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SALUS POPULI SUPREMA LEX ESTO

"The welfare of the people shall be the supreme law."

ROBIN CARNAHAN

SECRETARY OF STATE

MISSOURI REGISTER

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

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RULES—Cite material in the *Missouri Register* by volume and page number, for example, Vol. 28, *Missouri Register*, page 27. The approved short form of citation is 28 MoReg 27.

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

Title	***Code of State Regulations***	**Division**	**Chapter**	**Rule**
1	CSR	10-	1.	010
Department		Agency, Division	General area regulated	Specific area regulated

They are properly cited by using the full citation , i.e., 1 CSR 10-1.010.

Each department of state government is assigned a title. Each agency or division within the department is assigned a division number. The agency then groups its rules into general subject matter areas called chapters and specific areas called rules. Within a rule, the first breakdown is called a section and is designated as (1). Subsection is (A) with further breakdown into paragraph 1., subparagraph A., part (I), subpart (a), item I. and subitem a.

RSMo—The most recent version of the statute containing the section number and the date.

Rules appearing under this heading are filed under the authority granted by section 536.025, RSMo 2000. An emergency rule may be adopted by an agency if the agency finds that an immediate danger to the public health, safety or welfare, or a compelling governmental interest requires emergency action; follows procedures best calculated to assure fairness to all interested persons and parties under the circumstances; follows procedures which comply with the protections extended by the *Missouri* and the *United States Constitutions*; limits the scope of such rule to the circumstances creating an emergency and requiring emergency procedure, and at the time of or prior to the adoption of such rule files with the secretary of state the text of the rule together with the specific facts, reasons and findings which support its conclusion that there is an immediate danger to the public health, safety or welfare which can be met only through the adoption of such rule and its reasons for concluding that the procedure employed is fair to all interested persons and parties under the circumstances.

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

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

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 2—State Membership

EMERGENCY AMENDMENT

22 CSR 10-2.010 Definitions. The board is amending section (29), adding a new section (81) and renumbering the remaining sections.

PURPOSE: This amendment includes changes in the definitions made by the board of trustees regarding the key terms within the Missouri Consolidated Health Care Plan relative to state members.

*EMERGENCY STATEMENT: This emergency amendment must be in place by January 1, 2007, in accordance with the new plan year. Therefore, this amendment is necessary to protect members (employees, retirees and their families) enrolled in the Missouri Consolidated Health Care Plan (MCHCP) from the unintended consequences of having their health insurance coverage interrupted due to confusion regarding eligibility or availability of benefits. Further, it clarifies member eligibility and responsibility for various types of eligible charges, beginning with the first day of coverage for the new plan year. It may also help ensure that inappropriate claims are not made against the state and help protect the MCHCP and its members from being subjected to unexpected and significant financial liability and/or litigation. It is imperative that this amendment be registered immediately in order to maintain the integrity of the current health care plan. This emergency amendment must become effective January 1, 2007, in order that an immediate danger is not imposed on the public welfare. This amendment reflects changes made to the plan by the Missouri Consolidated Health Care Plan Board of Trustees. This emergency amendment complies with the protections extended by the **Missouri** and **United States Constitutions** and limits its scope to the circumstances creating the emergency. The MCHCP follows procedures best calculated to assure fairness to all interested persons and parties under the circumstances. Emergency amendment filed December 21, 2006, becomes effective January 1, 2007, expires on June 29, 2007.*

(29) Experimental/Investigational/Unproven. A treatment, procedure, device or drug that meets any of the criteria listed below is considered experimental/investigational/unproven, and is not eligible for coverage under the plan. Reliable evidence includes anything determined to be such by the plan administrator, in the exercise of its discretion, and may include published reports and articles in the medical and scientific literature generally considered to be authoritative by the national medical professional community. Experimental/investigational/unproven is defined as a treatment, procedure, device or drug that the plan administrator determines, in the exercise of its discretion:

(B) Is shown by reliable evidence to be the subject of ongoing Phase I*[, II, or III]* clinical trials or under study to determine its maximum tolerated dose, its toxicity, safety, efficiency, or its efficacy as compared with the standard means of treatment or diagnosis; or

(81) Severe obesity. Body Mass Index (BMI) greater than or equal to forty (40) or BMI greater than or equal to thirty-five (35) with at least two (2) or more of the following uncontrolled comorbidities: coronary heart disease, type 2 diabetes mellitus, clinically significant obstructive sleep apnea, pulmonary hyptertension, hypertension or other obesity related conditions which will be considered based on clinical review.

[(81)] **(82)** Skilled nursing facility (SNF). An institution which meets fully each of the following requirements:

(A) It is operated pursuant to law and is primarily engaged in providing, for compensation from its patients, the following services for persons convalescing from sickness or injury: room, board and twenty-four (24)-hour-a-day nursing service by one (1) or more professional nurses and nursing personnel as are needed to provide adequate medical care;

(B) It provides the services under the supervision of a proprietor or employee who is a physician or registered nurse; and it maintains adequate medical records and has available the services of a physician under an established agreement, if not supervised by a physician or registered nurse; and

(C) A skilled nursing facility shall be deemed to include institutions meeting the criteria in section (81) of this rule which are established for the treatment of sick and injured persons through spiritual means and are operated under the authority of organizations which are recognized under Medicare (Title I of Public Law 89-97).

[(82)] **(83)** Sound natural teeth. Teeth and/or tissue that is viable, functional, and free of disease. A sound natural tooth has no decay, fillings on no more than two (2) surfaces, no gum disease associated with bone loss, no history of root canal therapy, is not a dental implant, and functions normally in chewing and speech.

[(83)] **(84)** Specialty drugs. High cost drugs that are primarily self-injectible but sometimes oral medications.

[(84)] **(85)** State. Missouri.

[(85)] **(86)** Subrogation. The substitution of one "party" for another. Subrogation entitles the insurer to the rights and remedies that would otherwise belong to the insured (the subscriber) for a loss covered by the insurance policy. Subrogation allows the plan to stand in the place of the participant and recover the money directly from the other insurer.

[(86)] **(87)** Subscriber. The employee or member who elects coverage under the plan.

[(87)] **(88)** Survivor. A member who meets the requirements of 22 CSR 10-2.020(5)(A).

[(88)] **(89)** Unemancipated child(ren). A natural child(ren), a legally adopted child(ren) or a child(ren) placed for adoption, and a dependent disabled child(ren) over twenty-three (23) years of age (during initial eligibility period only and appropriate documentation may be required by the plan), and the following:

(A) Stepchild(ren);

(B) Foster child(ren) for whom the employee is responsible for health care;

(C) Grandchild(ren) for whom the employee has legal custody and is responsible for providing health care;

(D) Other child(ren) for whom the employee is legal custodian subject to specific approval by the plan administrator.

1. Except for a disabled child(ren) as described in section (58) of this rule, an unemancipated child(ren) is eligible from birth to the end of the month in which s/he is emancipated, as defined here, or attains age twenty-three (23) (see 22 CSR 10-2.020(3)(D)2. for continuing coverage on a handicapped child(ren) beyond age twenty-three (23)); and

(E) Stepchild(ren) who are not domiciled with the employee, provided the natural parent who is legally responsible for providing coverage is also covered as a dependent under the plan.

[(89)] **(90)** Usual, Customary, and Reasonable charge.

(A) Usual. The fee a physician most frequently charges the majority of his/her patients for the same or similar services.

(B) Customary. The range of fees charged in a geographic area by physicians of comparable skills and qualifications for the same performance of similar service.

(C) Reasonable. The flexibility to take into account any unusual clinical circumstances involved in performing a particular service.

(D) A formula is used to determine the customary maximum. The customary maximum is the usual charge submitted by ninety percent (90%) of the doctors for ninety percent (90%) of the procedures reported.

[(90)] **(91)** Utilization review. Evaluation of the necessity, appropriateness, and efficiency of the use of medical services, procedures, and facilities on a prospective, concurrent, or retrospective basis.

[(91)] **(92)** Vested subscriber. A member who meets the requirements of 22 CSR 10-2.020(5)(B).

AUTHORITY: section 103.059, RSMo 2000. Emergency rule filed Dec. 16, 1993, effective Jan. 1, 1994, expired April 30, 1994. Emergency rule filed April 4, 1994, effective April 14, 1994, expired Aug. 11, 1994. Original rule filed Dec. 16, 1993, effective July 10, 1994. For intervening history, please consult the ***Code of State Regulations****. Emergency amendment filed Dec. 21, 2006, effective Jan. 1, 2007, expires June 29, 2007. A proposed amendment covering this same material is published in this issue of the* ***Missouri Register****.*

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 2—State Membership

EMERGENCY AMENDMENT

22 CSR 10-2.060 PPO and Co-Pay Plan Limitations. The board is amending section (31).

PURPOSE: This amendment includes changes to the limitations and exclusions of the Missouri Consolidated Health Care Plan PPO and/or Co-Pay plan.

EMERGENCY STATEMENT: This emergency amendment must be in place by January 1, 2007, in accordance with the new plan year. Therefore, this amendment is necessary to protect members (employees, retirees and their families) enrolled in the Missouri Consolidated Health Care Plan (MCHCP) from the unintended consequences of having their health insurance coverage interrupted due to confusion regarding eligibility or availability of benefits. Further, it clarifies member eligibility and responsibility for various types of eligible charges, beginning with the first day of coverage for the new plan year. It may also help ensure that inappropriate claims are not made against the state and help protect the MCHCP and its members from being subjected to unexpected and significant financial liability and/or litigation. It is imperative that this amendment be registered immediately in order to maintain the integrity of the current health care plan. This emergency amendment must become effective January 1, 2007, in order that an immediate danger is not imposed on the public welfare. This amendment reflects changes made to the plan by the Missouri Consolidated Health Care Plan Board of Trustees. This emergency amendment complies with the protections extended by the ***Missouri*** *and* ***United States Constitutions*** *and limits its scope to the circumstances creating the emergency. The MCHCP follows procedures best calculated to assure fairness to all interested persons and parties under the circumstances. Emergency amendment filed December 21, 2006, becomes effective January 1, 2007, expires on June 29, 2007.*

(31) Obesity—medical and surgical intervention is not covered**, unless the member meets the definition of severe obesity as defined in 22 CSR 10-2.010 and such severe obesity has persisted for at least five (5) years**. **Bariatric surgery will only be covered when prior authorization is received from the medical plan. Please see the current State Member Handbook for further limitations regarding bariatric surgery.**

AUTHORITY: section 103.059, RSMo 2000. Emergency rule filed Dec. 16, 1993, effective Jan. 1, 1994, expired April 30, 1994. Emergency rule filed April 4, 1994, effective April 14, 1994, expired Aug. 11, 1994. Original rule filed Dec. 16, 1993, effective July 10, 1994. For intervening history, please consult the ***Code of State Regulations****. Emergency amendment filed Dec. 21, 2006, effective Jan. 1, 2007, expires June 29, 2007. A proposed amendment covering this same material is published in this issue of the* ***Missouri Register****.*

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 2—State Membership

EMERGENCY AMENDMENT

22 CSR 10-2.067 HMO and POS Limitations. The board is amending section (31).

PURPOSE: This amendment includes changes to the limitations and exclusions of the Missouri Consolidated Health Care Plan HMO and/or POS plan.

*EMERGENCY STATEMENT: This emergency amendment must be in place by January 1, 2007, in accordance with the new plan year. Therefore, this amendment is necessary to protect members (employees, retirees and their families) enrolled in the Missouri Consolidated Health Care Plan (MCHCP) from the unintended consequences of having their health insurance coverage interrupted due to confusion regarding eligibility or availability of benefits. Further, it clarifies member eligibility and responsibility for various types of eligible charges, beginning with the first day of coverage for the new plan year. It may also help ensure that inappropriate claims are not made against the state and help protect the MCHCP and its members from being subjected to unexpected and significant financial liability and/or litigation. It is imperative that this amendment be registered immediately in order to maintain the integrity of the current health care plan. This emergency amendment must become effective January 1, 2007, in order that an immediate danger is not imposed on the public welfare. This amendment reflects changes made to the plan by the Missouri Consolidated Health Care Plan Board of Trustees. This emergency amendment complies with the protections extended by the **Missouri** and **United States Constitutions** and limits its scope to the circumstances creating the emergency. The MCHCP follows procedures best calculated to assure fairness to all interested persons and parties under the circumstances. Emergency amendment filed December 21, 2006, becomes effective January 1, 2007, expires on June 29, 2007.*

(31) Obesity—Medical and surgical intervention is not covered**, unless the member meets the definition of severe obesity as defined in 22 CSR 10-2.010 and such severe obesity has persisted for at least five (5) years**. **Bariatric surgery will only be covered when prior authorization is received from the medical plan. Please see the current State Member Handbook for further limitations regarding bariatric surgery.**

*AUTHORITY: section 103.059, RSMo 2000. Emergency rule filed Dec. 21, 1994, effective Jan. 1, 1995, expired April 30, 1995. Emergency rule filed April 13, 1995, effective May 1, 1995, expired Aug. 28, 1995. Original rule filed Dec. 21, 1994, effective June 30, 1995. For intervening history, please consult the **Code of State Regulations**. Emergency amendment filed Dec. 21, 2006, effective Jan. 1, 2007, expires June 29, 2007. A proposed amendment covering this same material is published in this issue of the **Missouri Register**.*

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 2—State Membership

EMERGENCY RESCISSION

22 CSR 10-2.090 Pharmacy Benefit Summary. This rule established the benefit provisions, covered charges, limitations and exclusions of the Missouri Consolidated Health Care Plan pharmacy benefit.

PURPOSE: This rule is being rescinded as it is no longer needed.

*EMERGENCY STATEMENT: This emergency rescission must take effect by January 1, 2007, in accordance with the new plan year. Therefore, this rescission is necessary to protect members (employees, retirees and their families) enrolled in the Missouri Consolidated Health Care Plan (MCHCP) from the unintended consequences of having their health insurance coverage interrupted due to confusion regarding eligibility or availability of benefits. Further, it clarifies member eligibility and responsibility for various types of eligible charges, beginning with the first day of coverage for the new plan year. It may also help ensure that inappropriate claims are not made against the state and help protect the MCHCP and its members from being subjected to unexpected and significant financial liability and/or litigation. It is imperative that this rescission be registered immediately in order to maintain the integrity of the current health care plan. This emergency rescission must become effective January 1, 2007, in order that an immediate danger is not imposed on the public welfare. This rescission reflects changes made to the plan by the Missouri Consolidated Health Care Plan Board of Trustees. This emergency rescission complies with the protections extended by the **Missouri** and **United States Constitutions** and limits its scope to the circumstances creating the emergency. The MCHCP follows procedures best calculated to assure fairness to all interested persons and parties under the circumstances. Emergency rescission filed December 21, 2006, becomes effective January 1, 2007, expires on June 29, 2007.*

*AUTHORITY: section 103.059, RSMo 2000. Emergency rule filed Dec. 22, 2005, effective Jan. 1, 2006, expired June 29, 2006. Original rule filed Dec. 22, 2005, effective June 30, 2006. Emergency rescission filed Dec. 21, 2006, effective Jan. 1, 2007, expires June 29, 2007. A proposed rescission covering this same material is published in this issue of the **Missouri Register**.*

The Secretary of State shall publish all executive orders beginning January 1, 2003, pursuant to section 536.035.2, RSMo Supp. 2006.

EXECUTIVE ORDER
06-49

WHEREAS, it is a fundamental responsibility of government to protect its most vulnerable citizens; and

WHEREAS, in June 2006 the Governor organized the Mental Health Task Force ("the Task Force") and charged it with the responsibility of overseeing a cross-agency effort to work together to make certain that no instance of abuse or neglect in public or private facilities is overlooked; and

WHEREAS, the Task Force's membership includes the Directors of the Departments of Mental Health, Social Services, Health and Senior Services, Public Safety along with families and representatives of contract service providers; and

WHEREAS, the Governor directed the Task Force to produce a short-term plan for conducting joint investigations while developing a long-term cooperative effort to make certain that every instance of potential abuse or neglect in public and private facilities is investigated and addressed appropriately; and

WHEREAS, on June 16, 2006, the Task Force developed and released five short-term action items for immediate implementation to identify and address gaps in the investigations process at the Department of Mental Health ("the Department"); and

WHEREAS, in addition to the short term plan, the Task Force, by soliciting public input and holding public hearings throughout the state to listen to consumers' families, providers, staff, and others with an interest in the safety of the mental health system, produced and provided to the Governor long-term recommendations to improve the state's mental health system; and

WHEREAS, all recommendations put forth by the Task Force deserve thorough review by the Department and some can and should be implemented immediately.

NOW THEREFORE, I, Matt Blunt, Governor of Missouri, by virtue and authority vested in me by the Constitution and laws of the State of Missouri, do hereby issue the following orders:

The Department shall continue to notify the Missouri State Highway Patrol and local law enforcement of any deaths or assaults in a facility that is operated, licensed, or certified by the Department. Additionally, the Department shall report all deaths in a facility that is operated, licensed, or certified by the Department to the local coroner or medical examiner.

The Department shall implement an information management system that can rapidly and effectively track critical data on abuse, neglect, and other safety information. This data will be used as a component of the Department's continuous quality improvement plan and the Department's annual report to the Governor and Lieutenant Governor.

The Department and community providers shall develop standard individualized training for consumers and families on identifying and reporting abuse and neglect.

The Department shall work with the Department of Health and Senior Services to establish formal ties to its adult abuse hotline, and with the Department of Social Services for formal ties to its child abuse hotline, so that the reporters of abuse and neglect of consumers of the Department fully utilize those hotlines as another means of reporting abuse and neglect.

The Department shall develop a process for triage of incidents for joint investigation of all deaths or near deaths that are suspect for abuse or neglect, as well as incidents of physical assault and sexual misconduct. In order to conduct "triage," strict procedural guidelines must be developed to allow for proper prioritizing of cases. This process should include notification of and cooperation with local law enforcement.

The Department shall prepare an annual report to the Governor, the Lieutenant Governor, and the Mental Health Commission on its progress in implementing the above-mentioned recommendations. The annual report shall include data that indicates the level of safety in the mental health system, along with plans for additional action where needed. The first report shall be submitted by June 30, 2007.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 19th day of December, 2006.

Matt Blunt
Governor

ATTEST:

Robin Carnahan
Secretary of State

EXECUTIVE ORDER
06-50

WHEREAS, severe storm systems causing significant damage associated with heavy snow, freezing rain, sleet and ice impacted communities across the State of Missouri on November 30 and December 1, 2006, resulting in a significant interruption of public services; and

WHEREAS, Executive Order 06-46 was issued on December 1, 2006, declaring a State of Emergency within the State of Missouri; and

WHEREAS, Executive Order 06-48 was issued on December 1, 2006, authorizing the Director of the Missouri Department of Natural Resources to waive or suspend temporarily the operation of statutory or administrative rules or regulations in order to expedite the cleanup and recovery process; and

WHEREAS, in response to Executive Order 06-48, the Director of the Missouri Department of Natural Resources issued a waiver on December 7, 2006, suspending specific air pollution and solid waste regulations to address wastes generated by the severe storm systems; and

WHEREAS, several communities in the State of Missouri continue to clear debris caused by the severe storm systems; and

WHEREAS, Executive Orders 06-46 and 06-48 expire on January 1, 2007, unless extended in whole or in part.

NOW THEREFORE, I, Matt Blunt, Governor of the State of Missouri, by virtue of the authority vested in me by the Constitution and laws of the State of Missouri, hereby extend the declaration of emergency contained in Executive Order 06-46 and the terms of Executive Order 06-48 through March 1, 2007, for the purpose of continuing the cleanup efforts in the affected Missouri communities.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 28th day of December, 2006.

Matt Blunt
Governor

ATTEST:

Robin Carnahan
Secretary of State

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

Entirely new rules are printed without any special symbology under the heading of 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 6—Wildlife Code: Sport Fishing: Seasons, Methods Limits

PROPOSED AMENDMENT

3 CSR 10-6.535 Trout. The commission proposes to amend subsections (5)(A) and (B).

PURPOSE: This amendment corrects an inconsistency in the Wildlife Code.

(5) Permits: A trout permit, in addition to the prescribed fishing permit, is required to possess and transport trout except in areas where a daily fishing tag is required. A trout permit is required in addition to the prescribed fishing permit for fishing at:

(A) Bennett Spring State Park, Montauk State Park and Roaring River State Park from 8:00 a.m. to 4:00 p.m. on Fridays, Saturdays *[and]***,** Sundays **and Mondays** from the second Friday in November through the second *[Sunday]* **Monday** in February.

(B) Maramec Spring Park from 8:00 a.m. to 4:00 p.m. daily from the second Friday in November through the second *[Sunday]* **Monday** in February.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. Original rule filed June 13, 1994, effective Jan. 1, 1995. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed Dec. 19, 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 TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with John W. Smith, Assistant Director, Department of Conservation, PO Box 180, 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 5—Air Quality Standards and Air Pollution Control Rules Specific to the St. Louis Metropolitan Area

PROPOSED AMENDMENT

10 CSR 10–5.220 Control of Petroleum Liquid Storage, Loading and Transfer. The commission proposes to add new sections (1), (4) and (5); and renumber and amend original sections (1)–(14). 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 restricts volatile organic compound emissions from the handling of petroleum liquids in five (5) specific areas: petroleum storage tanks with a capacity greater than forty thousand (40,000) gallons, the loading of gasoline into delivery vessels, the transfer of gasoline from delivery vessels into storage containers, gasoline delivery vessels and the fueling of motor vehicles from storage containers. This amendment exempts initial fueling of motor vehicles at automobile assembly plants from the Missouri Performance Evaluation Test Procedures (MO/PETP) approval test requirements. However, all other requirements of the MO/PETP under this rule will be maintained to ensure that there is no increase of emissions from these facilities. This amendment also clarifies the MO/PETP requirements in the Gasoline Transfer section and incorporates other minor rule text clarifications (e.g. added definitions, language/typographical errors, etc.). The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is a

letter from Environ dated September 15, 2005 on behalf of the automotive manufacturers.

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) Applicability.

(A) This rule shall apply throughout St. Louis City and Jefferson, St. Charles, Franklin and St. Louis Counties.

(B) Compliance with this rule does not relieve the owner or operator of the responsibility to comply with other applicable governmental requirements.

