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 If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission.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 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 50—Division of School Improvement
Chapter 350—State Programs

PROPOSED RESCISSION

5 CSR 50-350.040 A+ Schools Program. This rule provided guidance for the distribution of grant awards to Missouri public high schools that demonstrated a commitment to the goals of the A+ program.

PURPOSE: This rule is being rescinded as grants are no longer being disseminated to local high schools that elect to participate in the designation process.

AUTHORITY: sections 160.545 and 161.092, RSMo Supp. 2006. This rule was previously filed as 5 CSR 60-120.060. Original rule filed Nov. 10, 1993, effective June 6, 1994. Changed to 5 CSR 50-350.040 and amended: Filed Sept. 27, 2000, effective May 30, 2001. Amended: Filed Feb. 28, 2003, effective Sept. 30, 2003. Amended: Filed Nov. 28, 2006, effective June 30, 2007. Rescinded: Filed June 25, 2010.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Department of Elementary and Secondary Education, ATTN: Margie Vandeven, Assistant Commissioner, Office of Quality Schools, PO Box 480, Jefferson City, Missouri 65102-0480. 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 10-5.480 St. Louis Area Transportation Conformity Requirements. The commission proposes to amend the rule purpose and sections (1) through (4) of this rule. 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/index.html.

PURPOSE: This rule implements section 176(c)(4)(E) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401–7671q.), and the related requirements of 23 U.S.C. 109(j) with respect to the conformity of transportation plans, programs, and projects which are developed, funded, or approved by the United States Department of Transportation (DOT), by metropolitan planning organizations (MPOs), or by other recipients of funds under Title 23 U.S.C. or the Federal Transit Laws (49 U.S.C. Chapter 53). This rule sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to the applicable implementation plan developed pursuant to section 110 and part D of the CAA. This rule applies to the St. Louis ozone and $PM_{2.5}$ nonattainment and carbon monoxide maintenance areas. This amendment will make changes to the current rule requiring transportation plans, programs, and projects to conform to state air quality implementation plans. This amendment will amend this rule to provide more specificity to the consultation process requirements. In February 2009, the U.S. Environmental Protection Agency (EPA) released a transportation conformity guidance document for developing state conformity plans. As a result, the Air Quality Planning Section is revising the state rule to provide a greater level of specificity to the consultation process to meet these guidance requirements. The evidence supporting the need for this proposed

rulemaking, per section 536.016, RSMo, is ***Guidance for Developing Transportation Conformity State Implementation Plans (SIPs)*** *(EPA-420-B-09-001, January 2009).*

PURPOSE: This rule implements section 176(c)(4)(E) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401–7671q.), and the related requirements of 23 U.S.C. 109(j)[,] with respect to the conformity of transportation plans, programs, and projects which are developed, funded, or approved by the United States Department of Transportation (DOT), [and] by metropolitan planning organizations (MPOs), or by other recipients of funds under Title 23 U.S.C. or the Federal Transit Laws (49 U.S.C. Chapter 53). This rule sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to the applicable implementation plan[,] developed pursuant to section 110 and part D of the CAA. This rule applies to the St. Louis ozone and $PM_{2.5}$ nonattainment and carbon monoxide maintenance areas.

(1) Applicability.

(A) *[This rule applies to the St. Louis ozone and $PM_{2.5}$ nonattainment and carbon monoxide maintenance areas.]* **This rule applies to all Environmental Protection Agency (EPA) designated nonattainment and maintenance areas for transportation related criteria pollutants with the St. Louis Metropolitan Planning Organization (East-West Gateway Council of Governments) responsible for conformity determinations.**

[(B) This rule meets the requirements for state transportation conformity state implementation plans as provided in section 6011(f)(4) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users. This regulation addresses and gives full legal effect to the following three (3) requirements of the Federal Transportation Conformity Rule, 40 CFR part 93 subpart A: 1) 40 CFR 93.105, which addresses consultation procedures; 2) 40 CFR 93.122(a)(4)(ii), which states that conformity plans must require written commitments to control measures to be obtained prior to a conformity determination if the control measures are not included in a metropolitan planning organization's transportation plan and transportation improvement program, and that such commitments be fulfilled; and 3) 40 CFR 93.125(c), which states that conformity plans must require written commitments to mitigation measures to be obtained prior to a project-level conformity determination, and that project sponsors comply with such commitments.]

