

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

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 If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission.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

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

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

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

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

Proposed Amendment Text Reminder:

Boldface text indicates new matter.

[Bracketed text indicates matter being deleted.]

**Title 1—OFFICE OF ADMINISTRATION
Division 10—Commissioner of Administration
Chapter 11—Travel Regulations**

PROPOSED RULE

1 CSR 10-11.030 State of Missouri Vehicular Travel Regulations

PURPOSE: Section 37.450, RSMo requires the Office of Administration to establish guidelines for determining the most cost effective and reasonable mode of travel for single trips from the following options: passenger rail, vehicle rental, state-owned vehicles and reimbursement for personal vehicle use. Additionally, 1 CSR 10-11.010 State of Missouri Travel Regulations states "Travel may be accomplished by plane, train, bus, private or state-owned automobile, rented car or taxi, whichever method serves the requirements of the state most economically and advantageously." This rule requires officials and employees to utilize the most cost effective vehicular travel method available. State agencies and officials may adopt more

restrictive vehicular travel policies provided the policy does not conflict with the rules herein. State agencies and officials must establish sufficient internal controls to ensure vehicular travel expenses are minimized to the greatest extent possible.

(1) For the purpose of these regulations, the following definitions shall apply:

(A) Officials and employees shall include all employees of the state of Missouri, statewide elected officials, members of boards, commissions, committees, advisory councils or other individuals who are not considered employees of the state of Missouri but who are otherwise eligible for mileage reimbursement;

(B) State agencies and officials shall include all departments of state government within the state of Missouri and all statewide elected officials, boards, commissions, committees, advisory councils or other divisions of state government that authorize mileage reimbursement.

(2) Pursuant to section 33.095, RSMo and 1 CSR 10-11.010(11)(A), the commissioner of administration will periodically issue mileage reimbursement rates comprised of a standard rate and a state fleet rate. The standard mileage reimbursement rate is deemed to represent the total cost to own and operate a personal vehicle. The allowance or reimbursement shall be computed at a rate not to exceed the Internal Revenue Service (IRS) standard mileage rate less three cents (3¢) per mile. Any change to the maximum rate is effective on July 1 of the year the IRS changes their standard mileage rate. The state fleet mileage reimbursement rate reflects the average cost of operating a mid-size sedan in the state vehicle fleet.

(3) Officials and employees must utilize the most cost effective vehicular travel option when traveling on state business. All relevant factors such as the: urgency; nature of travel required; type of vehicle required for the number of passengers, tool or equipment load; employee time and effort; official domicile; proximity to rental or state vehicles; and other administrative costs should be considered when selecting the most cost effective travel option.

(4) Officials and employees traveling to the same destination should car-pool whenever possible. Employees who elect to travel using their personal vehicle when car-pooling is available shall be denied reimbursement if space is reasonably available in a state-owned or rental vehicle traveling to the same destination for the same purpose.

(5) Officials and employees must utilize the Trip Optimizer or other equivalent method to calculate travel costs and ensure officials and employees use the most cost effective vehicular travel option for each trip. The Trip Optimizer assists in determining the most cost effective travel option for instate single trips. A single trip includes any number of trips taken by an individual during the same day. The State Fleet Management Program maintains the Trip Optimizer at: <http://www.oe.mo.gov/gf/fm/index.htm>.

(6) Officials and employees shall drive state vehicles while on state business that requires travel unless an exception applies as set forth in section (8) of this rule. When a state vehicle is available to the official or employee and the official or employee elects to drive a privately owned vehicle, the maximum reimbursement rate for an official or employee shall be limited to the established state fleet rate. When a state vehicle is not available, but a rental vehicle is reasonably available and is a lower cost option for the trip, the maximum mileage reimbursement for the official or employee shall not exceed the cost of the rental option, including the cost of fuel.

(7) Officials or agencies may establish savings thresholds whereby an official or employee may utilize the next lowest cost option without supervisory approval. Officials or agency thresholds may vary depending on several factors including: proximity of state vehicles or

rental vehicles and administrative expenses involved in making travel arrangements.

(8) Notwithstanding section (6) of this rule, officials or employees who use privately owned vehicles for official state business may be reimbursed up to the standard mileage reimbursement rate when they are:

(A) Members of boards, commissions, committees, advisory councils or other individuals who are not considered employees of the state of Missouri but who are otherwise eligible for mileage reimbursement;

(B) Officials or employees who otherwise would be traveling in a state vehicle when the total trip miles calculated on a daily basis are deemed low according to the State Vehicle Utilization Review section of the Trip Optimizer and where another official or employee could utilize the state vehicle to a greater extent; or

(C) Officials or employees who have a documented physical condition that require them to operate vehicles equipped to accommodate their specific needs.

(9) Officials or employees denied the use of a state vehicle due to their driving record may be reimbursed for use of a privately owned vehicle up to the state fleet rate.

(10) Officials or employees who operate their personal vehicle on state business must do so in compliance with the Motor Vehicle Financial Responsibility Law, Chapter 303, RSMo. Officials or employees and/or their insurer may be held liable for damages resulting from an accident that occurs while operating their vehicle on state business. Agencies and employees may refer to the *Guide for Drivers on State Business* at: <http://www.oe.mo.gov/gs/risk/legal/driver.htm> for more information.

(11) Officials or agencies shall establish internal procedures that require appropriate documentation to support the vehicular travel decisions made by their agency and employees. Officials or agencies shall specifically approve and justify any exceptions to this rule and retain the documentation as part of the related financial transaction. Officials or agencies must utilize the Trip Optimizer or other equivalent method to document the lowest cost travel option and maximum personal mileage reimbursement allowed.

AUTHORITY: sections 33.095, RSMo 2000 and 37.450, RSMo Supp. 2005. Original rule filed May 10, 2006.

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 Commissioner of Administration, Room 125, State Capitol Building, PO Box 809, 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 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 240—Public Service Commission
Chapter 3—Filing and Reporting Requirements**

PROPOSED AMENDMENT

4 CSR 240-3.545 Filing Requirements for Telecommunications Company Tariffs. The commission is amending section (16).

PURPOSE: This rule is being modified to allow rate decreases for competitive telecommunications on one (1)-day's notice to create consistency with changes to Missouri's telecommunications laws.

(16) Missouri statute 392.500 provides that the commission shall be notified at least ten (10) days in advance of proposed rate increases to competitive telecommunications services and that the commission shall be notified at least *[seven (7) days]* **one (1) day** in advance of proposed decreases to competitive telecommunications services. The *[seven (7)]* **one (1)** or ten (10)-day tariff filings for rate decreases and increases are for changes to existing rates *[only]* or charges, or proposed change in any classification or tariff resulting in a decrease or increase in rates or charges, for competitive telecommunications service. No other additional tariff changes, except as directed by commission order or as allowed under section (19) below, are permitted on *[seven (7)]* **one (1)** or ten (10) days notice. For example, changes to the terms and conditions of existing services, the introduction of new services, or the elimination of existing services still require a thirty (30)-day tariff filing.

AUTHORITY: section 386.250, RSMo 2000. Original rule filed Aug. 16, 2002, effective April 30, 2003. Rescinded and readopted: Filed Jan. 28, 2004, effective Sept. 30, 2004. Amended: Filed May 12, 2006.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Cully Dale, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register* and should include a reference to commission Case No. TX-2006-0429. Comments may also be submitted via a filing using the commission's electronic filing and information system at <http://www.psc.mo.gov/efis.asp>. A public hearing regarding this proposed amendment is scheduled for July 20, 2006, at 1:30 p.m. in Room 305 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed amendment, and may be asked to respond to commission questions.

SPECIAL NEEDS: Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or TDD Hotline 1-800-829-7541.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 240—Public Service Commission
Chapter 13—Service and Billing Practices for Residential
Customers of Electric, Gas and Water Utilities**

PROPOSED AMENDMENT

4 CSR 240-13.055 Cold Weather Maintenance of Service: Provision of Residential Heat-Related Utility Service During Cold Weather. The commission is adding section (14).

PURPOSE: This amendment provides additional repayment plans for residential users of natural gas for heating purposes.

(14) This section only applies to providers of natural gas services to residential customers. Other providers of heat-related utility services will continue to provide such service under the terms of sections (1) through (13) of this rule. The provisions of sections (1) through (13) of this rule continue to apply to providers of natural gas service except where inconsistent with the terms of this section.

(A) From December 1 through March 31, notwithstanding paragraph (10)(C)2. of this rule to the contrary, a gas utility shall restore service upon initial payment of fifty percent (50%) of the preexisting arrears, with the deferred balance to be paid as provided in subsection (10)(B). Any reconnection fee, trip fee, collection fee or other fee related to reconnection, disconnection or collection shall also be deferred. Between December 1 and April 1, any customer threatened with disconnection may retain service by entering into a payment plan as described in this section. Any payment plan entered into under this section shall remain in effect (as long as its terms are adhered to) for the term of the payment plan. However, a gas utility shall not be required to offer reconnection or retention of service under this subsection (14)(A) more than once for any customer.

(B) Any customer who is not disconnected or in receipt of a disconnect notice shall, at the customer's request, be permitted to enroll immediately in a gas utility's equal payment, budget-billing or similar plan. Any current bill or existing arrearage at the time of enrollment shall be dealt with consistent with paragraphs 10(B)1. through (10)(B)4. of this rule, provided that the customer agrees to make the initial payment prescribed in paragraph 10(C)1. or subsection (14)(A) as applicable.

(C) If a customer enters into a cold weather rule payment plan under this section:

1. Late payment charges shall not be assessed except with respect to failure to make timely payments under the payment plan; and

2. The gas utility shall not charge customers interest on the account balance for any deferral period.

(D) Any customer who enters into a cold weather rule payment agreement under this section and fully complies with the terms of the payment plan shall be treated, going forward, as not having defaulted on any cold weather rule payment agreement.

(E) A gas utility shall describe the provisions of section (14) in any notices or contacts with customers. In telephone contacts with customers expressing difficulty paying their gas bills, gas utilities shall inform those customers of their options under section (14).

(F) A gas utility shall be permitted to recover the costs of complying with this section as follows:

1. The cost of compliance with this section shall include any reasonable costs incurred to comply with the notice requirements of this section;

2. No gas utility shall be permitted to recover costs under this section that would have been incurred in the absence of this section;

3. Any net cost resulting from this section as of June 30 each year shall accumulate interest at the utility's short-term borrowing rate until such times as it is recovered in rates; and

4. No bad debts accrued prior to the effective date of this section may be included in the costs to be recovered under this section.

(G) A gas utility shall be permitted to recover the costs of complying with this rule through an Accounting Authority Order:

1. The commission shall grant an Accounting Authority Order, as defined below, upon application of a gas utility, and the gas utility may book to Account 186 for review, audit and recovery all incremental expenses incurred and incremental revenues

that are caused by this section. Any such Accounting Authority Order shall be effective until September 30, of each year for the preceding winter;

2. The commission has adopted the Uniform System of Accounts in 4 CSR 240-4.040. Accounting Authority Orders are commission orders that allow a utility to defer certain expenses to Account 186 under the Uniform System of Accounts for later recovery as determined by the commission in a subsequent general rate case; and

3. Although the Accounting Authority Order allows the gas utility to recover the reasonably incurred expenses only within the context of a general rate case, all such reasonably incurred expenses shall be recovered by the gas utility, together with interest thereon, as set forth above. The failure of a gas utility to be subject to a rate case within a specific period of time shall not in any way abrogate its rights to recover such reasonably incurred costs and interest in a subsequent general rate case.

AUTHORITY: sections 386.250 and 393.140, RSMo 2000 and 393.130, RSMo Supp. [2003] 2005. Original rule filed June 13, 1984, effective Nov. 15, 1984. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Dec. 16, 2005, effective Dec. 26, 2005, expired March 31, 2006. Amended: Filed May 15, 2006.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate over the next five (5) years.

PRIVATE COST: The commission estimates that this proposed amendment will have a fiscal impact on private entities of \$4,500,000 in the aggregate over the next five (5) years.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Cully Dale, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register and should include a reference to commission Case No. GX-2006-0434. Comments may also be submitted via a filing using the commission's electronic filing and information system at <http://www.psc.mo.gov/efis.asp>. A public hearing regarding this proposed amendment is scheduled for July 19, 2006, at 10:00 a.m. in Room 305 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed amendment, and may be asked to respond to commission questions.

SPECIAL NEEDS: Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or TDD Hotline 1-800-829-7541.

**FISCAL NOTE
PRIVATE ENTITY COST**

I. RULE NUMBER

Rule Number and Name	4 CSR 240-13.055 Cold Weather Maintenance of Service: Provision of Residential Heat-Related Utility Service During Cold Weather
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:	Classifications by type of the business entities which would likely be affected:	Estimated in the aggregate as to the cost of compliance with the rule by the affected entities:
Seven (7) Natural Gas Utilities	Missouri Public Service Commission Rate Regulated Natural Gas Utilities	\$410,000 the first year \$4,500,000 in subsequent years

III. WORKSHEET

1. The Missouri Public Service Commission (MoPSC) sent a draft of the proposed amended rule by email to all regulated natural gas utilities in the state asking for the fiscal impact of the proposed amended rule on their operations.
2. All regulated natural gas utilities, except for Missouri Gas Energy, Atmos Energy and Southern Missouri Gas, affected by the proposed rule responded to the request with numbers reflecting their estimated cost. Missouri Gas Energy, Atmos Energy and Southern Missouri Gas either refused or due to time constraints was unable to provide such information.

Natural Gas Utilities	Initial Implementation Cost	Ongoing Annual Cost
Laclede Gas Company	\$375,000	\$4,000,000
Missouri Gas Energy	Undetermined	Undetermined
AmerenUE	\$5,000	\$500,000
Aquila MPS and L&P	\$5,000	Unknown
Atmos Energy	Undetermined	Undetermined
Southern Missouri Gas	Undetermined	Undetermined
Fidelity Natural Gas	\$25,000	Unknown
Total	\$410,000	\$4,500,000

3. Fidelity Natural Gas has been purchased by Laclede Gas Company. However, it is still maintained as a separate system. Laclede provided separate information for Laclede Gas Company and Fidelity Natural Gas.

IV. ASSUMPTIONS

1. The life of the rule is estimated to be indefinite.
2. Staff estimated the aggregated private entity cost per utility to be \$410,000 the first year and \$4,500,000 in succeeding years.
3. FY 2007 dollars were used to estimate costs. No adjustment for inflation is applied.
4. Estimates assume utilities will use other debt collection options available to them.
5. The rule does not affect the creditor rights and remedies of a utility otherwise permitted by law.
6. The rule does not require a utility to commence service to an applicant engaged in name-switching to avoid payment of bills nor does it require commencement of service when there has been any other type of consumer fraud.
7. Affected entities are assumed to be in compliance with all other Missouri Public Service Commission rules and regulations and with all applicable Missouri statutes.
8. A level of un-collectibles is included in the revenue requirements for each regulated gas utility. The level may vary from year to year for many reasons other than the effects of this proposed amendment, including, for example: the economy, the level of unemployment in certain areas, the weather and the price of natural gas.
9. The dollar amount in section III above detail initial implementation cost and ongoing annual cost. The total dollar amounts for compliance with the rule are added together in section II above.
10. Although this note reflects a fiscal impact to gas utilities, the rule also establishes provisions whereby the gas utility shall be permitted to recover the cost of complying with the rule through an Accounting Authority Order (AAO). The AAO will allow recovery for all incremental expenses incurred and incremental reviews that are caused by this rule. The AAO allows the gas utility to recover the reasonably incurred expenses only within the context of a general rate case together with interest. The failure of a gas utility to be subject to a rate case within a specific period of time shall not in any way abrogate its rights to recover such reasonably incurred costs and interest in a subsequent general rate case.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 25—Motor Carrier Operations**

PROPOSED AMENDMENT

7 CSR 10-25.040 Notice to be Given to Consumers by Household Goods Carriers—Timing of Delivery, Form and Contents. The commission is amending section (5) of this rule.

PURPOSE: This amendment will remove the Web site address that is no longer available and replace it with a reference to the agency's general Web site.

(5) The notice of customer rights and obligations shall contain words and phrases set forth in the current form of notice printed by the Department of Transportation (MoDOT), in not less than nine (9)-point type, in a readily legible format. The Department of Transportation shall make copies of the notice available in reasonable quantities at no cost to the household goods carriers registered for intrastate carriage in this state. The notice *[is provided at the following website: <http://www.carrier.state.mo.us/mcs/registration/info.htm>] can be found on the MoDOT Motor Carrier Services Web site located at: <http://www.modot.mo.gov/mcs>.*

AUTHORITY: sections 226.008, RSMo Supp. [2004] 2005 and 387.060, RSMo 2000. Original rule filed Aug. 16, 2004, effective March 30, 2005. Amended: Filed May 11, 2006.