(C) Exemptions to this rule include:

1. Petroleum storage tanks that meet the following requirements shall be exempt from subsection (3)(A) of this rule:

A. Are used to store processed and/or treated petroleum or condensate when it is stored, processed and/or treated at a drilling and production installation prior to custody transfer;

B. Contain a petroleum liquid with a true vapor pressure less than 27.6 kilopascals (kPa) (4.0 psia) at ninety degrees Fahrenheit (90°F);

C. Are of welded construction, and equipped with a metallic-type shoe primary seal and have a shoe-mounted secondary seal or closure devices of demonstrated equivalence approved by the staff director; and

D. Are used to store waxy, heavy pour crude oil.

2. Gasoline loading. Subsection (3)(B) of this rule shall not apply to a loading installation whose average monthly throughput of gasoline is less than or equal to one hundred twenty thousand (120,000) gallons when averaged over the most recent calendar year, provided that the installation loads gasoline by submerged loading and meets the following requirements:

A. To maintain the exemption, these installations shall submit a report on a form supplied by the department no later than February 1 of each year to the staff director stating gasoline throughput for each month of the previous calendar year. After the effective date of this rule, any revision to the department supplied forms will be presented to the regulated community for a forty-five (45)-day comment period;

B. Delivery vessels purchased after December 31, 1995, shall be Stage I equipped;

C. A loading installation that fails to meet the requirements of the exemption for one (1) calendar year shall not qualify for the exemption again;

D. To maintain the exemption, owners or operators shall maintain records of gasoline throughput and gasoline delivery; and

E. Delivery vessels operated by an exempt installation shall not deliver to Stage I controlled tanks unless the delivery vessel is equipped with and employs Stage I controls.

3. Stationary gasoline tanks with a capacity of less than or equal to one thousand (1,000) gallons.

4. Fueling of motor vehicles. For facilities with one thousand (1,000) gallon or smaller tank(s) and monthly throughput of less than or equal to ten thousand (10,000) gallons of gasoline are exempt from subsection (3)(E) of this rule.

5. Gasoline transfer provisions per paragraph (3)(C)2. of this rule shall not apply to transfers made to storage tanks equipped with floating roofs or their equivalent.

6. Gasoline transfer provisions per paragraphs (3)(C)1.–4. of this rule shall not apply to stationary storage tanks having a capacity less than or equal to two thousand (2,000) gallons used exclusively for the fueling of implements of agriculture.

7. Fueling of motor vehicles pursuant to subsection (3)(E) of this rule shall not apply to any stationary tank used primarily for the fueling of agricultural implements or implements of husbandry. For purposes of subsection (3)(E), agricultural implements and implements of husbandry shall refer to vehicles exempted from licensing requirements by the Missouri Department of Revenue.

8. Initial fueling of motor vehicles. Subsection (3)(E) of this rule shall not apply to any fueling system used for the initial fueling of motor vehicles as defined in subsection (2)(I) of this rule.

9. Ancillary fueling of motor vehicles. Subsection (3)(E) of this rule shall not apply to any fueling system used for the initial fueling of motor vehicles as defined in subsection (2)(J) of this rule.

*[(1)]***(2)** Definitions.

[(A) Definitions of certain terms used in this rule may be found in 10 CSR 10-6.020.]

*[(B)]***(A)** *[Definitions Specific to this Rule.]* **Ancillary refueling system—Any gasoline dispensing facility, including related equipment, that shares a common storage tank with an initial fueling system as defined in subsection (2)(F) of this rule. The purpose of an ancillary refueling system is to refuel in-use motor vehicles at automobile assembly plants.**

*[1.]***(B)** CARB—California Air Resources Board, 2020 L Street, P*[.]*O*[.]* Box 2815, Sacramento, CA 95812.

(C) CARB EVR—California Air Resources Board Enhanced Vapor Recovery Program.

*[2.]***(D)** Department—Missouri Department of Natural Resources, *[205 Jefferson Street,]* P*[.]*O*[.]* Box 176, Jefferson City, MO 65102.

*[3.]***(E)** Director—The director of the Missouri Department of Natural Resources, or a designated representative to carry out the duties as described in 643.060 of the Missouri Air Conservation Law.

(F) Initial fueling of motor vehicles—The operation, including related equipment, of dispensing gasoline fuel into a newly assembled motor vehicle at an automobile assembly plant while the vehicle is still being assembled on the assembly line. The newly assembled motor vehicles being fueled on the assembly line must have fuel tanks that have never before contained gasoline fuel.

(G) MO/PETP—The *Missouri Performance Evaluation Test Procedures*, a set of test procedures for evaluating performance of Stage I/II vapor control equipment and systems to be installed or that have been installed in Missouri. MO/PETP is based upon CARB EVR. Contact the department for a copy of the current MO/PETP.

[4. System—Manufacturer's application of one of the specific designs for Stage II vapor recovery.]

*[5.]***(H)** Staff director—Director of the Air Pollution Control Program of the Department of Natural Resources, or a designated representative.

(I) System—Manufacturer's application of one of the specific designs for Stage II vapor recovery.

*[6.]***(J)** Vapor recovery system modification—Any repair, replacement, alteration or upgrading of vapor recovery equipment or gasoline dispensing equipment beyond normal maintenance of the system as permitted by the staff director. Replacement of equipment with like equipment shall not be considered a vapor recovery system modification.

[7. MO/PETP—The Missouri Performance Evaluation Test Procedures, a set of test procedures for evaluating performance of Stage I/II vapor control equipment and systems to be installed or that have been installed in Missouri. Contact the department for a copy of the latest MO/PETP.

8. Initial fueling of motor vehicles—The operation of dispensing gasoline fuel into a newly assembled motor vehicle

at an automobile assembly plant while the vehicle is still being assembled on the assembly line. The newly assembled motor vehicles being fueled on the assembly line must have fuel tanks that have never before contained gasoline fuel.

9. Ancillary refueling system—Any gasoline dispensing facility that shares a common storage tank with an initial fueling system as defined in paragraph (1)(B)8. of this rule. The purpose of an ancillary refueling system is to refuel in-use motor vehicles at automobile assembly plants.]

(K) 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.

[(2) Applicability.

(A) This rule shall apply throughout St. Louis City and Jefferson, St. Charles, Franklin and St. Louis Counties.

(B) Compliance with this rule does not relieve the owner or operator of the responsibility to comply with other applicable governmental requirements.]

(3) General Provisions.

*[(3)]***(A)** Petroleum Storage Tanks.

*[(A)]***1.** No owner or operator of petroleum storage tanks shall cause or permit the storage in any stationary storage tank of more than forty thousand (40,000) gallons capacity of any petroleum liquid having a true vapor pressure of one and five-tenths (1.5) pounds per square inch absolute (psia) or greater at ninety degrees Fahrenheit (90°F), unless the storage tank is a pressure tank capable of maintaining working pressures sufficient at all times to prevent volatile organic compound (VOC) vapor or gas loss to the atmosphere or is equipped with one (1) of the following vapor loss control devices:

*[1.]***A.** A floating roof, consisting of a pontoon type, double-deck type or internal floating cover or external floating cover, that rests on the surface of the liquid contents and is equipped with a closure seal(s) to close the space between the roof edge and tank wall. Storage tanks with external floating roofs shall meet the additional following requirements:

*[A.]***(I)** The storage tank *[is]* **must be** fitted with**—**

*[(I)]***(a)** A continuous secondary seal extending from the floating roof to the tank wall (rim-mounted secondary seal); or

*[(II)]***(b)** A closure or other device approved by the staff director that controls VOC emissions with an effectiveness equal to or greater than a seal required under *[part (3)(A)1.A.(I)]* **subpart (3)(A)1.A.(I)(a)** of this rule;

*[B.]***(II)** All seal closure devices **must** meet the following requirements:

*[(I)]***(a)** There are no visible holes, tears or other openings in the seal(s) or seal fabric;

*[(II)]***(b)** The seal(s) is intact and uniformly in place around the circumference of the floating roof between the floating roof and the tank wall; and

*[(III)]***(c)** For vapor-mounted primary seals, the accumulated area of gaps exceeding 0.32 centimeters, one-eighth inch (1/8") width, between the secondary seal and the tank wall shall not exceed 21.2 cm^2 per meter of tank diameter (1.0 in^2 per foot of tank diameter);

*[C.]***(III)** All openings in the external floating roof, except for automatic bleeder vents, rim space vents and leg sleeves, *[are]* **must be** equipped with—

*[(I)]***(a)** Covers, seals or lids in the closed position except when the openings are in actual use; and

*[(II)]***(b)** Projections into the tank which remain below the liquid surface at all times;

*[D.]***(IV)** Automatic bleeder vents *[are]* **must be** closed at all times except when the roof is floated off or landed on the roof leg supports;

*[E]***(V)** Rim vents *[are]* **must be** set to open when the roof is being floated off the leg supports or at the manufacturer's recommended setting; and

*[F.]***(VI)** Emergency roof drains *[are]* **must be** provided with slotted membrane fabric covers or equivalent covers which cover at least ninety percent (90%) of the area of the opening;

*[2.]***B.** A vapor recovery system with all storage tank gauging and sampling devices gas-tight, except when gauging or sampling is taking place. The vapor disposal portion of the vapor recovery system shall consist of an absorber system, condensation system, *[incinerator]* **membrane system** or equivalent vapor disposal system that processes the vapor and gases from the equipment being controlled; or

*[3.]***C.** Other equipment or means of equal efficiency for purposes of air pollution control that may be approved by the staff director.

*[(B)]***2.** Control equipment described in *[paragraph (3)(A)1.]* **subparagraph (3)(A)1.A.** of this rule shall not be allowed if the petroleum liquid other than gasoline has a true vapor pressure of 11.1 psia or greater at ninety degrees Fahrenheit (90°F). All storage tank gauging and sampling devices shall be gas-tight except when gauging or sampling is taking place.

[(C) Owners and operators of petroleum storage tanks subject to this section shall maintain written records of maintenance (both routine and unscheduled) performed on the tanks, all repairs made, the results of all tests performed and the type and quantity of petroleum liquid stored in them. The records shall be maintained for two (2) years and made available to the staff director upon request.]

3. Reporting and record keeping shall be per subsection (4)(A) of this rule.

[(D) This section shall not apply to petroleum storage tanks which—

1. Are used to store processed and/or treated petroleum or condensate when it is stored, processed and/or treated at a drilling and production installation prior to custody transfer;

2. Contain a petroleum liquid with a true vapor pressure less than 27.6 kilopascals (kPa) (4.0 psia) at ninety degrees Fahrenheit (90°F);

3. Are of welded construction, and equipped with a metallic-type shoe primary seal and have a shoe-mounted secondary seal or closure devices of demonstrated equivalence approved by the staff director; and

4. Are used to store waxy, heavy pour crude oil.]

*[(4)]***(B)** Gasoline Loading.

*[(A)]***1.** No owner or operator of a gasoline loading installation or delivery vessel shall cause or permit the loading of gasoline into any delivery vessel from a loading installation unless the loading installation is equipped with a vapor recovery system or equivalent. This system or system equivalent shall be approved by the staff director, and the delivery vessel shall be in compliance with *[section (6)]* **subsection (3)(D)** of this rule.

*[(B)]***2.** Loading shall be accomplished in a manner that the displaced vapors and air will be vented only to the vapor recovery system. Measures shall be taken to prevent liquid drainage from the loading device when it is not in use or to accomplish complete drainage before the loading device is disconnected. The vapor disposal portion of the vapor recovery system shall consist of one (1) of the following:

*[1.]***A.** An absorber system, condensation system, *[incinerator]* **membrane system** or equivalent vapor disposal system that processes the vapors and gases from the equipment being controlled and limits the discharge of VOC into the atmosphere to ten (10) milligrams of VOC vapor per liter of gasoline loaded*[. Each owner or operator shall comply as expeditiously as practicable but no later than December 31, 1995]*;

*[2.]***B.** A vapor handling system that directs the vapor to a fuel gas system; or

*[3.]***C.** Other equipment of an efficiency equal to or greater than *[paragraph (4)(B)1. or 2.]* **subparagraph (3)(B)2.A. or B.** of this rule if approved by the staff director.

[(C) Owners or operators of loading installations shall keep complete records documenting the number of delivery vessels loaded and their owners. Records shall be kept for two (2) years and shall be made available to the staff director upon request.]

3. Reporting and record keeping shall be per subsection (4)(B) of this rule.

[(D) This section shall not apply to a loading installation whose average monthly throughput of gasoline is less than or equal to one hundred twenty thousand (120,000) gallons when averaged over the most recent calendar year, provided that the installation loads gasoline by submerged loading.

1. To maintain the exemption, these installations shall submit to the staff director on a form supplied by the department by February 1 of each year, a report stating gasoline throughput for each month of the previous calendar year. After the effective date of this rule, any revision to the department supplied forms will be presented to the regulated community for a forty-five (45)-day comment period.

2. Delivery vessels purchased after December 31, 1995, shall be Stage I equipped.

3. A loading installation that fails to meet the requirements of the exemption for one (1) calendar year shall not qualify for the exemption again.

4. To maintain the exemption owners or operators shall maintain records of gasoline throughput and gasoline delivery.

5. Delivery vessels operated by an exempt installation shall not deliver to Stage I controlled tanks unless the delivery vessel is equipped with and employs Stage I controls.]

*[(5)]***(C)** Gasoline Transfer.

*[(A)]***1.** No owner or operator of a gasoline storage tank or delivery vessel shall cause or permit the transfer of gasoline from a delivery vessel into a gasoline storage tank with a capacity greater than five*[-]*hundred (500) gallons unless—

*[1.]***A.** The storage tank is equipped with a submerged fill pipe extending unrestricted to within six inches (6") of the bottom of the tank, and not touching the bottom of the tank, or the storage tank is equipped with a system that allows a bottom fill condition;

*[2.]***B.** All storage tank caps and fittings are vapor-tight when gasoline transfer is not taking place; and

*[3.]***C.** Each storage tank is vented via a conduit that is—

*[A.]***(I)** At least two inches (2") inside diameter;

*[B.]***(II)** At least twelve feet (12') in height above grade; *[and]*

*[C.]***(III)** Equipped with a pressure/vacuum valve that is CARB certified **and MO/PETP approved** at three inches water column pressure/eight inches water column vacuum (3"wcp/8"wcv) except when the owner or operator provides documentation that the system is CARB certified **or MO/PETP approved** for a different valve and will not function properly with a 3"wcp/8"wcv valve*[.]***; and**

(IV) Initial fueling of motor vehicle systems and ancillary refueling systems previous MO/PETP approval applies for pressure/vacuum valves.

*[(B)]***2.** Stationary storage tanks having a volume greater than one thousand (1,000) gallons **and less than forty thousand (40,000) gallons** shall also be equipped with a Stage I vapor recovery system **that has a collection efficiency of ninety-eight percent (98%) that is based on MO/PETP,** and the delivery vessels to these tanks shall be in compliance with *[section (6)]* **subsection (3)(D)** of this rule.

*[1.]***A.** The vapor recovery system shall collect no less than ninety-**eight** percent *[(90%)]* **(98%)** by volume of the vapors displaced from the stationary storage tank during gasoline transfer and shall return the vapors via a vapor-tight return line to the delivery vessel. *[After the effective date of this rule, all coaxial systems shall be equipped with]* **All fill ports and vapor ports shall have MO/PETP approved** poppeted fittings.

*[2.]***B.** A delivery vessel shall be *[refilled]* **reloaded** only at installations complying with the provisions of *[section (4)]* **subsection (3)(B)** of this rule.

*[3.]***C.** This *[section]* **subsection** shall not be construed to prohibit safety valves or other devices required by governmental regulations.

*[(C)]***3.** No owner or operator of a gasoline delivery vessel shall cause or permit the transfer of gasoline from a delivery vessel into a storage tank with a capacity greater than one thousand (1,000) gallons **and less than forty thousand (40,000) gallons** unless—

*[1.]***A.** The owner or operator employs one (1) vapor line per product line during the transfer. The staff director may approve other delivery systems upon submittal to the department of test data demonstrating compliance with *[paragraph (5)(B)1.]* **subparagraph (3)(C)2.A.** of this rule;

*[2.]***B.** The vapor hose(s) employed is no less than three inches (3") inside diameter; and

*[3.]***C.** The product hose(s) employed is no more than four inches (4") inside diameter.

4. Reporting and record keeping shall be per subsection (4)(C) of this rule.

[(D) The owner or operator of stationary storage tanks subject to this section shall keep records documenting the vessel owners and number of delivery vessels unloaded by each owner. Records shall be kept for two (2) years and shall be made available to the staff director within five (5) days of a request. The owner or operator shall retain on-site copies of the loading ticket, manifest or delivery receipt for each grade of product received, subject to examination by the staff director upon request. If a delivery receipt is retained rather than a manifest or loading ticket, the delivery ticket shall bear the following information: vendor name, date of delivery, quantity of each grade, point of origin, and the manifest or loading ticket number. The required retention on-site of the loading ticket, manifest or delivery receipt shall be limited to the four (4) most recent records for each grade of product]

[(E) The provisions of subsection (5)(B) of this rule shall not apply to transfers made to storage tanks equipped with floating roofs or their equivalent.

(F) The provisions of subsections (5)(A)–(D) of this rule shall not apply to stationary storage tanks having a capacity less than or equal to two thousand (2,000) gallons used exclusively for the fueling of implements of agriculture.]

*[(6)]***(D)** Gasoline Delivery Vessels.

*[(A)]***1.** No owner or operator of a gasoline delivery vessel shall operate or use a gasoline delivery vessel which is loaded or unloaded at an installation subject to *[section (4) or (5)]* **subsection (3)(B) or (3)(C) of this rule** unless—

*[1.]***A.** The delivery vessel is tested annually to demonstrate compliance with the test method specified in 40 CFR part 63, subpart R, section 63.425(e);

*[2.]***B.** The owner or operator obtains the completed test results signed by a representative of the testing facility upon successful completion of the leak test. Blank test certification application forms for the test results will be provided to the testing facilities by the department. After the effective date of this rule, any revision to the department supplied forms will be presented to the regulated community for a forty-five (45)-day comment period. The owner or operator shall send a copy of the signed successful test results to the staff director. The staff director, upon receipt of acceptable test results, shall issue an official sticker to the owner or operator;

*[3.]***C.** The Missouri sticker is placed on the upper left portion of the back end of the vessel;

*[4.]***D.** The delivery vessel is repaired by the owner or operator and retested within fifteen (15) days of testing if it does not meet the leak test criteria of *[subsection (6)(A)]* **subparagraph**

(3)(D)1.A. of this rule; and

*[5.]***E.** A copy of the vessel's current Tank Truck Tightness Test results are kept with the delivery vessel at all times and made immediately available to the staff director upon request.

*[(B)]***2.** An owner or operator of a gasoline delivery vessel who can demonstrate to the satisfaction of the staff director that the vessel has passed a current annual leak test in another state shall be deemed to have satisfied the requirements of *[paragraph (6)(A)1.]* **subparagraph (3)(D)1.A.** of this rule, if the other state's leak test program requires the same gauge pressure and test procedures as specified in *[paragraph (6)(A)1.]* **subparagraph (3)(D)1.A.** of this rule. The owner or operator shall apply for a Missouri sticker and display the Missouri sticker on the upper left portion of the back end of the delivery vessel.

[(C) Owners or operators of gasoline delivery vessels shall keep records of all tests and maintenance performed on the vessels for not less than two (2) years and these records shall be made available to the staff director upon request]

3. Reporting and record keeping shall be per subsection (4)(D) of this rule.

*[(D)]***4.** This *[section]* **subsection** shall not be construed to prohibit safety valves or other devices required by governmental safety regulations.

*[(7)]***(E)** Fueling of Motor Vehicles.

[(A) General Provisions.]

1. Except as provided in *[sections (3)–(5)]* **subsections (3)(A)–(C) of this rule**, no owner or operator shall install, permit the use of or maintain any stationary gasoline tank with a capacity of more than one thousand (1,000) gallons or operate a facility with a monthly throughput of greater than ten thousand (10,000) gallons of gasoline unless the storage tank(s) is equipped with a vapor recovery system. The system shall be approved by the staff director based on the *[current]* MO/PETP and shall be capable of—

A. Collecting the hydrocarbon vapors and gases discharged during motor vehicle fueling;

B. Preventing their emission into the atmosphere; and

C. Maintaining ninety-five percent (95%) efficiency of total capture and emission reduction.

[2. The MO/PETP referenced in paragraph (7)(A)1. of this rule shall not be required before January 1, 1998. Prior to January 1, 1998, CARB documentation of ninety-five percent (95%) efficiency on a bellowed balance system shall be required.]

*[3.]***2.** After January 1, 1999, no facility subject to this section shall employ remote vapor check *[values]* **valves**.

*[4.]***3.** After January 1, 1999, no construction permit for modification or replacement of any equipment or component, including a like for like replacement, shall be approved unless the equipment or component is MO/PETP approved. After January 1, 1999, if a construction permit is not required, no facility utilizing an approved system shall modify or replace any equipment or component, including a like for like replacement, unless the equipment or component is MO/PETP approved. In the event that the staff director finds a violation of this provision, the staff director may require replacement of components or equipment with MO/PETP approved components or equipment.

*[5.]***4.** For the purpose of *[section (7)]* **subsection (3)(E)** of this rule, no vapor recovery systems or devices shall be installed, used or maintained until they are permitted by the director in accordance with *[sections (10) and (11)]* **subsections (3)(H) and (I)** of this rule.

*[6.]***5.** All tank gauging and sampling sites or ports, valves, breakaways, joints and disconnects on the vapor recovery systems shall be gas-tight to prevent VOC emissions except during gauging or sampling.

*[7.]***6.** All vapor recovery systems shall be maintained in good working order in accordance with the manufacturer's specifications and with no indication of visible liquid leaks.

*[8.]***7.** The operator of each affected facility shall post operation instructions conspicuously in the gasoline dispensing area for the system in use at each station. The instructions shall clearly describe how to fuel vehicles correctly with vapor recovery nozzles utilized at that station. The instructions shall also include a warning that repeated attempts to continue dispensing gasoline after the system has indicated that the vehicle fuel tank is full may result in spillage of gasoline.

*[9.]***8.** The operator of each affected facility shall ensure **dispensing** gasoline *[is not dispensed at a rate greater than ten (10) gallons per minute]* **meets the requirements of 40 CFR 80.22(j) promulgated June 26, 1996 and hereby incorporated by reference in this rule, as published by the Office of 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**.

*[10.]***9.** The staff director shall identify and list specific defects that substantially impair the effectiveness of components or systems used for the control of gasoline vapors resulting from motor vehicle fueling operations. This ongoing list shall be used by the staff director as a basis for marking the components or systems out-of-order and shall be made available to any gasoline dispensing facilities subject to *[subsection (7)(A)]* **paragraph (3)(E)1.** of this rule. The list shall be made available to the facility's designated person for use in performing system maintenance.

*[11.]***10.** Upon the staff director's identification of substantial defects in equipment or installation of a gasoline vapor control system, the system or components shall be marked "out-of-order" and no person shall use or permit the use of that system or component until those defects and all other defects have been repaired, replaced or adjusted to establish compliance. The components or system may be released into operation when the staff director has reinspected the facility; found the system and components to be in good working order; and removed the "out-of-order" notice. The staff director shall reinspect the previously marked "out-of-order" system or component and other noted defects as expeditiously as possible after notification from the operator that the repairs have been completed. In no case shall the reinspection be more than four (4) days from the operator's notification that the repairs have been completed. In those cases in which the reinspection cannot be scheduled within the required time, the owner or operator may remove the "out-of-order" notice with permission of the staff director. If reinspection reveals that compliance has not been established, the system or components shall remain tagged "out-of-order." The staff director shall conduct a second reinspection within seven (7) days from the operator's notification that repairs have been completed.