(B) The purpose of this rule is to fulfill the requirement in 40 CFR 51.390(b) to establish a state implementation plan (SIP) revision that includes the following three (3) sections of the federal transportation conformity rule:

1. 40 CFR 93.105, which addresses consultation procedures;

2. 40 CFR 93.122(a)(4)(ii), which states that conformity SIPs must require that written commitments to control measures be obtained prior to a conformity determination if the control measures are not included in a metropolitan planning organization (MPO) transportation plan and transportation improvement program (TIP) and that such a commitment be fulfilled; and

3. 40 CFR 93.125(c), which states that conformity SIPs must require that written commitments to mitigation measures be obtained prior to a project-level conformity determination and that project sponsors comply with such commitments.

(C) Once this rule is approved by the EPA into the Missouri State Implementation Plan, it has full legal effect. Conformity determinations will be governed by these criteria and procedures as well as any applicable portions of the federal conformity rule that are not addressed by the state rule.

*[(C)]***(D)** The Federal Transportation Conformity Rule (for reference) is located at 40 *Code of Federal Regulations* (CFR) 93.100 through 93.129.

(2) Definitions.

(A) Definitions for key words and phrases used in this rule may be found in subsection 40 CFR 93.101 of 40 CFR 93 Subpart A, promulgated as of *[July 1, 2006]* **July 1, 2009**, which is hereby incorporated by reference in this rule, as published by the Office of the Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, D.C. 20408. This rule does not incorporate any subsequent amendments or additions.

(B) Participants in the interagency consultation process *[must include]* **will be comprised of management and technical staff members from** the following public agencies:

1. City of St. Louis Department of Health Air Pollution Control Program;
2. East-West Gateway Council of Governments;
3. Federal Highway Administration, Illinois Division;
4. Federal Highway Administration, Missouri Division;
5. Federal Transit Administration, Region 7;
6. Illinois Department of Transportation;
7. Illinois Environmental Protection Agency**'s Bureau of Air**;
8. Madison County Highway Department;
9. Madison County Transit District;
10. Metro (Bi-State Development Agency);
11. Missouri Department of Natural Resources' Air Pollution Control Program;
12. Missouri Department of Transportation;
13. St. Clair County Department of Roads and Bridges;
14. St. Clair County Transit District;
15. St. Louis County Department of Health;
16. St. Louis County Department of Highways;
17. U.S. Environmental Protection Agency, Region 5; and
18. U.S. Environmental Protection Agency, Region 7.

(C) When a reference is made in this rule to the state air agencies, the local air agencies, the state transportation agencies, the local transportation agencies, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the EPA, this means the public agencies listed in subsection (2)(B) of this rule that are participants in the interagency consultation process.

(D) Other agency participation in the interagency consultation process under this rule includes:

1. Local transportation agencies through the appointment of one (1) representative from local transportation agency interests in the Illinois portion of the St. Louis area and the appointment of one (1) representative from local transportation agency interests in the Missouri portion of the St. Louis area. The MPO and the Illinois Department of Transportation will jointly appoint the Illinois representative and the MPO and the Missouri Department of Transportation will jointly appoint the Missouri representative;

2. Local air quality agencies through the appointment of one (1) representative from each of the two (2) local air quality agencies. The MPO and the Missouri Department of Natural Resources will jointly appoint the local air quality agency representatives;

3. Local mass transit agencies through the appointment of one (1) representative from local mass transit agency interests in the Illinois portion of the St. Louis area and the appointment of one (1) representative from local mass transit agency interests in the Missouri portion of the St. Louis area. The MPO and the Illinois Department of Transportation will jointly appoint the Illinois representative and the MPO and the Missouri Department of Transportation will jointly appoint the Missouri representative;

4. Nothing in this paragraph will preclude the authority of the lead agencies listed in subparagraphs (3)(B)1.A., B., and C. of this rule to involve additional agencies in the consultation process which are directly impacted by any project or action subject to this rule; and

5. Representatives appointed under paragraphs (2)(D) 1., 2., 3., and 4. of this rule will not come from an agency already represented as a consulting agency under subsection (2)(B) of this rule.

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

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

[(3) General Provisions.

(A) Interagency Consultation Procedures (Federal Code Location: 40 CFR 93.105).

1. General. Procedures for interagency consultation (federal, state and local), resolution of conflicts, and public consultation are described in paragraphs (3)(A)1.–(3)(A)6. of this rule. Public consultation procedures meet the requirements for public involvement in 23 CFR part 450.