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

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

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

**Title 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**

PROPOSED AMENDMENT

10 CSR 10-6.070 New Source Performance Regulations. The commission proposes to amend subsection (1)(A), add new subsection (1)(C), renumber original subsection (1)(C) and amend section (3). If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency for delegation of enforcement authority. The evidence supporting the need for this proposed rulemaking is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address and phone number listed in the Notice of Public Hearing at the end of

this rule. More information concerning this rulemaking can be found at the Missouri Department of Natural Resources' Environmental Regulatory Agenda website, www.dnr.mo.gov/regs/regagenda.htm.

PURPOSE: This rule establishes acceptable design and performance criteria for specified new or modified emission sources. The purpose of this rulemaking is to amend 10 CSR 10-6.070 to incorporate 40 CFR part 60 subparts promulgated or amended between July 1, 2003 and June 30, 2004 and clarify the applicability section intent. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, are: elements of the State/EPA work plan and Title V Operating Permit Program requirements.

(1) Applicability.

(A) The provisions of 40 CFR part 60 promulgated as of June 30, [2003] 2004 shall apply and are hereby incorporated by reference in this rule, as published by the Office of the Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, D.C. 20408. This rule does not incorporate any subsequent amendments or additions.

(B) Exceptions to the adoption are as follows:

1. Sections 60.4, 60.9 and 60.10 of subpart A;
2. Subpart B in its entirety;
3. Those provisions which are not delegable by United States Environmental Protection Agency (EPA). Examples of these are listed as follows:

A. Innovative Technology Waivers (for example, sections 60.47, 60.286 and 60.398);

B. Commercial Demonstration Permits (for example, section 60.45(a));

C. Alternative or Equivalent Methods (for example, sections 60.8(b)(2), 60.8(b)(3), 60.11(e), 60.114(a), 60.195(b), 60.302(d)(3), 60.482-1(c)(2), 60.484, 60.493(b)(2)(i)(A), 60.496(a)(1), 60.592(c) and 60.623); and

D. National Consistency (for example, sections 60.332(a)(3) and 60.335(f)(1)); and

4. Incinerators which are subject to Hazardous Waste Management Commission rule 40 CFR 264, subpart O as incorporated in 10 CSR 25-7.264 shall not be subjected to the requirements of this rule. The exemptions granted under 40 CFR 264.340(b) as incorporated in 10 CSR 25-7.264 are subject to this rule. All other applicable requirements of this chapter shall remain in effect as to the incinerators.

(C) In addition to complying with the provisions of this rule, affected sources may be required to obtain an operating permit pursuant to Title V of the Clean Air Act Amendments or 10 CSR 10-6.065.

[(C)](D) Where emission limitations, test procedure or other requirements found in both subsection (1)(A) of this rule and in another rule under Title 10 Division 10 of the Code of State Regulations are applicable to an emission source, the more restrictive rule requirement shall be applied.

(3) General Provisions. The following are the New Source Performance Standards (NSPS) 40 CFR part 60 subparts that are adopted by reference in subsection (1)(A) of this rule. Individual source operations or installations in these categories are subject to this rule based on date of commencement of construction and other category specific parameters, as specified in the applicable subpart:

Subpart	Title
(D)	Standards of Performance for Fossil-Fuel-Fired Steam Generators for Which Construction is Commenced After August 17, 1971

(Da)	Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978
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(Db)	Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units
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(Dc) **Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units**

(E) **Standards of Performance for Incinerators**

(Ea) **Standards of Performance for Municipal Waste Combustors [constructed after] for Which Construction is Commenced After December 20, 1989[,] and on or [before] Before September 20, 1994**

(Eb) **Standards of Performance for Large Municipal Waste Combustors [constructed after] for Which Construction is Commenced After September 20, 1994 or for Which Modification or Reconstruction is Commenced After June 19, 1996**

(Ec) **Standards of Performance for Hospital/Medical/Infectious Waste Incinerators [constructed after] for Which Construction is Commenced After June 20, 1996**

(F) **Standards of Performance for Portland Cement Plants**

(G) **Standards of Performance for Nitric Acid Plants**

(H) **Standards of Performance for Sulfuric Acid Plants**

(I) **Standards of Performance for Hot Mix Asphalt [Concrete Plants] Facilities**

(J) **Standards of Performance for Petroleum Refineries**

(K) **Standards of Performance for Storage Vessels for Petroleum Liquids [after] for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978**

(Ka) **Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984**

(Kb) **Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) [after] for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984**

(L) **Standards of Performance for Secondary Lead Smelters**

(M) **Standards of Performance for Secondary Brass and Bronze Production Plants**

(N) **Standards of Performance for Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973**

(Na) **Standards of Performance for Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983**

(O) **Standards of Performance for Sewage Treatment Plants**

(P) **Standards of Performance for Primary Copper Smelters**

(Q) **Standards of Performance for Primary Zinc Smelters**

(R) **Standards of Performance for Primary Lead Smelters**

(S) **Standards of Performance for Primary Aluminum Reduction Plants**

(T) **Standards of Performance for the Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants**

(U) **Standards of Performance for the Phosphate Fertilizer Industry: Super-/phosphoric Acid Plants**

(V) **Standards of Performance for the Phosphate Fertilizer Industry: Diammonium Phosphate Plants**

(W) **Standards of Performance for the Phosphate Fertilizer Industry: Triple Superphosphate Plants**

(X) **Standards of Performance for the Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities**

(Y) **Standards of Performance for Coal Preparation Plants**

(Z) **Standards of Performance for Ferroalloy Production Facilities**

(AA) **Standards of Performance for Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974, and On or Before August 17, 1983**

(AAa) **Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 17, 1983**

(BB) **Standards of Performance for Kraft Pulp Mills**

(CC) **Standards of Performance for Glass Manufacturing Plants**

(DD) **Standards of Performance for Grain Elevators**

(EE) **Standards of Performance for Surface Coating of Metal Furniture**

(GG) **Standards of Performance for Stationary Gas Turbines**

(HH) **Standards of Performance for Lime Manufacturing Plants**

(KK) **Standards of Performance for Lead-Acid Battery Manufacturing Plants**

(LL) **Standards of Performance for Metallic Mineral Processing Plants**

(MM) **Standards of Performance for Automobile and Light/-/Duty Truck Surface Coating Operations**

(NN) **Standards of Performance for Phosphate Rock Plants**

(PP) **Standards of Performance for Ammonium Sulfate Manufacture**

(QQ) **Standards of Performance for the Graphic Arts Industry: Publication Rotogravure Printing**

(RR) **Standards of Performance for Pressure Sensitive Tape and Label Surface Coating Operations**

(SS) **Standards of Performance for Industrial Surface Coating: Large Appliances**

(TT) **Standards of Performance for Metal Coil Surface Coating**

(UU) **Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture**

(VV) **Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry**

(WW) **Standards of Performance for the Beverage Can Surface Coating Industry**

(XX) **Standards of Performance for Bulk Gasoline Terminals**

(AAA) **Standards of Performance for New Residential Wood Heaters**

(BBB) **Standards of Performance for the Rubber Tire Manufacturing Industry**

(DDD) **Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry**

(FFF) **Standards of Performance for Flexible Vinyl and Urethane Coating and Printing**

(GGG) **Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries**

(HHH) **Standards of Performance for Synthetic Fiber Production Facilities**

(III) **Standards of Performance for Volatile Organic Compound (VOC) Emissions [from] From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes**

(JJJ) **Standards of Performance for Petroleum Dry Cleaners**

(KKK) **Standards of Performance for Equipment Leaks of VOC From Onshore Natural Gas Processing Plants**

(LLL) **Standards of Performance for Onshore Natural Gas Processing: SO₂ Emissions**

(NNN) **Standards of Performance for Volatile Organic Compound (VOC) Emissions [from] From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations**

(OOO) **Standards of Performance for Nonmetallic Mineral Processing Plants**

(PPP) **Standard of Performance for Wool Fiberglass Insulation Manufacturing Plants**

(QQQ) **Standards of Performance for VOC Emissions From Petroleum Refinery Wastewater Systems**

(RRR) **Standards of Performance for Volatile Organic Compound Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes**

(SSS) **Standards of Performance for Magnetic Tape Coating Facilities**

(TTT) **Standards of Performance for Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines**

(UUU) **Standards of Performance for Calciners and Dryers in Mineral Industries**

(VVV) **Standards of Performance for Polymeric Coating of Supporting Substrates Facilities**

(WWW) **Standards of Performance for Municipal Solid Waste Landfills**

(AAAA) **Standards of Performance for Small Municipal Waste Combustion Units for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction is Commenced After June 6, 2001**

(CCCC) **Standards of Performance for Commercial and Industrial Solid Waste Incineration Units for Which Construction Is Commenced After November 30, 1999 or for Which Modification or Reconstruction Is Commenced on or After June 1, 2001**

AUTHORITY: section 643.050, RSMo 2000. Original rule filed Dec. 10, 1979, effective April 11, 1980. For intervening history, please consult the Code of State Regulations. Amended: Filed May 2, 2006.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed amendment will begin at 9:00 a.m., July 20, 2006. The public hearing will be held at the Crowne Plaza—St. Louis Airport, 11228 Lone Eagle Drive, St. Louis, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Air Pollution Control Program, 1659A East Elm Street, PO Box 176, Jefferson City, MO 65102-0176, (573) 751-4817. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., July 27, 2006. Written comments shall be sent to Chief, Operations Section, Missouri Department of Natural Resources' Air Pollution Control Program, 1659A East Elm Street, PO Box 176, Jefferson City, MO 65102-0176.

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

PROPOSED AMENDMENT

10 CSR 10-6.075 Maximum Achievable Control Technology Regulations. The commission proposes to amend subsections (1)(A) and (1)(B) and section (3). If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency for delegation of enforcement authority. The evidence supporting the need for this proposed rulemaking is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address and phone number listed in the Notice of Public Hearing at the end of this rule. More information concerning this rulemaking can be found at the Missouri Department of Natural Resources' Environmental Regulatory Agenda website, www.dnr.mo.gov/regs/regagenda.htm.

PURPOSE: This rule establishes emission control technology, performance criteria and work practices to achieve emission standards for sources that emit or have the potential to emit hazardous air pollutants. The purpose of this rulemaking is to amend 10 CSR 10-6.075 to incorporate 40 CFR part 63 subparts promulgated or amended between July 1, 2002 and June 30, 2003 and clarify the applicability

section intent. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, are: elements of the State/EPA work plan and Title V Operating Permit Program requirements.

(1) Applicability.

(A) The provisions of 40 CFR part 63 promulgated as of June 30, [2003] 2004 shall apply and are hereby incorporated by reference in this rule, as published by the Office of the Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, D.C. 20408. This rule does not incorporate any subsequent amendments or additions.

(B) Exceptions to the adoption are as follows:

1. Sections 63.13 and 63.15(a)(2) of subpart A; and

2. Those provisions which are not delegable by United States Environmental Protection Agency (EPA). Examples of these include alternative or equivalent methods (for example, sections 63.102(b), 63.150(I)(1) through (I)(4), and 63.177).

(3) General Provisions. The following are the Maximum Achievable Control Technology (MACT) 40 CFR part 63 subparts that are adopted by reference in subsection (1)(A) of his rule. Individual source operations or installations in these categories are subject to this rule based on category specific parameters, as specified in the applicable subpart:

Subpart Title

(F) National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry

(G) National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater

(H) National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks

(I) National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks

(J) National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production

(L) National Emission Standards for Coke Oven Batteries

(M) National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities

(N) National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks

(O) Ethylene Oxide Emissions Standards for Sterilization Facilities

(Q) National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers

(R) National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)

(S) National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry

(T) National Emission Standards for Halogenated Solvent Cleaning

(U) National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins

(W) National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production

(X) National Emission Standards for Hazardous Air Pollutants From Secondary Lead Smelting

(Y) National Emission Standards for Marine Tank Vessel Loading Operations

(AA) National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants

(BB) National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants

(CC) National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries

(DD) National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations

(EE) National Emission Standards for Magnetic Tape Manufacturing Operations

(GG) National Emission Standards for Aerospace Manufacturing and Rework Facilities

(HH) National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities

(II) National Emission Standards for Shipbuilding & Ship Repair (Surface Coating)

(JJ) National Emission Standards for Wood Furniture Manufacturing Operations

(KK) National Emission Standards for the Printing and Publishing Industry

(LL) National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants

(MM) National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills

(OO) National Emission Standards for Tanks—Level 1

(PP) National Emission Standards for Containers

(QQ) National Emission Standards for Surface Impoundments

(RR) National Emission Standards for Individual Drain Systems

(SS) National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process

(TT) National Emission Standards for Equipment Leaks—Control Level 1

(UU) National Emission Standards for Equipment Leaks—Control Level 2 Standards

(VV) National Emission Standards for Oil-Water Separators and Organic-Water Separators

(WW) National Emission Standards for Storage Vessels (Tanks)—Control Level 2

(XX) National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations

(YY) National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards

(CCC) National Emission Standards for Hazardous Air Pollutants for Steel Pickling-HCl Process Facilities and Hydrochloric Acid Regeneration Plants

(DDD) National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production

(EEE) National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors

(GGG) National Emission Standards for Pharmaceuticals Production

(HHH) National Emission Standards for Hazardous Air Pollutants From Natural Gas Transmission and Storage Facilities

(III) National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production

(JJJ) National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins

(LLL) National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry

(MMM) National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production

(NNN) National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing

(OOO) National Emission Standards for Hazardous Air Pollutant Emissions: Manufacture of Amino/Phenolic Resins

(PPP) National Emission Standards for Hazardous Air Pollutant Emissions for Polyether Polyols Production

(QQQ) National Emission Standards for Hazardous Air Pollutant Emissions for Primary Copper Smelting

(RRR) National Emission Standards for Hazardous Air Pollutants: Secondary Aluminum Production

(TTT) National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting

(UUU) National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units

(VVV) National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works

(XXX) National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production: Ferromanganese and Silicomanganese

(AAAA) National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills

(CCCC) National Emission Standards for Hazardous Air Pollutants: Manufacturing of Nutritional Yeast

(EEEE) National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline)

(FFFF) National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing

(GGGG) National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production

(HHHH) National Emission Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production

(IIII) National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks

(JJJJ) National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating

(KKKK) National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans

(MMMM) National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products

(NNNN) National Emission Standards for Hazardous Air Pollutants: Surface Coating of Large Appliances

(OOOO) National Emission Standards for Hazardous Air Pollutants: Printing, Coating, and Dyeing of Fabrics and Other Textiles

(PPPP) National Emission Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products

(QQQQ) National Emission Standards for Hazardous Air Pollutants: Surface Coating of Wood Building Products

(RRRR) National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Furniture

(SSSS) National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Coil

(TTTT) National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations

(UUUU) National Emission Standards for Hazardous Air Pollutants for Cellulose Products Manufacturing

(VVVV) National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing

(WWWW) National Emission Standards for Hazardous Air Pollutants: Reinforced Plastic Composites Production

(XXXX) National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing

(YYYY) National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines

(ZZZZ) National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines

(AAAAA) National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants

(BBBBB) National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing

(CCCCC) National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks

(DDDDD) National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing

(EEEEE) National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries

(FFFFF) National Emission Standards for Hazardous Air Pollutants for Integrated Iron and Steel Manufacturing Facilities
(GGGGG) National Emission Standards for Hazardous Air Pollutants: Site Remediation

(HHHHH) National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing

(IIIII) National Emission Standards for Hazardous Air Pollutants: Mercury Emissions From Mercury Cell Chlor-Alkali Plants

(JJJJJ) National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing

(KKKKK) National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing

(LLLLL) National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing

(MMMMM) National Emission Standards for Hazardous Air Pollutants: Flexible Polyurethane Foam Fabrication Operations

(NNNNN) National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production

(PPPPP) National Emission Standards for Hazardous Air Pollutants for Engine Test Cells/Stand/ard/s

(QQQQQ) National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities

(RRRRR) National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing

(SSSSS) National Emissions Standards for Hazardous Air Pollutants for Refractory Products Manufacturing

(TTTTT) National Emissions Standards for Hazardous Air Pollutants for Primary Magnesium Refining

AUTHORITY: section 643.050, RSMo 2000. Original rule filed May 1, 1996, effective Dec. 30, 1996. For intervening history, please consult the Code of State Regulations. Amended: Filed May 2, 2006.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed amendment will begin at 9:00 a.m., July 20, 2006. The public hearing will be held at the Crowne Plaza—St. Louis Airport, 11228 Lone Eagle Drive, St. Louis, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Air Pollution Control Program, 1659A East Elm Street, PO Box 176, Jefferson City, MO 65102-0176, (573) 751-4817. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., July 27, 2006. Written comments shall be sent to Chief, Operations Section, Missouri Department of Natural Resources' Air Pollution Control Program, 1659A East Elm Street, PO Box 176, Jefferson City, MO 65102-0176.