[(B) Section (7) of this rule shall not apply to any stationary tank used primarily for the fueling of agricultural implements or implements of husbandry. For purposes of this section, agricultural implements and implements of husbandry shall refer to vehicles exempted from licensing requirements by the Missouri Department of Revenue.

(C) Section (7) of this rule shall not apply to any fueling system used for the initial fueling of motor vehicles as defined in paragraph (1)(B)8. of this rule.

(D) Subsection (7)(A) of this rule shall apply to any ancillary refueling system as defined in paragraph (1)(B)9. of this rule.]

*[(8)]***(F)** Initial Fueling of Motor Vehicles.

1. Initial fueling systems and ancillary refueling systems.

*[(A)]***A.** *[Section (8)]* **Subsection (3)(F)** of this rule shall only apply to the fueling *[system]* **systems** used for the initial fueling of motor vehicles as defined in *[paragraph (1)(B)8.]* **subsection (2)(I)** of this rule **and the ancillary refueling systems used to fuel in-use motor vehicles defined in subsection (2)(J) of this rule**. **These initial fueling systems and ancillary refueling systems are not subject to the MO/PETP testing requirements. All other MO/PETP provisions apply.**

B. The initial fueling systems and ancillary refueling systems storage tank systems are subject to the gasoline storage tank transfer requirements in subsection (3)(C) of this rule except for the MO/PETP testing requirements. All other MO/PETP provisions in subsection (3)(C) of this rule apply.

*[(B)]***2.** *[General Provisions]* **Owner or operator requirements.**

*[1.]***A.** No owner or operator shall install, permit the use of, or maintain any stationary gasoline tank for the purpose of initial fueling of new motor vehicle gasoline tanks unless **the new motor vehicle is equipped with a U.S. Environmental Protection Agency (EPA) certified Onboard Refueling Vapor Recovery (ORVR) system or** the **gasoline** dispensing system is equipped with a vapor recovery system**,** *[The system shall be approved by the staff director based on the current MO/PETP and shall be capable of—]* **(e.g., Stage II), capable of a minimum ninety-five percent (95%) control efficiency**.

B. No owner or operator shall install, permit the use of, or maintain any stationary gasoline tank for the purpose of ancillary fueling of motor vehicles unless the motor vehicle is equipped with an EPA certified ORVR system or the gasoline dispensing system is equipped with a vapor recovery system, (e.g., Stage II), capable of a minimum ninety-five percent (95%) control efficiency.

C. Demonstration of emission capture efficiency of the gasoline dispensing vapor recovery system or emission control system shall be required and made available to the staff director upon request. The dispensing system, (e.g., Stage II), shall be approved by the staff director if the system—

*[A.]***(I)** *[Collecting]* **Collects** the hydrocarbon vapors and gases discharged during initial motor vehicle fueling*[, storage tank loading, breathing, and working losses]*;

*[B.]***(II)** *[Preventing]* **Prevents** their emission into the atmosphere; and

*[C.]***(III)** *[Maintaining]* **Demonstrates a minimum of** ninety-five percent (95%) **control** efficiency *[of total capture and]* **for** emission reduction of the fueling and dispensing operation *[and the storage tank loading, breathing, and working loss]* emissions. **Testing methods shall be in accordance with EPA reference test methods (or alternative test methods as approved by the staff director) for incineration destruction efficiency.**

[2. After January 1, 1999, no facility utilizing an approved system shall modify or replace any equipment or component, including a like for like replacement, unless the equipment or component is MO/PETP approved. In the event that the staff director finds a violation of this provision, the staff director may require replacement of components or equipment with MO/PETP approved components or equipment.]

D. Initial fueling systems and ancillary refueling systems are subject to the gasoline transfer tank requirements in subsection (3)(C) of this rule except for the MO/PETP testing.

E. The owner or operator of an initial fueling system and ancillary refueling system shall—

*[3.]***(I)** *[All tank gauging and sampling sites or ports, valves, flanges, breakaways, joints and disconnects on the vapor recovery systems shall be gas-tight to prevent VOC emissions except during gauging or sampling. Under no circumstances shall there be any]* **Maintain the vapor control system in good working order in accordance with the manufacturer's specifications and with no indication of** visible liquid leaks or detectable vapor emissions*[.]***;**

(II) Conduct regular preventive maintenance self-inspections of the vapor control system and conduct any necessary repairs upon identification of those defects. The facility must conduct all maintenance specified by manufacturer guidelines. These manufacturers guidelines must be made available to department and local agency inspectors upon request;

(III) The operator of each affected facility shall ensure dispensing gasoline meets the requirements of 40 CFR 80.22(j) promulgated June 26, 1996 and hereby incorporated by reference in this rule, as published by the Office of 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;

(IV) Ensure all fueling procedures are conducted in the most efficient manner to reduce emissions from drips; and

(V) Ensure the resealing of the filled vehicle's tank after fueling.

F. Reporting and record keeping shall be per subsection (4)(E) of this rule.

[4. All vapor recovery control systems shall be maintained in good working order in accordance with the manufacturer's specifications and with no indication of visible liquid leaks.

5. These facilities and their vapor recovery systems are subject to all conditions of the MO/PETP Approval document.

6. The owner or operator of a vapor recovery system must conduct regular preventative maintenance self-inspections and conduct any necessary repairs upon identification of those defects. The facility must conduct all maintenance specified by manufacturer guidelines. These manufacturer guidelines must be made available to inspectors upon request.

7. Records must be kept on-site of all self-inspections, defects found, repairs, and maintenance activities. Records must be made available to the department inspectors upon request.

8. Facilities will allow the department to make vapor recovery inspections at any time to ensure systems are in working order and are being maintained and operated according to permits and regulations, MO/PETP approvals, and manufacturer recommendations.

9. The department and local agency Stage II inspectors will make every attempt to avoid disrupting assembly line production. This may be done by allowing initial fueling site personnel to make repairs on the spot, or within a reasonable time frame. However, this consideration will not affect recording of defects or enforcement action.

10. After repairs are made and notification by the plant is received, the department or local agency will reinspect all defects found in official Stage II inspections. Failure by a facility to notify the department of repairs and request reinspection within fifteen (15) days of repair may result in enforcement action.]

*[(9)]***(G)** Permits Required.

*[(A)]***1.** All facilities subject to *[subsection (7)(A)]* **paragraph (3)(E)1.** of this rule, except facilities subject to subsection *[(7)(D)]***(3)(F)** of this rule, shall meet the following permitting requirements:

*[1.]***A.** No facility *[subject to [section (7) of this rule]* shall construct or undergo vapor recovery system modification without permits obtained according to *[section (10)]* **subsection (3)(H)** of this rule; and

*[2.]***B.** No facility *[subject to section (7) of this rule]* shall operate without an operating permit obtained according to *[section (11)]* **subsection (3)(I)** of this rule.

*[(B)]***2.** All facilities subject to *[subsection (7)(D) and section (8)]* **subsection (3)(F)** of this rule shall meet the following permitting requirements:

*[1.]***A.** The facility must apply for a Stage II construction permit for all modifications or construction of initial fueling systems or ancillary refueling systems. All performance testing in *[sections (10) and (11)]* **subsections (3)(H) and (3)(I)** of this rule shall be conducted to ensure system integrity; and

*[2.]***B.** All operating permitting requirements of *[section (11)]* **subsection (3)(I)** of this rule, except *[subsection (11)(B)]*

paragraph (3)(I)2. of this rule, are applicable to any initial fueling systems or ancillary refueling systems. Except for the initial Stage II Operating Permit, Stage II Operating Permits shall be incorporated as part of the facility applicable requirements of Part 70 Operating Permits according to 10 CSR 10-6.065.

*[(10)]***(H)** Construction Permits for Vapor Recovery Systems for New Facilities and Vapor Recovery System Modification for Existing Facilities. No new gasoline dispensing facility that requires a Stage II vapor recovery system shall begin construction prior to obtaining a construction permit according to *[subsection (10)(A)]* **paragraph (3)(H)1.** of this rule. Facilities shall apply for permits to test experimental technology according to *[subsection (10)(B)]* **paragraph (3)(H)2.** of this rule. Existing facilities that undergo vapor recovery system modification shall obtain permits according to *[subsection (10)(C)]* **paragraph (3)(H)3.** of this rule. Owners, operators and contractors beginning construction without first obtaining a construction permit are subject to enforcement action.

*[(A)]***1.** Owners or operators of new gasoline dispensing facilities that require Stage II equipment shall—

*[1.]***A.** Submit an application on a form supplied by the department for a permit to construct at least sixty (60) days prior to beginning construction. The application shall include:

*[A.]***(I)** Complete diagrams and a thorough description of the planned facility;

*[B.]***(II)** Plumbing diagrams including vapor lines, vent lines, slope of return vapor lines, material of all underground, above ground and dispenser plumbing, grade of site in relation to tanks, plumbing, and dispensers;

*[C.]***(III)** Current CARB executive orders for the proposed system and/or the system components. After January 1, 1998, no facility shall be issued a construction permit unless the system that will be installed has been demonstrated to achieve ninety-five percent (95%) efficiency according to paragraph *[(7)(A)1.]***(3)(E)1.** of this rule. After January 1, 1999, no facility shall be issued a construction permit unless the equipment and components of the approved system that will be installed have been MO/PETP tested and approved;

*[D.]***(IV)** At the option of the owner/operator, full port ball valves may be installed just below the riser of the vapor chamber. The ball valves shall be sealed fully open at all times except during testing. The ball valve shall be tested in line during the dynamic back pressure blockage test;

*[E]***(V)** Detailed description of the storage tank(s). The storage tank(s) shall be—

*[(I)]***(a)** Type I tank(s). A Type I tank is an underground storage tank that shall be covered with not less than six inches (6") of soil and/or concrete; or

*[(II)]***(b)** Type II tank(s). A Type II tank is one that has any portion of the shell exposed to the atmosphere. A Type II tank shall be equipped with a vapor processor; and

*[F.]***(VI)** Schedule of construction;

*[2.]***B.** Obtain a construction permit prior to beginning construction. The director shall issue a construction permit or a permit rejection within thirty (30) days of receipt of the application. When an appeal is made following rejection of the application to construct, that appeal shall be filed within thirty (30) days of the notice of rejection;

*[3.]***C.** Display the construction permit in a prominent location during construction;

*[4.]***D.** Notify the department seven (7) calendar days prior to the anticipated completion date of underground piping and schedule a mutually acceptable inspection date. In the event that no mutually acceptable date is available, the staff director shall schedule the inspection date. The underground piping shall not be covered without visual inspection by the staff director. If defects are found, the staff director shall provide written notice of those defects;

*[5.]***E.** Establish compliance with all rules and requirements of the department including those in Title 10 of the *Code of State Regulations*;

*[6.]***F.** Document for the staff director that prior to the introduction of product, the tank and piping system were subjected to a construction pressurization test of not more than five pounds per square inch (5 psi) and not less than four and five-tenths pounds per square inch (4.5 psi) and maintained this pressure for not less than thirty (30) minutes;

*[7.]***G.** Obtain staff director approval of final test methods and procedures that will be used to prove compliance;

*[8.]***H.** Within thirty (30) days of completion of construction, conduct and pass final leak tests and dynamic back pressure/liquid blockage tests to show compliance with department requirements. The staff director may observe the test; and

*[9.]***I.** Obtain and maintain on-site in a prominent location the current operating permit from the director for the site and the specific vapor recovery system that was installed. The operating permit is renewable every five (5) years and shall be maintained according to *[section (11)]* **subsection (3)(I)** of this rule.

*[(B)]***2.** The director may approve experimental technology for a specific gasoline dispensing facility. Experimental technology may be approved for up to one (1) year for a limited number of stations under specific conditions determined by the staff director. Facilities applying for approval of experimental technology shall—

*[1.]***A.** Submit an application for director approval at least ninety (90) days prior to beginning construction. The application shall include, but not be limited to:

*[A.]***(I)** Complete diagrams and a thorough description of the planned facility;

*[B.]***(II)** Plumbing diagrams including vapor lines, vent lines, slope of return vapor lines, material of all underground, above ground and dispenser plumbing, grade of site in relation to tanks, plumbing, and dispensers; and

*[C.]***(III)** Standards, test data, history, and related information for the proposed system;

*[2.]***B.** Submit to the staff director a detailed plan for the construction and operation of the system. The plan shall include a description of the planned testing and record keeping for the facility. The director may issue the construction permit when all conditions of the testing facility are deemed satisfactory;

*[3.]***C.** Display the construction permit in a prominent location during construction;

*[4.]***D.** Install monitoring equipment to prove that the vapor recovery system is leak-tight if requested by the staff director; and

*[5.]***E.** Upon completion of testing, obtain and maintain on-site in a prominent location a current operating permit from the director for the specific innovative technology that is in operation. The permit shall specify the technology, the location and the time period the technology will be tested.

*[(C)]***3.** Existing facilities that are subject to *[section (7) or (8)]* **subsection (3)(E) or (3)(F)** of this rule and undergo vapor recovery system modification shall—

*[1.]***A.** Submit an application on a form supplied by the department for a permit to construct prior to beginning modifications. After the effective date of this rule, any revision to the department supplied forms will be presented to the regulated community for a forty-five (45)-day comment period. Applications for construction permits shall be submitted for projects that include, but are not limited to:

*[A.]***(I)** Modifications that require breaking concrete in an area that may affect the vapor lines; and

*[B.]***(II)** Modifications that may affect the vapor lines themselves;

*[2.]***B.** Supply any information required by the staff director for the specific facility. Such information may include, but not be limited to, plumbing diagrams, including vapor lines, vent lines, slope of vapor lines, material of all underground, above ground and dispenser plumbing, grade of site in relation to tanks, plumbing and dispensers, current CARB executive orders for the proposed system and equipment, and proof of compliance with all rules and requirements of the department including those in Title 10 of the *Code of State Regulations*;

*[3.]***C.** Obtain a construction permit prior to beginning the modification. Continued operation during the construction requires department approval. The director shall issue a construction permit or a permit rejection within thirty (30) days of receipt of the application. When an appeal is made following rejection of the application, that appeal shall be filed within thirty (30) days of the notice of rejection;

*[4.]***D.** Display the construction permit in a prominent location during construction;

*[5.]***E.** Establish a schedule for inspection and testing as required by the staff director and notify the department seven (7) calendar days prior to the anticipated completion date of underground piping and schedule a mutually acceptable inspection date. In the event that no mutually acceptable date is available, the staff director shall schedule the inspection date. The underground piping shall not be covered without visual inspection by the staff director. If defects are found, the staff director shall provide written notice of those defects;

*[6.]***F.** Supply test results to the staff director;

*[7.]***G.** Receive staff director approval of final test methods and procedures that will be used to prove compliance;

*[8.]***H.** Within thirty (30) days of completion of construction, conduct and pass final leak tests and dynamic back pressure/liquid blockage tests to show compliance with department requirements. The staff director may observe the tests; and

*[9.]***I.** Upon completion of testing, obtain and display in a prominent location on-site the current operating permit from the director for the specific site and the specific vapor recovery system that was installed.

*[A.]***(I)** The operating permit shall be maintained according to *[section (11)]* **subsection (3)(I)** of this rule, except *[subsection (11)(B)]* **paragraph (3)(I)2.** of this rule shall not apply to initial fueling systems and ancillary refueling systems at automobile assembly facilities.

*[B.]***(II)** The operating permit is renewable every five (5) years, except for operating permits covering initial fueling systems and ancillary refueling systems at automobile assembly facilities. Automobile assembly facilities shall apply for an initial Stage II Operating Permit covering both their initial fueling systems and their ancillary refueling systems that will be current until their Part 70 Operating Permit is renewed.

*[C.]***(III)** Except for the initial Stage II Operating Permit, the operating permit for automobile assembly facilities that covers their initial fueling systems and their ancillary refueling systems shall be incorporated as part of the facility applicable requirements of 10 CSR 10-6.065 Operating Permits.

*[(11)]***(I)** Operating Permits for Existing Facilities. All existing facilities subject to *[section (7) or (8)]* **subsection (3)(E) or (3)(F)** of this rule must apply to the director for an operating permit.

*[(A)]***1.** Initial *[Operating Permits]* **operating permits**. The term of the initial permit shall be established by the staff director. In order to obtain an operating permit an existing facility shall—

*[1.]***A.** Apply to the director for an operating permit within sixty (60) days of the date of the staff director's notice to apply and test within ninety (90) days of the notice. However, no facility subject to this requirement shall operate after January 1, 1999, without an operating permit;

*[2.]***B.** Provide documentation that the Stage II system is certified by CARB **EVR** as having a vapor recovery or removal efficiency of at least ninety-five percent (95%);

*[3.]***C.** Conduct and pass a department-approved back pressure blockage test and a department-approved leak decay test. The owner/operator of the facility shall schedule the tests and notify the staff director of the test dates at least seven (7) days prior to the testing date. The staff director may observe the tests. The owner/operator of the facility shall provide satisfactory test results to the staff director;

*[4.]***D.** Designate a person(s) who has attended a department-approved training course for the Stage II equipment that is installed at that facility. A designated person shall be available for consultation to facility personnel and to the department;

*[5.]***E.** Demonstrate that the facility maintains a system of record keeping that meets the staff director's requirements; and

*[6.]***F.** Establish compliance with all rules and requirements of the Missouri Department of Natural Resources including those in Title 10 of the *Code of State Regulations*.

*[(B)]***2.** Renewal of *[Operating Permits]* **operating permits**. The operating permit is renewable on the date specified in the initial operating permit and for periods of five (5) years after the initial permit term expires. In order to renew the operating permit a facility shall—

*[1.]***A.** Apply to the director for renewal of the operating permit and test within ninety (90) days prior to the renewal date;

*[2.]***B.** Demonstrate that the facility maintained all system components in good operating order during the preceding operating permit term including prompt efforts to establish compliance following "out-of-order" notices;

*[3.]***C.** Schedule staff director-approved tests prior to the expiration date of the permit, notify the staff director of test dates at least fourteen (14) days prior to test dates and provide documentation that the system passed the tests;

*[4.]***D.** Maintain records according to *[section (12)]* **subsection (4)(F)** of this rule;

*[5.]***E.** A facility using a system that is decertified by CARB shall establish compliance with this rule within one (1) year or by the next renewal date of the operating permit whichever is longer. Failure to establish compliance will result in nonrenewal of the operating permit; and

*[6.]***F.** After January 1, 2001, no operating permit shall be renewed without documentation that the Stage II system in use at the facility can be demonstrated to achieve ninety-five percent (95%) efficiency as specified in paragraph *[(7)(A)1.]***(3)(E)1.** of this rule. Replacement of equipment and/or components in place as part of an approved system on January 1, 1999, shall not be required as long as the equipment and/or components pass operating permit tests.

*[(12)]***(J)** Owner/Operator Compliance. The owner or operator of a vapor recovery system subject to this rule shall—

*[(A)]***1.** Operate the vapor recovery system and the gasoline loading equipment in a manner that prevents—

*[1.]***A.** Gauge pressure from exceeding four thousand five hundred (4,500) pascals (eighteen inches (18") of H_2O) in the delivery vessel;

*[2.]***B.** A reading equal to or greater than one hundred percent (100%) of the lower explosive limit (LEL), measured as propane at two point five (2.5) centimeters from all points on the perimeter of a potential leak source when measured by the method referenced in 10 CSR 10-6.030(14)(E) during loading or transfer operations; and

*[3.]***C.** Visible liquid leaks during loading or transfer operations; and

*[(B)]***2.** Repair and retest within fifteen (15) days, a vapor recovery system that exceeds the limits in *[section (12)]* **paragraph (3)(J)1.** of this rule; and

3. Reporting and record keeping shall be per subsection (4)(F) of this rule.

[(C) Maintain records of department permits, inspection reports, enforcement documents, training certifications, gasoline deliveries, routine and unscheduled maintenance and repairs and all results of tests conducted. Records shall be kept for two (2) years. Unless otherwise specified in this rule, records shall be available to the staff director within five (5) days of a request]

[(13) Testing and Monitoring Procedures and Reporting.

(A) Testing and monitoring procedures to determine compliance with section (6) of this rule and confirm the continuing existence of leak-tight conditions shall be according to

10 CSR 10-6.030(14)(B)1. or by any method determined by the staff director.

(B) Testing procedures to determine compliance with paragraph (4)(B)1. shall be according to 10 CSR 10-6.030(14)(A) or by any method determined by the staff director.

(C) The staff director, at any time, may monitor a facility subject to section (7) of this rule. The staff director may require a leak test, a back pressure blockage test, an air-to-liquid test, a pressure/vacuum valve test or may require any test or monitoring procedure in order to determine compliance with this rule.

(D) The staff director, at any time, may monitor a delivery vessel, vapor recovery system or gasoline loading equipment by a method determined by the staff director to confirm continuing compliance with this rule.

(E) An annual staff director-approved back pressure blockage test and/or air-to-liquid test may be required. Additional testing may also be required by the staff director in order to determine proper functioning of vapor recovery equipment.]

*[(14)]***(K)** Vapor Recovery Advisory Group. The St. Louis Vapor Recovery Advisory Group shall advise the staff director on vapor recovery issues in the St. Louis nonattainment area.

*[(A)]***1.** Composition. The advisory group will consist of one (1) representative from each of these agencies or organizations:

*[1.]***A.** Missouri Department of Natural Resources, Air Pollution Control Program;

*[2.]***B.** Missouri Department of Natural Resources, Hazardous Waste Program Underground Storage Tank Unit;

*[3.]***C.** St. Louis City Air Pollution Control Agency or St. Louis County Air Pollution Control Agency;

*[4.]***D.** Missouri Department of Agriculture, Division of Weights and Measures;

*[5.]***E.** An organization representing petroleum marketers;

*[6.]***F.** An organization representing petroleum equipment contractors; and

*[7.]***G.** An organization representing oil refiners.

*[(B)]***2.** Purpose. The St. Louis Vapor Recovery Advisory Group shall review, study and make recommendations to the staff director on vapor recovery issues. Any member of the advisory group may bring an issue to the attention of the group. The advisory group shall—

*[1.]***A.** Review vapor recovery system components that frequently fail;

*[2.]***B.** Review CARB certifications and decertifications of vapor recovery system components;

*[3.]***C.** Develop modifications to established tests such as the leak decay test and the back pressure blockage test. Modified test procedures shall prove integrity of Stage I and Stage II systems but may be designed for cost and time efficiency; and

*[4.]***D.** Review any other vapor recovery issues deemed appropriate by the staff director.

*[(C)]***3.** Limitations. The advisory group is subject to all applicable state and federal statutes and regulations. All advisory group meetings shall comply with the Missouri Sunshine Act. The advisory group assumes no regulatory authority.

(4) Reporting and Record Keeping.

(A) Owners and operators of petroleum storage tanks subject to subsection (3)(A) of this rule shall maintain written records of maintenance (both routine and unscheduled) performed on the tanks, all repairs made, the results of all tests performed and the type and quantity of petroleum liquid stored in them. Records shall be kept for two (2) years and made available to the staff director within five (5) days of a request.