A. The implementation plan revision required shall include procedures for interagency consultation (federal, state, and local), resolution of conflicts, and public consultation as described in paragraphs (3)(A)1.–(3)(A)6. of this rule. Public consultation procedures will be developed in accordance with the requirements for public involvement in 23 CFR part 450.

B. MPOs and state departments of transportation will provide reasonable opportunity for consultation with state air agencies, local air quality and transportation agencies, Department of Transportation (DOT), and U.S. Environmental Protection Agency (EPA), including consultation on the issues described in subparagraph (3)(A)3.A. of this rule, before making conformity determinations.

2. Interagency consultation procedures—General factors.

A. Representatives of the MPO, state and local air quality planning agencies, state and local transportation agencies shall undertake an interagency consultation process in accordance with this section with each other and with local or regional offices of the EPA, Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) on the development of the implementation plan, the list of Transportation Control Measures (TCMs) in the applicable implementation plan, the unified planning work program under 23 CFR section 450.314, the transportation plan, the Transportation Improvement Plan (TIP), and any revisions to the preceding documents and associated conformity determinations.

B. The state air quality agency shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process as required by this section with respect to the development of the applicable implementation plans and control strategy implementation plan revisions and the list of TCMs in the applicable implementation plan. The MPO shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process as required by this section with respect to the development of the unified planning work program under 23 CFR section 450.314, the transportation plan, the TIP, and any amendments or revisions thereto. The MPO shall also be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process as required by this section with respect to any determinations of conformity under this rule for which the MPO is responsible.

C. In addition to the lead agencies identified in subparagraph (3)(A)2.B. of this rule, other agencies entitled to participate in any interagency consultation process under this rule include:

(I) The Illinois Department of Transportation, the Missouri Department of Transportation, the Federal Highway Administration, the Federal Transit Administration, the U.S. Environmental Protection Agency, the Illinois Environmental Protection Agency and the Missouri Department of Natural Resources;

(II) Local transportation agencies through the appointment of one (1) representative from local transportation agency interests on the Illinois side of the St. Louis area and the appointment of one (1) representative from local transportation agency interests on the Missouri side of the St. Louis area. The MPO and the Illinois Department of Transportation shall jointly appoint the Illinois representative, and the MPO and Missouri Department of Transportation shall jointly appoint the Missouri representative;

(III) Local air quality agencies through the appointment of one (1) representative from each of the two (2) local air quality agencies. The MPO and the Missouri Department of Natural Resources shall jointly appoint the local air quality agency representatives; and

(IV) Local mass transit agencies through the appointment of one (1) representative from local mass transit agency interests on the Illinois side of the St. Louis area and the appointment of one (1) representative from local mass transit agency interests on the Missouri side of the St. Louis area. The MPO and the Illinois Department of Transportation shall jointly appoint the Illinois representative, and the MPO and Missouri Department of Transportation shall jointly appoint the Missouri representative;

(V) Nothing in this paragraph shall preclude the authority of the lead agency listed in subparagraph (3)(A)2.B. of this rule to involve additional agencies in the consultation process which are directly impacted by any project or action subject to this rule;

(VI) Representatives appointed under parts (3)(A)2.C.(II)–(3)(A)2.C.(V) of this rule shall not come from an agency already represented as a consulting agency under this section.

D. It shall be the responsibility of the appropriate lead agency designated in subparagraph (3)(A)2.B. of this rule to solicit early and continuing input from all other consulting agencies, to provide those agencies with all relevant information needed for meaningful input and, where appropriate, to assure policy-level contact with those agencies. The lead agency shall, at a minimum, provide opportunities for discussion and comment in accordance with the interagency consultation procedures detailed in this section. The lead agency shall consider the views of each other consulting agency prior to making a final decision, shall respond in writing to those views and shall assure that such views and response (or where appropriate a summary thereof) are made part of the record of any decision or action.

E It shall be the responsibility of each agency listed in subparagraph (3)(A)2.C. of this rule (other than the lead agency designated under subparagraph (3)(A)2.B. of this rule) to confer with the lead agency and the other participants in the consultation process, to review and make relevant comment on all proposed and final documents and decisions in a timely manner and to attend consultation and decision meetings. To the extent requested by the lead agency or other agencies involved, or as required by other

provisions of this rule, each agency shall provide timely input on any area of substantive expertise or responsibility (including planning assumptions, modeling, information on status of TCM implementation, and interpretation of regulatory or other requirements), and shall comply with any reasonable request to render such technical assistance to the lead agency as may be needed to support the development of the document or decision.