**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**

PROPOSED AMENDMENT

10 CSR 10-6.080 Emission Standards for Hazardous Air Pollutants. The commission proposes to amend subsections (1)(A) and (1)(B) and add new subsection (1)(C) and reletter the original

(1)(C) to (1)(D). If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency for delegation of enforcement authority. The evidence supporting the need for this proposed rulemaking is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address and phone number listed in the Notice of Public Hearing at the end of this rule. More information concerning this rulemaking can be found at the Missouri Department of Natural Resources' Environmental Regulatory Agenda website, www.dnr.mo.gov/reg/regagenda.htm.

PURPOSE: This rule establishes emission standards and performance criteria for new or modified sources emitting hazardous air pollutants. The purpose of this rulemaking is to amend 10 CSR 10-6.080 to incorporate 40 CFR part 61 subparts promulgated or amended between July 1, 2003 and June 30, 2004 and clarify the applicability section intent. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, are: elements of the State/EPA work plan and Title V Operating Permit Program requirements.

(1) Applicability.

(A) The provisions of 40 CFR part 61 promulgated as of June 30, [2003] 2004 shall apply and are hereby incorporated by reference in this rule, as published by the Office of the Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, D.C. 20408. This rule does not incorporate any subsequent amendments or additions.

(B) Exceptions to the adoption are as follows:

1. Sections 60.4, 60.16 and 60.17 of subpart A;
2. Subparts B, H, I, K, Q, R, T,/, and W in their entirety; and
3. Those provisions which are not delegable by United States Environmental Protection Agency (EPA). Examples of these include alternative or equivalent methods (for example, sections 61.12(d)(1), 61.13(h)(1)(ii), 61.112(c), 61.164(a)(2), 61.164(a)(3), and 61.244).

(C) In addition to complying with the provisions of this rule, affected sources may be required to obtain an operating permit pursuant to Title V of the Clean Air Act Amendments or 10 CSR 10-6.065.

[(C)](D) Where emission limitations, test procedure or other requirements found in both subsection (1)(A) of this rule and in another rule under Title 10 Division 10 of the Code of State Regulations are applicable to an emission source, the more restrictive rule requirement shall be applied.

AUTHORITY: section 643.050, RSMo 2000. Original rule filed Dec. 10, 1979, effective April 11, 1980. For intervening history, please consult the Code of State Regulations. Amended: Filed May 2, 2006.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed amendment will begin at 9:00 a.m., June 20, 2006. The public hearing will be held at the Crowne Plaza—St. Louis Airport, 11228 Lone Eagle Drive, St. Louis, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Air Pollution Control Program, 1659A East Elm Street, PO Box 176, Jefferson City, MO 65102-0176, (573) 751-4817. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., July 27, 2006. Written comments shall be sent to Chief, Operations

Section, Missouri Department of Natural Resources' Air Pollution Control Program, 1659A East Elm Street, PO Box 176, Jefferson City, MO 65102-0176.

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

PROPOSED AMENDMENT

10 CSR 10-6.110 Submission of Emission Data, Emission Fees and Process Information. The commission proposes to amend subsection (3)(D). If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency to replace the current rule in the Missouri State Implementation Plan. The evidence supporting the need for this proposed rulemaking is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address and phone number listed in the Notice of Public Hearing at the end of this rule. More information concerning this rulemaking can be found at the Missouri Department of Natural Resources' Environmental Regulatory Agenda website, www.dnr.mo.gov/regs/regagenda.htm.

PURPOSE: This rule deals with submittal of emission information, emission fees and public availability of emission data. It provides procedures for collection, recording and submittal of emission data and process information on state-supplied Emission Inventory Questionnaire and Emission Statement forms, or in a format satisfactory to the director, so that the state can calculate emissions for the purpose of state air resource planning. This amendment will establish emission fees for Missouri facilities as required annually and will change the April 1 due dates for emission fees and emission inventory questionnaires to June 1 so all classifications will have the June 1 due date. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is section 643.079 of the Missouri statutes and public testimony provided at the July 21, 2005 Missouri Air Conservation Commission Meeting.

(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] **2006** 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] **June 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] **June 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.

AUTHORITY: section 643.050, RSMo 2000. Original rule filed June 13, 1984, effective Nov. 12, 1984. For intervening history, please consult the *Code of State Regulations*. Amended: Filed May 11, 2006.

PUBLIC COST: Although this proposed amendment does not change the amount of the emissions fee from 2005 to 2006, there will be a reduction in revenue of three hundred thirty thousand two hundred eighty-eight dollars (\$330,288) in the aggregate to the state agency due to decreasing emissions. See attached fiscal note for assumptions that apply.

PRIVATE COST: Although this proposed amendment does not change the amount of the emissions fee from 2005 to 2006, there will be a reduction of three hundred thirty thousand two hundred eighty-eight dollars (\$330,288) in the aggregate of private entity fees paid due to decreasing emissions. See attached fiscal note for assumptions that apply.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed amendment will begin at 9:00 a.m., July 20, 2006. The public hearing will be held at the Crowne Plaza—St. Louis Airport, 11228 Lone Eagle Drive, St. Louis, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Air Pollution Control Program, 1659 E. Elm Street, PO Box 176, Jefferson City, MO 65102-0176, (573) 751-4817. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., July 27, 2006. Written comments shall be sent to Chief, Operations Section, Missouri Department of Natural Resources' Air Pollution Control Program, 1659 E. Elm Street, PO Box 176, Jefferson City, MO 65102-0176.

**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)	\$ 131,499 Reduction In Fees Paid
Missouri Department of Natural Resources	\$ 330,288 Reduction In Revenue

Cost estimates are reported as annualized aggregates.

III. WORKSHEET

	FY2007*	FY2008	FY2009	FY2010	FY2011	
EQ Fees	\$1,382,674	\$1,363,508	\$1,344,607	\$1,325,969	\$1,307,589	
	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017*
	\$1,289,463	\$1,271,589	\$1,253,963	\$1,236,581	\$1,219,440	\$0

	EQ Fee Costs		
	FY2007	FY2008**	Annualized Aggregate
EQ Fees (\$34.50 Fee for 2006)	\$1,382,674	\$1,363,508	\$1,299,538

	EQ Fee Costs		
	FY2007	FY2008**	Annualized Aggregate
EQ Fees (\$34.50 Fee for 2005)	\$1,477,823	\$1,467,226	\$1,431,037

Aggregate Reduction In EQ Fees Paid For This Amendment***	\$131,499
Reduction In Public Entity Fee Revenue For This Amendment***	\$461,786
Resulting Reduction In Public Entity Fee Revenue For This Amendment***	\$330,288

* See Assumption 3.
 ** The first full fiscal year for this rulemaking is FY2008.
 *** Difference in annualized aggregate costs when emissions fee remains the same but emissions decrease from prior calendar year.

List of Affected Entities:

Source Description	Number of Facilities
Gas & Electric	46
Sanitary Services	32
Hospitals	20
Rehabilitation Centers	2
Schools	9
Correctional Facility	6
National Security	7
Post Office	2
Transportation	3
Other	9
Totals	136

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 June 1 each year for all United States Department of Labor Standard Industrial Classifications. For example, costs for all calendar year 2006 emission fees are received by the Missouri Department of Natural Resources between January 1, 2007 and June 30, 2007.
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 2006. This fee represents neither an increase nor a decrease from the emissions fee of \$34.50 per ton of regulated air pollutant for calendar year 2005.
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 reduction in public entity fee revenue for the Missouri Department of Natural Resources' Air Pollution Control Program results from the difference in emissions between calendar years. The 2003 emissions (274,422 tons) were used for the 2005 calculations and the 2004 emissions (270,194 tons) were used in the 2006 calculations. This reduction in emissions along with fee adjustments made to account for plant shutdowns, production cuts, added controls, etc. results in the reduction in public entity revenue.

**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:
2,570 Facilities (listed below)	Listed below	\$ 330,288 Reduction In Fees Paid

Cost estimates are reported as annualized aggregates.

III. WORKSHEET

	FY2007*	FY2008	FY2009	FY2010	FY2011
EIQ Fees	\$7,812,287	\$7,703,996	\$7,597,206	\$7,491,896	\$7,388,046

FY2012	FY2013	FY2014	FY2015	FY2016	FY2017*
\$7,285,636	\$7,184,645	\$7,085,054	\$6,986,843	\$6,889,994	\$0

EIQ Fee Costs			
	FY2007	FY2008**	Annualized Aggregate
EIQ Fees (\$34.50 Fee for 2006)	\$7,812,287	\$7,703,996	\$7,342,560

EIQ Fee Costs			
	FY2007	FY2008**	Annualized Aggregate
EIQ Fees (\$34.50 Fee for 2005)	\$7,923,700	\$7,866,882	\$7,672,848

Total Aggregate Reduction In EIQ Fees Paid For This Amendment***	\$330,288
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* See Assumption 3.

** The first full fiscal year for this rulemaking is FY2008.

*** Difference in annualized aggregate revenue when emissions fee remains the same but emissions decrease from prior calendar year.

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	51
08	FORESTRY	0
09	FISHING, HUNTING AND TRAPPING	0
10	METAL MINING	7
12	COAL MINING	4
13	OIL AND GAS EXTRACTION	0
14	MINING AND QUARRYING OF NONMETALLIC MINERALS, EXCEPT FUELS	321
15	BUILDING CONSTRUCTION-GENERAL CONTRACTORS AND OPERATIVE	0
16	HEAVY CONSTRUCTION OTHER THAN BUILDING CONSTRUCTION	1
17	CONSTRUCTION-SPECIAL TRADE CONTRACTORS	4
20	FOOD AND KINDRED PRODUCTS	112
21	TOBACCO PRODUCTS	0
22	TEXTILE MILL PRODUCTS	1
23	APPAREL AND OTHER FINISHED PRODUCTS MADE FROM FABRICS	1
24	LUMBER AND WOOD PRODUCTS, EXCEPT FURNITURE	61
25	FURNITURE AND FIXTURES	25
26	PAPER AND ALLIED PRODUCTS	22
27	PRINTING, PUBLISHING, AND ALLIED INDUSTRIES	61
28	CHEMICALS AND ALLIED PRODUCTS	136
29	PETROLEUM REFINING AND RELATED INDUSTRIES	137
30	RUBBER AND MISCELLANEOUS PLASTICS PRODUCTS	64
31	LEATHER AND LEATHER PRODUCTS	5
32	STONE, CLAY, GLASS, AND CONCRETE PRODUCTS	360

SIC Code	SIC Description	Number of Facilities
33	PRIMARY METAL INDUSTRIES	50
34	FABRICATED METAL PRODUCTS, EXCEPT MACHINERY AND TRANSPORTATION	83
35	INDUSTRIAL AND COMMERCIAL MACHINERY AND COMPUTER EQUIPMENT	53
36	ELECTRONIC AND OTHER ELECTRICAL EQUIPMENT AND COMPONENTS	32
37	TRANSPORTATION EQUIPMENT	63
38	MEASURING, ANALYZING, AND CONTROLLING INSTRUMENTS	4
39	MISCELLANEOUS MANUFACTURING INDUSTRIES	19
40	RAILROAD TRANSPORTATION	0
41	LOCAL AND SUBURBAN TRANSIT AND INTERURBAN HIGHWAY PASSENGER	1
42	MOTOR FREIGHT TRANSPORTATION AND WAREHOUSING	13
43	UNITED STATES POSTAL SERVICE	0
44	WATER TRANSPORTATION	5
45	TRANSPORTATION BY AIR	6
46	PIPELINES, EXCEPT NATURAL GAS	18
47	TRANSPORTATION SERVICES	3
48	COMMUNICATIONS	5
49	ELECTRIC, GAS, SANITARY SERVICES, AND LANDFILLS	111
50	WHOLESALE TRADE-DURABLE GOODS	19
51	WHOLESALE TRADE-NON-DURABLE GOODS	157
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

SIC Code	SIC Description	Number of Facilities
58	EATING AND DRINKING PLACES	0
59	MISCELLANEOUS RETAIL	1
60	DEPOSITORY INSTITUTIONS	0
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	0
70	HOTELS, ROOMING HOUSES, CAMPS, AND OTHER LODGING PLACES	1
72	PERSONAL SERVICES AND DRY CLEANERS	435
73	BUSINESS SERVICES	5
75	AUTOMOTIVE REPAIR, SERVICES, AND PARKING	5
76	MISCELLANEOUS REPAIR SERVICES	2
78	MOTION PICTURES	0
79	AMUSEMENT AND RECREATION SERVICES	1
80	HEALTH SERVICES	33
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	9
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	5

SIC Code	SIC Description	Number of Facilities
93	PUBLIC FINANCE, TAXATION & MONETARY	0
94	ADMINISTRATION OF HUMAN RESOURCE PERSONNEL	0
95	ADMINISTRATION OF ENVIRONMENTAL QUALITY AND HOUSING PROGRAMS	1
96	ADMINISTRATION OF ECONOMIC PROGRAMS	0
97	NATIONAL SECURITY AND INTERNATIONAL AFFAIRS	2
99	UNKNOWN	44
Total Facilities		2,570

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 June 1 each year for all United States Department of Labor Standard Industrial Classifications. For example, costs for all calendar year 2006 emission fees are received by the Missouri Department of Natural Resources between January 1, 2007 and June 30, 2007.
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 2006. This fee represents neither an increase nor a decrease from the emissions fee of \$34.50 per ton of regulated air pollutant for calendar year 2005.
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.
9. The aggregate reduction in public entity fee revenue for the Missouri Department of Natural Resources' Air Pollution Control Program results from the difference in emissions between calendar years. The 2003 emissions (274,422 tons) were used for the 2005 calculations and the 2004 emissions (270,194 tons) were used in the 2006 calculations. This reduction in emissions along with fee adjustments made to account for plant shutdowns, production cuts, added controls, etc. results in the reduction in public entity revenue.

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

PROPOSED RULE

10 CSR 10-6.345 Control of NO_x Emissions From Upwind Sources. If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency for inclusion in the Missouri State Implementation Plan. The evidence supporting the need for this proposed rulemaking is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address and phone number listed in the Notice of Public Hearing at the end of this rule. More information concerning this rulemaking can be found at the Missouri Department of Natural Resources' Environmental Regulatory Agenda website, www.dnr.mo.gov/regs/regagenda.htm.

PURPOSE: The purpose of this rule is to protect the air quality in the St. Louis area by addressing NO_x sources proposed for construction outside and upwind of the St. Louis nonattainment area. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is a March 25, 2004 Resolution by the Missouri Air Conservation Commission directing staff to develop this rule.

(1) Applicability.

(A) This rule shall apply to new emission sources or modifications in Perry, St. Genevieve, St. Francois, Washington, and Warren Counties that trigger Prevention of Significant Deterioration (PSD) review for nitrogen oxides (NO_x);

(B) This rule shall apply to sources with a project-specific net emissions increase greater than nine hundred (900) tons of NO_x during ozone season; and

(C) This rule will expire five (5) years from the effective date.

(2) Definitions.

(A) Baseline emission inventory—The most current approved emission inventory for the state of Missouri that has been utilized in developing the State Implementation Plan (SIP), including attainment demonstration modeling, for the St. Louis ozone nonattainment area calculated on a tons per ozone season basis.

(B) Ozone season—From May 1 through September 30 of each year.

(C) Project-specific net emissions increase—The difference between permitted emissions to be emitted by the project that triggered PSD review and the baseline emission inventory for the applicable project.

(D) Supplemental Emission Reductions (SERs)—Equals Potential to Emit minus Best Achievable Control Technology (BACT) controls minus emission offsets minus credits minus nine hundred (900) tons per ozone season.

(E) Definitions of certain terms specified in this rule, other than those defined in this rule section, may be found in 10 CSR 10-6.020.

(3) General Provisions.

(A) Sources that meet the applicability requirements of subsections (1)(A) and (1)(B) of this rule shall meet either the following requirements or the requirements of subsection (3)(B) of this rule. The source shall apply one (1) or more of the following emission reduction strategies sufficient to ensure that the overall emission increase for NO_x does not exceed nine hundred (900) tons during the St. Louis ozone season:

1. The source applies beyond-BACT emission controls to the PSD emission unit and/or accepts ozone-season operating limitations on the unit.

2. The source obtains 1:1 emission offsets for NO_x emissions,

under the Missouri emission banking and trading rule 10 CSR 10-6.410.

3. The source satisfies the requirements of subsection (3)(A) of this rule by being subject to a NO_x cap and trade program where the total NO_x tons emitted by all affected sources in the program is capped on an ozone season or annual basis and meets the following requirements:

A. The newly constructed source is in full compliance with the NO_x cap and trade program; and

B. The actual NO_x tons emitted during the ozone season in excess of nine hundred (900) tons required for compliance with the NO_x cap and trade program is acquired from sources subject to the NO_x cap and trade program located in the St. Louis eight (8)-hour ozone nonattainment area or located in the same county as the source.