(B) Owners or operators of loading installations subject to gasoline loading subsection (3)(B) of this rule shall keep complete records documenting the number of delivery vessels loaded and their owners. Records shall be kept for two (2) years and made available to the staff director within five (5) days of a request.

(C) The owner or operator of stationary storage tanks subject to gasoline transfer subsection (3)(C) of this rule shall keep records documenting the vessel owners and number of delivery vessels unloaded by each owner. Records shall be kept for two (2) years and made available to the staff director within five (5) days of a request. The owner or operator shall retain on-site copies of the loading ticket, manifest or delivery receipt for each grade of product received, subject to examination by the staff director upon request. If a delivery receipt is retained rather than a manifest or loading ticket, the delivery ticket shall bear the following information: vendor name, date of delivery, quantity of each grade, point of origin, and the manifest or loading ticket number. The required retention on-site of the loading ticket, manifest or delivery receipt shall be limited to the four (4) most recent records for each grade of product.

(D) Owners or operators of gasoline delivery vessels subject to subsection (3)(D) of this rule shall keep records of all tests and maintenance performed on the vessels. Records shall be kept for two (2) years and made available to the staff director within five (5) days of a request. Also a copy of the vessel's current Tank Truck Tightness Test results shall be kept with the delivery vessel at all times and made immediately available to the staff director upon request.

(E) Initial fueling and ancillary fueling of motor vehicles subject to subsection (3)(F) of this rule shall keep records on-site of all self-tests, self-inspections, defects found, repairs, and maintenance activities. Records shall be kept for two (2) years and made available to the staff director within five (5) days of a request.

(F) Owner/Operator Compliance. The owner or operator of a vapor recovery system subject to subsection (3)(J) of this rule shall maintain records of department permits, inspection reports, enforcement documents, training certifications, gasoline deliveries, routine and unscheduled maintenance and repairs and all results of tests conducted. Unless otherwise specified in this rule, records shall be kept for two (2) years and made available to the staff director within five (5) days of a request.

(5) Test Methods.

(A) Gasoline loading testing procedures to determine compliance with subparagraph (3)(B)2.A. of this rule shall be according to 10 CSR 10-6.030 subsection (14)(A) or by any method determined by the staff director.

(B) Gasoline delivery vessels testing and monitoring procedures to determine compliance with subsection (3)(D) of this rule and confirm the continuing existence of leak-tight conditions shall be according to 10 CSR 10-6.030 subsection (14)(B) or by any method determined by the staff director.

(C) Fueling of Motor Vehicles. The staff director, at any time, may monitor a facility subject to subsection (3)(E) of this rule. The staff director may require a leak test, a back pressure blockage test, an air-to-liquid test, a pressure/vacuum valve test or may require any test or monitoring procedure in order to determine compliance with this rule.

(D) Delivery vessel, vapor recovery system or gasoline loading equipment may be monitored by the staff director at any time by a method determined by the staff director to confirm continuing compliance with this rule.

(E) An annual staff director-approved back pressure blockage test and/or air-to-liquid test may be required. Additional testing may also be required by the staff director in order to determine proper functioning of vapor recovery equipment.

(F) Facilities containing initial fueling systems and ancillary refueling systems shall allow the department to make vapor recovery inspections at any time to ensure systems are in working order and are being maintained and operated according to permits and regulations, and manufacturer recommendations—

1. The department and local agency Stage II inspectors shall

be allowed access in a timely manner. Department and local agency Stage II inspectors shall make every attempt to avoid disrupting assembly line production. This may be done by allowing initial fueling site personnel to make repairs on the spot, or within a reasonable time frame. However, this consideration will not affect recording of defects or enforcement action; and

2. After repairs are made and notification by the plant is received, the department or local agency shall reinspect all defects found in official Stage II inspections. Failure by a facility to notify the department of repairs and request reinspection within fifteen (15) days of repair may result in enforcement action.

(G) All emission controls that are approved by the director will not be considered federally enforceable, and will not shield a source from the federal obligation to comply with the underlying emission controls, by the EPA until submitted to EPA and approved by EPA in the state implementation plan.

*AUTHORITY: section 643.050, RSMo [Supp. 1998] **2000**. Original rule filed March 14, 1967, effective March 24, 1967. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Jan. 2, 2007.*

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., March 29, 2007. The public hearing will be held at the Café 37, Walnut Room, 37 Court Square, West Plains, 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 the Director, Missouri Department of Natural Resources' Air Pollution Control Program, 1659 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., April 5, 2007. Written comments shall be sent to Chief, Operations Section, Missouri Department of Natural Resources' Air Pollution Control Program, 1659 East Elm Street, PO Box 176, Jefferson City, MO 65102-0176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 80—Solid Waste Management
Chapter 8—*[Waste] Scrap* Tires

PROPOSED AMENDMENT

10 CSR 80-8.020 *[Waste] Scrap* **Tire Collection Centers**. The department is amending the chapter title, the rule title, the purpose, sections (1)–(5) and removing the forms that follow the rule in the *Code of State Regulations*.

PURPOSE: The department is amending portions of the rule to reflect revised statutory language in Senate Bill 225 to replace references to "waste tire" with the term "scrap tire." This amendment will also correct typographical errors, grammatical errors, clarify regulatory exemptions, and update materials referenced in the rule.

*PURPOSE: This rule contains the requirements for [waste] **scrap** tire collection centers.*

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) Definitions. **Definitions for key words used in this rule may be found in section 260.200, RSMo. Additional definitions specific to this rule are as follows:**

(A) A **scrap tire** collection center is a site where *[waste]* **scrap** tires are collected prior to being offered for recycling or processing and where fewer than five hundred (500) tires are kept on site on any given day.

(B) A *[waste]* **scrap** tire is a tire that is no longer suitable for its original intended purpose because of wear, damage or defect.

1. A tire no longer suitable for its original intended purpose due to wear is a tire with exposed cord or tread depth less than two thirty-seconds of an inch (2/32") when measured in any major groove.

[2. A tire still mounted on a rim is not a waste tire, except as described in paragraph (1)(B)3.]

*[3.]***2.** Any tire that is discarded with the intent of final disposal is also a *[waste]* **scrap** tire.

*[4.]***3.** A cut tire, for the purposes of disposal in a permitted solid waste disposal area, is a *[waste]* **scrap** tire cut in half circumferentially**; sidewalls removed from tread;** or cut into at least three (3) parts with no part being larger than approximately one-third (1/3) of the original tire's size.

*[5.]***4.** A shredded or chipped tire, for the purposes of disposal in a permitted solid waste disposal area, is a *[waste]* **scrap** tire that has been reduced to parts no larger than that defined in the definition of a cut tire.

(C) A passenger tire equivalent (PTE), for the purposes of calculating the amount of tires, equals twenty (20) pounds.

(2) General Requirements.

(A) *[Waste]* **Scrap** tire collection centers shall be used only for the proper and temporary storage of *[waste]* **scrap** tires. *[Waste]* **Scrap** tires shall be removed for recovery or processing or for temporary storage at a permitted *[waste tire site, waste]* **scrap** tire processing facility or for permanent disposal at a permitted solid waste disposal area.

(C) All tire retailers or other businesses that generate *[waste]* **scrap** tires shall use a *[waste]* **scrap** tire hauler permitted by the *[department]* **state of Missouri**, except that businesses may haul such *[waste]* **scrap** tires without a permit, if such hauling is performed without any consideration **(monetary or non-monetary compensation)** and such business maintains records on the *[waste]* **scrap** tires hauled as required by section (5) of this rule.

(D) Tire retailers shall not be liable for illegal disposal of *[waste]* **scrap** tires after such *[waste]* **scrap** tires are delivered to a *[waste]* **scrap** tire hauler, *[waste]* **scrap** tire collection center, *[waste tire site,* w*aste]* **scrap** tire processing facility or *[waste]* **scrap** tire end-user facility if such entity is permitted by the *[Department of Natural Resources]* **state of Missouri**.

(3) Applicability**.**

(A) Exemptions. The following are not regulated as *[waste]* **scrap** tire collection centers provided that pollution, a public nuisance or a health hazard is not created and provided the tires are stored according to the requirements of section (4) of this rule:

1. A person collecting or storing less than twenty-five (25) *[waste]* **scrap** tires;

2. Warranty tires or new defective tires stored by tire retailers and wholesalers prior to transit to the wholesaler or manufacturer for adjustment credit **or return**;

3. Tires that are to be reused without further processing as vehicle tires (reused for the original intended purpose) that are separated

from *[waste]* **scrap** tires within thirty (30) days of receipt at a *[waste]* **scrap** tire collection center, provided these tires are stored in compliance with the requirements of section (4) of this rule and are not stored outside for more than one (1) year;

4. Any new-tire retailer or new-tire wholesaler may hold more than five hundred (500) scrap tires for a period not to exceed thirty (30) days if such tires are stored according to requirements in section (4) of this rule;

5. Any person licensed as an auto dismantler and salvage dealer under Chapter 301, RSMo may, without further license, permit or payment of fee, store but shall not burn or bury on his/her property, up to five hundred (500) scrap tires that have been cut, chipped or shredded, if such tires are only from vehicles acquired by him/her, and such tires are stored in accordance with section (4) of this rule. Auto dismantlers and salvage dealers must arrange for the proper disposal of the scrap tires to take place within thirty (30) days. Appropriate documentation of the disposal arrangements shall be made available to the department upon request. In no case shall more than five hundred (500) scrap tires be stored for more than thirty (30) days unless the auto dismantler and salvage dealer is permitted as a scrap tire processor;

*[4.]***6.** Retreadable tire casings held in inventory by tire retreaders for retreading that are stored separately from other *[waste]* **scrap** tires, provided these tires are stored in compliance with section (4) of this rule and provided they are not stored outside for more than one (1) year; or

*[5.]***7.** Tires stored in conjunction with a department-approved or nonprofit cleanup if the *[waste]* **scrap** tires are stored for a period not to exceed thirty (30) days are exempt from this rule.

(B) This rule shall pertain to whole, cut, shredded, baled**, buffed** or chipped *[waste]* **scrap** tires.

(C) Underground storage of *[waste]* **scrap** tires requires a permit as a solid waste disposal area and shall comply with the requirements of 10 CSR 80.

(4) Storage Requirements.

(A) Fire Protection. A *[waste]* **scrap** tire collection center shall be in compliance with the fire protection requirements of this subsection.

1. *[Whole waste tire storage shall meet the Standard for Storage of Rubber Tires, NFPA 231D, 1994 edition, adopted by the National Fire Protection Association]* **The owner or operator of a scrap tire collection center shall provide written evidence from the local fire protection agency that indoor or outdoor storage of whole or processed scrap tires complies with the currently applicable local or state fire protection standards, or the scrap tire collection center must comply with the *2006 International Fire Code*, published by the International Code Council, Inc., 4051 W. Flossmoor Road, Country Club Hills, IL, 60478-5795, copyright 2006,** which by this reference is incorporated into this rule. **This rule does not incorporate any subsequent amendments or additions.**

[2. Cut, chipped, baled or shredded waste tire storage shall meet the fire prevention, exposure protection and firefighting access guidelines contained in the Standard for Storage of Rubber Tires, NFPA 231D, 1994 edition, adopted by the National Fire Protection Association.

3. Indoor storage requirements are contained in NFPA 231D, 1994 edition. Outdoor storage requirements are contained in NFPA 231D, Appendix C, 1994 edition. Copies of the NFPA standard may be obtained by contacting the NFPA, P.O. Box 9101, Quincy, MA 02269 (800-344-3555).

4. Alternately, the collection center may provide evidence that whole, cut, chipped, baled or shredded waste tire storage is in compliance with the local fire code.]

(B) Location. *[Waste]* **Scrap** tire collection centers shall not be located in a wetland, sinkhole or floodplain (unless protected against at least the one hundred (100)-year flood design by impervious dikes or other appropriate means to prevent the flood waters from contacting the *[waste]* **scrap** tires).

(C) Vector Control. Conditions shall be maintained that are unfavorable for the harboring, feeding and breeding of vectors. If the method being used to control vectors is not effective, the owner/operator of the *[waste]* **scrap** tire collection center shall use an alternate method to correct the vector problem. The owner/operator of a *[waste]* **scrap** tire collection center storing tires shall use one (1) or more of the following methods of vector control:

1. Drain tires of water and keep them dry within a building, enclosed trailer or under a cover that is impermeable. The cover shall be maintained water impermeable;

2. Alter tires so they do not retain water;

3. Treat the tires with a larvicide and/or adulticide appropriate to prevent the development of mosquito larvae and pupae and repeat treatment as often as necessary to prevent this development, taking into account the effectiveness and life of the larvicide and/or adulticide utilized;

A. Larvicides and/or adulticides shall be applied in accordance with their labels, Chapter 281, RSMo and its implementing regulations.

B. The dimensions of the tire pile and the method of stacking the tires must allow for application of the larvicide and/or adulticide to all tires; and

4. Alternate methods of vector control must be approved by the department.

(5) Record *[k]***K**eeping Requirements. The owner/operator of a *[waste]* **scrap** tire collection center shall maintain records, on forms provided by the department, as required by this rule. All records required by this rule shall be kept for at least three (3) years. The period of record retention extends upon the written request of the department or automatically during the course of any unresolved enforcement action regarding the regulated activity. The records shall be made available for inspection by the department or its designated representative upon request. Collection center shall also maintain records of vector control activities.

*AUTHORITY: sections 260.225, **RSMo 2000** and 260.270, RSMo Supp. [1996] **2006**. Original rule filed Jan. 3, 1991, effective July 8, 1991. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Jan. 2, 2007.*

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 will be held on this proposed amendment at 1:00 p.m. on March 6, 2007. The public hearing will be held at the Department of Natural Resources Conference Center in the Roaring River Conference Room, located at 1738 East Elm Street (rear), Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested persons. Also, any interested person may submit a written statement in support of or in opposition to this proposed amendment until 5:00 p.m. on April 6, 2007. Written statements should be sent to Mr. Chris Nagel, Department of Natural Resources, Solid Waste Management Program, PO Box 176, Jefferson City, MO 65201-0176.

SPECIAL NEEDS: If you have any special needs addressed by the Americans With Disabilities Act, please notify us at (573) 751-5401 at least five (5) working days prior to the hearing.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 80—Solid Waste Management
Chapter 8—*[Waste] Scrap* Tires

PROPOSED AMENDMENT

10 CSR 80-8.030 *[Waste] Scrap* **Tire Hauler Permits**. The department is amending the chapter title, the rule title, the purpose, sections (1)–(3) and removing the forms that follow the rule in the *Code of State Regulations*.

PURPOSE: The department is amending portions of the rule to reflect revised statutory language in Senate Bill 225 to replace references to "waste tire" with the term "scrap tire." This amendment will also correct typographical errors, grammatical errors, and update materials referenced in the rule.

PURPOSE: This rule sets forth requirements for obtaining a permit as a [waste] scrap tire hauler.

(1) Applicability.

(A) Definitions. **Definitions for key words used in this rule may be found in section 260.200, RSMo. Additional definitions specific to this rule are as follows:**

1. A *[waste]* **scrap** tire is a tire that is no longer suitable for its original intended purpose because of wear, damage or defect.

A. A tire no longer suitable for its original intended purpose due to wear is a tire with exposed cord or tread depth less than two thirty-seconds **of an** inch (2/32") when measured in any major groove.

[B. A tire still mounted on a rim is not a waste tire, except as described in subparagraph (1)(A)1.C.]

*[C.]***B.** Any tire that is discarded with the intent of final disposal is also a *[waste]* **scrap** tire.

*[D.]***C.** A cut tire, for the purposes of disposal in a permitted solid waste disposal area, is a *[waste]* **scrap** tire cut in half circumferentially**; sidewalls removed from tread;** or cut into at least three (3) parts with no part being larger than approximately one-third (1/3) of the original tire's size.

*[E.]***D.** A shredded or chipped tire, for the purposes of disposal in a permitted solid waste disposal area, is a *[waste]* **scrap** tire that has been reduced to parts no larger than that defined in the definition of a cut tire.

E. A passenger tire equivalent (PTE), for the purposes of calculating the amount of tires, equals twenty (20) pounds.

(B) Permit Exemptions. The following persons are not required to obtain a permit to haul *[waste]* **scrap** tires provided that pollution, a public nuisance or a health hazard is not created:

1. A person who does not haul for consideration **(monetary or non-monetary compensation)** or commercial profit;

2. A person hauling warranty tires or new defective tires to the retailer, wholesaler or manufacturer for adjustment credit or return; *[and]* **or**

3. A person hauling *[waste]* **scrap** tires which have been generated at his/her own business or residence, provided that this transportation is done using his/her own employees and vehicles.

(2) *[Waste]* **Scrap** Tire Hauler Permit Requirements.

(A) Permit Application. A person applying for a *[waste]* **scrap** tire hauler permit shall submit*[, by certified mail,]* the following information to the *[Missouri Department of Natural Resources, Solid Waste Management Program, P.O. Box 176, Jefferson City, MO 65102]* **Missouri Department of Transportation, Motor Carrier Service, PO Box 893, Jefferson City, MO 65102-0893**. This information must be submitted *[to the department]* at least thirty (30) days prior to expiration of the permit*[.]***:**

1. A completed application form provided by the *[department]* **Missouri Department of Transportation**. *[The information submitted shall include the following:*

A. The name, address and telephone number of the person in whose name the permit is to be issued;

B. The geographic area served by the hauler;

C. The approximate number or weight of waste tires transported per month;

D. The number and type(s) of vehicles used to haul waste tires;

E The location(s) to which waste tires are to be hauled, including name(s), address(es) and phone numbers of the receiving facility(ies);

F. The drivers license number of each driver or, in the case of persons regulated through the United States Department of Transportation (DOT), the number the DOT has issued to the applicant; and]

*[G.]***2.** Other information deemed necessary by the *[department]* **Missouri Department of Natural Resources and the Missouri Department of Transportation** to ascertain compliance with sections 260.200 through 260.345, RSMo and implementing rules.

*[2.]***3.** A nonreturnable *[waste]* **scrap** tire hauler permit fee in the amount of one hundred dollars ($100) shall be submitted with the completed application form. The fee shall be in the form of a check or money order made payable to the Department of Natural Resources.

(B) Application Review, Approval and Denial. The *[department]* **Missouri Department of Natural Resources and the Missouri Department of Transportation** shall review applications submitted under this rule**. The Missouri Department of Transportation** shall approve the application and issue a permit or shall deny the application. *[In the event that an application is denied, the department shall issue a written report to the applicant stating the reason for the denial.]*

(C) Permit Issuance**, Suspension** and Revocation. A *[waste]* **scrap** tire hauler permit issued pursuant to this rule shall remain valid for a period of one (1) year unless **suspended or** revoked by the *[department]* **Missouri Department of Transportation**. A *[waste]* **scrap** tire hauler permit may be revoked or suspended for noncompliance with the provisions of sections 260.200*[—]* **through** 260.345, RSMo or corresponding rules.

(D) A person who has, within the preceding twenty-four (24) months, been found guilty or pleaded guilty to a violation of section 260.270, RSMo which involves the transport of *[waste]* **scrap** tires may not be granted a permit to transport *[waste]* **scrap** tires unless the person seeking the permit has provided to the *[department]* **Missouri Department of Natural Resources, Scrap Tire Unit and to the Missouri Department of Transportation, Motor Carrier Service,** a performance bond or letter of credit as provided under this subsection.

1. The bond or letter shall be conditioned upon faithful compliance with the terms and conditions of the permit and section 260.270, RSMo and shall be in the amount of ten thousand ($10,000) dollars.

2. Such performance bond, placed on file with the *[department]* **Department of Natural Resources**, shall be in one (1) of the following forms:

A. A performance bond, payable to the *[department]* **Department of Natural Resources** and issued by an institution authorized to issue such bonds in this state; or

B. An irrevocable letter of credit issued in favor of and payable to the *[department]* **Department of Natural Resources** from a commercial bank or savings and loan having an office in the state of Missouri.

3. Upon determination by the *[department]* **Department of Natural Resources** that a person has violated the terms and conditions of the permit or section 260.270, RSMo, the *[department]*

Department of Natural Resources shall notify the person that the bond or letter of credit shall be forfeited and the moneys placed in an appropriate subaccount of the Solid Waste Management Fund, created under section 260.330, RSMo for remedial action.

4. The *[department]* **Department of Natural Resources** shall expend whatever portion of the bond or letter of credit necessary to conduct resource recovery or nuisance abatement activities to alleviate any condition resulting from a violation of section 260.270, RSMo or the terms and conditions of a permit.

5. The requirement for a person to provide a performance bond or a letter of credit under this rule shall cease for that person after two (2) consecutive years in which the person has not been found guilty or pleaded guilty to a violation of section 260.270, RSMo.

(3) Operating Requirements.

(A) Record *[k]***K**eeping.

1. During periods when a vehicle contains *[waste]* **scrap** tires, a *[waste]* **scrap** tire hauler shall maintain **the current permit** in**side** the vehicle *[the current permit]*.

2. Record Keeping Requirements. A *[waste]* **scrap** tire hauler shall maintain tracking and summary reports as required by the *[department]* **Department of Natural Resources** on forms provided by the *[department]* **Department of Natural Resources** or on similar forms or in a similar format that has been preapproved by the *[department]* **Department of Natural Resources**. The tracking report(s) shall be filled out for each load delivered to an approved destination and shall include all applicable collection and receiver data. They shall be submitted to the Department of Natural Resources, Solid Waste Management Program, P*[.]*O*[.]* Box 176, Jefferson City, MO 65102 by the fifteenth of each month after the date the tires were delivered to their destination.

3. All records required by this rule shall be kept for at least three (3) years. The period of record retention extends upon the written request of the *[department]* **Department of Natural Resources** or automatically during the course of any unresolved enforcement action regarding the regulated activity. The records shall be made available for inspection by the *[department]* **Department of Natural Resources** or its designated representative upon request.

(B) Destination. A permitted *[waste]* **scrap** tire hauler shall transport *[waste]* **scrap** tires to—

1. A registered *[waste]* **scrap** tire end user *[provider]* **provided** that the end user is in compliance with all applicable state and federal laws and regulations;

2. A solid waste disposal area or transfer station *[approved or]* permitted by the *[department]* **Department of Natural Resources**;

3. A solid waste processing or *[waste]* **scrap** tire processing facility permitted by the *[*department*]* **Department of Natural Resources**;

[4. A waste tire site permitted by the department;]

*[5.]***4.** A *[waste]* **scrap** tire collection center;

*[6.]***5.** A permit-exempt facility, provided the *[waste]* **scrap** tires are stored and/or processed in compliance with 10 CSR *[80-8.020(4)]***80-8.050(5)**; or

*[7.]***6.** Out-of-state (provided that transport and the final destinations are in compliance with the requirements of that state).