F. For documents or decisions subject to this rule for which the MPO is the designated lead agency, the MPO shall, through the regular meetings of its board of directors and committees, be the primary forum for discussion at the policy level. The MPO shall ensure that all consulting agencies are provided with opportunity to participate throughout the decision-making process including the early planning stages. The MPO shall modify or supplement its normal schedule of meetings, if needed, to provide adequate opportunity for discussion of the matters subject to this rule.

G. It shall be the responsibility of the lead agency designated under subparagraph (3)(A)2.B. of this rule to initiate the consultation process by notifying other consulting agencies of the following:

(I) The decision(s) or document(s) for which consultation is being undertaken; and

(II) The proposed planning or programming process for the development of the decision(s) or document(s). The proposed planning or programming process shall include at a minimum:

(a) The roles and responsibilities of each agency at each stage in the planning process, including technical as well as policy aspects;

(b) The organizational level of regular consultation;

(c) The proposed schedule of, or process for convening, consultation meetings, including the process and assignment of responsibilities for selecting a chairperson and setting meeting agendas;

(d) The process for circulating or otherwise making available all relevant materials in a timely fashion at each stage in the consultation process, and in particular for circulating or otherwise making available drafts of proposed documents or decisions before formal adoption or publication;

(e) The process and assignment of responsibility for maintaining an adequate record of the consultation process; and

(f) The process for responding to the significant comments of involved agencies;

(III) The consultation planning and programming process to be followed for each document or decision subject to this rule shall be determined by consensus among the consulting agencies and shall thereafter be binding on all parties until such time as it may be revised by consensus among the consulting agencies.

H. All drafts and supporting materials subject to consultation shall be provided at such level of detail as each consulting agency may need to determine its response. Any consulting agency may request, and the appropriate lead agency shall supply, supplemental information as is reasonably available for the consulting agency to determine its response.

I. The time allowed at each stage in the consultation process shall not be less than that specified by regulation or this rule, published by the lead agency in any document describing the consultation procedures to be followed under 23 CFR part 450, 40 CFR part 51 or this rule, or otherwise previously agreed by consensus of the consulting agencies. Where no such time has been specified, published or agreed to, the time shall be determined by consensus of the consulting agencies based upon the amount of material subject to consultation, the extent of prior informal or technical consultation and discussion, the nature of the decision to be made, and such other factors as are previously agreed by the consulting agencies. The time allowed for consultation shall be the same for all agencies being consulted, and any extension of time granted to one (1) agency shall also be allowed all other agencies.

J. Determining the adequacy of consultation opportunities.

(I) Representatives of the consulting agencies listed in subparagraph (3)(A)2.C. of this rule shall meet once each calendar year for the purpose of reviewing the sequence and adequacy of the consultation planning and programming processes established or proposed under subparagraph (3)(A)2.G. of this rule for each type of document or decision. Responsibility for convening this meeting shall rest with the appropriate lead agency designated in subparagraph (3)(A)2.B. of this rule.

(II) In any year (other than the first after the adoption of this rule) in which there is an agreed upon consultation planning or programming process in effect and no consulting agency has requested any change to that process, the appropriate lead agency may propose that this process remain in effect. Upon notification of acceptance of this proposal by all consulting agencies, no further action by the lead agency shall be required and the meeting and review required under part (3)(A)2.J.(I) of this rule need not take place for that year.

K. The consultation planning and programming processes proposed and agreed to under subparagraph (3)(A)2.G. of this rule shall comply with the following general principles:

(I) Consultation shall be held early in the planning process, so as to facilitate sharing of information needed for meaningful input and to allow the consulting agencies to confer with the lead agency during the formative stages of developing any document or decision subject to this rule;

(II) For conformity determinations for transportation plan revisions or TIPs, the consultation process shall, at a minimum, specifically include opportunities for the consulting agencies to confer upon the analysis required to make conformity determinations. This consultation shall normally take place at the technical level, except to the extent agreed by consensus under subparagraph (3)(A)2.J. of this rule, and shall take place prior to the consideration of draft documents or conformity determinations by the MPO;

(III) For state implementation plans, the consultation process shall, at a minimum, specifically include opportunities for the consulting agencies to confer upon the motor vehicle emissions budget. This consultation shall take place at the technical and policy levels, except to the extent agreed by consensus under subparagraph (3)(A)2.J. of this rule, and shall take place prior to the consideration of the draft budget by the state air quality agency;