4. The source obtains SERs. Capital funds for SER projects must be expended by the permittee, or transferred to a third party trustee under contract to complete SER work, prior to operational startup of the new or modified emission unit that required PSD review.

A. The minimum required SER is calculated as follows:

(I) Determine the overall ozone season NO_x emissions considering any emission controls, offsets, and credits from paragraphs (3)(A)1.–(3)(A)3. of this rule; and

(II) Subtract nine hundred (900) tons.

B. In order to be approved, the SER measure must provide emission reductions that meet the criteria requirements described below—

(I) Quantifiable—Emission reductions must be calculated for the time period for which the reductions will be used. The applicant must provide a detailed estimate of the amount and type of emissions that will be reduced, and a clear methodology as approved by the staff director for how the estimates were derived. The estimate must be based on U.S. Environmental Protection Agency (EPA) guidance if available, or best available scientific information;

(II) Surplus—Emission reductions are surplus as long as they are not otherwise relied on to meet other applicable air quality attainment and maintenance requirements. In addition, to be considered surplus the emissions from control measures must be a part of the State Implementation Plan emission inventory;

(III) Federally enforceable—Control measures to reduce emissions must be enforceable through a permit issued under a SIP approved permitting program, or must meet enforceability requirements of EPA guidance for mobile source voluntary measures or stationary source emerging and voluntary measures; and

(IV) Permanent—The emission reductions must be permanent throughout the term that the emission reduction is used.

C. To qualify for SER credit for the retrofit of mobile source and nonroad equipment that operate primarily within the same county, or within the St. Louis ozone nonattainment area, the source must ensure the retrofit meets the following requirements:

(I) On-road equipment must not be greater than ten (10) years old at the time of retrofit;

(II) Retrofit of equipment with engines manufactured in year 2007 or later do not qualify for SER credit;

(III) If such equipment is not owned by the PSD permittee, the equipment owner must contractually agree to accept and maintain the retrofit equipment until the mobile source or equipment is sold or scrapped, and to meet part (3)(A)4.C.(V) of this rule.

(IV) These retrofit controls must be designed to reduce NO_x and hydrocarbon emissions, though they may also control other pollutants; and

(V) When retrofitted mobile equipment is sold or scrapped, any replacement units must meet NO_x and hydrocarbon emission rates at least as stringent as the retrofitted units.

D. The following mobile and nonroad retrofit equipment and replacement units are approved for SER credit, subject to subparagraph (3)(A)4.C. of this rule, if applicable:

(I) Retrofit with oxidation catalyst;

(II) Conversion of gasoline or diesel engines to use exclusively natural gas, liquefied petroleum gas, propane, or hydrogen;

(III) Replacement of an engine with an engine that meets California Air Resources Board or post-2007 federal emission requirements for new on-road or nonroad engines at the time of engine replacement;

(IV) Replacement of nonroad equipment powered with engines of nineteen (19) kilowatts or less, with equipment that meets federal emission requirements for new equipment of that type at the time of replacement. Equipment replaced must be operable at the time of replacement and rendered incapable of reuse afterwards; and

(V) Replacement of portable gasoline containers used primarily within the St. Louis ozone nonattainment area, with portable containers that meet the spill control and permeability requirements of the California Air Resources Board. Portable containers replaced must be rendered incapable of reuse as a container.

E. The following emission reduction projects may be used to generate SER credit:

(I) NO_x emission control equipment purchased with SER funds may be installed on existing stationary emission sources owned by a third party within the same county, or within the St. Louis ozone nonattainment area. Volatile organic compound (VOC) emission control equipment must be installed on existing stationary sources within the St. Louis ozone nonattainment area. The third party owner must contractually agree to accept and maintain the emission control equipment until the emission unit is retired, replaced, or fitted with replacement emission controls. The third party owner must also agree to make the controls federally enforceable. Resulting NO_x or VOC emission reductions must exceed existing emission control levels and those required by any promulgated federal or Missouri rule;

(II) Installation of anti-idling support equipment. This equipment includes electrical service and cab heating/air conditioning for heavy duty truck or locomotive idling areas such as switch yards, truck stops, rest stops, and loading docks, located in the same county as the PSD emission source or in the St. Louis ozone nonattainment area; or

(III) Other emission reduction projects approved by the department. An approvable SER project will provide NO_x or VOC emission reductions which would not occur otherwise in a timely manner.

(B) Sources subject to this rule may conduct regional transport modeling based on an approved protocol and submit the results to the Missouri Department of Natural Resources' Air Pollution Control Program for verification to demonstrate that post-control emissions of ozone precursors (NO_x and VOC) from the new or modified emission source will not raise the predicted ozone level at any critical grid cell in the St. Louis fine-grid modeling domain more than one (1) part per billion (ppb). Critical grid cells are those grid cells in the St. Louis nonattainment area where the maximum daily eight (8)-hour ozone concentration, determined from the control case modeling, is equal to or greater than eighty (80) ppb. Modeled post-control emissions will account for on-site emission levels, and also could account for emission offset reductions obtained at other locations, if identifiable and not already considered in the baseline emission inventory after adjusting for any applicable local, state, or federal control measures. SERs will not be considered in the modeling. Application of the model must meet minimum requirements set forth in written guidance issued by the department. A modeled impact on critical grid cells less than one (1) ppb using the procedures identified in the guidance shall be sufficient to meet this requirement.

(4) Reporting and Record Keeping. *(Not Applicable)*

(5) Test Methods. *(Not Applicable)*

AUTHORITY: section 643.050, RSMo 2000. Original rule filed May 4, 2006.

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 on this proposed rule will begin at 9:00 a.m., July 20, 2006. The public hearing will be held at the Crowne Plaza—St. Louis Airport, 11228 Lone Eagle Drive, St. Louis, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176, (573) 751-4817. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., July 27, 2006. Written comments shall be sent to Chief, Operations Section, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176.

Title 13—DEPARTMENT OF SOCIAL SERVICES Division 70—Division of Medical Services Chapter 10—Nursing Home Program

PROPOSED AMENDMENT

13 CSR 70-10.015 Prospective Reimbursement Plan for Nursing Facility Services. The division is adding paragraph (13)(A)10.

PURPOSE: This amendment provides for a per diem increase to nursing facility reimbursement rates by granting a quality improvement adjustment of three dollars and seventeen cents (\$3.17) for State Fiscal Year (SFY) 2007.

(13) Adjustments to the Reimbursement Rates. Subject to the limitations prescribed elsewhere in this regulation, a facility's reimbursement rate may be adjusted as described in this section.

(A) Global Per Diem Rate Adjustments. A facility with either an interim rate or a prospective rate may qualify for the global per diem rate adjustments. Global per diem rate adjustments shall be added to the specified cost component ceiling.

1. FY-96 negotiated trend factor—

A. Facilities with either an interim rate or prospective rate in effect on October 1, 1995, shall be granted an increase to their per diem effective October 1, 1995, of 4.6% of the cost determined in paragraphs (11)(A)1., (11)(B)1., (11)(C)1. and the property insurance and property taxes detailed in paragraph (11)(D)3. of this regulation; or

B. Facilities that were granted a prospective rate based on paragraph (12)(A)2. that is in effect on October 1, 1995, shall have their increase determined by subsection (3)(S) of this regulation.

2. FY-97 negotiated trend factor—

A. Facilities with either an interim rate or prospective rate in effect on October 1, 1996, shall be granted an increase to their per diem effective October 1, 1996, of 3.7% of the cost determined in paragraphs (11)(A)1., (11)(B)1., (11)(C)1. and the property insurance and property taxes detailed in paragraph (11)(D)3. of this regulation; or

B. Facilities that were granted a prospective rate based on paragraph (12)(A)2. that is in effect on October 1, 1995, shall have their increase determined by subsection (3)(S) of this regulation.

3. NFRA. Effective October 1, 1996, all facilities with either an interim rate or a prospective rate shall have its per diem adjusted to include the current NFRA as an allowable cost in its reimbursement rate calculation.

4. Minimum wage adjustment. All facilities with either an interim rate or a prospective rate in effect on November 1, 1996, shall be granted an increase to their per diem effective November 1, 1996, of two dollars and forty-five cents (\$2.45) to allow for the change in minimum wage. Utilizing Fiscal Year 1995 cost report data, the total industry hours reported for each payroll category was multiplied by the fifty-cent (50¢) increase, divided by the patient days for the facilities reporting hours for that payroll category and factored up by 8.67% to account for the related increase to payroll taxes. This calculation excludes the director of nursing, the administrator and assistant administrator.

5. Minimum wage adjustment. All facilities with either an interim rate or a prospective rate in effect on September 1, 1997, shall be granted an increase to their per diem effective September 1, 1997, of one dollar and ninety-eight cents (\$1.98) to allow for the change in minimum wage. Utilizing Fiscal Year 1995 cost report data, the total industry hours reported for each payroll category was multiplied by the forty-cent (40¢) increase, divided by the patient days for the facilities reporting hours for that payroll category and factored up by 8.67% to account for the related increase to payroll taxes. This calculation excludes the director of nursing, the administrator and assistant administrator.

6. FY-98 negotiated trend factor—

A. Facilities with either an interim rate or prospective rate in effect on October 1, 1997, shall be granted an increase to their per diem effective October 1, 1997, of 3.4% of the cost determined in paragraphs (11)(A)1., (11)(B)1., (11)(C)1. and the property insurance and property taxes detailed in paragraph (11)(D)3. of this regulation; or

B. Facilities that were granted a prospective rate based on paragraph (12)(A)2. that is in effect on October 1, 1995, shall have their increase determined by subsection (3)(S) of this regulation.

7. FY-99 negotiated trend factor—

A. Facilities with either an interim rate or prospective rate in effect on October 1, 1998, shall be granted an increase to their per diem effective October 1, 1998, of 2.1% of the cost determined in paragraphs (11)(A)1., (11)(B)1., (11)(C)1., the property insurance and property taxes detailed in paragraph (11)(D)3. of this regulation and the minimum wage adjustments detailed in paragraphs (13)(A)4. and (13)(A)5.; or

B. Facilities that were granted a prospective rate based on paragraph (12)(A)2. that is in effect on October 1, 1998, shall have their increase determined by subsection (3)(S) of this regulation.

8. FY-2000 negotiated trend factor—

A. Facilities with either an interim rate or prospective rate in effect on July 1, 1999, shall be granted an increase to their per diem effective July 1, 1999, of 1.94% of the cost determined in subsections (11)(A), (11)(B), (11)(C), the property insurance and property taxes detailed in paragraph (11)(D)3. and the minimum wage adjustments detailed in paragraphs (13)(A)4. and (13)(A)5. of this regulation; or

B. Facilities that were granted a prospective rate based on paragraph (12)(A)2. that is in effect on July 1, 1999, shall have their increase determined by subsection (3)(S) of this regulation.

9. FY-2004 nursing facility operations adjustment —

A. Facilities with either an interim rate or prospective rate in effect on July 1, 2003, shall be granted an increase to their per diem effective for dates of service beginning July 1, 2003 through June 30, 2004 of four dollars and thirty-two cents (\$4.32) for the cost of nursing facility operations. Effective for dates of service beginning July 1, 2004, the per diem adjustment shall be reduced to three dollars and seventy-eight cents (\$3.78).

B. The operations adjustment shall be added to the facility's current rate as of June 30, 2003 and is effective for payment dates after August 1, 2003.

10. FY-2007 quality improvement adjustment—

A. Facilities with either an interim rate or prospective rate in effect on July 1, 2006, shall be granted an increase to

their per diem effective for dates of service beginning July 1, 2006 of three dollars and seventeen cents (\$3.17) to improve the quality of life for nursing facility residents.

B. The quality improvement adjustment shall be added to the facility's current rate as of June 30, 2006 and is effective for dates of service beginning July 1, 2006 and after.

AUTHORITY: sections 208.153, 208.159 and 208.201, RSMo 2000 and Conference Committee Substitute for Senate Committee Substitute for House Committee Substitute for House Bill 1011, 93rd General Assembly. Emergency rule filed Dec. 21, 1994, effective Jan. 1, 1995, expired April 30, 1995. Emergency rule filed April 21, 1995, effective May 1, 1995, expired Aug. 28, 1995. Original rule filed Dec. 15, 1994, effective July 30, 1995. For intervening history, please consult the Code of State Regulations. Amended: Filed May 15, 2006.

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions approximately \$28,198,101 for SFY 2007.

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Social Services, 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.

FISCAL NOTE**PUBLIC COST****I. RULE NUMBER**

Rule Number and Name:	13 CSR 70-10.015 Prospective Reimbursement Plan for Nursing Facility Services
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Social Services Division of Medical Services	Annual estimated cost: SFY 2007 = \$28,198,101

III. WORKSHEET

SFY 2007:

Estimated Paid Days: SFY 2007	8,895,300
x Rate Increase	<u> \$3.17</u>
Total Estimated Impact: SFY 2007	<u>\$28,198,101</u>
State Share – General Revenue	\$10,805,512
Federal Share (61.68%)	\$17,392,589

IV. ASSUMPTIONS

Estimated Paid Days:

The estimated paid days for SFY 2007 are based on the actual Medicaid days paid for nursing facility services during SFY 2005, increased by 0.5% for 2006 and 2007.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 10—Nursing Home Program**

PROPOSED AMENDMENT

13 CSR 70-10.080 Prospective Reimbursement Plan for HIV Nursing Facility Services. The division is adding paragraph (13)(A)6.

PURPOSE: This amendment provides for a per diem increase to HIV nursing facility reimbursement rates by granting a quality improvement adjustment of three dollars and seventeen cents (\$3.17) for State Fiscal Year (SFY) 2007.

(13) Adjustments to the Reimbursement Rates. Subject to the limitations prescribed elsewhere in this regulation, a facility's reimbursement rate may be adjusted as described in this section.

(A) Global Per-/Diem Rate Adjustments. A facility with either an interim rate or a prospective rate may qualify for the global per diem rate adjustments. Global per diem rate adjustments shall be added to the specified cost component ceiling.

1. Minimum wage adjustment. All facilities with either an interim rate or a prospective rate in effect on September 1, 1997, shall be granted an increase to their per diem effective September 1, 1997, of one dollar and ninety-eight cents (\$1.98) to allow for the change in minimum wage. Utilizing Fiscal Year 1995 cost report data, the total industry hours reported for each payroll category was multiplied by the forty-cent (40¢) increase, divided by the patient days for the facilities reporting hours for that payroll category and factored up by 8.67% to account for the related increase to payroll taxes. This calculation excludes the director of nursing, the administrator and assistant administrator.

2. FY-98 negotiated trend factor.

A. Facilities with either an interim rate or prospective rate in effect on October 1, 1997, shall be granted an increase to their per diem effective October 1, 1997, of 3.4% of the cost determined in paragraphs (11)(A)1., (11)(B)1., (11)(C)1. and the property insurance and property taxes detailed in paragraph (11)(D)3. of this regulation; or

B. Facilities that were granted a prospective rate based on paragraph (12)(A)2. that is in effect on October 1, 1995, shall have their increase determined by subsection (3)(S) of this regulation.

3. FY-99 negotiated trend factor.

A. Facilities with either an interim rate or prospective rate in effect on October 1, 1998, shall be granted an increase to their per diem effective October 1, 1998, of 2.1% of the cost determined in paragraphs (11)(A)1., (11)(B)1., (11)(C)1., the property insurance and property taxes detailed in paragraph (11)(D)3. of this regulation and the minimum wage adjustment detailed in paragraph (13)(A)1.; or

B. Facilities that were granted a prospective rate based on paragraph (12)(A)2. that is in effect on October 1, 1998, shall have their increase determined by subsection (3)(S) of this regulation.

4. FY-2000 negotiated trend factor.

A. Facilities with either an interim rate or prospective rate in effect on July 1, 1999, shall be granted an increase to their per diem effective July 1, 1999, of 1.94% of the cost determined in subsections (11)(A), (11)(B), (11)(C), the property insurance and property taxes detailed in paragraph (11)(D)3. and the minimum wage adjustment detailed in paragraph (13)(A)1. of this regulation; or

B. Facilities that were granted a prospective rate based on paragraph (12)(A)2. that is in effect on July 1, 1999, shall have their increase determined by subsection (3)(S) of this regulation.

5. FY-2004 nursing facility operations adjustment.

A. Facilities with either an interim rate or prospective rate in effect on July 1, 2003, shall be granted an increase to their per diem

effective for dates of service beginning July 1, 2003 through June 30, 2004 of four dollars and thirty-two cents (\$4.32) for the cost of nursing facility operations. Effective for dates of service beginning July 1, 2004, the per diem adjustment shall be reduced to three dollars and seventy-eight cents (\$3.78).

B. The operations adjustment shall be added to the facility's current rate as of June 30, 2003 and is effective for payment dates after August 1, 2003.

6. FY-2007 quality improvement adjustment.

A. Facilities with either an interim rate or prospective rate in effect on July 1, 2006, shall be granted an increase to their per diem effective for dates of service beginning July 1, 2006 of three dollars and seventeen cents (\$3.17) to improve the quality of life for nursing facility residents.