(C) Mixed Loads. No tires shall be transported with other material on one vehicle if it could result in a hazardous combination likely to cause explosion, fire or release of a dangerous or toxic gas or in violation of any applicable **federal,** state or *[federal]* **local** law or regulation. **Scrap tires sorted from used tires shall not be stored in excess of seven (7) consecutive days.**

(D) Any person permitted as a *[waste]* **scrap** tire hauler shall notify the *[department]* **Missouri Department of Natural Resources, Scrap Tire Unit and Missouri Department of Transportation, Motor Carrier Service** within thirty (30) days of any change of address, phone number, type and number of vehicles, or destination of tires hauled. Registered or certified mail sent to a permitted hauler with proper postage and last known address that is returned unclaimed shall be considered adequate notification of notice served. Refusal to accept mail is a violation of these regulations.

AUTHORITY: sections 260.225, ***RSMo 2000*** *260.270 and 260.278, RSMo Supp. [1996]* ***2006****. Original rule filed Jan. 3, 1991, effective July 8, 1991. For intervening history, please consult the* ***Code of State Regulations****. Amended: Filed Jan. 2, 2007.*

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 will be held on this proposed amendment at 1:00 p.m. on March 6, 2007. The public hearing will be held at the Department of Natural Resources Conference Center in the Roaring River Conference Room, located at 1738 East Elm Street (rear), Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested persons. Also, any interested person may submit a written statement in support of or in opposition to this proposed amendment until 5:00 p.m. on April 6, 2007. Written statements should be sent to Mr. Chris Nagel, Department of Natural Resources, Solid Waste Management Program, PO Box 176, Jefferson City, MO 65201-0176.

SPECIAL NEEDS: If you have any special needs addressed by the Americans With Disabilities Act, please notify us at (573) 751-5401 at least five (5) working days prior to the hearing.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 80—Solid Waste Management
Chapter 8—Waste Tires

PROPOSED RESCISSION

10 CSR 80-8.040 Waste Tire Site Permits. This rule contained the requirements for obtaining a permit as a waste tire site.

PURPOSE: This rule is being rescinded in accordance with Senate Bill 225, as a waste tire site is no longer allowed by statute, unless it is also a processing facility.

AUTHORITY: sections 260.225 and 260.270, RSMo Supp. 1996. Original rule filed Jan. 3, 1991, effective July 8, 1991. For intervening history, please consult the ***Code of State Regulations****. Rescinded: Filed Jan. 2, 2007.*

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed rescission at 1:00 p.m. on March 6, 2007. The public hearing will be held at the Department of Natural Resources Conference Center in the Roaring River Conference Room, located at 1738 East Elm Street (rear), Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested persons. Also, any interested person may submit a written statement in support of or in opposition to this proposed rescission until 5:00 p.m. on April 6, 2007.

Written statements should be sent to Mr. Chris Nagel, Department of Natural Resources, Solid Waste Management Program, PO Box 176, Jefferson City, MO 65201-0176.

SPECIAL NEEDS: If you have any special needs addressed by the Americans With Disabilities Act, please notify us at (573) 751-5401 at least five (5) working days prior to the hearing.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 80—Solid Waste Management
Chapter 8—*[Waste] Scrap* Tires

PROPOSED AMENDMENT

10 CSR 80-8.050 *[Waste] Scrap* **Tire Processing Facility Permits**. The department is amending the chapter title, the rule title, the purpose, sections (1)–(6), and adding section (7) and removing the form that follows the rule in the *Code of State Regulations*.

PURPOSE: The department is amending portions of the rule to reflect revised statutory language in Senate Bill 225 to replace references to "waste tire" with the term "scrap tire." This amendment will also correct typographical errors, grammatical errors, and update materials referenced in the rule.

PURPOSE: This rule contains the requirements for [waste] scrap tire processing facility permits.

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) Definitions. **Definitions for key words used in this rule may be found in section 260.200, RSMo. Additional definitions specific to this rule are as follows:**

(A) A *[waste]* **scrap** tire is a tire that is no longer suitable for its original intended purpose because of wear, damage or defect.

1. A tire no longer suitable for its original intended purpose due to wear is a tire with exposed cord or tread depth less than two thirty-seconds of an inch (2/32") when measured in any major groove.

[2. A tire still mounted on a rim is not a waste tire, except as described in paragraph (1)(A)3.]

*[3.]***2.** Any tire that is discarded with the intent of final disposal is also a *[waste]* **scrap** tire.

*[(B)]***3.** A cut tire, for the purposes of disposal in a permitted solid waste disposal area, is a *[waste]* **scrap** tire cut in half circumferentially**; sidewalls removed from tread;** or cut into at least three (3) parts with no part being larger than approximately one-third (1/3) of the original tire's size.

*[(C)]***4.** A shredded or chipped tire, for the purposes of disposal in a permitted solid waste disposal area, is a *[waste]* **scrap** tire that has been reduced to parts no larger than that defined in the definition of a cut tire.

(B) For purposes of this rule, a scrap tire that has been reduced to parts no larger than one-half inch (1/2") nominal is not a scrap tire.

(C) A passenger tire equivalent (PTE), for the purposes of calculating the amount of tires, equals twenty (20) pounds.

(D) A *[waste]* **scrap** tire processing facility is a site where *[waste]* tires are reduced in volume by shredding, cutting, **buffing,** chipping, baling or otherwise altered to facilitate recycling, resource recovery or disposal. A person who operates *[portable]* **mobile** or stationary *[waste]* **scrap** tire processing equipment *[for consideration]* is a *[waste]* **scrap** tire processing facility under this rule.

(E) A scrap tire site is a site at which five hundred (500) or more scrap tires are accumulated. No new scrap tire sites shall be permitted by the department after August 28, 1997, unless they are located at permitted scrap tire processing facilities or registered scrap tire end-user facilities.

(F) A mobile scrap tire processor is a scrap tire processing operation that provides scrap tire removal services for the abatement of scrap tire sites, or for scrap tire collection centers by operating mobile scrap tire processing equipment at remote locations, and that does not store whole or processed scrap tires at any location at any time.

(2) General Requirements.

(A) This rule is intended to provide minimum requirements for operation of a *[waste]* **scrap** tire processing facility **and a mobile scrap tire processor**. If techniques other than those listed in this rule are to be used, it is the obligation of the *[waste tire processing facility]* owner/operator to demonstrate to the department in advance that the techniques to be employed satisfy the requirements. Detailed processing facility and operational plans for the techniques shall be submitted to the department in writing and approved by the department in writing prior to being employed. The techniques utilized shall not result in pollution, a public nuisance or a health hazard.

(B) *[Waste]* **Scrap** tire processing facilities **and mobile scrap tire processors** shall be in compliance with the requirements of the department's Clean Water Law, Chapter 644, RSMo and implementing regulations.

(C) Permitted scrap tire processing facilities are to be used only for the proper and temporary storage of scrap tires.

(3) Applicability.

(A) Permit Exemptions. The following persons are not required to obtain a *[waste]* **scrap** tire processing permit provided that pollution, a public nuisance or a health hazard is not created and provided the tires are stored according to the requirements of section (5) of this rule:

1. Processing facilities with less than twenty-five (25) tires at the facility at all times;

2. Any collection center which exclusively processes *[waste]* **scrap** tires generated solely at the collection center, provided that the processing is done using the collection center's employees and processing equipment and provided the processing takes place at the collection center where the *[waste]* **scrap** tires are generated; and

3. Any collection center that contracts with a permitted *[waste]* **scrap** tire processing facility for the processing and proper disposal of *[waste]* **scrap** tires generated solely at the collection center.

(B) Any *[waste]* **scrap** tire processing facility **or mobile scrap tire processor** not specifically exempted under subsection (3)(A) is required to be permitted under this rule.

(C) *[Any waste]* **All scrap** tire sites *[permitted after August 28, 1997,]* must *[also]* be permitted as *[a waste]* **scrap** tire processing *[facility]* **facilities** under 10 CSR 80-8.050. *[Any waste tire site permitted on or before August 28, 1997, must also be permitted as a waste tire processing facility under 10 CSR 80-8.050 unless the person who maintains such site verifies that a quantity of waste tires at least equal to the number of additional waste tires received was shipped to a waste tire processing or end-user facility within thirty (30) days after receipt of such additional waste tires.]*

(4) *[Waste]* **Scrap** Tire Processing Facility Permit Application.

(A) A person desiring to establish, maintain or operate a *[waste]* **scrap** tire processing facility shall make application to the department **in triplicate** on forms provided by the department. Processing facilities in existence on the effective date of this rule shall make application within thirty (30) days of the effective date of this rule

and shall be allowed to continue to operate during the permit review process provided that the facility does not cause a public nuisance, a health hazard or pollution and provided that the application is submitted on time and complete.

(B) An application for a *[waste]* **scrap** tire processing facility permit shall be sent by certified mail to the Missouri Department of Natural Resources, Solid Waste Management Program, P*[.]*O*[.]* Box 176, Jefferson City, MO 65102-0176. The application shall consist of*[—]***:**

1. A completed *[Waste]* **Scrap** Tire Processing Facility Permit Application form which will be provided by the department;

2. Detailed site plans and operational plans containing the information necessary to comply with the storage and record keeping requirements of this rule. Plans shall include**:**

A. *[an]* **An** estimate of the inventory **of scrap tires** that can be processed or used in six (6) months of normal and continuous operation. This estimate shall be based on the volume of tires processed or used by the facility in the last year, or the manufacturer's estimated capacity of the processing equipment. This estimate may be increased when new equipment is obtained by the owner of the facility and may be reduced if equipment used previously is removed from active use. Active use will be determined on a case-by-case basis and will be based on the provisions of the permit;

B. Topographic and boundary surveys prepared by a registered land surveyor showing contour intervals of ten feet (10') or less. This survey shall have a scale of not less than one inch equals four hundred feet (1"=400'). All existing and proposed storage areas and structures shall be shown on the survey;

C. A map showing the land use and zoning within five hundred feet (500') of the property boundaries, including the location of all residences, buildings, utilities and easements. This map shall have a scale of not less than one inch equals four hundred feet (1"= 400'); and

D. Detailed plans containing the information necessary to comply with the closure requirements and financial assurance instrument requirements of this rule;

3. A contingency plan designed to minimize the hazards to human health and the environment from fires, runoff of contaminants resulting from fires and from mosquitoes in case of failure of the primary method of vector control. The contingency plan shall include, but not be limited to, the following items, as applicable:

A. The actions site personnel must take in response to fires, runoff resulting from fires and mosquito breeding in scrap tires;

B. An evacuation plan for site personnel, in case of fire; and

C. Evidence that the fire contingency plan has been provided to the local fire and police departments;

*[3.]***4.** Plans for final disposition of the *[waste]* **scrap** tires;

*[4.]***5.** Evidence of compliance with **the** department's Clean Water Law, Chapter 644, RSMo and implementing regulations;

6. Evidence of compliance with local zoning requirements;

*[5.]***7.** Evidence of property ownership; *[and]*

8. Explicit written authorization from the property owner, if different from the applicant, for land use for scrap tire storing and processing operations; and

*[6.]***9.** Nonreturnable processing facility permit fee of two hundred dollars ($200). The fee shall be paid by **certified** check or money order made payable to the Department of Natural Resources. *[If the facility is required to apply for both a waste tire site permit, and a waste tire processing facility permit, and the permits are applied for at the same time, the department will only charge one (1) permit fee.]*

(C) The applicant shall reimburse the department for all permit review costs incurred by the department up to a maximum of two thousand dollars ($2,000). The department will submit a bill to the applicant for review costs incurred after completion of the investigation of the original application and upon completion of the investigation of any subsequent submittals. Payment must be received before the permit will be issued. Permit review costs shall include: permit application review time and costs associated with site visits. *[If the facility is required to apply for both a waste tire site permit and a waste tire processing facility permit, and the permits are applied for at the same time, the department will only charge for one (1) permit review.]*

(D) Application Review, Approval and Denial. The department will complete an investigation of the application to determine compliance with the requirements of sections 260.200–260.345, RSMo, and corresponding rules, and render a decision to the applicant. When the investigation reveals that the *[waste]* **scrap** tire processing facility application*[—]* **either:**

1. Complies with the provisions of sections 260.200–260.345, RSMo, and corresponding rules, the department will approve the application and issue a permit; or

2. Does not comply with the provisions of sections 260.200–260.345, RSMo, and corresponding rules, the department will issue a written denial to the applicant, including the reasons for denial.

(E) Permit Issuance, **Suspension,** Revocation and Modification.

1. A permit for a *[waste]* **scrap** tire processing facility will be issued to the owner/operator for the life of the facility.

2. A *[waste]* **scrap** tire processing facility permit may be revoked or suspended for noncompliance with the provisions of sections 260.200–260.345, RSMo or corresponding rules.

3. The department may, at any time during the life of the permit, open and modify or alternately revoke the permit and require the permittee to comply with any currently applicable federal, state or local requirements.

(5) Storage Requirements.

(A) Fire Protection.

1. *[Indoor and outdoor whole waste tire storage shall meet the Standard for Storage of Rubber Tires, NFPA 231D, 1994 edition, adopted by the National Fire Protection Association (NFPA)]* **The owner or operator of a scrap tire processing facility shall provide written evidence from the local fire protection agency that indoor and outdoor storage of whole or processed scrap tires complies with the currently applicable local or state fire protection standards, or the scrap tire processing facility must comply with the *2006 International Fire Code*, published by the International Code Council, Inc., 4051 W. Flossmoor Road, Country Club Hills, IL, 60478-5795, copyright 2006,** which by this reference is incorporated into this rule. **This rule does not incorporate any subsequent amendments or additions.**

[2. Indoor and outdoor cut, chipped or shredded waste tire storage shall meet the fire prevention, exposure protection and fire fighting access guidelines contained in the Standard for Storage of Rubber Tires, NFPA 231D, 1994 edition, adopted by the National Fire Protection Association.

3. Indoor storage requirements are contained in NFPA 231D, 1994 edition. Outdoor storage requirements are contained in NFPA 231D, Appendix C, 1994 edition. Copies of the NFPA standard may be obtained by contacting the NFPA, P.O. Box 9101, Quincy, MA 02269 (800-344-3555).]

(B) Runoff Protection. Surface water drainage shall be diverted around and away from *[waste]* **scrap** tires.

(C) Location. *[Waste]* **Scrap** tire processing facilities shall not be located in a wetland, sinkhole or floodplain (unless protected against at least the one hundred (100)-year design flood by impervious dikes or other appropriate means to prevent the flood waters from contacting the *[waste]* **scrap** tires).

(D) Site Control. *[Waste]* **Scrap** tire processing facilities shall be fenced or enclosed or otherwise made inaccessible. Signs shall be

posted to prohibit unauthorized entry. (Wording such as "Access Restricted to Authorized Haulers Only" should be used.)

(E) Vector Control. Conditions shall be maintained that are unfavorable for the harboring, feeding and breeding of vectors. If the method being used to control vectors is not effective, the owner/operator of the *[waste]* **scrap** tire processing facility shall use an alternative method to correct the vector problem. The owner/operator of a *[waste]* **scrap** tire processing facility shall use one (1) or more of the following methods of vector control:

1. Drain tires of water and keep dry within a building, enclosed trailer or under a cover that is water impermeable. The cover shall be maintained to be water impermeable;

2. Alter tires so they do not retain water;

3. Treat the tires with a larvicide and/or adulticide appropriate to prevent the development of mosquito larvae and pupae and repeat treatment as often as necessary to prevent such development, taking into account the effectiveness and life of the larvicide and/or adulticide utilized.

A. Larvicides and/or adulticides shall be applied in accordance with their label, Chapter 281, RSMo and its implementing regulations.

B. The dimensions of the tire pile and the method of stacking the tires shall allow for application of the larvicide and/or adulticide to all tires*[; and]***.**

4. Alternate methods of vector control must be approved by the department if documented to control larvae, pupae and adult mosquitoes.

(F) Inventory. The inventory of unprocessed *[waste]* **scrap** tires on the premises of the facility shall not exceed the amount that can be used in six (6) months of normal and continuous operation. This amount shall be based on the volume of tires used by the facility in the last year or the manufacturer's estimated capacity of the equipment used by the facility. The inventory of processed *[waste]* **scrap** tires on the premises of the facility shall not be more than twice the amount of unprocessed tires allowed by this rule.

(6) Record Keeping Requirements. The owner/operator of a *[waste]* **scrap** tire processing facility shall maintain the records required by this rule. All records required by this rule shall be kept for at least three (3) years. The period of record retention extends upon the written request of the department or automatically during the course of any unresolved enforcement action regarding the regulated activity. The records shall be made available for inspection by the department or its designated representative upon request. The records shall include at least the following:

(B) On forms provided by the department, the number of tires received each week, number of tires removed to final disposition each week, final disposition of removed tires and the name and permit number, if applicable, of each *[waste]* **scrap** tire hauler bringing tires to or removing tires from the facility. This information shall be summarized monthly; and

(C) Records of Vector Control Activities. For a *[waste]* **scrap** tire processing facility utilizing a larvicide and/or adulticide for vector control, the records shall include the following:

1. If the larvicide/adulticide is applied by a registered pest control company, the name of the company and the date of application; or

2. If the larvicide/adulticide is not applied by a registered pest control company, type(s) of larvicide/adulticide utilized, amount utilized and date applied.

(7) Closure, Financial Assurance.

(A) Exemptions. The following are not required to establish a closure plan and financial assurance instrument provided that pollution, a public nuisance or a health hazard is not created and provided the scrap tires are stored according to the requirements of section (5) of this rule:

1. Mobile scrap tire processors permitted by the department;

2. Scrap tire processing facilities permitted by the department, at which less than five hundred (500) scrap PTE are stored at any time.

(B) Closure Plan Requirements.

1. Plans for closure of the scrap tire processing facility shall include methods, time schedules and cost estimates for removal of all scrap tires and site clean-up and restoration activities. The cost estimates for the amount of the financial assurance instrument shall be based upon the current costs of similar cleanups using data from actual scrap tire cleanup project bids received by the department to remediate scrap tire sites of similar size. The following shall be performed as a part of closure of a scrap tire processing facility and shall be included in the plans:

A. Removal and clean-up plans and cost estimates. Scrap tires shall be removed from the site and taken to a Missouri facility that has obtained applicable permits from the department or taken out-of-state (provided that transport and final destinations are in compliance with the requirements of that state). The site shall be cleaned up so as to remove all other solid waste to provide a pleasing appearance;

B. Site restoration plans and cost estimates. If necessary, removal of any contaminated soil, debris, residue, and/or placement of cover and establishment of vegetation in a manner as to minimize erosion, control drainage and provide a pleasing appearance. For the purposes of financial assurance instruments, the cost of removal of at least fifty percent (50%) of processed scrap tire material that has been reduced to parts no larger than one-half inch (1/2") nominal;

C. The owner/operator must demonstrate in the closure plan that the estimate represents the maximum closure costs at any time during the active operation of the scrap tire site;

D. The cost estimate(s) submitted with the closure plan shall contain an estimate in current dollars (based upon the current costs of similar cleanups using data from actual scrap tire clean-up project bids received by the department to remediate scrap tire sites of similar size) and an adjusted estimate for the succeeding five (5) years based on the projected rate of inflation. The rate of inflation used for this purpose shall be the latest percent change in the Implicit Price Deflator for the Gross Domestic Product for the latest completed year, as determined by the United States Department of Commerce, Bureau of Economic Analysis. The adjusted cost estimate shall be used to determine the amount of the financial assurance instrument; and

E. The closure cost estimates shall be adjusted every five (5) years by the owner/operator based upon the actual rate of inflation for the preceding five (5) years and the projected rate of inflation for the succeeding five (5) years. The adjusted cost estimates shall be submitted to the department for review every five (5) years after the date of permit issuance.

2. The owner/operator of a scrap tire processing facility shall notify the department in writing at least ninety (90) days prior to the date the owner/operator expects to begin closure. The owner/operator shall begin implementation of the closure plan required in this rule within thirty (30) days after the closure date specified in the closure plan.

3. Owner/operators of a permitted scrap tire processing facility as a part of closure of the scrap tire site, shall execute an easement with the department, which allows the department, its agents or its contractors to enter the premises to complete work specified in the closure plan, to monitor or maintain the scrap tire site, or take remedial action. This easement will be terminated upon proper closure of the site.

4. If changes in the design and/or operation of a scrap tire processing facility make modifications in the closure plans or cost estimates necessary, modified closure plans and cost estimates

shall be submitted to the department for approval prior to implementation of the changes.

(C) Financial Assurance Requirements.

1. A permit will not be issued until financial assurance instruments as required by subsection (7)(C) of this rule have been submitted and approved by the department.

A. Increasing and decreasing financial assurance instruments. The following shall apply to all financial assurance instruments as specified in paragraph (7)(C)2. of this rule except the financial test, corporate guarantee and insurance: When the estimated closure cost increases, the amount of the financial assurance instrument shall be adjusted to cover the increase in the cost estimate. The owner/operator shall increase the amount of the financial assurance instrument within one hundred eighty (180) days of the increase in the estimate and submit written evidence of the increase to the director or obtain other financial assurance as specified in paragraph (7)(C)2. of this rule to cover the increase. If the current closure cost decreases and the owner/operator has received written approval from the director of this decrease, the owner/operator may decrease the amount of the closure financial assurance instrument.

B. Release of closure financial assurance instruments. The department will inspect a permitted scrap tire processing facility when notified by the owner/operator that the closure plan has been implemented. If the inspection reveals that the approved closure plan has been properly effected, the director shall authorize the release or proportional release of the financial assurance instrument submitted for closure and interest, if any.

C. Forfeiture of financial assurance instruments. If the owner/operator fails to properly implement the closure plan, the director will give written notice of the violation and order the owner/operator to implement the closure plan. If corrective measures approved by the director are not commenced within a specified and reasonable time, the director will order forfeiture of all or that part of the owner/operator's financial assurance instrument necessary to implement the closure plans. Any owner/operator aggrieved by a forfeiture order may appeal as provided in section 536.150, RSMo.

2. Financial assurance instruments. The requirements of subsection (7)(C) of this rule for financial assurance instrument(s) for closure may be satisfied by establishing a trust fund or escrow account, securing a financial guarantee bond or a performance bond, obtaining an irrevocable letter of credit, insurance, or a combination of these as outlined in paragraph (7)(C)2. of this rule. This requirement may also be satisfied by meeting a financial test and by using a corporate guarantee. A municipality or county may satisfy the requirements by signing a contract of obligation.

A. Trust fund or escrow account. The establishment of a trust fund or escrow account may be used to satisfy the requirement for a financial assurance instrument to provide for closure.

(I) A bank or other financial institution which is authorized to administer trusts in Missouri and whose trust operations are regulated and examined by Missouri or a federal agency shall act as the trustee of the closure trust fund. An escrow account shall be established at a bank or financial institution which is located in Missouri and which is examined by Missouri or a federal agency.

(II) The trust fund or escrow account shall consist of cash, certificates of deposit or United States government securities. United States government securities include treasury bills, treasury bonds and treasury notes guaranteed by the federal government.

(III) Wording of trust fund or escrow account agreements.

