1, 2005 (30 MoReg 1168–1169). 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.