B. The quality improvement adjustment shall be added to the facility's current rate as of June 30, 2006 and is effective for dates of service beginning July 1, 2006 and after.

AUTHORITY: sections 208.153 and 208.201, RSMo 2000 and Conference Committee Substitute for Senate Committee Substitute for House Committee Substitute for House Bill 1011, 93rd General Assembly. Original rule filed Aug. 1, 1995, effective March 30, 1996. For intervening history, please consult the Code of State Regulations. Amended: Filed May 15, 2006.

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions approximately fourteen thousand eight hundred and ninety-nine dollars (\$14,899) for SFY 2007.

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Social Services, 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.

FISCAL NOTE**PUBLIC COST****I. RULE NUMBER**

Rule Number and Name:	13 CSR 70-10.080 Prospective Reimbursement Plan for HIV Nursing Facility Services
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
HIV Nursing facilities	Annual estimated cost: SFY 2007 = \$14,899

III. WORKSHEET

SFY 2007:

Estimated Paid Days: SFY 2007	4,700
x Rate Increase	<u>\$3.17</u>
Total Estimated Impact: SFY 2007	<u>\$14,899</u>
State Share – General Revenue	\$5,709
Federal Share (61.74%)	\$9,190

IV. ASSUMPTIONS

Estimated Paid Days:

The estimated paid days for SFY 2007 are based on the actual Medicaid days paid for nursing facility services during SFY 2005, increased by 0.5% for 2006 and 2007.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 15—Hospital Program**

PROPOSED AMENDMENT

13 CSR 70-15.110 Federal Reimbursement Allowance (FRA).
The division is revising section (13) and adding section (14).

PURPOSE: This amendment will revise the Federal Reimbursement Allowance (FRA) assessment for State Fiscal Year 2006 to five and ninety-seven hundredths percent (5.97%) and establish the Federal Reimbursement Allowance (FRA) assessment for State Fiscal Year 2007 at five and eighty-three hundredths percent (5.83%).

(13) Federal Reimbursement Allowance (FRA) for State Fiscal Year 2006. The FRA assessment for State Fiscal Year (SFY) 2006 shall be determined at the rate of *[five and fifty-four hundredths percent (5.54%)]* **five and ninety-seven hundredths percent (5.97%)** of the hospital's total operating revenue less tax revenue/other government appropriations plus non-operating gains and losses as published by the Missouri Department of Health and Senior Services, Section of Health Statistics. The base financial data for 2002 will be annualized, if necessary, and will be adjusted by the trend factor listed in 13 CSR 70-15.010(3)(B) to determine revenues for the current state fiscal year. The financial data that is submitted by the hospitals to the Missouri Department of Health and Senior Services is required as part of 19 CSR 10-33.030 Reporting Financial Data by Hospitals. If the pertinent information is not available through the Department of Health and Senior Services' hospital database, the Division of Medical Services will use the Medicaid data similarly defined from the Medicaid cost report that is required to be submitted pursuant to 13 CSR 70-15.010(5)(A).

(14) Federal Reimbursement Allowance (FRA) for State Fiscal Year (SFY) 2007. The FRA assessment for SFY 2007 shall be determined at the rate of **five and eighty-three hundredths percent (5.83%)** of the hospital's total operating revenue less tax revenue/other government appropriations plus non-operating gains and losses as published by the Missouri Department of Health and Senior Services, Section of Health Statistics. The base financial data for 2003 will be annualized, if necessary, and will be adjusted by the trend factor listed in 13 CSR 70-15.010(3)(B) to determine revenues for the current state fiscal year. The financial data that is submitted by the hospitals to the Missouri Department of Health and Senior Services is required as part of 19 CSR 10-33.030 Reporting Financial Data by Hospitals. If the pertinent information is not available through the Department of Health and Senior Services' hospital database, the Division of Medical Services will use the Medicaid data similarly defined from the Medicaid cost report that is required to be submitted pursuant to 13 CSR 70-15.010(5)(A).

AUTHORITY: sections 208.201, 208.453 and 208.455, RSMo 2000. Emergency rule filed Sept. 21, 1992, effective Oct. 1, 1992, expired Jan. 28, 1993. Emergency rule filed Jan. 15, 1993, effective Jan. 25, 1993, expired May 24, 1993. Original rule filed Sept. 21, 1992, effective June 7, 1993. For intervening history, please consult the *Code of State Regulations*. Emergency amendment filed May 10, 2006, effective May 20, 2006, expires Nov. 15, 2006. Amended: filed May 10, 2006.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate in SFY 2006.

PRIVATE COST: This proposed amendment is expected to cost pri-

vate entities an additional \$55,603,217 in SFY 2006. It is expected to cost private entities \$819,092,465 in SFY 2007.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Office of the Director, 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.

FISCAL NOTE**PRIVATE COST****I. RULE NUMBER**

Rule Number and Name:	13 CSR 70-15.110 Federal Reimbursement Allowance (FRA)
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification 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:
133	Hospitals	SFY 2006 = \$55,603,217 SFY 2007 = \$819,092,465

III. WORKSHEET

The fiscal note is based on establishing the SFY 2006 FRA assessment percentage at 5.97% and the SFY 2007 FRA assessment percentage at 5.83%.

IV. ASSUMPTIONS

The SFY 2006 FRA assessment is based on total operating revenue less tax revenue/other government appropriations plus non-operating gains and losses of approximately \$12.8 billion multiplied by 5.97%. The \$55,603,217 cost is the difference between the original SFY 2006 of \$709,765,443 and the new SFY 2006 estimated cost of \$765,368,660. The 133 hospitals reported above include 38 hospitals that are owned or controlled by state, county, city or hospital districts. The impact on these hospitals is \$7,631,784 (\$105,957,528 new estimate less \$98,325,744 original estimate).

The SFY 2007 FRA assessment is based on total operating revenue less tax revenue/other government appropriations plus non-operating gains and losses of approximately \$14 billion multiplied by 5.83%. The 133 hospitals reported above include 38 hospitals that are owned or controlled by state, county, city or hospital districts. The impact of these hospitals is \$108,126,937.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 40—Optical Program**

PROPOSED AMENDMENT

13 CSR 70-40.010 Optical Care Benefits and Limitations—Medicaid Program. The division is amending sections (1) and (7).

PURPOSE: This amendment updates the incorporated material and removes the program limitation on eyeglasses for adults.

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 Optical Care program shall be administered by the Department of Social Services, Division of Medical Services. The optical care services covered and not covered, the program limitations and the maximum allowable fees for all covered services shall be determined by the **Department of Social Services**, Division of Medical Services and shall be *[made available through the included in the Optical provider manual and provider bulletins, which are incorporated by reference and made a part of this rule as published by the Department of Social Services, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65109, at its website at www.dss.mo.gov/dms, [provider bulletins, and updates to the provider manual] June 15, 2006. This rule does not incorporate any subsequent amendments or additions.* Services covered shall include only those services which are clearly shown to be medically necessary.

(7) Program Limitations.

(D) Eyeglasses are *[only]* covered by Medicaid for **Medicaid** eligible *[needy children, pregnant women, and blind persons]* individuals when the prescription is at least 0.75 diopters for one (1) eye or 0.75 diopters for each eye. *[Eyeglasses (any type of frame and/or lens) are not covered for any other Medicaid eligibles.]*

(E) Only one (1) pair of eyeglasses is allowed every two (2) years (within any twenty-four (24)-month period of time) for **Medicaid** eligible *[needy children, pregnant women, and blind persons regardless of age]* individuals.

AUTHORITY: sections 208.152, RSMo Supp. [2004] 2005 and 208.153 and 208.201, RSMo 2000 and *[Senate Substitute for Senate Bill 539 enacted by the 93rd General Assembly 2005] Conference Committee Substitute for Senate Committee Substitute for House Committee Substitute for House Bill 1011, 93rd General Assembly.* This rule was previously filed as 13 CSR 40-81.170. Emergency rule filed April 10, 1981, effective April 20, 1981, expired July 10, 1981. Original rule filed April 10, 1981, effective July 11, 1981. For intervening history, please consult the *Code of State Regulations*. Amended: Filed May 15, 2006.

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions a total of \$1,600,000 in the aggregate.

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the

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.

FISCAL NOTE**PUBLIC COST****I. RULE NUMBER**

Rule Number and Name:	13 CSR 70-40.010 Optical Care Benefits and Limitations
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Social Services Division of Medical Services	\$1,600,000 Total \$600,000 – General Revenue

III. WORKSHEET

The public cost of this proposed rule is \$600,000 based on the state fiscal year 2005 utilization of optical services (eyeglasses) for adult Medicaid recipient excluding pregnant women and blind persons. It is estimated 20,500 individuals will meet the criteria with 18,900 frames purchased and 20,500 lenses provided.

IV. ASSUMPTIONS

The proposed rule provides for one pair of eyeglasses every two years for all adult Medicaid recipients excluding pregnant women or blind persons. Pregnant women and blind persons continued to receive the eyeglass benefit.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 60—Durable Medical Equipment Program**

PROPOSED AMENDMENT

13 CSR 70-60.010 Durable Medical Equipment Program. The division is amending sections (1) and (6).

PURPOSE: This amendment updates the incorporated material and removes the program limitation on wheelchair accessories for eligible adults.

(1) Administration. The Medicaid durable medical equipment (DME) program shall be administered by the Department of Social Services, Division of Medical Services. The services and items covered and not covered, the program limitations and the maximum allowable fees for all covered services shall be determined by the Department of Social Services, Division of Medical Services and shall be included in the DME provider manual, which is incorporated by reference and made a 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, [July 15, 2005] **June 15, 2006**. This rule does not incorporate any subsequent amendments or additions.

(6) Covered Services. It is the provider's responsibility to determine the coverage benefits for a Medicaid eligible recipient based on his or her type of assistance as outlined in the DME manual. Reimbursement will be made to qualified participating DME providers only for DME items, determined by the recipient's treating physician or advanced practice nurse in a collaborative practice arrangement to be medically necessary. Covered services include the following items: prosthetics, excluding an artificial larynx; ostomy supplies; diabetic supplies and equipment; oxygen and respiratory equipment, excluding CPAP/S/s, BiPAPs, nebulizers, IPPB machines, humidification items, suction pumps and apnea monitors; and wheelchairs, excluding [wheelchair accessories and] scooters. Covered services for a Medicaid eligible needy child(ren) or person receiving Medicaid under a category of assistance for pregnant women or the blind shall include but not be limited to: prosthetics; orthotics; oxygen and respiratory care equipment; parenteral nutrition; ostomy supplies; diabetic supplies and equipment; decubitus care equipment; wheelchairs; wheelchair accessories and scooters; augmentative communication devices; and hospital beds. Specific procedure codes that are covered under the DME program are listed in Section 19 of the DME provider manual, which is incorporated by reference and made a 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, [July 15, 2005] **June 15, 2006**. This rule does not incorporate any subsequent amendment or additions. These items must be for use in the recipient's home when ordered in writing by the recipient's physician or advanced practice nurse in a collaborative practice arrangement. Although an item is classified as DME, it may not be covered in every instance. Coverage is based on the fact that the item is reasonable and necessary for treatment of the illness or injury, or to improve the functioning of a malformed or permanently inoperative body part and the equipment meets the definition of DME. Even though a DME item may serve some useful, medical purpose, consideration must be given by the physician or advanced practice nurse in a collaborative arrangement and the DME supplier to what extent, if any, it is reasonable for Medicaid to pay for the item as opposed to another realistically feasible alternative pattern of care. Consideration should be given by the physician or advanced practice nurse in a collaborative practice arrangement and the DME supplier as to whether the item serves essentially the same purpose as equipment already available to the recipient. If two (2)

different items each meet the need of the recipient, the less expensive item must be employed, all other conditions being equal.

AUTHORITY: sections 208.153 and 208.201, RSMo 2000 and Conference Committee Substitute for Senate Committee Substitute for House Committee Substitute for House Bill 1011, 93rd General Assembly. Original rule filed Nov. 1, 2002, effective April 30, 2003. Emergency amendment filed Aug. 11, 2005, effective Sept. 1, 2005, expired Feb. 27, 2006. Amended: Filed June 15, 2005, effective Dec. 30, 2005. Amended: Filed May 15, 2006.

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions \$5,600,000 in the aggregate.

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the 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.

FISCAL NOTE**PUBLIC COST****I. RULE NUMBER**

Rule Number and Name:	13 CSR 70-60.010 Durable Medical Equipment Program
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Social Services Division of Medical Services	\$5,600,000 - Total \$2,200,000 - General Revenue

III. WORKSHEET

The public cost of providing wheelchair accessories/batteries is \$2.2 million. The cost is based on the state fiscal year 2004 utilization (adjusted for increased cost and utilization) of these services by adult Medicaid eligibles except for pregnant women and blind persons.

IV. ASSUMPTIONS

The proposed rule will include wheelchair accessories and wheelchair batteries as a covered Medicaid service for adult Medicaid recipients. Pregnant women and blind persons continue to receive these services.

Title 20—DEPARTMENT OF INSURANCE
Division 700—Licensing
Chapter 6—Bail Bond Agents and Surety Recovery Agents

PROPOSED RULE

20 CSR 700-6.350 Registration of Business Names

PURPOSE: This rule outlines requirements for registering business names used by or on behalf of bail bond agents, general bail bond agents, and surety recovery agents.

(1) No bail bond agent, general bail bond agent or surety recovery agent shall use any name in connection with any surety or bail bond business or represent themselves to any judge, attorney, court official, law enforcement officer or state, county or municipal entity by any name or title in connection with said business unless such name or title is either licensed by the department or registered with the department as required herein.

(2) Registration of Business Names. Any bail bond agent, general bail bond agent or surety recovery agent doing any bail bond or surety recovery business in, or representing themselves to any member of the public in connection with said business by, any name or title other than the name identified on the license issued to the agent by the department, referred to herein as a “business name,” shall register each such name or title with the department. The registration shall include the complete name or title to be used by the bail bond agent, general bail bond agent or surety recovery agent and shall be in a form prescribed by the director.

(3) A bail bond agent, general bail bond agent or surety recovery agent shall not be required to register a business name with the department if the agent is conducting bail bond or surety recovery business in his/her legal name, including any first or last name or easily identifiable variation thereof, provided that the name used is identified on or may be readily ascertained from the license issued to the agent by the department. An agent otherwise exempt from registration by this section shall be required to register a business name if any other person or entity is authorized to use, or to conduct any bail bond or surety recovery business under, the agent’s legal name as identified in this section.

(4) Each business name registration request must identify an appropriately licensed bail bond, general bail bond or surety recovery agent authorized to conduct business in or on behalf of the proposed business name. This regulation does not exempt any person or entity from any licensing requirements imposed by Missouri law, including, Chapter 374, RSMo. The director may deny the registration of any business name that has been subject to discipline by the department and/or any name that is potentially deceptive, misleading or not in the public interest.

(5) At the discretion of the director, persons using a business name prior to the promulgation of this regulation shall have the right to first register the business name with the department if proof is submitted to the department evidencing substantial use of the business name by the applicant prior to the promulgation of this regulation. Requests for first registration must be received within thirty (30) days of the effective date of this regulation. The director may deny the registration of any business name that has been previously registered with or licensed by the department by another person or entity.

(6) Forms for the registration of a business name are available on the department’s website at www.insurance.mo.gov and at the Department of Insurance. A twenty-five dollar (\$25)-registration fee shall accompany all registration forms submitted to the department

pursuant to this rule. Forms shall be updated within thirty (30) days of any change in the information provided, including a change of officers or address. The department may periodically request verification of any information provided pursuant to this rule.

(7) Failure to comply with this section may constitute grounds for discipline pursuant to section 374.755, RSMo.

AUTHORITY: sections 374.040 and 374.045, RSMo 2000 and 374.702, 374.705 and 374.783, RSMo Supp. 2005. Original rule filed May 5, 2006.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions seven hundred eighty dollars (\$780) in the aggregate.

PRIVATE COST: This proposed rule will cost private entities twenty-three thousand eight hundred twenty-five dollars (\$23,825) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed rule at 10 a.m. on July 19, 2006. 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 at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to the proposed amendment, until 5:00 p.m. on July 19, 2006. 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.

**FISCAL NOTE
PUBLIC COST**

I. RULE NUMBER

Rule Number and Name:	20 CSR 700-6.350 Registration of Business Names
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Missouri Department of Insurance	\$780.00

III. WORKSHEET

26 work hours x \$30.00 = \$780.00

IV. ASSUMPTIONS

Twenty-six (26) work hours of computer programming will be required to modify a department database to capture the names being registered along with the bail bond agents, general bail bond agents and surety recovery agents using the registered business name.