(a) The wording of the trust fund agreement must be identical to the wording specified in form MO 780-1272 and the trust fund agreement must be accompanied by a formal certification of acknowledgment form MO 780-1271. An original or an originally signed duplicate of the trust fund agreement shall be submitted to the department.

(b) The wording of the escrow account agreement shall be identical to the wording in form MO 780-1264. An original or an originally signed duplicate of the escrow account agreement shall be submitted to the department.

(IV) If the owner/operator establishes a trust fund or escrow account after having used one (1) or more alternate mechanisms specified in paragraph (7)(C)2. of this rule, the first payment must be in at least the amount that the trust fund or escrow account would contain if the trust fund or escrow account were established initially and annual payments made based upon the current costs of similar cleanups using data from actual scrap tire clean-up project bids received by the department to remediate scrap tire sites of similar size.

(V) If an owner/operator substitutes other financial assurance as specified in subsection (7)(C) of this rule for all or part of the trust fund or escrow account, s/he may submit a written request to the department for release of all or a portion of the amount covered by the trust fund or escrow account.

(VI) Within sixty (60) days after receiving a request from the owner/operator for release of funds as specified in part (7)(C)2.A.(V) of this rule, the director will instruct the trustee or escrow agent to release to the owner/operator those funds as the director specifies in writing.

(VII) If the owner/operator does not properly implement the closure plan and does not comply with an order by the department to do so, the department will order the forfeiture of all or part of the trust fund or escrow account as specified in subparagraph (7)(C)1.C. of this rule.

(VIII) The director will agree to termination of the trust fund or escrow account when:

(a) An owner/operator substitutes alternate financial assurance as specified in subsection (7)(C) of this rule; or

(b) The director releases the owner/operator from the requirements of subsection (7)(C) of this rule.

B. Financial guarantee bond. The requirement for a financial assurance instrument may be satisfied by securing a financial guarantee bond.

(I) The bond shall be executed by the owner/operator and a corporate surety licensed to do business in Missouri. The surety company issuing the bond, at a minimum, must be among those listed as acceptable sureties on federal bonds in Circular 570 of the United States Department of the Treasury. Corporate surety companies that issue sureties in which the penal sums (face amounts) exceed the corporation's underwriting limitation must provide proof of coinsurance, reinsurance, or provide another method of assurance in accordance with Treasury Circular 297, Revised September 1, 1978, (31 CFR sections 223.10-11).

(II) The wording of the surety bond must be identical to the wording specified in form MO 780-1265.

(III) The owner/operator who uses a surety bond to satisfy the requirements of subsection (7)(C) of this rule must also establish a standby trust fund or escrow account. Under the terms of the bond, all payments made will be deposited by the surety directly into the standby trust fund or escrow account in accordance with instructions from the director. This standby trust fund or escrow account must meet the requirements specified in subparagraph (7)(C)2.A. of this rule except that:

(a) An original or an originally signed duplicate of the standby trust fund or escrow account agreement must be submitted to the department with the surety bond; and

(b) Unless the standby trust fund or escrow account is funded pursuant to the requirements of subparagraph (7)(C)2.B. of this rule, the following are not required by these rules:

I. Payments into the trust fund or escrow account;

II. Annual valuations as required by the trust fund or escrow account agreement; and

III. Notices of nonpayment as required by the trust fund or escrow account agreement.

(IV) The bond must guarantee that the owner/operator will:

(a) Fund the standby trust fund or escrow account in an amount equal to the penal sum of the bond before the beginning of final closure of the scrap tire site;

(b) Fund the standby trust fund or escrow account in an amount equal to the penal sum within thirty (30) days after an order to begin closure is issued by the department; or

(c) Provide alternate financial assurance as specified in subsection (7)(C) of this rule; and within ninety (90) days after receipt, by both the owner/operator and the department, of a cancellation notice of the bond from the surety, obtain the director's written approval of the provided assurance.

(V) Under the terms of the bond, the surety will become liable on the bond obligation when the owner/operator fails to perform as guaranteed by the bond.

(VI) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner/operator and to the department. Cancellation may not occur, however, during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the owner/operator and the director, as evidenced by the return receipts.

(VII) The owner/operator may cancel the bond if the director has given prior written consent based on receipt of evidence of alternate financial assurance as specified in subsection (7)(C) of this rule.

C. Performance bond. The requirement for a financial assurance instrument may be satisfied by securing a performance bond guaranteeing performance of closure.

(I) The bond shall be executed by the owner/operator and a corporate surety licensed to do business in Missouri. The surety company issuing the bond, at a minimum, must be among those listed as acceptable sureties on federal bonds in Circular 570 of the United States Department of the Treasury. Corporate surety companies that issue sureties in which the penal sums (face amounts) exceed the corporation's underwriting limitation must provide proof of coinsurance, reinsurance, or provide another method of assurance in accordance with Treasury Circular 297, Revised September 1, 1978, (31 CFR sections 223.10-11).

(II) The wording of the surety bond must be identical to the wording specified in form MO 780-1266.

(III) The owner/operator who uses a surety bond to satisfy the requirements of subsection (7)(C) of this rule must also establish a standby trust fund or escrow account. Under the terms of the bond, all payments made will be deposited by the surety directly into the standby trust fund or escrow account in accordance with instructions from the director. This standby trust fund or escrow account must meet the requirements specified in subparagraph (7)(C)2.A. of this rule, except that:

(a) An original or an originally signed duplicate of the standby trust fund or escrow account agreement must be submitted to the department with the surety bond; and

(b) Unless the standby trust fund or escrow account is funded pursuant to the requirements of subparagraph (7)(C)2.C. of this rule, the following are not required by these rules:

I. Payments into the trust fund or escrow account as specified;

II. Annual valuations as required by the trust fund or escrow account agreement; and

III. Notices of nonpayment as required by the trust fund or escrow account agreement.

(IV) The bond must guarantee that the owner/operator will:

(a) Perform final closure in accordance with the closure plan and other requirements of the scrap tire processing facility permit whenever required to do so; or

(b) Provide alternate financial assurance as specified in subsection (7)(C) of this rule and obtain the director's written approval of the provided assurance, within ninety (90) days after receipt by both the owner/operator and the department of a notice of cancellation of the bond from the surety.

(V) Under the terms of the bond, the surety will become liable on the bond obligation when the owner/operator fails to perform as guaranteed by the bond. Following a determination that the owner/operator has failed to perform final closure in accordance with the closure plan, under the terms of the bond the surety will perform final closure as guaranteed by the bond or will deposit the amount of the penal sum into the standby trust fund or escrow account.

(VI) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner/operator and to the department. Cancellation may not occur, however, during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the owner/operator and the department, as evidenced by the return receipts.

(VII) The owner/operator may cancel the bond if the director has given prior written consent. The director will provide written consent when:

(a) An owner/operator substitutes alternate financial assurance as specified in subsection (7)(C) of this rule; or

(b) The director releases the owner/operator from the requirements of subsection (7)(C) of this rule.

(VIII) The surety will not be liable for deficiencies in the performance of closure by the owner/operator after the director releases the owner/operator from the requirements of subsection (7)(C) of this rule.

D. Letter of credit. The requirement for a financial assurance instrument may be satisfied by obtaining an irrevocable standby letter of credit.

(I) The letter of credit shall be issued by a state- or federally-chartered and regulated bank or trust association. If the issuing institution is not located in Missouri, a bank or trust association located in Missouri must confirm the letter of credit and the confirmation shall be filed with the department along with the letter of credit.

(II) The wording of the letter of credit must be identical to the wording specified in form MO 780-1267.

(III) An owner/operator who uses a letter of credit to satisfy the requirements of subsection (7)(C) of this rule must also establish a standby trust fund or escrow account. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the director will be deposited by the issuing institution directly into the standby trust fund or escrow account in accordance with instructions from the director. This standby trust fund or escrow account must meet the requirements of the trust fund or escrow account specified in subparagraph (7)(C)2.A. of this rule, except that:

(a) An original or an originally signed duplicate of the standby trust fund or escrow account agreement must be submitted to the department with the letter of credit; and

(b) Unless the standby trust fund or escrow account is funded pursuant to the requirements of subparagraph (7)(C)2.D. of this rule, the following are not required by these rules:

I. Payments into the trust fund or escrow account as specified;

II. Annual valuations as required by the trust fund

or escrow account agreement; and

III. Notices of nonpayment as required by the trust fund or escrow account agreement.

(IV) The letter of credit must be accompanied by a letter from the owner/operator referring to the letter of credit by number, the issuing institution and date and providing the following information: the scrap tire processing facility permit number, name and address of the scrap tire processing facility and the amount of funds assured for closure of the scrap tire processing facility by the letter of credit.

(V) The letter of credit must be irrevocable and issued for a period of at least one (1) year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one (1) year unless, at least one hundred twenty (120) days before the current expiration date, the issuing institution notifies both the owner/operator and the department by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the one hundred twenty (120) days will begin on the date when both the owner/operator and the department have received the notice, as evidenced by the return receipts.

(VI) If the owner/operator does not establish alternate financial assurance as specified in subsection (7)(C) of this rule and obtain written approval of this alternate assurance from the director within ninety (90) days after receipt by both the owner/operator and the department of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the director will draw on the letter of credit. The director may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last thirty (30) days of this extension, the director will draw on the letter of credit if the owner/operator has failed to provide alternate financial assurance as specified in subsection (7)(C) of this rule and obtain written approval of that assurance from the director.

(VII) Following a determination that the owner/operator has failed to perform final closure in accordance with the closure plan and other permit requirements when required to do so, the director may draw on the letter of credit.

(VIII) The director will return the letter of credit to the issuing institution for termination when:

(a) An owner/operator substitutes alternate financial assurance as specified in subsection (7)(C) of this rule; or

(b) The director releases the owner/operator from the requirements of subsection (7)(C) of this rule.

E. Insurance. The requirement for a financial assurance instrument may be satisfied by obtaining insurance. The insurance policy shall be irrevocable and without provisions to transfer, loan/borrow, withdraw, make premium payments from or otherwise extract or encumber funds from the face amount or cash surrender value of the policy, except upon written approval by the director or his/her designee.

(I) The insurer, at a minimum, shall be licensed to transact the business of insurance, or be eligible to provide insurance as an admitted or an excess or surplus lines insurer, in one (1) or more states, and authorized to transact business in Missouri by law and by the Missouri Department of Insurance, Financial Institutions and Professional Registration.

(II) The wording of the certificate of insurance must be identical to the wording specified in form MO 780-1268.

(III) The insurance policy must be issued for a face amount at least equal to the amount specified in paragraph (7)(B)1. of this rule. The term face amount means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(IV) The insurance policy must guarantee that funds will be available to close the scrap tire processing facility whenever final closure occurs. The policy must also guarantee that once the final closure begins, the insurer, upon the direction of the director, will be responsible for paying out funds, up to an amount equal to the face amount of the policy, to that party(ies) as the director specifies. Release of the funds will be authorized by the director according to paragraph (7)(C)1. of this rule.

(V) The owner/operator must maintain the policy in full force and effect until the director consents to termination of the policy by the owner/operator as specified in part (7)(C)2.E.(VIII) of this rule. Failure to pay the premium, without substitution of alternate financial assurance as specified in subsection (7)(C) of this rule, will constitute a significant violation of these rules, warranting such remedy as the director deems necessary. The violation will be deemed to begin upon receipt by the department of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

(VI) Each policy shall contain provisions:

(a) Allowing assignment of the policy to a successor owner/operator. The assignment may be conditional upon consent of the insurer, provided the consent is not unreasonably refused;

(b) Providing that policy issued on a claims-made basis shall provide retroactive coverage from the date of issuance of said policy covering the facility and shall contain an extended claims reporting period of at least twelve (12) months; and

(c) Designating the Director, Missouri Department of Natural Resources as the irrevocable primary beneficiary without collateral assignment(s).

(VII) The policy must provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy, at a minimum, must provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate or fail to renew the policy by sending notice by certified mail to the owner/operator and the department. Cancellation, termination or failure to renew may not occur, however, during the one hundred twenty (120) days beginning with the date of receipt of the notice by both the director and the owner/operator, as evidenced by the return receipts. Cancellation, termination or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:

(a) The director deems the tire site abandoned;

(b) The permit is terminated or revoked or a new permit is denied;

(c) Closure is ordered by the director or a United States district court or other court of competent jurisdiction;

(d) The owner/operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), *United States Code*; or

(e) The premium due is paid.

(VIII) The director will give written consent to the owner/operator that s/he may terminate the insurance policy when:

(a) An owner/operator substitutes alternate financial assurance as specified in subsection (7)(C) of this rule; or

(b) The director releases the owner/operator from the requirements of subsection (7)(C) of this rule.

F. Financial test and corporate guarantee. The requirements for a financial assurance instrument may be satisfied by passing a financial test. A corporate guarantee submitted by the parent corporation of the owner/operator as specified in part (7)(C)2.F.(X) of this rule may also be used to satisfy the requirements for a financial assurance instrument.

(I) To pass the financial test the owner/operator must meet the criteria of either subpart (7)(C)2.F.(I)(a) or (b) of this rule.

(a) The owner/operator must have:

I. Two (2) of the following three (3) ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5;

II. Tangible net worth at least 2.0 times the sum of the current closure cost estimates covered by the test; and

III. Assets in the United States amounting to at least ninety percent (90%) of his/her total assets or at least 2.0 times the sum of the current closure cost estimates covered by the test.

(b) The owner/operator must have:

I. A current rating for his/her most recent bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's;

II. Tangible net worth at least 2.0 times the sum of the current closure cost estimates covered by the test; and

III. Assets located in the United States amounting to at least ninety percent (90%) of his/her total assets or at least 2.0 times the sum of the current closure cost estimates covered by the test.

(II) The phrase current closure cost estimates as used in part (7)(C)2.F.(I) of this rule refers to the cost estimates required to be shown in paragraphs 1.–4. of the letter from the owner/operator's chief financial officer form MO 780-1269.

(III) To demonstrate that s/he meets this test, the owner/operator must submit the following items to the department:

(a) A letter signed by the owner/operator's chief financial officer and worded as specified in form MO 780-1269;

(b) A copy of the independent certified public accountant's report on examination of the owner/operator's financial statements for the latest completed fiscal year based on generally accepted accounting principles; and

(c) A special report from the owner/operator's independent certified public accountant to the owner/operator stating that:

I. S/he has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in those financial statements; and

II. The regulatory requirement that the certified public accountant provide assurance must be consistent with current professional auditing standards.

(IV) After the initial submission of items specified in part (7)(C)2.F.(III) of this rule, the owner/operator must send updated information to the department within ninety (90) days after the close of each succeeding fiscal year. This information must consist of all three (3) items specified in part (7)(C)2.F.(III) of this rule.

(V) If the owner/operator no longer meets the requirements of part (7)(C)2.F.(I) of this rule, s/he must send notice to the department of intent to establish alternate financial assurance. The notice must be sent by certified mail within ninety (90) days after the end of the fiscal year for which the year-end financial data show that the owner/operator no longer meets the requirements. The owner/operator must provide the alternate financial assurance within one hundred twenty (120) days after the end of the fiscal year.

(VI) The director, based on a reasonable belief that the owner/operator may no longer meet the requirements of part (7)(C)2.F.(I) of this rule, may require reports of financial condition at any time from the owner/operator in addition to those specified in part (7)(C)2.F.(I) of this rule. If the director finds, on the basis of the reports or other information, that the owner/operator no longer meets the requirements of part (7)(C)2.F.(I) of this rule, the owner/operator must provide alternative financial assurance as specified in subsection (7)(C) of this rule within thirty (30) days after notification of such a finding.

(VII) The department may require and evaluate additional information which relates to financial status, including present or potential environmental liabilities and may deny the use of the financial test based upon the evaluation or the failure of an applicant to provide such additional information requested by the department within thirty (30) days from the date of that request. Pending approval of the use of the test by the director or pending appeal before any court of competent jurisdiction of the department's denial of the use of the test, the owner/operator shall comply with the financial assurance requirements through the use of an alternate financial assurance mechanism as described in subsection (7)(C) of this rule. The burden of proof shall be on the applicant in the event of any appeal of a denial. If the department rules that the firm's financial test is unacceptable, the firm shall have thirty (30) days from the date of notification of such a decision to provide alternative financial assurances.

(VIII) The department may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in the report on examination of the owner/operator's financial statements. An adverse opinion or a disclaimer of opinion will be cause for disallowance. The department will evaluate other qualifications on an individual basis. The owner/operator must provide alternate financial assurance as specified in subsection (7)(C) of this rule within thirty (30) days after notification of the disallowance.

(IX) The owner/operator is no longer required to submit the items specified in part (7)(C)2.F.(III) of this rule when:

(a) An owner/operator substitutes alternate financial assurance as specified in subsection (7)(C) of this rule; or

(b) The director releases the owner/operator from the requirements of subsection (7)(C) of this rule.

(X) An owner/operator may meet the requirements of subsection (7)(C) of this rule by obtaining a written guarantee, referred to in this rule as corporate guarantee. The guarantor must be the parent corporation of the owner/operator. The guarantor must meet the requirements for owner/operators in parts (7)(C)2.F.(I)–(VIII) of this rule and must comply with the terms of the corporate guarantee. The wording of the corporate guarantee must be identical to the wording specified in form MO 780-1270. The corporate guarantee must accompany the items sent to the department as specified in part (7)(C)2.F.(III) of this rule. The terms of the corporate guarantee must provide that:

(a) If the owner/operator fails to perform final closure of a scrap tire processing facility covered by the corporate guarantee in accordance with the closure plan and other permit requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in subparagraph (7)(C)2.A. of this rule in the name of the owner/operator;

(b) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner/operator and to the department. Cancellation may not occur, however, during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by both the owner/operator and the department, as evidenced by the return receipts; and

(c) If the owner/operator fails to provide alternate financial assurance as specified in subsection (7)(C) of this rule and obtain the written approval of the alternate assurance from the director within ninety (90) days after receipt by both the owner/operator and the department of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will

provide the alternative financial assurance in the name of the owner/operator.

G. Contract of obligation. Municipalities or counties may satisfy the requirements for a financial assurance instrument by entering into a contract of obligation for the full amount of the approved closure cost estimates. The wording of the contract of obligation shall be identical to the wording specified in form MO 780-1263.

(I) The contract of obligation shall be a binding agreement on the municipality or county, allowing the department to collect the required amount from any funds being disbursed or to be disbursed by Missouri to the municipality or county. A municipality or county that uses the contract of obligation every five (5) years shall submit a letter to the department from the governing body reaffirming the amount of their financial obligation. The wording of the contract of obligation shall be identical to the wording specified in the Contract of Obligation form.

(II) Resolution and/or Ordinance. The Contract of Obligation shall be submitted to the department by the owner/operator with an attached Resolution or Ordinance specifying the name of the Signatory Agent having the designated authority to sign the Contract of Obligation. The Resolution or Ordinance shall contain wording similar to the wording specified in the Resolution/Ordinance form.

(III) Local Government Financial Test. The Contract of Obligation shall be submitted to the department every five (5) years by the owner/operator with an attached, accurate and complete Local Government Financial Test. The Local Government Financial Test shall contain:

(a) A letter signed by the owner/operator's chief financial officer using wording identical to the wording specified in the Local Government Financial Test form;

(b) A copy of an independent certified public accountant's report on examination of the owner/operator's financial statements for the latest completed fiscal year; and

(c) A special report from an independent certified public accountant to the owner/operator stating that—

I. S/he has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in the financial statements;

II. S/he should report an appropriate description of the findings using a summary of findings in accordance with the requirements of the American Institute of Certified Public Accountants Statement on Auditing Standards #75; and

III. The special report procedure was performed in accordance with generally accepted accounting principles (GAAP).

(IV) The owner/operator shall include a copy of the most recent comprehensive annual financial report (CAFR) disclosing, for public notice, all of the estimated scrap tire processing facility closure financial obligations. The report shall include:

(a) The nature and source of the closure requirements;

(b) The costs recognized to date;

(c) The costs remaining to be incurred.

(V) Definitions. The financial terms used in this rule shall be consistent with generally accepted accounting principles (GAAP).

(VI) Qualifications.

(a) Local governments will not be qualified to utilize Contracts of Obligation and Local Government Financial Tests if they have been determined to:

I. Be an enterprise fund, solid waste management district or organization other than a county or incorporated city, town or village, as classified in Article VI, Section 15, of the *Constitution of Missouri*. Two (2) or more qualified local governments may join in common to submit combined mechanisms;

II. Currently be in default on any outstanding general obligation bonds;

III. Have any outstanding general obligation bonds having a Standard and Poor's rating less than BBB or a Moody's rating less than Baa;

IV. Have operated at a deficit exceeding five percent (5%) of the total annual revenues in each of the past two (2) years, except as allowed in Article VI, Sections 26(a) through 26(g), of the *Constitution of Missouri*;

V. Have a relative size threshold in excess of forty-three percent (43%) of the local government's total annual revenues. This rule allows the annual guaranteed environmental financial assurances to sub-total up to forty-three percent (43%) of the total annual revenues with additional secured financial assurance mechanism(s) being demonstrated for the remaining balance;

VI. Have an adverse opinion or a disclaimer of opinion from an independent certified public accountant as reported under subparagraphs (7)(C)2.G.(III)(b) and (7)(C)2.G.(III)(c) of this rule; and

VII. Fail the ratio test criteria of subparagraph (7)(C)2.G.(VI)(b)I. of this rule.

(b) An owner/operator qualified under subparagraph (7)(C)2.G.(VI) of this rule shall pass the Local Government Financial Test by meeting the criteria of either parts (7)(C)2.G.(VI)(b)I., Alternative I, or (7)(C)2.G.(VI)(b)II., Alternative II, of this rule as follows:

I. Alternative I. The owner/operator shall have a liquidity ratio greater than or equal to 0.050 and a debt service ratio less than or equal to 0.20; or

II. Alternative II. The owner/operator shall have a current rating for all outstanding general obligation bonds of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's. Ratings from agencies other than Standard and Poor's or Moody's and ratings on expired bonds, refunding bonds, revenue bonds, insured bonds or structured financing (guaranteed or collateralized) are not acceptable.

(VII) Effective dates.

(a) All applicants and/or owners/operators of active scrap tire processing facilities, choosing to use a Contract of Obligation to guarantee scrap tire processing facility financial assurance, shall submit a Local Government Financial Test and a Comprehensive Annual Financial Report, using the most recent fiscal financial statements, with each Contract of Obligation and Resolution/Ordinance submitted on or after April 9, 1998. After initial approval, each owner/operator shall every five (5) years submit an updated Contract of Obligation and Resolution/Ordinance, Local Government Financial Test and Comprehensive Annual Financial Report within one hundred eighty (180) days following the end of their fiscal year.

(b) All owners/operators of officially closed facilities, having properly executed Contracts of Obligation that were approved prior to April 9, 1998, are not required to submit a Local Government Financial Test nor a Comprehensive Annual Financial Report as long as they are in compliance with 10 CSR 80-2.030 at the time of closure. The cost estimates of the Contracts of Obligation for officially closed facilities may be every five (5) years adjusted for inflation, as specified in subsection (7)(C)1.A. of this rule, by using a cover letter amendment to the contract signed by the designated signatory agent.

H. Use of multiple financial assurance instruments. An owner/operator may satisfy the requirements of subsection (7)(C) of this rule for financial assurance instruments by establishing more than one (1) financial instrument per scrap tire processing facility for closure. These instruments are limited to trust funds, escrow accounts, financial guarantee bonds, and letters of credit. The instrument must be as specified in paragraph (7)(C)2. of

this rule except that it is the combination of instruments, rather than the single instrument which must provide financial assurance for an amount at least equal to an amount based upon the current costs of similar cleanups using data from actual scrap tire clean-up project bids received by the department to remediate scrap tire sites of similar size. If an owner/operator uses a trust fund or escrow account in combination with a surety bond or a letter of credit, s/he may use the trust fund or escrow account as the standby trust fund or escrow account for the other instruments. A single standby trust fund or escrow account may be established for two (2) or more instruments. The director may use any or all of the instruments to provide for closure of the scrap tire site.

I. Filing, increasing and decreasing financial assurance instruments. When increases in the financial assurance instrument are no longer being made and the estimated closure cost increases, the amount of the financial assurance instrument shall be adjusted to cover the increase in the cost estimate. The owner/operator shall increase the amount of the financial assurance instrument within sixty (60) days of the increase in the estimate and submit written evidence of the increase to the director or obtain other financial assurance as specified in subsection (7)(B) of this rule to cover the increase. If the current cost of closure decreases and the owner/operator has received written approval from the director of a decrease, the owner/operator may decrease the amount of the closure financial assurance instrument.

J. Release of financial assurance instruments. The department will inspect a permitted scrap tire processing facility when notified by the owner/operator that the closure plan has been implemented. If the inspection reveals that the approved closure plan has been properly effected, the director shall authorize the release or proportional release of, the financial assurance instrument submitted for closure and interest, if any.

K. Forfeiture of financial assurance instruments. If the owner/operator fails to properly implement the closure plan, the director will give written notice of the violation and order the owner/operator to implement the closure plan. If closure as approved by the director has not commenced within a specified and reasonable time, the director will order forfeiture of all or that part of the owner/operator's financial assurance instrument necessary to implement closure. Any owner/operator aggrieved by a forfeiture order may appeal as provided in section 260.235, RSMo.

*AUTHORITY: sections 260.225, **RSMo 2000** and 260.270, RSMo Supp. [1996] **2000**. Original rule filed April 16, 1997, effective Dec. 30, 1997. Amended: Filed Jan. 2, 2007.*

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 may cost private entities up to six hundred thousand dollars ($0 to $600,000) in the aggregate if a financial assurance instrument (FAI) is required.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed amendment at 1:00 p.m. on March 6, 2007. The public hearing will be held at the Department of Natural Resources Conference Center in the Roaring River Conference Room, located at 1738 East Elm Street (rear), Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested persons. Also, any interested person may submit a written statement in support of or in opposition to this proposed amendment until 5:00 p.m. on April 6, 2007. Written statements should be sent to Mr. Chris Nagel, Department of Natural Resources, Solid Waste Management Program, PO Box 176, Jefferson City, MO 65201-0176.

SPECIAL NEEDS: If you have any special needs addressed by the Americans With Disabilities Act, please notify us at (573) 751-5401 at least five (5) working days prior to the hearing.

FISCAL NOTE
PRIVATE ENTITY COST

I. RULE NUMBER

Rule Number and Name:	10 CSR 80-8.050 Scrap Tire Processing Facility Permits
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of Entities by class which would likely be affected by the adoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
Six (at this time)	Scrap Tire Processing Facilities	$0 to $600,000 (No increase is anticipated.)

III. WORKSHEET

Estimated Cost of Compliance =
(6 Scrap Tire Processing Facilities) X ($0 to $100,000 range of current cost) =
$0 to $600,000 range of estimated cost in the aggregate of compliance with the rule by the affected entities

IV. ASSUMPTIONS

A Financial Assurance Instrument (FAI) is required.

There are nine FAI options. The costs of these options vary dependent upon the type of FAI used. The amount of the FAI required is dependent on the inventory of scrap tires on-site. Inventories also vary widely. FAI values currently range from $50,000.00 to $100,000.00. The current average FAI value is $73,150.00. Current costs range from $0 to $100,000.

Scrap tire processing facilities will directly benefit from the relaxed requirements and corresponding decreased costs of providing FAI's, thereby reducing their business costs through this rulemaking proposal.

The SWMP normally receives one scrap tire processing facility permit application per year.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 80—Solid Waste Management
Chapter 8—*[Waste] Scrap* Tires

PROPOSED AMENDMENT

10 CSR 80-8.060 *[Waste] Scrap* **Tire End-User Facility Registrations**. The department is amending the chapter title, the rule title, the purpose, sections (1)–(5), adding section (6), renumbering sections (6) and (7) and removing the forms that follow the rule in the *Code of State Regulations*.

PURPOSE: The department is amending portions of the rule to reflect revised statutory language in Senate Bill 225 to replace references to "waste tire" with the term "scrap tire." This amendment will also correct typographical errors, grammatical errors, and update materials referenced in the rule.

PURPOSE: This rule contains the requirements for [waste] scrap tire end-user facility registrations.

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) Definitions. **Definitions for key words used in this rule may be found in section 260.200, RSMo. Additional definitions specific to this rule are as follows:**

(A) A scrap tire end-user facility is a site where scrap tires are used as a fuel or fuel supplement or converted into a useable product and where no further processing of scrap tires takes place, as the term scrap tire processing facility is defined in 10 CSR 80-8.050(1)(D).

*[(A)]***(B)** A *[waste]* **scrap** tire is a tire that is no longer suitable for its original intended purpose because of wear, damage or defect.

1. A tire no longer suitable for its original intended purpose due to wear is a tire with exposed cord or tread depth less than two thirty-seconds inch (2/32") when measured in any major groove.

[2. A tire still mounted on a rim is not a waste tire, except as described in paragraph (1)(A)3.]

*[3]***2.** Any tire that is discarded with the intent of final disposal is also a *[waste]* **scrap** tire.

*[4.]***3.** A cut tire, for the purposes of disposal in a permitted solid waste disposal area, is a *[waste]* **scrap** tire cut in half circumferentially; sidewalls removed from tread; or cut into at least three (3) parts with no part being larger than approximately one-third (1/3) of the original tire's size.

*[5.]***4.** A shredded or chipped tire, for the purposes of disposal in a permitted solid waste disposal area, is a *[waste]* **scrap** tire that has been reduced to parts no larger than that defined in the definition of a cut tire.

[(B) A waste tire end-user facility is a site where waste tires are used as a fuel or fuel supplement or converted into a useable product.]

(C) A passenger tire equivalent (PTE), for the purposes of calculating the amount of tires, equals twenty (20) pounds.

(2) General Requirements.

(A) This rule is intended to provide minimum requirements for operation of a *[waste]* **scrap** tire end-user facility. If techniques other than those listed in this rule are to be used, it is the obligation of the *[waste]* **scrap** tire end-user facility owner/operator to demonstrate to the department in advance that the techniques to be employed will satisfy the requirements. Detailed facility and operational plans for the techniques shall be submitted to the department in writing and approved by the department in writing prior to being employed. The operations of a *[waste]* **scrap** tire end-user facility shall not result in pollution, a public nuisance or a health hazard. If these conditions exist, the facility shall be required to take any steps deemed necessary by the department to mitigate the conditions.

(B) This rule shall pertain to whole, cut, shredded, baled or chipped *[waste]* **scrap** tires.

(C) Underground storage of *[waste]* **scrap** tires requires a permit as a solid waste disposal area and shall comply with the requirements of 10 CSR 80.

(D) The *[waste]* **scrap** tire end-user facility shall be in compliance with Chapters 643 and 644, RSMo and their regulations and Air Pollution Control Programs' requirements.

(3) Applicability. This rule applies to*[—]***:**

(A) A facility that burns *[waste]* **scrap** tires as tire-derived fuel;

(B) A facility which utilizes *[waste]* **scrap** tire-derived materials in the manufacture of a product for resale;

[(C) A facility that uses tire-derived materials as a shock absorbing playground cover or in running tracks;]

*[(D)]***(C)** A person who leases or owns real property using *[waste]* **scrap** tires on that property for soil erosion abatement and drainage purposes, to secure covers over silage, hay, straw or agricultural products or for recreational or structural purposes. Use of *[over]* one hundred (100) *[waste]* **or more scrap** tires in any form for the purposes listed in this paragraph shall*[—]***:**

1. Be part of an engineered structure and properly held in place *[and]* **or** anchored, as necessary. (Example methods of proper use of *[waste]* **scrap** tires are detailed in the *Streambank Protection Guidelines* prepared by the United States Army Engineer Waterways Experiment Station, **Vicksburg, MS 39180, October 1983, 2nd Printing, October 1984,** which by this reference is incorporated into this rule. **This rule does not incorporate any subsequent amendments or additions.**);

2. Be approved first by the department; the department may deny the request for end use based upon any previous violation of the Solid Waste Management Law and rules or if the applicant fails to establish that the end use will not result in pollution, a public nuisance or a health hazard.

A. The approval request must be in writing and should contain at least the following information:

(I) A detail**ed** description of the intended use of the tires, how the tires are to be *[hold]* **held** in place and the maximum number of tires to be used;

(II) A detailed description of the method(s) and procedure*[s]*(s) to be used for vector control, if applicable;

(III) A detailed description of the method(s) and procedure*[s]*(s) to be used for fire protection, including prevention of the spread of fire to surrounding buildings and property, if applicable; and

(IV) Other information as deemed necessary by the department; and

3. Be agreed to in writing by the property owner; and

*[(E)]***(D)** Any other facility that meets the definition of a *[waste]* **scrap** tire end-user facility in section (1) of this rule.

(4) Registration.

(A) A person desiring to establish, maintain or operate a *[waste]* **scrap** tire end-user facility shall complete and submit to the department a *[Waste]* **Scrap** Tire End User Registration Form which will be provided by the department. Facilities currently in existence at the effective date of this rule shall register with the department within thirty (30) days of the effective date of this rule.

(B) A person who leases or owns real property using less than one hundred (100) *[waste]* **scrap** tires on that property to secure cover

over silage, hay, straw or agricultural products is not required to register as an end user.

(C) The completed registration form shall be sent by certified mail to the Missouri Department of Natural Resources, Solid Waste Management Program, P*[.]*O*[.]* Box 176, Jefferson City, MO 65102-0176.

(5) Inventory **and Storage**.

(A) The inventory of unprocessed *[waste]* **scrap** tires on the premises of the facility shall not exceed the amount that can be used in six (6) months of normal and continuous operation. This amount shall be based on the volume of tires used by the facility in the last year or the manufacturer's estimated capacity of the equipment used by the facility. The inventory of processed *[waste]* **scrap** tires on the premises of the facility shall not be more than twice the amount of unprocessed tires allowed by this rule.

(B) The owner or operator of a scrap tire end-user facility shall provide written evidence from the local fire protection agency that indoor and outdoor storage of whole or processed scrap tires complies with the currently applicable local or state fire protection standards, or the scrap tire end-user facility must comply with the *2006 International Fire Code*, published by the International Code Council, Inc., 4051 W. Flossmoor Road, Country Club Hills, IL, 60478-5795, copyright 2006, which by this reference is incorporated into this rule. This rule does not incorporate any subsequent amendments or additions.

(6) Closure, Financial Assurance.

(A) Exemptions. The following are not required to establish a closure plan and financial assurance instrument provided that pollution, a public nuisance or a health hazard is not created and provided the scrap tires are stored according to the requirements of section (5) of this rule:

1. Scrap tire end-user facilities that can provide documentation that they maintain appropriate and adequate insurance coverage to ensure proper closure of the facility;

2. Scrap tire end-user facilities that can demonstrate that they have established a financial assurance instrument that is approved by another program within the department, and which includes provisions for the removal of whole and processed scrap tires, other solid waste, and plans for site restoration;

3. Scrap tire end-user facilities with demonstrated liquid assets greater than one (1) million dollars USD; or

4. Scrap tire end-user facilities where no further processing of scrap tires takes place, as the term scrap tire processing facility is defined in 10 CSR 80-8.050(1)(D).

(B) Closure plans and financial assurance instruments shall comply with 10 CSR 80-8.050(7).

*[(6)]***(7)** Record Keeping Requirements. The owner/operator of a *[waste]* **scrap** tire end-user facility shall maintain the records required by this rule. All records required by this rule shall be kept for at least three (3) years following the end of the calendar year of such activity. The period of record retention extends upon the written request of the department or automatically during the course of any unresolved enforcement action regarding the regulated activity. The records shall be made available for inspection by the department or its designated representative upon request. The records shall include at least the following:

(A) The number or weight of tires used, shipped or otherwise disposed of each month by the facility;

(B) The number or weight of *[waste]* **scrap** tires received at the facility each month; and

(C) The source of *[waste]* **scrap** tires received at the facility each month and permit number of that source and/or the hauler, if applicable.

*AUTHORITY: sections [260.200] **260.225, RSMo 2000 and 260.270,** RSMo Supp. [1996] **2006**. Original rule filed April 16, 1997, effective Dec. 30, 1997. Amended: Filed Jan. 2, 2007.*

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 may cost private entities up to seven hundred thousand dollars ($0 to $700,000) in the aggregate if a financial assurance instrument (FAI) is required.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed amendment at 1:00 p.m. on March 6, 2007. The public hearing will be held at the Department of Natural Resources Conference Center in the roaring River Conference Room, located at 1738 East Elm Street (rear), Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested persons. Also, any interested person may submit a written statement in support of or in opposition to this proposed amendment until 5:00 p.m. on April 6, 2007. Written statements should be sent to Mr. Chris Nagel, Department of Natural Resources, Solid Waste Management Program, PO Box 176, Jefferson City, MO 65201-0176.

SPECIAL NEEDS: If you have any special needs addressed by the Americans With Disabilities Act, please notify us at (573) 751-5401 at least five (5) working days prior to the hearing.

FISCAL NOTE
PRIVATE ENTITY COST

I. RULE NUMBER

Rule Number and Name:	10 CSR 80-8.060 Scrap Tire End-User Facility Registrations
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of Entities by class which would likely be affected by the adoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
Seven (at this time)	Scrap tire end user facilities	$0 to $700,000 (No increase is anticipated.)

III. WORKSHEET

Estimated Cost of Compliance =
(7 Scrap Tire end user facilities) X ($0 to $100,000 range of current cost) =
$0 to $700,000 range of estimated cost in the aggregate of compliance with the rule by the affected entities

IV. ASSUMPTIONS

A Financial Assurance Instrument (FAI) is required. Prior to SB225, scrap tire end-users were not required to provide FAI's.

There are nine FAI options. The costs of these options vary dependent upon the type of FAI used. The amount of the FAI required is dependent on the inventory of scrap tires on-site. Inventories also vary widely.

FAI values for scrap tire processors currently range from $50,000.00 to $100,000.00. The current average FAI value is $73,150.00. Current costs range from $0 to $100,000. Since processors provide the material to end-users, the worst case scenario would be the same. However, the proposed rule requirements incorporate exemptions for scrap tire end-user facilities that should allow end-users to avoid any additional costs.

The SWMP normally receives one scrap tire end-user facility registration per year.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 80—Solid Waste Management
Chapter 9—Solid Waste Management Fund

PROPOSED AMENDMENT

10 CSR 80-9.030 *[Waste] Scrap* **Tire Grants**. The department is amending the rule title, Purpose and sections (1)–(3), (5) and (7).

PURPOSE: The department is amending portions of the rule to reflect revised statutory language in Senate Bill 225 to replace references to "waste tire" with the term "scrap tire." This amendment will also allow for up to a fifty percent (50%) grant match, correct typographical errors, grammatical errors, and update materials referenced in the rule.

PURPOSE: The rule provides a statewide plan for the use of moneys received under section[s] 260.273 [and 260.274], RSMo.

(1) Statewide Plan.

(A) General. In combination with 10 CSR 80-9.035 *[Waste]* **Scrap** Tire Cleanup Contracts, this is a statewide plan to implement *[sub]*section 260.273*[.6]*, RSMo.

(B) Goals. The goals of the statewide plan are to reduce the number of *[waste]* **scrap** tires produced and encourage sustainable *[waste]* **scrap** tire markets for reuse, remanufacturing and reprocessing of *[waste]* **scrap** tires; divert the stream of *[waste]* **scrap** tires from being landfilled or illegally dumped; and mitigate the adverse public health, welfare and environmental impacts of illegal *[waste]* **scrap** tire sites.

(2) Grant Types. The department may provide grants *[from moneys collected under section 260.273, RSMo]* not to exceed five percent (5%) of the moneys received under section 260.273, RSMo, for the following grant types subject to financial resources, appropriations, eligibility requirements and application priorities:

(A) Demonstration grants may be available to pay testing costs required to demonstrate the technical and economic feasibility of utilizing *[waste]* **scrap** tire materials in the manufacture of a product or as tire-derived fuel or a fuel supplement. Grants may also be available for end use as shock absorbing *[waste]* **scrap** tire playground or running track material:

1. Grant amount. The department will award grants in an amount determined by the department on an annual basis.

2. Matching share. The grantee's matching share of the total cost of the activity shall be at least fifty percent (50%) of the grant award and shall be a cash contribution toward the project. A match *[will not be required]* **may be required up to fifty percent (50%)** for grants utilizing shock absorbing *[waste]* **scrap** tire playground or running track material; and

(B) Capital expenditure grants may be available for equipment to convert/modify existing facilities for the purpose of using *[waste]* **scrap** tires as a fuel or fuel supplement; or for equipment to convert or modify existing facilities to manufacture products made from *[waste]* **scrap** tires.

1. Grant amount. The department will award grants in an amount determined by the department on an annual basis.

2. Matching share. The grantee's matching share of the total cost of the activity shall be */*at least*/* **up to** fifty percent (50%) of the grant award and shall be a cash contribution toward the project.

(3) Eligibility.

(A) This rule applies to any person located in Missouri involved in any activity funded under *[subsections (2)(A) and (2)(B)]* **section (2)** of this rule.

(C) Grants will only be awarded for an activity which uses at least forty percent (40%) of its tires from Missouri *[waste]* **scrap** tire sites, retailers, processors or residents. The burden of proof shall be on the applicant to show that the eligibility requirements have been met.

(D) Grants will not be awarded to activities for projects that result in the landfilling of *[waste]* **scrap** tires.

(5) Application Review and Evaluation. Applications will be reviewed for completeness and ranked according to the evaluation criteria established by the department with the advice of the *[Waste Tire Advisory Council established by the director under section 260.274, RSMo]* **Scrap Tire Advisory Group** and in light of the goals as set forth in subsection (1)(B) of this rule.

(6) Grant Awards.

(A) Prior to award of funding, the recipient shall*[—]***:**

1. Provide verification to the department that all applicable federal, state and local permits, approvals, licenses or waivers required by law to implement the activity have been obtained or applied for; and

2. Enter into a grant award agreement issued by the department.

(7) Costs and Record *[k]***K**eeping.

(A) Eligible costs for demonstration grants are*[—]***:**

1. Air emissions test costs;

2. Salaries and fringe benefit costs of personnel directly engaged in the activity;

3. Drafting, printing and distributing of final reports;

4. Supplies needed and used during the project;

5. Eligibility costs for utilization of playground or running track material are limited to the material itself and any associated delivery costs; and

6. Consultant costs.

(B) Eligible costs for capital expenditure grants are the cost of equipment**, cost** to convert **equipment** or modify existing facilities for the purpose of using *[waste]* **scrap** tires as a fuel supplement or the cost of equipment to convert or modify existing facilities to manufacture products made from *[waste]* **scrap** tires.

AUTHORITY: sections 260.225, ***RSMo 2000*** *260.273[, 260.274] and 260.276, RSMo Supp. [1996]* ***2006****. Emergency rule filed Oct. 5, 1992, effective Nov. 4, 1992, expired March 3, 1993. Original rule filed Oct. 5, 1992, effective June 7, 1993. Amended: Filed April 16, 1997, effective Dec. 30, 1997. Amended: Filed Jan. 2, 2007.*

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 will be held on this proposed amendment at 1:00 p.m. on March 6, 2007. The public hearing will be held at the Department of Natural Resources Conference Center in the Roaring River Conference Room, located at 1738 East Elm Street (rear), Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested persons. Also, any interested person may submit a written statement in support of or in opposition to this proposed amendment until 5:00 p.m. on April 6, 2007. Written statements should be sent to Mr. Chris Nagel, Department of Natural Resources, Solid Waste Management Program, PO Box 176, Jefferson City, MO 65201-0176.

SPECIAL NEEDS: If you have any special needs addressed by the Americans With Disabilities Act, please notify us at (573) 751-5401 at least five (5) working days prior to the hearing.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 80—Solid Waste Management
Chapter 9—Solid Waste Management Fund

PROPOSED AMENDMENT

10 CSR 80-9.035 *[Waste] Scrap* **Tire Clean-Up Contracts**. The department is amending the rule title, sections (1)–(4) and adding subsection (2)(A).

PURPOSE: The department is amending portions of the rule to reflect revised statutory language in Senate Bill 225 to replace references to "waste tire" with the term "scrap tire." This amendment will also provide preference to Missouri vendors bidding on contract, correct typographical errors, and grammatical errors.

(1) General. This rule applies to any person involved in the activities set forth in this rule. The department shall fully or partially bid, in accordance with the terms and conditions of the state of Missouri Office of Administration's bid process, contracts for removing and properly disposing of *[waste]* **scrap** tires that are stored in violation of the Solid Waste Management Law and implementing rules and/or to those that pose a public nuisance or a threat to the health or welfare of the public.

(F) All *[waste]* **scrap** tire site cleanups must adhere to Best Management Practices (BMPs) for water pollution control as follows:

1. Erosion and sediment control.

A. Stabilize all high traffic areas, including entrance and exit areas to minimize vehicle tracking.

B. Minimize run-on from adjacent properties through the use of diversion dikes, berms, or equivalent.

C. Trap sediment at down-gradient locations and outlets serving unstabilized areas. This may include filter fabric fences, sediment traps, vegetated swales or strips, diversion structures, retention/detention basins or equivalent.

2. Oil and grease.

A. Maintain equipment to prevent leaks and spills.

B. Use drip pans or other containment under equipment or around petroleum storage areas.

C. Have materials such as absorbent pads easily accessible to clean up spills and leakage.

3. Application of fertilizers, pesticides, and herbicides.

A. Observe all applicable federal, state and local regulations when using these products.

B. Strictly follow recommended applications rates and methods (i.e., do not apply in excess of vegetative requirements).

C. Have materials such as absorbent pads easily accessible to clean up spills.

D. Properly dispose of all containers.

E. The use of petroleum products for vegetative control is prohibited.

4. Maintenance.

A. Conduct inspections of BMPs.

B. Perform preventative maintenance as needed on BMPs.

5. Provide employee training on proper handling and maintenance practices.

6. Discharges shall not cause violations of the general criteria in the Water Quality Standards in 10 CSR 20-7.031(3).

(2) Eligibility. Any person, firm, corporation, state agency, charitable, fraternal, or other nonprofit organization may bid on a contract for each resource recovery or nuisance abatement activity.