**FISCAL NOTE
PRIVATE COST**

I. RULE NUMBER

Rule Number and Name:	20 CSR 700-6.350 Registration of Business Names
Type of Rulemaking:	Proposed Rule

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:
812	Bail Bond Agents (812 x \$25)	\$20,300
130	General Bail Bond Agents (130 x \$25)	\$3,250
11	Surety Recovery Agents (11 x \$25)	\$275

III. WORKSHEET

953 General Bail Bond, Bail Bond and Surety Recovery Agents x \$25 Registration Fee = \$23,825

IV. ASSUMPTIONS

Bail bond, general bail bond or surety recovery agents registering as business name with the department will be required to submit a \$25 registration fee. One time cost for registering each business.

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 20—Personnel Advisory Board
and Division of Personnel
Chapter 4—Appeals, Investigations, Hearings
and Grievances**

ORDER OF RULEMAKING

By the authority vested in the Personnel Advisory Board under section 36.070, RSMo 2000, the board amends a rule as follows:

1 CSR 20-4.010 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 15, 2006 (31 MoReg 285-286). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed amendment was held April 11, 2006, and the public comment period ended that same day. At the public hearing, the board explained the proposed amendment and two (2) comments were made.

COMMENT: The Department of Mental Health commented that the rule is unclear as to what would be deemed a "legitimate" reason for the person who imposed the discipline not being required to attend a hearing.

RESPONSE AND EXPLANATION OF CHANGE: Subparagraph (3)(B)3.C. and paragraph (3)(B)4. will be changed to remove references to legitimate reasons.

COMMENT: The Office of Administration expressed concern that parties to the appeal will not know in advance of the hearing if the board finds that the reason for absence is not legitimate.

RESPONSE: The board indicated that in most cases the hearings officer is not made aware of the absence until the actual hearing. If possible, the hearings officer will try to determine this information prior to the hearing.

1 CSR 20-4.010 Appeals

(3) Appeals Must be Submitted and Hearings Conducted Following the Procedures and Guides Provided in this Rule.

(B) Hearings Procedure. The conduct of hearings before the Personnel Advisory Board is subject to the following provisions:

1. Hearings will be held in the Office of the Personnel Advisory Board in Jefferson City, Missouri, unless a different location is specified by action of the board;

2. If no prehearing conference has been held, the board will make a determination of what questions are at issue based upon the notice of the disciplinary action and the appellant's contentions in the appeal prior to the taking of testimony. The hearing shall be confined to and come within the scope of law and facts that the board has determined to be at issue. The board may exclude evidence which is purely cumulative;

3. The person who imposed the discipline is to attend the hearing. If that person is not the appointing authority, it must be the subordinate to whom authority has been delegated. The person who imposed the discipline does not have to attend the hearing if:

A. The appellant has waived his or her attendance;

B. The parties agree to present his or her testimony by other means such as stipulation, affidavit, or testimony over the telephone or if either party wishes to present the testimony by deposition; or

C. He or she is unable to attend the hearing and the absence of his or her testimony would not unduly prejudice the appellant;

4. If the person who imposed the discipline is unavailable to provide his or her testimony for the hearing and the board determines that not having their testimony unduly prejudices the appellant, then the board may disapprove the appellant's discipline;

5. The person conducting the hearing will read a statement citing the appropriate sections of the merit system law applicable to appeals;

6. The person conducting the hearing will read the charges of the appointing authority and the contentions of the appellant. By agreement these documents may be inserted in the record without reading before commencing the taking of testimony;

7. All witnesses will be sworn or affirmed. When possible, witnesses will stand to be sworn or affirmed;

8. The Personnel Advisory Board, on request of either party or on its own motion, may order that the witnesses be separated so as to preclude any witness, other than the parties and their attorneys, from hearing the testimony of other witnesses. When requested by the appellant, only one (1) person in addition to counsel shall remain in the room to represent the appointing authority;

9. The appointing authority will be required to present his/her case first. Experience has shown this method gives the board a clearer and quicker picture of the issues. This is not a shift of the burden of proof, but is only the burden of going ahead with the proof;

10. The Personnel Advisory Board may take notice of its rules, the class specifications, official records of the Personnel Division and the pay plan without the necessity of an offer in evidence;

11. The Personnel Advisory Board may fix the total time to be allowed for oral argument;

12. At the hearing the entire proceedings will be tape recorded. After the board announces its findings of fact, conclusions of law, decision and order, or at an earlier time if the board determines that the interest of efficient administration would be served, a copy of the

recording, will be made available to either party. The board will not transcribe the record from aural to written form. The cost of a transcription will be borne by the requesting party. The transcription may be performed by any commercial business or agency selected by the requesting party. The board will forward directly to the selected business or agency a copy of the aural recording;

13. No rehearing shall be granted from a final decision of the Personnel Advisory Board; however, at any time prior to issuance of the decision, the board may require the production of additional documents and records, the presentation of additional testimony after prior notification to both parties, or both;

14. An appeal set for hearing may be continued by the Personnel Advisory Board for cause deemed sufficient or by consent of both parties to the appeal. However, a continuance will not be granted except for compelling cause or to serve the ends of justice. If an appellant requests and is granted a continuance, the Personnel Advisory Board, in its discretion, may deny the appellant any compensation for that portion of time lost by reason of the continuance made at the request if the appellant's appeal is finally sustained. If an appeal scheduled for hearing is not reached, it shall be reset and given precedence over any subsequent appeal;

15. The finding of the board will be announced in writing subsequent to the hearing. Parties will be notified by letter sent by certified mail. The finding will be made as provided in section 36.390(5), RSMo; and

16. As appropriate and where no specific rule governs the issue, the Personnel Advisory Board will utilize the rules of the civil procedure for guidance.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 115—State Committee of Dietitians
Chapter 1—General Rules**

ORDER OF RULEMAKING

By the authority vested in the State Committee of Dietitians under sections 324.212.4, RSMo Supp. 2005 and 324.228, RSMo 2000, the board amends a rule as follows:

4 CSR 115-1.040 Fees is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 15, 2006 (31 MoReg 286-288). 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 115—State Committee of Dietitians
Chapter 2—Licensure Requirements**

ORDER OF RULEMAKING

By the authority vested in the State Committee of Dietitians under section 324.216, RSMo Supp. 2005, the board adopts a rule as follows:

4 CSR 115-2.045 Inactive Status is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on February 15, 2006 (31

MoReg 289-291). No changes have been made to 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 263—State Committee for Social Workers
Chapter 2—Licensure Requirements**

ORDER OF RULEMAKING

By the authority vested in the State Committee for Social Workers under sections 337.600, 337.612, 337.618, 337.650, 337.662, 337.668 and 337.677, RSMo Supp. 2005 and 337.627, RSMo 2000, the board rescinds a rule as follows:

4 CSR 263-2.082 Continuing Education is rescinded.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on February 15, 2006 (31 MoReg 309). No changes have been made to the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 263—State Committee for Social Workers
Chapter 2—Licensure Requirements**

ORDER OF RULEMAKING

By the authority vested in the State Committee for Social Workers under sections 337.627, RSMo 2000 and 337.668 and 337.677, RSMo Supp. 2005, the board adopts a rule as follows:

4 CSR 263-2.082 Continuing Education is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on February 15, 2006 (31 MoReg 309-313). No changes have been made to 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 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 10-6.061 Construction Permit Exemptions is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on January 3, 2006 (31 MoReg 25–28). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Department of Natural Resources' Air Pollution Control Program received one (1) comment from the Missouri Ag Industries Council (Mo-Ag).

COMMENT: Mo-Ag commented that they support the proposed changes to the grain handling, storage and drying facilities exemption in subparagraph (3)(A)2.E. Mo-Ag also commented that in addition to the proposed revisions, the exemption level of one hundred ninety thousand (190,000) bushels storage capacity in (3)(A)2.E.(II) should be increased to reflect current emission factors. Mo-Ag provided data and calculations to support their recommendation. Based on their latest calculations, Mo-Ag recommended an exemption level of 3,637,931 bushels throughput.

RESPONSE: For the past several weeks, the department's Air Pollution Control Program has been working with Mo-Ag in an effort to incorporate the latest emission factors into the exemption for grain handling, storage and drying facilities. After several discussions, it was mutually agreed that no changes would be made to the rule language as part of this rulemaking to allow additional research time to arrive at an exemption level that would be acceptable to all interested parties. A change to the exemption level will be considered with the next revision to this rule.

**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 and 208.201, RSMo 2000 and 208.152 and 208.471, RSMo Supp. 2005, the director amends a rule as follows:

13 CSR 70-15.010 Inpatient Hospital Services Reimbursement Plan; Outpatient Hospital Services Reimbursement Methodology **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on March 1, 2006 (31 MoReg 384–385). 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 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 9—Uniform Counting Standards**

ORDER OF RULEMAKING

By the authority vested in the Secretary of State under section 115.225, RSMo Supp. 2005, the secretary rescinds a rule as follows:

15 CSR 30-9.020 Uniform Counting Standards—Optical Scan Voting Systems **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on March 15, 2006 (31

MoReg 472). No changes have been made to the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A letter containing comments was received from the Missouri Republican State Committee.

COMMENT: The Missouri Republican State Committee asserts that because legislation is being proposed to codify the existing rule, rescission of the rule, so that it may be replaced by the new, more detailed rule, "will have only served to create uncertainty and confusion, as the standards for determining what constitutes a vote change back and forth."

RESPONSE: Rescission of the present rule is necessary to replace it with the new detailed rule, which clarifies and illustrates the definition of what constitutes a vote in the present rule. Passage of legislation pending in the General Assembly is speculative. No changes were made in response to this comment.

**Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 9—Uniform Counting Standards**

ORDER OF RULEMAKING

By the authority vested in the Secretary of State under section 115.225, RSMo Supp. 2005, the secretary adopts a rule as follows:

15 CSR 30-9.020 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on March 15, 2006 (31 MoReg 472–475). Because there are changes throughout the proposed rule, the entire rule is reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Elections Division received twenty-five (25) comments on the proposed rule from twenty (20) county clerks and election authorities. A discussion was also held with representatives from the Legislative Committee of the Missouri Association of County Clerks and Election Authorities in order to receive their comments. Two (2) identical comments were received from two (2) members of Missourians for Honest Elections and one (1) letter containing multiple comments was received from the Missouri Republican State Committee.

COMMENT: The clerks' and election authorities' comments and the Missouri Republican State Committee's comments in general concerned differences in interpretation of marks made by voters, as illustrated in the proposed rule. The clerks and election authorities suggested that differences between the marks that an optical scan device could read and those that an election judge could read might result in differences in vote counts and they had comments about the accuracy of the depiction of ballot markings.

RESPONSE AND EXPLANATION OF CHANGE: To ensure uniformity and consistency in application of the counting standards as required by the Help America Vote Act, the illustrations were developed based on research of similar rules determining voter intent from other states. The short explanations and illustrations are intended to clarify and illustrate the definition of what constitutes a vote in the present rule. Changes have been made in response to the specific comments listed below.

COMMENT: Several clerks noted that the "connect the arrow" illustration of the original proposed rule, subsection (3)(C), did not correctly illustrate the meaning of that portion of the rule. The subsection is intended to instruct election judges when recreating a damaged

ballot and during a manual recount in determining the intent of the voter when the voter circles the target area.

RESPONSE AND EXPLANATION OF CHANGE: The illustration in this section has been revised to show a circling of the arrow.

COMMENT: Several clerks stated they did not believe underlining the name of a candidate or ballot issue was an appropriate expression of voter intent in the proposed rule, subsection (3)(E).

RESPONSE AND EXPLANATION OF CHANGE: The text of the subsection has been amended to delete the phrase “or underlined,” and the corresponding two (2) illustrations of ballots with the candidate’s name underlined have been deleted.

COMMENT: Several clerks and the Missouri Republican State Committee stated they did not believe that the proposed rule, subsection (3)(F), in which the party abbreviation associated with the candidate’s name was circled, was an appropriate expression of voter intent.

RESPONSE AND EXPLANATION OF CHANGE: The proposed section and the corresponding illustrations have been deleted.

COMMENT: Several clerks and the Missouri Republican State Committee stated they did not believe that the proposed rule, subsection (3)(G), in which the voter crossed out all but one (1) candidate or issue preference, was an appropriate expression of voter intent.

RESPONSE AND EXPLANATION OF CHANGE: The proposed section and the corresponding illustrations have been deleted.

COMMENT: The Missouri Republican State Committee provided a comment on proposed rule subsection (3)(H), in which a clarifying mark or marks could be used to determine voter intent where the voter also marked the target area adjacent to two (2) or more candidates, allowing the vote to be counted. The committee was concerned that the standard is too subjective and would lead to disparate treatment of voters.

RESPONSE: No changes were made in response to this comment. Voter intent may be clearly expressed in the form of marks or handwritten words on the ballot. During a manual recount or in recreating a damaged ballot, the only times these rules will be used, such clear expressions of voter intent must be counted.

COMMENT: Several clerks and the Missouri Republican State Committee stated they did not believe that the proposed rule, subsection (4)(A), interpreting hesitation or stray marks in the designated area on a ballot, was an appropriate indication of voter intent.

RESPONSE AND EXPLANATION OF CHANGE: The section and the corresponding illustrations have been deleted.

COMMENT: Members of Missourians for Honest Elections commented about the problems inherent in electronic voting, security issues, and requiring random hand counting of ballots to verify electronic counts. They also commented that vote records should be “human-readable” for two (2) years following an election. They requested a public hearing on the issue as soon as possible.

RESPONSE: The Help America Vote Act requires states to “adopt uniform and nondiscriminatory standards that define what constitutes a vote and that will be counted as a vote for each category of voting system used in the State.” The proposed rule is intended to instruct local election authorities in recreating damaged ballots and conducting a manual recount of optically scanned paper ballots when one is ordered. It is not directly applicable to electronic voting equipment. In addition, current state law requires vote records be retained for not less than one (1) year after an election is decided. No changes to the rule were made in response to this comment.

COMMENT: The Missouri Republican State Committee provided a general comment that the rules interpreting some instances where multiple candidates are marked as valid votes turned “some over-

votes into valid votes,” which could provide the incentive and ability for “unscrupulous persons” to change a voter’s vote during the manual recount process.

RESPONSE: No changes were made in response to this comment. During a manual recount or in recreating a damaged ballot, the only times these rules will be used, clear expressions of voter intent must be counted. Recounts are conducted by local election judges representing both major parties who are not unknown persons. The rule is designed to provide clarity and uniformity for the local election judges.

COMMENT: Several clerks commented that the proposed rule, subsections (4)(B) and (4)(C), which illustrated and defined overvotes, were sufficiently related in content that they should be combined into a single section of the rule for clarity. The Missouri Republican State Committee commented that these sections were confusing.

RESPONSE AND EXPLANATION OF CHANGE: The proposed sections have been deleted and combined and rewritten into a new section numbered (4). The original four (4) illustrations that accompanied the originally proposed subsections (4)(B) and (4)(C) have been retained, because they give an accurate pictorial representation of the two (2) types of overvotes that are covered in section (4).

COMMENT: The clerks and election authorities noted that the proposed rule, section (5), governing the counting of votes for write-in candidates, was inconsistent with the original optical scan rule and inconsistent with the governing statute because the voter would not have been required to mark the designated area on the ballot in order to cast a valid write-in vote.

RESPONSE AND EXPLANATION OF CHANGE: A new subsection has been added to the proposed rule, numbered (5)(A), that requires a mark in the designated area on the ballot as well as the candidate’s name in order to be counted as a valid vote for a write-in candidate. Subsequent subsections of section (5) have been renumbered correspondingly. The accompanying illustrations have been revised by adding a mark in the target area next to the valid candidate’s name to reflect the new subsection’s requirement.

COMMENT: The clerks and election authorities noted that the proposed rule, subsection (6)(B), which also concerns votes for write-in candidates, contained the same deficiency as delineated in the immediately preceding comment.

RESPONSE AND EXPLANATION OF CHANGE: Subsection (6)(B) has been amended to include the requirement that the voter mark the target area on the ballot in addition to writing in the candidate’s name in order to be counted as a valid vote for a write-in candidate.

COMMENT: Several clerks stated that the proposed rule, subsection (6)(C)—in which the voter marks not only the target area for a named candidate on the ballot, but also marks the target area and writes in the name of a second candidate who is neither named on the ballot nor qualified as a write-in candidate—should not have been designated as an overvote. In practice, such a scenario is considered a vote for the named candidate, because the written-in candidate is not a qualified write-in candidate.

RESPONSE AND EXPLANATION OF CHANGE: Subsection (6)(C) has been amended to reflect that the situation described is not an overvote, but is considered a vote for the named candidate. The accompanying two (2) illustrations have been revised to reflect the new section.

15 CSR 30-9.020 Uniform Counting Standards—Optical Scan Voting Systems

PURPOSE: This rule provides for standards to be used by election authorities when counting ballots cast using optical scan voting systems.

(1) The election authority shall be responsible for insuring that the standards provided for in this rule are followed when counting ballots cast using optical scan voting systems.