(A) Vender Preference. In letting contracts for the performance of any job or service for the removal or clean up of scrap tires under this chapter, the Department of Natural Resources shall, in addition to the requirements of sections 34.073 and 34.076, RSMo, and any other points awarded during the evaluation process, give to any vendor that meets one (1) or more of the following factors a five percent (5%) preference and ten (10) bonus points for each factor met:

1. The bid is submitted by a vendor that has resided or maintained its headquarters or principal place of business in Missouri continuously for the two (2) years immediately preceding the date on which the bid is submitted;

2. The bid is submitted by a nonresident corporation vendor that has an affiliate or subsidiary that employs at least twenty (20) state residents and has maintained its headquarters or principal place of business in Missouri continuously for the two (2) years immediately preceding the date on which the bid is submitted;

3. The bid is submitted by a vendor that resides or maintains its headquarters or principal place of business in Missouri and, for the purposes of completing the bid project and continuously over the entire term of the project, an average of at least seventy-five percent (75%) of such vendor's employees are Missouri residents who have resided in the state continuously for at least two (2) years immediately preceding the date on which the bid is submitted. Such vendor must certify the residency requirements of this subdivision and submit a written claim for preference at the time the bid is submitted;

4. The bid is submitted by a nonresident vendor that has an affiliate or subsidiary that employs at least twenty (20) state residents and has maintained its headquarters or principal place of business in Missouri and, for the purposes of completing the bid project and continuously over the entire term of the project, an average of at least seventy-five percent (75%) of such vendor's employees are Missouri residents who have resided in the state continuously for at least two (2) years immediately preceding the date on which the bid is submitted. Such vendor must certify the residency requirements of this section and submit a written claim for preference at the time the bid is submitted;

5. The bid is submitted by any vendor that provides written certification that the end use of the tires collected during the project will be for fuel purposes or for the manufacture of a useable good or product. For the purposes of this section, the landfilling of waste tires, waste tire chips, or waste tire shreds in any manner, including landfill cover, shall not permit the vendor a preference.

(3) Nuisance Abatement and Resource Recovery Activities.

(A) The department shall give first priority to cleanup of illegal *[waste]* **scrap** tire sites owned by persons who present satisfactory evidence that such persons were not responsible for the creation of the nuisance conditions or any violations of sections 260.270 through 260.278, RSMo at the site. In evaluating whether a site qualifies for cleanup under this subsection, the department may consider*[—]***:**

1. The degree of responsibility or culpability of such persons for the creation or maintenance of the *[waste]* **scrap** tire site;

2. The extent to which such persons profited from the hauling, disposal and/or storage of the *[waste]* **scrap** tires;

3. The extent to which such persons took steps to stop the illegal deposition of tires on the property;

4. The nature of such persons' interest in the property on which the *[waste]* **scrap** tires were deposited; and

5. The degree of cooperation that such persons provide to the department in abating the *[waste]* **scrap** tire violations, including the willingness of such persons to allow timely access to the property to conduct any nuisance abatement or resource recovery activities.

(B) Any person who purchases property containing *[waste]* **scrap** tires in violation of sections 260.270 through 260.278, RSMo after the effective date of this rule shall not qualify for cleanup under subsection (3)(A).

(C) The department shall use the following list of criteria to rank sites for contract cleanups:

1. Presence of mosquitoes and/or other disease-carrying vectors;

2. Risk of fire at the site;

3. Proximity of the *[waste]* **scrap** tire site to populated areas, businesses, public use areas or highways;

4. Number of complaints received concerning the site;

5. Number of *[waste]* **scrap** tires present and age of the site;

6. Location of the site in relation to a flood plain, sinkhole, or losing stream;

7. Ability of a person to pay for cleanup of the site;

8. Willingness of a person/local authorities to expedite cleanup of the site;

9. Status of enforcement against any responsible parties;

10. The existence of local programs to prevent illegal dumping or the willingness of local authorities to prosecute persons responsible for illegal dumping; and

11. Any other criteria necessary to protect the public health, safety or welfare and the environment.

(D) The department shall conduct resource recovery or nuisance abatement activities designed to reduce the volume of *[waste]* **scrap** tires or alleviate any nuisance condition at any site if the owner or operator of such a site fails to comply with the regulations under sections 260.270 through 260.278, RSMo, or if the site remains in violation of such statutes and rules. The department reserves all rights to recover all or a portion of the costs of cleanup from the property owner and any other parties responsible for creation of the *[waste]* **scrap** tire site except where the property owner presents evidence that such persons were not responsible for the creation of the nuisance conditions or any violations of sections 260.270 through 260.278, RSMo at the site.

(4) Any charitable, fraternal, or other nonprofit organization which voluntarily cleans up land or water resources may be reimbursed for properly disposing of *[waste]* **scrap** tires collected in the course of such cleanup. Funds will be allocated each year for these types of activities. The amount of funds allocated will depend on funding availability and amount of appropriations.

(A) A portion of the funds allocated will be available to any charitable, fraternal, or other nongovernmental nonprofit organization that wishes to clean up small, illegal *[waste]* **scrap** tire sites in their area. These funds will be awarded under the following conditions:

1. On a first-come-first-served basis;

2. The organization(s) shall receive written approval from the department prior to conducting the cleanup. The organization(s) shall state where they will dispose of the tires and shall estimate the number of tires and the associated disposal costs for which the organization plans to seek reimbursement from the department; and

3. Reimbursement shall be for disposal costs only.

(B) Another portion of the funds allocated will be available for tires picked up as incidental wastes by nongovernmental, nonprofit groups which voluntarily clean up land or water resources and collect *[waste]* **scrap** tires in the course of such cleanup. These funds will be awarded under the following conditions:

1. On a first-come-first-served basis;

2. The organization(s) shall receive written approval from the department prior to conducting the cleanup. The organization(s) shall state where they will dispose of the tires and shall estimate the number of tires and the associated disposal costs for which the organization plans to seek reimbursement from the department; and

3. Reimbursement shall be for disposal costs only.

*AUTHORITY: sections 260.225, **RSMo 2000** 260.273[, 260.274] and 260.276, RSMo Supp. [1996] **2006**. Original rule filed April 16, 1997, effective Dec. 30, 1997. Amended: Filed Jan. 2, 2007.*

PUBLIC COST: This proposed amendment is estimated to cost state agencies or political subdivisions one hundred twenty-five thousand dollars ($125,000) per year in the aggregate assuming instate contractors are used.

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 will be held on this proposed amendment at 1:00 p.m. on March 6, 2007. The public hearing will be held at the Department of Natural Resources Conference Center in the Roaring River Conference Room, located at 1738 East Elm Street (rear), Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested persons. Also, any interested person may submit a written statement in support of or in opposition to this proposed amendment until 5:00 p.m. on April 6, 2007. Written statements should be sent to Mr. Chris Nagel, Department of Natural Resources, Solid Waste Management Program, PO Box 176, Jefferson City, MO 65201-0176.

SPECIAL NEEDS: If you have any special needs addressed by the Americans With Disabilities Act, please notify us at (573) 751-5401 at least five (5) working days prior to the hearing.

FISCAL NOTE
PUBLIC ENTITY COST

I. RULE NUMBER

Rule Number and Name:	10 CSR 80-9.035 Scrap Tire Clean-Up Contracts
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
MO Dept. of Natural Resources	$125,000 per year

III. WORKSHEET

Potential Additional Cost =
(250,000 tires per year illegally disposed of) X ($0.50 per tire) =
$125,000 per year in potential additional costs.

IV. ASSUMPTIONS

The department has contracted out scrap tire dump cleanups in the past. The proposed amendment could increase scrap tire cleanup costs to the department because SB225 requires that the department provide Missouri businesses additional points in the bidding process. The additional points result in a benefit for Missouri businesses by receiving a competitive advantage over out of state businesses.

Assume Missouri contractors are used for this calculation, though at this time the department does not anticipate contracting out to private businesses. The department has entered into a Memorandum of Understanding with the Department of Corrections' Missouri Vocational Enterprises to conduct all future scrap tire dump cleanups.

Assume additional cost per scrap tire = $0.50. This is based on the most recent bid awarded in April 2005 where the cost difference was almost exactly $50.00 per ton (50 cents per tire) more for the awarded Missouri contractor than the nearest out-of-state contractor. These costs are paid from fees collected at the point of sale when consumers purchase new tires.

Assume that 250,000 tires per year will be illegally disposed of in Missouri.

Assume no increase of any administrative costs or benefits to any state agency resulting from this proposed rule amendment

Estimated life of the rule is indefinite.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 2—State Membership

PROPOSED AMENDMENT

22 CSR 10-2.010 Definitions. The board is amending sections (29), adding a new section (81) and renumbering the remaining sections.

PURPOSE: This amendment includes changes in the definitions made by the board of trustees regarding the key terms within the Missouri Consolidated Health Care Plan.

(29) Experimental/Investigational/Unproven. A treatment, procedure, device or drug that meets any of the criteria listed below is considered experimental/investigational/unproven, and is not eligible for coverage under the plan. Reliable evidence includes anything determined to be such by the plan administrator, in the exercise of its discretion, and may include published reports and articles in the medical and scientific literature generally considered to be authoritative by the national medical professional community. Experimental/investigational/unproven is defined as a treatment, procedure, device or drug that the plan administrator determines, in the exercise of its discretion:

(B) Is shown by reliable evidence to be the subject of ongoing Phase I*[, II, or III]* clinical trials or under study to determine its maximum tolerated dose, its toxicity, safety, efficiency, or its efficacy as compared with the standard means of treatment or diagnosis; or

(81) Severe obesity. Body Mass Index (BMI) greater than or equal to forty (40) or BMI greater than or equal to thirty-five (35) with at least two (2) or more of the following uncontrolled co-morbidities: coronary heart disease, type 2 diabetes mellitus, clinically significant obstructive sleep apnea, pulmonary hyptertension, hypertension or other obesity related conditions which will be considered based on clinical review.

[(81)] **(82)** Skilled nursing facility (SNF). An institution which meets fully each of the following requirements:

(A) It is operated pursuant to law and is primarily engaged in providing, for compensation from its patients, the following services for persons convalescing from sickness or injury: room, board and twenty-four (24)-hour-a-day nursing service by one (1) or more professional nurses and nursing personnel as are needed to provide adequate medical care;

(B) It provides the services under the supervision of a proprietor or employee who is a physician or registered nurse; and it maintains adequate medical records and has available the services of a physician under an established agreement, if not supervised by a physician or registered nurse; and

(C) A skilled nursing facility shall be deemed to include institutions meeting the criteria in section (81) of this rule which are established for the treatment of sick and injured persons through spiritual means and are operated under the authority of organizations which are recognized under Medicare (Title I of Public Law 89-97).

[(82)] **(83)** Sound natural teeth. Teeth and/or tissue that is viable, functional, and free of disease. A sound natural tooth has no decay, fillings on no more than two (2) surfaces, no gum disease associated with bone loss, no history of root canal therapy, is not a dental implant, and functions normally in chewing and speech.

[(83)] **(84)** Specialty drugs. High cost drugs that are primarily self-injectible but sometimes oral medications.

[(84)] **(85)** State. Missouri.

[(85)] **(86)** Subrogation. The substitution of one "party" for another. Subrogation entitles the insurer to the rights and remedies that would otherwise belong to the insured (the subscriber) for a loss covered by the insurance policy. Subrogation allows the plan to stand in the place of the participant and recover the money directly from the other insurer.

[(86)] **(87)** Subscriber. The employee or member who elects coverage under the plan.

[(87)] **(88)** Survivor. A member who meets the requirements of 22 CSR 10-2.020(5)(A).

[(88)] **(89)** Unemancipated child(ren). A natural child(ren), a legally adopted child(ren) or a child(ren) placed for adoption, and a dependent disabled child(ren) over twenty-three (23) years of age (during initial eligibility period only and appropriate documentation may be required by the plan), and the following:

(A) Stepchild(ren);

(B) Foster child(ren) for whom the employee is responsible for health care;

(C) Grandchild(ren) for whom the employee has legal custody and is responsible for providing health care;

(D) Other child(ren) for whom the employee is legal custodian subject to specific approval by the plan administrator.

1. Except for a disabled child(ren) as described in section (58) of this rule, an unemancipated child(ren) is eligible from birth to the end of the month in which s/he is emancipated, as defined here, or attains age twenty-three (23) (see 22 CSR 10-2.020(3)(D)2. for continuing coverage on a handicapped child(ren) beyond age twenty-three (23)); and

(E) Stepchild(ren) who are not domiciled with the employee, provided the natural parent who is legally responsible for providing coverage is also covered as a dependent under the plan.

[(89)] **(90)** Usual, Customary, and Reasonable charge.

(A) Usual. The fee a physician most frequently charges the majority of his/her patients for the same or similar services.

(B) Customary. The range of fees charged in a geographic area by physicians of comparable skills and qualifications for the same performance of similar service.

(C) Reasonable. The flexibility to take into account any unusual clinical circumstances involved in performing a particular service.

(D) A formula is used to determine the customary maximum. The customary maximum is the usual charge submitted by ninety percent (90%) of the doctors for ninety percent (90%) of the procedures reported.

[(90)] **(91)** Utilization review. Evaluation of the necessity, appropriateness, and efficiency of the use of medical services, procedures, and facilities on a prospective, concurrent, or retrospective basis.

[(91)] **(92)** Vested subscriber. A member who meets the requirements of 22 CSR 10-2.020(5)(B).

AUTHORITY: section 103.059, RSMo 2000. Emergency rule filed Dec. 16, 1993, effective Jan. 1, 1994, expired April 30, 1994. Emergency rule filed April 4, 1994, effective April 14, 1994, expired Aug. 11, 1994. Original rule filed Dec. 16, 1993, effective July 10, 1994. For intervening history, please consult the ***Code of State Regulations****. Emergency amendment filed Dec. 21, 2006, effective Jan. 1, 2007, expires June 29, 2007. Amended: Filed Dec. 21, 2006.*

PUBLIC COST: The fiscal impact of this proposed amendment is estimated to be less than five hundred dollars ($500) in the aggregate for state agencies or political subdivisions.

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Consolidated Health Care Plan, Attn: Ron Meyer, PO Box 104355, Jefferson City, MO 65110. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 2—State Membership

PROPOSED AMENDMENT

22 CSR 10-2.060 PPO and Co-Pay Plan Limitations. The board is amending section (31).

PURPOSE: This amendment includes changes to the limitations and exclusions of the Missouri Consolidated Health Care Plan PPO and/or Co-Pay plan.

(31) Obesity—medical and surgical intervention is not covered**, unless the member meets the definition of severe obesity as defined in 22 CSR 10-2.010 and such severe obesity has persisted for at least five (5) years**. **Bariatric surgery will only be covered when prior authorization is received from the medical plan. Please see the current State Member Handbook for further limitations regarding bariatric surgery.**

*AUTHORITY: section 103.059, RSMo 2000. Emergency rule filed Dec. 16, 1993, effective Jan. 1, 1994, expired April 30, 1994. Emergency rule filed April 4, 1994, effective April 14, 1994, expired Aug. 11, 1994. Original rule filed Dec. 16, 1993, effective July 10, 1994. For intervening history, please consult the **Code of State Regulations**. Emergency amendment filed Dec. 21, 2006, effective Jan. 1, 2007, expires June 29, 2007. Amended: Filed Dec. 21, 2006.*

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions four hundred ninety-one thousand two hundred and fifteen dollars ($491,215) in the aggregate.

PRIVATE COST: This proposed amendment will cost private entities three thousand two hundred dollars ($3,200) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Consolidated Health Care Plan, Attn: Ron Meyer, PO Box 104355, Jefferson City, MO 65110. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

FISCAL NOTE
PUBLIC COST

I. RULE NUMBER

Title: 22 – Missouri Consolidated Health Care Plan

Division: Division 10

Chapter: Chapter 2

Type of Rulemaking: Proposed Rule

Rule Number and Name: 2.060 PPO and Co-Pay Plan Limitations

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Missouri Consolidated Health Care Plan	$491,215 (no additional funding is being requested from the state; MCHCP will internally absorb these costs through savings achieved by self funding)

III. WORKSHEET

A benefit for bariatric surgery is being added to the plan design in order to provide assistance to those members who are severely obese in an effort to improve their health. This new benefit is only for those members meeting the definition of "severe obesity" as stated in 22 CSR 10-2.010. In addition, there are further requirements that must be met in order to utilize the benefit. Under this arrangement, the member would be responsible for paying a $500 copayment for the surgery and a $300 copayment for the inpatient hospitalization.

IV. ASSUMPTIONS

1. Cash flow projections for total Co-pay premiums received for calendar year 2007;
2. Subscriber enrollment projected for FY08; and
3. Actuarial projections performed by Mercy Health Plans for its insured business in southwest Missouri.

FISCAL NOTE
PRIVATE COST

V. RULE NUMBER

Title: 22 – Missouri Consolidated Health Care Plan

Division: Division 10

Chapter: Chapter 2

Type of Rulemaking: Proposed Rule

Rule Number and Name: 2.060 PPO and Co-Pay Plan Limitations

VI. SUMMARY OF FISCAL IMPACT

Estimate 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:
4	Individuals – Missouri Consolidated Health Care Plan subscribers and dependents	$ 3,200 (Although this is really a cost savings to the member using this benefit as this was not a covered benefit prior to this rule change. Therefore, the member would have been responsible for the full cost of the benefit rather than a copayment).

VII. WORKSHEET

A benefit for bariatric surgery is being added to the plan design in order to provide assistance to those members who are severely obese in an effort to improve their health. This new benefit is only for those members meeting the definition of "severe obesity" as stated in 22 CSR 10-2.010. In addition, there are further requirements that must be met in order to utilize the benefit. Under this arrangement, the member would be responsible for paying a $500 copayment for the surgery and a $300 copayment for the inpatient hospitalization.

VIII. ASSUMPTIONS

1. $800 total for surgery and inpatient hospitalization copayments;
2. Number of members known to have had gastric bypass surgery in the past; and
3. Anticipate increase in member utilization since the benefit is now covered.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 2—State Membership

PROPOSED AMENDMENT

22 CSR 10-2.067 HMO and POS Limitations. The board is amending section (31).

PURPOSE: This amendment includes changes to the limitations and exclusions of the Missouri Consolidated Health Care Plan HMO and/or POS plan.

(31) Obesity—Medical and surgical intervention is not covered**, unless the member meets the definition of severe obesity as defined in 22 CSR 10-2.010 and such severe obesity has persisted for at least five (5) years**. **Bariatric surgery will only be covered when prior authorization is received from the medical plan. Please see the current State Member Handbook for further limitations regarding bariatric surgery.**

AUTHORITY: section 103.059, RSMo 2000. Emergency rule filed Dec. 21, 1994, effective Jan. 1, 1995, expired April 30, 1995. Emergency rule filed April 13, 1995, effective May 1, 1995, expired Aug. 28, 1995. Original rule filed Dec. 21, 1994, effective June 30, 1995. For intervening history, please consult the ***Code of State Regulations****. Emergency amendment filed Dec. 21, 2006, effective Jan. 1, 2007, expires June 29, 2007. Amended: Filed Dec. 21, 2006.*

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions $6,300,000 in the aggregate.

PRIVATE COST: This proposed amendment will cost private entities twenty-four thousand dollars ($24,000) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Consolidated Health Care Plan, Attn: Ron Meyer, PO Box 104355, Jefferson City, MO 65110. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

FISCAL NOTE
PUBLIC COST

V. RULE NUMBER

Title: 22 – Missouri Consolidated Health Care Plan

Division: Division 10

Chapter: Chapter 2

Type of Rulemaking: Proposed Rule

Rule Number and Name: 2.067 HMO and POS Limitations

VI. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Missouri Consolidated Health Care Plan	$6.3 million (no additional funding is being requested from the state; MCHCP will internally absorb these costs through savings achieved by self funding)

VII. WORKSHEET

A benefit for bariatric surgery is being added to the plan design in order to provide assistance to those members who are severely obese in an effort to improve their health. This new benefit is only for those members meeting the definition of "severe obesity" as stated in 22 CSR 10-2.010. In addition, there are further requirements that must be met in order to utilize the benefit. Under this arrangement, the member would be responsible for paying a $500 copayment for the surgery and a $300 copayment for the inpatient hospitalization.

VIII. ASSUMPTIONS

1. Cash flow projections for total HMO premiums received for calendar year 2007;
2. Subscriber enrollment projected for FY08; and
3. Actuarial projections performed by Mercy Health Plans for its insured business in southwest Missouri.

FISCAL NOTE
PRIVATE COST

I. RULE NUMBER

Title: 22 – Missouri Consolidated Health Care Plan

Division: Division 10

Chapter: Chapter 2

Type of Rulemaking: Proposed Rule

Rule Number and Name: 2.067 HMO and POS Limitations

II. SUMMARY OF FISCAL IMPACT

Estimate 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:
30	Individuals – Missouri Consolidated Health Care Plan subscribers and dependents	$ 24,000 (Although this is really a cost savings to the member using this benefit as this was not a covered benefit prior to this rule change. Therefore, the member would have been responsible for the full cost of the benefit rather than a copayment).

III. WORKSHEET

A benefit for bariatric surgery is being added to the plan design in order to provide assistance to those members who are severely obese in an effort to improve their health. This new benefit is only for those members meeting the definition of "severe obesity" as stated in 22 CSR 10-2.010. In addition, there are further requirements that must be met in order to utilize the benefit. Under this arrangement, the member would be responsible for paying a $500 copayment for the surgery and a $300 copayment for the inpatient hospitalization.

IV. ASSUMPTIONS

1. $800 total for surgery and inpatient hospitalization copayments;
2. Number of members known to have had gastric bypass surgery in the past; and
3. Anticipate increase in member utilization since the benefit is now covered.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 2—State Membership

PROPOSED RESCISSION

22 CSR 10-2.090 Pharmacy Benefit Summary. The rule established the benefit provisions, covered charges, limitations and exclusions of the Missouri Consolidated Health Care Plan pharmacy benefit.

PURPOSE: This rule is being rescinded as it is no longer needed.

AUTHORITY: section 103.059, RSMo 2000. Emergency rule filed Dec. 22, 2005, effective Jan. 1, 2006, expired June 29, 2006. Original rule filed Dec. 22, 2005, effective June 30, 2006. Emergency rescission filed Dec. 21, 2006, effective Jan. 1, 2007, expires June 29, 2007. Rescinded: Filed Dec. 21, 2006.

PUBLIC COST: The fiscal impact of this proposed rescission is estimated to be less than five hundred dollars ($500) in the aggregate for state agencies or political subdivisions.

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Consolidated Health Care Plan, Attn: Ron Meyer, PO Box 104355, Jefferson City, MO 65110. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*