(2) Prior to tabulating ballots all machines shall be programmed to reject blank ballots where no votes are recorded, or where an over-vote is registered in any race.

(A) In jurisdictions using precinct-based tabulators, the voter who cast the ballot shall review the ballot if rejected, to determine if he/she wishes to make any changes to the ballot or if he/she would like to spoil their ballot and receive another ballot.

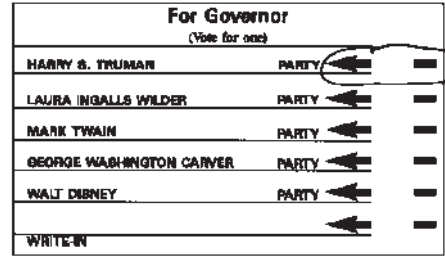
(B) In jurisdictions using centrally based tabulators, if a ballot is so rejected, it shall be reviewed by a bipartisan team using the following criteria:

1. If a ballot is determined to be damaged, the bipartisan team shall spoil the original ballot and duplicate the voter's intent on the new ballot, provided that there is an undisputed method of matching the duplicate card with its original after it has been placed with the remainder of the ballot cards from that precinct; and

2. The provisions of sections (3), (4), (5) and (6) of this rule.

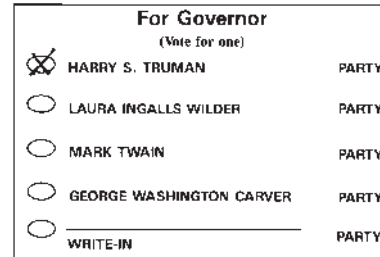
(3) The following marks shall be considered expressions of voter intent:

(A) Any ballot which is properly marked in the target area, as specified by the ballot instructions.

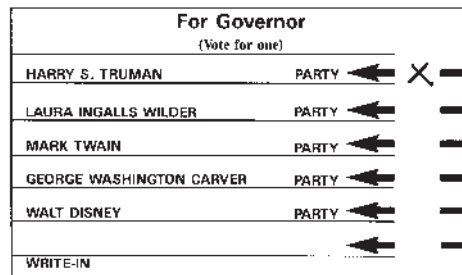


This constitutes a vote for Harry S. Truman.

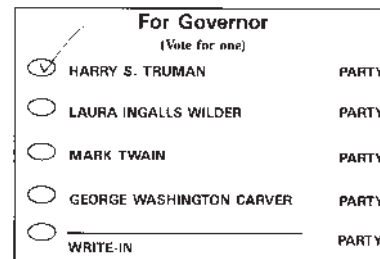
(D) There is a distinguishing mark in the target area next to a candidate or issue preference including but not limited to the following examples:



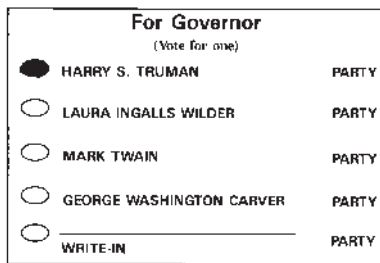
This constitutes a vote for Harry S. Truman.



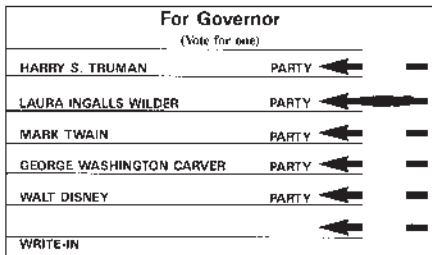
This constitutes a vote for Harry S. Truman.



This constitutes a vote for Harry S. Truman.



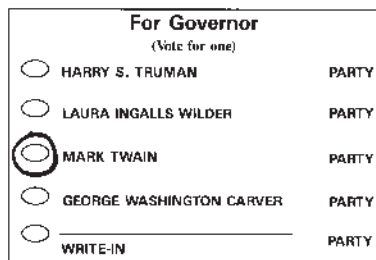
This constitutes a vote for Harry S. Truman.



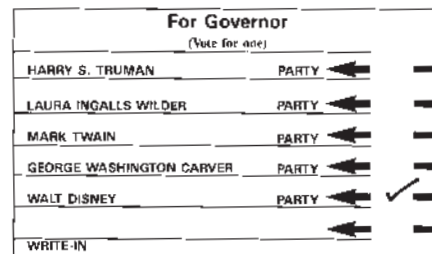
This constitutes a vote for Laura Ingalls Wilder.

(B) Any ballot that is properly marked with any device other than the approved marking device which prevents a machine count shall be counted as a vote.

(C) The target area next to a candidate or issue preference is circled.



This constitutes a vote for Mark Twain.



This constitutes a vote for Walt Disney.

(E) The name of a candidate or issue preference is circled.

For Governor
(Vote for one)

<input type="radio"/>	HARRY S. TRUMAN	PARTY
<input checked="" type="radio"/>	LAURA INGALLS WILDER	PARTY
<input type="radio"/>	MARK TWAIN	PARTY
<input type="radio"/>	GEORGE WASHINGTON CARVER	PARTY
<input type="radio"/>	WRITE-IN	PARTY

This constitutes a vote for Laura Ingalls Wilder.

For Governor
(Vote for one)

HARRY S. TRUMAN	PARTY	←	█
LAURA INGALLS WILDER	PARTY	←	█
MARK TWAIN	PARTY	←	█
GEORGE WASHINGTON CARVER	PARTY	←	█
WALT DISNEY	PARTY	←	█
WRITE-IN		←	█

This constitutes a vote for Laura Ingalls Wilder.

For Governor
(Vote for one)

HARRY S. TRUMAN	PARTY	←	█
LAURA INGALLS WILDER	PARTY	←	█
MARK TWAIN	PARTY	←	█
GEORGE WASHINGTON CARVER	PARTY	←	█
WALT DISNEY	PARTY	←	█
WRITE-IN		←	█

This constitutes an overvote.

For Fire District Board
(Vote for two)

<input checked="" type="radio"/>	HARRY S. TRUMAN	PARTY
<input type="radio"/>	LAURA INGALLS WILDER	PARTY
<input checked="" type="radio"/>	MARK TWAIN	PARTY
<input checked="" type="radio"/>	GEORGE WASHINGTON CARVER	PARTY
<input type="radio"/>	WRITE-IN	PARTY

This constitutes an overvote.

(F) In the event that there are distinguishing marks for two (2) or more candidates, clarified by an additional mark or marks that appear to indicate support, the ballot shall be counted as a vote for the candidate with the additional, clarifying marks.

For Governor
(Vote for one)

<input checked="" type="radio"/>	HARRY S. TRUMAN	PARTY
<input type="radio"/>	LAURA INGALLS WILDER	PARTY
<input checked="" type="radio"/>	MARK TWAIN	PARTY
<input type="radio"/>	GEORGE WASHINGTON CARVER	PARTY
<input type="radio"/>	WRITE-IN	PARTY

This constitutes a vote for Harry S. Truman.

For School Board
(Vote for three)

HARRY S. TRUMAN	PARTY	←	█
LAURA INGALLS WILDER	PARTY	←	█
MARK TWAIN	PARTY	←	█
GEORGE WASHINGTON CARVER	PARTY	←	█
WALT DISNEY	PARTY	←	█
WRITE-IN		←	█

This constitutes an overvote.

(5) In jurisdictions using optical scan systems, a valid vote for a write-in candidate must include the following:

(A) A distinguishing mark in the target area next to the name of the candidate;

(B) The name of a qualified write-in candidate. If the name of the candidate, as written by the voter, is substantially as declared by the candidate it shall be counted, or in those circumstances where the names of candidates are similar, the names of candidates as shown on voter registration records shall be counted; and

(C) The name of the office for which the candidate is to be elected.

For Governor
(Vote for one)

HARRY S. TRUMAN	PARTY	←	█
LAURA INGALLS WILDER	PARTY	←	█
MARK TWAIN	PARTY	←	█
GEORGE WASHINGTON CARVER	PARTY	←	█
WALT DISNEY	PARTY	←	█
WRITE-IN		←	█

This constitutes a vote for Harry S. Truman.

(4) If a voter marks more candidates than there are positions to be elected for that office, without any additional clarifying marks, the marks do not constitute a valid vote for any candidate in that race and the ballot shall be deemed an overvote.

For Governor
(Vote for one)

<input type="radio"/>	HARRY S. TRUMAN	PARTY
<input type="radio"/>	LAURA INGALLS WILDER	PARTY
<input type="radio"/>	MARK TWAIN	PARTY
<input type="radio"/>	GEORGE WASHINGTON CARVER	PARTY
<input checked="" type="radio"/>	Bobby Jones	PARTY
<input type="radio"/>	WRITE-IN	PARTY

Bobby Jones is a qualified candidate. This constitutes a vote for Bobby Jones.

For Governor
(Vote for one)

<input type="radio"/>	HARRY S. TRUMAN	PARTY
<input checked="" type="radio"/>	LAURA INGALLS WILDER	PARTY
<input type="radio"/>	MARK TWAIN	PARTY
<input checked="" type="radio"/>	GEORGE WASHINGTON CARVER	PARTY
<input type="radio"/>	WRITE-IN	PARTY

This constitutes an overvote.

For Governor
(Vote for one)

HARRY S. TRUMAN	PARTY	←	█
LAURA INGALLS WILDER	PARTY	←	█
MARK TWAIN	PARTY	←	█
GEORGE WASHINGTON CARVER	PARTY	←	█
WALT DISNEY	PARTY	←	█
Bobby Jones		←	█
WRITE-IN		←	█

Bobby Jones is a qualified candidate. This constitutes a vote for Bobby Jones.

(6) If a voter designates a vote for a named candidate on the ballot and also provides for a write-in candidate in the same race it shall be treated as follows:

(A) If a voter designates a vote for a named candidate on the ballot and writes in the same candidate in the write-in area, the vote shall count for that candidate.

For Governor (Vote for one)		
<input type="radio"/>	HARRY S. TRUMAN	PARTY
<input type="radio"/>	LAURA INGALLS WILDER	PARTY
<input type="radio"/>	MARK TWAIN	PARTY
<input checked="" type="radio"/>	GEORGE WASHINGTON CARVER	PARTY
<input type="radio"/>	<u>George W. Carver</u>	PARTY
	WRITE-IN	

This constitutes a vote for George Washington Carver.

For Governor (Vote for one)		
HARRY S. TRUMAN	PARTY	←
LAURA INGALLS WILDER	PARTY	←
MARK TWAIN	PARTY	←
GEORGE WASHINGTON CARVER	PARTY	←
WALT DISNEY	PARTY	←
<u>Laura Ingalls Wilder</u>		←
WRITE-IN		

This constitutes a vote for Laura Ingalls Wilder.

(B) If a voter designates a vote for a named candidate on the ballot and writes in the name of a qualified write-in candidate or the name of a different named candidate on the ballot in that race and makes a distinguishing mark in the target area next to the name of the write-in candidate, it shall be considered an overvote with neither candidate receiving credit for the vote.

For Governor (Vote for one)		
<input type="radio"/>	HARRY S. TRUMAN	PARTY
<input type="radio"/>	LAURA INGALLS WILDER	PARTY
<input checked="" type="radio"/>	MARK TWAIN	PARTY
<input type="radio"/>	GEORGE WASHINGTON CARVER	PARTY
<input checked="" type="radio"/>	<u>Harry S. Truman</u>	PARTY
	WRITE-IN	

This constitutes an overvote.

For Governor (Vote for one)		
HARRY S. TRUMAN	PARTY	←
LAURA INGALLS WILDER	PARTY	←
MARK TWAIN	PARTY	←
GEORGE WASHINGTON CARVER	PARTY	←
WALT DISNEY	PARTY	←
<u>Walt Disney</u>		←
WRITE-IN		

This constitutes an overvote.

(C) If a voter designates a vote for a named candidate on the ballot and writes in the name of a person who is not a qualified write-in candidate and not a named candidate on the ballot in that race, it shall be considered a vote for the named candidate.

For Governor (Vote for one)		
<input type="radio"/>	HARRY S. TRUMAN	PARTY
<input checked="" type="radio"/>	LAURA INGALLS WILDER	PARTY
<input type="radio"/>	MARK TWAIN	PARTY
<input type="radio"/>	GEORGE WASHINGTON CARVER	PARTY
<input checked="" type="radio"/>	<u>Albert Einstein</u>	PARTY
	WRITE-IN	

Albert Einstein is not a qualified candidate. This constitutes a vote for Laura Ingalls Wilder.

For Governor (Vote for one)		
HARRY S. TRUMAN	PARTY	←
LAURA INGALLS WILDER	PARTY	←
MARK TWAIN	PARTY	←
GEORGE WASHINGTON CARVER	PARTY	←
WALT DISNEY	PARTY	←
<u>Michael Douglas</u>		←
WRITE-IN		

Michael Douglas is not a qualified candidate. This constitutes a vote for Harry S. Truman.

(7) Whenever a hand recount of votes of optical scan ballots is ordered, the provisions of this rule shall be used to determine voter intent.

**Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 9—Uniform Counting Standards**

ORDER OF RULEMAKING

By the authority vested in the Secretary of State under section 115.225, RSMo Supp. 2005, the secretary rescinds a rule as follows:

15 CSR 30-9.030 Uniform Counting Standards—Paper Ballots is rescinded.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on March 15, 2006 (31 MoReg 475-476). No changes have been made to the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A letter containing comments was received from the Missouri Republican State Committee.

COMMENT: The Missouri Republican State Committee asserts that because legislation is being proposed to codify the existing rule, rescission of the rule, so that it may be replaced by the new, more detailed rule, "will have only served to create uncertainty and confusion, as the standards for determining what constitutes a vote change back and forth."

RESPONSE: Rescission of the present rule is necessary to replace it with the new detailed rule, which clarifies and illustrates the definition of what constitutes a vote in the present rule. Passage of legislation pending in the General Assembly is speculative. No changes were made in response to this comment.

**Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 9—Uniform Counting Standards**

ORDER OF RULEMAKING

By the authority vested in the Secretary of State under section 115.225, RSMo 2005, the secretary adopts a rule as follows:

15 CSR 30-9.030 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on March 15, 2006 (31 MoReg 476-478). Because there are changes throughout the proposed rule, the entire rule is reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Elections Division received twenty-five (25) comments on the proposed rule from twenty (20) county clerks and election authorities. A discussion was also held with representatives from the Legislative Committee of the Missouri Association of County Clerks and Election Authorities in order to receive their comments. Two (2) identical comments were received from two (2) members of Missourians for Honest Elections and one (1) letter containing multiple comments was received from the Missouri Republican State Committee.

COMMENT: The clerks' and election authorities' comments and the Missouri Republican State Committee's comments in general concerned differences in interpretation of marks made by voters, as illustrated in the proposed rule. The clerks and election authorities suggested that differences between the marks that an optical scan device could read and those that an election judge could read might result in differences in vote counts, and they had comments about the accuracy of the depiction of ballot markings.

RESPONSE AND EXPLANATION OF CHANGE: To ensure uniformity and consistency in application of the counting standards as required by the Help America Vote Act, the illustrations were developed based on research of similar rules determining voter intent from other states. The short explanations and illustrations are intended to clarify and illustrate the definition what constitutes a vote in the present rule. Changes have been made in response to the specific comments listed below.

COMMENT: Several clerks stated they did not believe underlining the name of a candidate or ballot issue was an appropriate expression of voter intent in the proposed rule, subsection (2)(D).

RESPONSE AND EXPLANATION OF CHANGE: The text of the section has been amended to delete the phrase "or underlined," and the corresponding illustration of a ballot with candidate name underlined has been deleted.

COMMENT: Several clerks and the Missouri Republican State Committee stated they did not believe that the proposed rule, subsection (2)(E), in which the party abbreviation associated with the candidate's name was circled, was an appropriate expression of voter intent.

RESPONSE AND EXPLANATION OF CHANGE: The proposed section and corresponding illustration have been deleted.

COMMENT: Several clerks and the Missouri Republican State Committee stated they did not believe that the proposed rule, subsection (3)(F), in which the voter crossed out all but one (1) candidate or issue preference, was an appropriate expression of voter intent.

RESPONSE AND EXPLANATION OF CHANGE: The proposed section and corresponding illustration have been deleted.

COMMENT: Several clerks and the Missouri Republican State Committee stated they did not believe that the proposed rule, subsection (3)(A), interpreting hesitation or stray marks in the target area on a ballot, was an appropriate indication of voter intent.

RESPONSE AND EXPLANATION OF CHANGE: The section and corresponding illustration have been deleted.

COMMENT: The Missouri Republican State Committee provided a comment on proposed rule subsection (3)(H), in which a clarifying mark or marks could be used to determine voter intent where the voter also marked the target area adjacent to two (2) or more candidates, allowing the vote to be counted. The committee was concerned that the standard is too subjective and would lead to disparate treatment of voters.

RESPONSE: No changes were made in response to this comment. Voter intent may be clearly expressed in the form of marks or handwritten words on the ballot. During a manual recount or in recreating a damaged ballot, the only times these rules will be used, such clear expressions of voter intent must be counted.

COMMENT: Members of Missourians for Honest Elections commented about the problems inherent in electronic voting, security issues, and requiring random hand counting of ballots to verify electronic counts. They also commented that vote records should be "human-readable" for two (2) years following an election. They requested a public hearing on the issue as soon as possible.

RESPONSE: The Help America Vote Act requires states to "adopt uniform and nondiscriminatory standards that define what constitutes a vote and that will be counted as a vote for each category of voting system used in the State." The proposed rule is intended to instruct local election authorities in recreating damaged ballots and conducting a manual recount of paper ballots when one is ordered. It is not applicable to electronic voting equipment. In addition, current state law requires vote records be retained for not less than one (1) year after an election is decided. No changes to the rule were made in response to this comment.

COMMENT: The Missouri Republican State Committee provided a general comment that the rules interpreting some instances where multiple candidates are marked as valid votes turned "some overvotes into valid votes," which could provide the incentive and ability for "unscrupulous persons" to change a voter's vote during the manual recount process.

RESPONSE: No changes were made in response to this comment. During a manual recount or in recreating a damaged ballot, the only times these rules will be used, clear expressions of voter intent must be counted. Recounts are conducted by local election judges representing both major parties who are not unknown persons. The rule is designed to provide clarity and uniformity for the local election judges.

COMMENT: Several clerks commented that the proposed rule, subsections (3)(B) and (3)(C), which illustrated and defined overvotes, were sufficiently related in content that they should be combined into a single rule for clarity. The Missouri Republican State Committee commented that these sections were confusing.

RESPONSE AND EXPLANATION OF CHANGE: The proposed sections have been deleted, and combined and rewritten into a new section numbered (3). The original two (2) illustrations that accompanied the originally proposed rule subsections (3)(B) and (3)(C) have been retained, because they give an accurate pictorial representation of the two (2) types of overvotes that are covered in section (3).

COMMENT: The clerks and election authorities noted that the proposed rule, section (4), governing the counting of votes for write-in candidates, was inconsistent with the original rule for paper ballots and inconsistent with statute because the voter would not have been required to mark the target area on the ballot in order to cast a valid write-in vote.

RESPONSE AND EXPLANATION OF CHANGE: A new subsection numbered (4)(A) has been added to the proposed rule that requires a mark in the target area on the ballot as well as the candidate's name in order to be counted as a valid vote for a write-in candidate. Subsequent subsections of section (4) have been renumbered correspondingly. The accompanying illustrations have been revised by adding a mark in the target area next to the valid candidate's name to reflect the new subsection's requirement.

COMMENT: The clerks and election authorities noted that the proposed rule, subsection (5)(B), which also concerns votes for write-in candidates, contained the same deficiency as delineated in the immediately preceding comment.

RESPONSE AND EXPLANATION OF CHANGE: The rule, subsection (5)(B), has been amended to include the requirement that the voter mark the designated area on the ballot in addition to writing in the candidate's name in order to be counted as a valid vote for a write-in candidate.

COMMENT: Several clerks stated that proposed rule subsection (5)(C)—in which the voter marks not only the target area for a named candidate on the ballot, but also marks the target area and writes in the name of second candidate who is neither named on the ballot nor qualified as a write-in candidate—should not be designated as an overvote. In practice, such a scenario is considered a vote for the named candidate because the written-in candidate is not a qualified write-in candidate.

RESPONSE AND EXPLANATION OF CHANGE: Subsection (5)(C) has been amended to reflect that the situation described is not an overvote, but is considered a vote for the named candidate. The accompanying illustration has been revised to reflect the new section.

15 CSR 30-9.030 Uniform Counting Standards—Paper Ballots

PURPOSE: This rule provides for standards to be used by election authorities when counting ballots cast using paper ballots.

(1) The election authority shall be responsible for insuring that the standards provided for in this rule are followed when counting ballots cast using paper ballots.

(2) The following marks shall be considered expressions of voter intent:

(A) Any ballot which is properly marked, as specified by the ballot instructions, in the target area.

For Governor (Vote for one)		
<input checked="" type="checkbox"/>	HARRY S. TRUMAN	PARTY
<input type="checkbox"/>	LAURA INGALLS WILDER	PARTY
<input type="checkbox"/>	MARK TWAIN	PARTY
<input type="checkbox"/>	GEORGE WASHINGTON CARVER	PARTY
<input type="checkbox"/>	WRITE-IN	PARTY

This constitutes a vote for Harry S. Truman.

(B) The target area next to a candidate or issue preference is circled.

For Governor (Vote for one)		
<input type="checkbox"/>	HARRY S. TRUMAN	PARTY
<input type="checkbox"/>	LAURA INGALLS WILDER	PARTY
<input checked="" type="checkbox"/>	MARK TWAIN	PARTY
<input type="checkbox"/>	GEORGE WASHINGTON CARVER	PARTY
<input type="checkbox"/>	WRITE-IN	PARTY

This constitutes a vote for Mark Twain.

(C) There is a distinguishing mark in the target area next to a candidate or issue preference including but not limited to the following examples:

For Governor (Vote for one)		
<input checked="" type="checkbox"/>	HARRY S. TRUMAN	PARTY
<input type="checkbox"/>	LAURA INGALLS WILDER	PARTY
<input type="checkbox"/>	MARK TWAIN	PARTY
<input type="checkbox"/>	GEORGE WASHINGTON CARVER	PARTY
<input type="checkbox"/>	WRITE-IN	PARTY

This constitutes a vote for Harry S. Truman.

For Governor (Vote for one)		
<input checked="" type="checkbox"/>	HARRY S. TRUMAN	PARTY
<input type="checkbox"/>	LAURA INGALLS WILDER	PARTY
<input type="checkbox"/>	MARK TWAIN	PARTY
<input type="checkbox"/>	GEORGE WASHINGTON CARVER	PARTY
<input type="checkbox"/>	WRITE-IN	PARTY

This constitutes a vote for Harry S. Truman.

(D) The name of a candidate or issue preference is circled.

For Governor (Vote for one)		
<input type="checkbox"/>	HARRY S. TRUMAN	PARTY
<input checked="" type="checkbox"/>	LAURA INGALLS WILDER	PARTY
<input type="checkbox"/>	MARK TWAIN	PARTY
<input type="checkbox"/>	GEORGE WASHINGTON CARVER	PARTY
<input type="checkbox"/>	WRITE-IN	PARTY

This constitutes a vote for Laura Ingalls Wilder.

(E) In the event that there are distinguishing marks for two (2) or more candidates, clarified by an additional mark or marks that appear to indicate support, the ballot shall be counted as a vote for the candidate with the additional, clarifying marks.

For Governor (Vote for one)		
<input type="checkbox"/>	HARRY S. TRUMAN	PARTY
<input checked="" type="checkbox"/>	LAURA INGALLS WILDER	PARTY
<input type="checkbox"/>	MARK TWAIN	PARTY
<input checked="" type="checkbox"/>	GEORGE WASHINGTON CARVER	PARTY
<input type="checkbox"/>	WRITE-IN	PARTY

This constitutes a vote for Laura Ingalls Wilder.

(3) If a voter marks more candidates than there are positions to be elected for that office, without any additional clarifying marks, the marks do not constitute a valid vote for any candidate in that race and the ballot shall be deemed an overvote.

For Governor (Vote for one)		
<input checked="" type="checkbox"/>	HARRY S. TRUMAN	PARTY
<input type="checkbox"/>	LAURA INGALLS WILDER	PARTY
<input type="checkbox"/>	MARK TWAIN	PARTY
<input checked="" type="checkbox"/>	GEORGE WASHINGTON CARVER	PARTY
<input type="checkbox"/>	WRITE-IN	PARTY

This constitutes an overvote.

For School Board (Vote for three)		
<input checked="" type="checkbox"/>	HARRY S. TRUMAN	PARTY
<input type="checkbox"/>	LAURA INGALLS WILDER	PARTY
<input checked="" type="checkbox"/>	MARK TWAIN	PARTY
<input checked="" type="checkbox"/>	GEORGE WASHINGTON CARVER	PARTY
<input checked="" type="checkbox"/>	WALT DISNEY	PARTY
<input type="checkbox"/>	_____	PARTY
	WRITE-IN	

This constitutes an overvote.

(4) In jurisdictions using paper ballots, a valid vote for a write-in candidate must include the following:

(A) A distinguishing mark in the target area next to the name of the candidate;

(B) The name of a qualified write-in candidate. If the name of the candidate, as written by the voter, is substantially as declared by the candidate it shall be counted, or in those circumstances where the names of candidates are similar, the names of candidates as shown on voter registration records shall be counted.

(C) The name of the office for which the candidate is to be elected.

For Governor (Vote for one)		
<input type="checkbox"/>	HARRY S. TRUMAN	PARTY
<input type="checkbox"/>	LAURA INGALLS WILDER	PARTY
<input type="checkbox"/>	MARK TWAIN	PARTY
<input type="checkbox"/>	GEORGE WASHINGTON CARVER	PARTY
<input checked="" type="checkbox"/>	<u>Bobby Jones</u>	PARTY
	WRITE-IN	

Bobby Jones is a qualified candidate. This constitutes a vote for Bobby Jones.

(5) If a voter designates a vote for a named candidate on the ballot and also provides for a write-in candidate in the same race it shall be treated as follows:

(A) If a voter designates a vote for a named candidate on the ballot and writes in the same candidate in the write-in area, the vote shall count for that candidate.

For Governor (Vote for one)		
<input type="checkbox"/>	HARRY S. TRUMAN	PARTY
<input checked="" type="checkbox"/>	LAURA INGALLS WILDER	PARTY
<input type="checkbox"/>	MARK TWAIN	PARTY
<input type="checkbox"/>	GEORGE WASHINGTON CARVER	PARTY
<input checked="" type="checkbox"/>	<u>Laura Ingalls Wilder</u>	PARTY
	WRITE-IN	

This constitutes a vote for Laura Ingalls Wilder.

(B) If a voter designates a vote for a named candidate on the ballot and writes in the name of a qualified write-in candidate or the name of a different named candidate on the ballot in that race and makes a distinguishing mark in the target area next to the name of the write-in candidate, it shall be considered an overvote with neither candidate receiving credit for the vote.

For Governor (Vote for one)		
<input type="checkbox"/>	HARRY S. TRUMAN	PARTY
<input type="checkbox"/>	LAURA INGALLS WILDER	PARTY
<input checked="" type="checkbox"/>	MARK TWAIN	PARTY
<input type="checkbox"/>	GEORGE WASHINGTON CARVER	PARTY
<input checked="" type="checkbox"/>	<u>Harry S. Truman</u>	PARTY
	WRITE-IN	

This constitutes an overvote.

(C) If a voter designates a vote for a named candidate on the ballot and writes in the name of a person who is not a qualified write-in candidate and not a named candidate on the ballot in that race, it shall be considered a vote for the named candidate.

For Governor (Vote for one)		
<input type="checkbox"/>	HARRY S. TRUMAN	PARTY
<input type="checkbox"/>	LAURA INGALLS WILDER	PARTY
<input type="checkbox"/>	MARK TWAIN	PARTY
<input checked="" type="checkbox"/>	GEORGE WASHINGTON CARVER	PARTY
<input checked="" type="checkbox"/>	<u>Gertrude Stein</u>	PARTY
	WRITE-IN	

Gertrude Stein is not a qualified candidate. This shall constitute a vote for George Washington Carver.

(6) Whenever a hand recount of votes of paper ballots is ordered, the provisions of this rule shall be used to determine voter intent.

**Title 19—DEPARTMENT OF HEALTH
AND SENIOR SERVICES
Division 30—Division of Regulation and Licensure
Chapter 20—Hospitals**

ORDER OF RULEMAKING

By the authority vested in the Department of Health and Senior Services under sections 192.006 and 197.080, RSMo 2000 and 197.154, RSMo Supp. 2005, the department amends a rule as follows:

**19 CSR 30-20.021 Organization and Management for Hospitals
is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 15, 2006 (31 MoReg 324-337). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Department of Health and Senior Services received one (1) comment on the proposed amendment.

COMMENT: The Division of Community and Public Health in the Department of Health and Senior Services commented on proposed paragraph 19 CSR 30-20.021(2)(B)13. This agency believes that the prohibition of “the use of tobacco products throughout the hospital and its facilities” is subject to varying interpretations. The Division of Community and Public Health suggested that the intent of the regulation could be made clearer, and the potential for non-uniformity of tobacco control policies among various hospitals could be reduced, by amending the above phrase such as to prohibit “the use of

tobacco products throughout the hospital, its campus, its vehicles, and property and facilities under its ownership or control.”

RESPONSE: Section 197.080, RSMo, gives the Department of Health and Senior Services authority to adopt, amend, promulgate and enforce rules, regulations and standards with respect to all hospitals to further the purposes of the hospital licensure law in promoting safe and adequate treatment of individuals in hospitals in the interest of public health, safety and welfare. The department believes that this statutory authority extends to the portion of a hospital's premises covered by its license, but not to other hospital grounds, cars, or buildings. While the department agrees that a total prohibition of tobacco use on any part of the hospital grounds as well as non-licensed facilities and vehicles under a hospital's control is beneficial, and, indeed, some hospitals have already taken these positive steps, the department has no statutory authority to regulate these areas. No changes to the proposed rule were made based on this comment.

SUMMARY OF EARLIER COMMENTS: In addition to the comment above, the department received two (2) comments from a publication of a similar proposed amendment in the October 3, 2005 *Missouri Register* (30 MoReg 2070-2083). Although these comments were not resubmitted in response to the publication of this rule in the February 15, 2006 *Missouri Register*, the department acknowledges them.

COMMENT TO OCTOBER 3, 2005 PUBLICATION: A hospital system commented that while it supported the prohibition of the use of tobacco products, it believes the amendment should be changed to accommodate the clinical needs of inpatient psychiatric, substance abuse, and chemical dependency patients. The hospital system also recommended that the proposed amendment be clarified to permit hospitals to define in their policies and procedures what constitutes the hospital's facilities. No changes to the proposed amendment were made based on this comment.

RESPONSE: The department appreciates the hospital system's comment on the tobacco amendment. The department reviewed the empirical evidence in the articles that the hospital system submitted supporting smoking in psychiatric units. (These articles included: A Review of the Effects of Nicotine on Schizophrenia and Antipsychotic Medications by Edward R. Lyon, M.S., Ed.D., 1999; Level of Functioning; Severity of Illness, and Smoking Status Among Chronic Psychiatric Patients by R. G. Hall, et al., 1995; Normalization of Auditory Physiology by Cigarette Smoking in Schizophrenic Patients, L. E. Adler, et al., 1993.) However, we also reviewed other empirical evidence in articles that does not support smoking in psychiatric units, but rather supports a smoke-free psychiatric unit. (These articles included: Management of Smoking in People with Psychiatric Disorders by Douglas M. Ziedonis and Jill M. Williams, 2003; Smoking Cessation Approaches for Persons with Mental Illness or Addictive Disorders, N. El-Guebaly, et al., 2002; Treatment of Tobacco Use in an Inpatient Psychiatric Setting by J. J. Prochaska, et al., 2004.) Hospitals in this state and other states have successfully implemented a tobacco-free policy throughout the entire facility. There are also a number of nicotine replacement products available for use. The health hazards caused by the use of tobacco products, both to the actual user of tobacco products and to those who inhale second-hand smoke have been well documented in the literature for many years. In the department's role of safeguarding the health of the citizens of Missouri, we cannot condone the use of tobacco products in any setting for any reason. No changes to the proposed amendment were made based on this comment.

COMMENT TO OCTOBER 3, 2005 PUBLICATION: A statewide hospital association commented on the restriction on the use of tobacco products in the proposed amendment. The association supported the portion of the proposed amendment that prohibits the use of tobacco products because it will foster a healthy work and patient

care environment and sets an appropriate standard for their member hospitals and the communities these hospitals serve. However, the association is aware that several of their member hospitals have concerns about how the ban would affect inpatient psychiatric, substance abuse and chemical dependency patients. The association indicated that they welcomed the opportunity to work with the department and their member hospitals to address these concerns.

RESPONSE: The department appreciates the hospital association's comment on the tobacco amendment. As indicated in the response to the earlier comment, the department reviewed empirical evidence in articles supporting smoking in psychiatric units and in articles that do not support smoking in psychiatric units, but rather support a smoke-free psychiatric unit. Hospitals in this state and other states have successfully implemented a tobacco-free policy throughout the entire facility. There are also a number of nicotine replacement products available for use. The health hazards caused by the use of tobacco products, both to the actual user of tobacco products and to those who inhale second-hand smoke have been well documented in the literature for many years. In the department's role of safeguarding the health of the citizens of Missouri, it cannot condone the use of tobacco products in this setting for any reason. No changes to the proposed amendment were made based on this comment.