(IV) In addition to the requirements of parts (3)(A)2.K.(II)–(3)(A)2.K.(III) of this rule, if TCMs are to be considered in transportation plans, TIPs or state implementation plans, specific opportunities to consult regarding TCMs by air quality and transportation agencies must be provided prior to the consideration of the TCMs by the appropriate lead agency; and

(V) Additional consultation opportunities must be provided prior to any final action being taken by any of the lead agencies defined in subparagraph (3)(A)2.B. of this rule on any document or decision subject to this rule. Before taking formal action to approve any plan, program, document or other decision subject to this rule, the consulting agencies shall be given an opportunity to communicate their views in

writing to the lead agency. The lead agency shall consider those views and respond in writing in a timely and appropriate manner prior to any final action. Such views and written response shall be made part of the record of the final decision or action. Opportunities for formal consulting agency comment may run concurrently with other public review time frames.

L. Consultation on planning assumptions.

(I) The MPO shall convene a meeting of the consulting agencies listed in subparagraph (3)(A)2.C. of this rule no less frequently than once each calendar year for the purpose of reviewing the planning, transportation and air quality assumptions, and models and other technical procedures in use or proposed to be used for the state implementation plan (SIP) motor vehicle emissions inventory, motor vehicle emissions budget, and conformity determinations. This meeting shall normally take place at the technical level except to the extent agreed by consensus under subparagraph (3)(A)2.J. of this rule.

(II) In all years when it is intended to determine the conformity of a transportation plan revision or TIP, the meeting required in part (3)(A)2.L.(I) of this rule shall be held before the MPO commences the evaluation of projects submitted or proposed for inclusion in the transportation plan revision or TIP, and before the annual public meeting held in accordance with 23 CFR section 450.322(c). The MPO shall consider the views of all consulting agencies before making a decision on the latest planning assumptions to be used for conformity determinations. The state air quality agencies shall consider the views of all consulting agencies before making a decision on the latest planning assumptions to be used for developing the SIP motor vehicle emissions inventory, motor vehicle emissions budget and for estimating the emissions reductions associated with TCMs.

(III) It shall be the responsibility of each of the consulting agencies to advise the MPO of any pending changes to their planning assumptions or methods and procedures used to estimate travel, forecast travel demand, or estimate motor vehicle emissions. Where necessary the MPO shall convene meetings, additional to that required under part (3)(A)2.L.(I) of this rule, to share information and evaluate the potential impacts of any proposed changes in planning assumptions, methods or procedures and to exchange information regarding the timetable and scope of any upcoming studies or analyses that may lead to future revision of planning assumptions, methods or procedures.

(IV) Whenever a change in air quality or transportation planning assumptions, methods or procedures is proposed that may have a significant impact on the SIP motor vehicle emissions inventory, motor vehicle emissions budget or conformity determinations, the agency proposing the change shall provide the consulting agencies an opportunity to review the basis for the proposed change. All consulting agencies shall be given at least thirty (30) days to evaluate the impact of the proposed change prior to final action by the agency proposing the change. To the fullest extent practicable, the time frame for considering and evaluating proposed changes shall be coordinated with the procedures for consultation on planning assumptions in parts (3)(A)2.L.(I)–(3)(A)2.L.(III) of this rule.

M. A meeting that is scheduled or required for another purpose may be used for the purposes of consultation if the consultation purpose is identified in the public notice for the meeting and all consulting agencies are notified in advance of the meeting.

N. In any matter which is the subject of consultation, no consulting agency may make a final decision or move to finally approve a document subject to this rule until the expiry of the time allowed for consultation and the completion of the process notified under subparagraph (3)(A)2.G. of this rule. Notwithstanding the previous sentence, any consulting agency may make a final decision or move to finally approve a document subject to this rule if final comments on the draft document or decision have been received from all other consulting agencies. The lead agency designated under subparagraph (3)(A)2.B. of this rule shall, in making its decision, take account of all views expressed in response to consultation.

3. Interagency consultation procedures—specific processes. Interagency consultation procedures shall also include the following specific processes:

A. An interagency consultation process in accordance with paragraph (3)(A)2. of this rule involving the MPO, state and local air quality planning agencies, state and local transportation agencies, the EPA and the DOT shall be undertaken for the following (except where otherwise provided, the MPO shall be responsible for initiating the consultation process):

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

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

(III) Evaluating whether projects otherwise exempted from meeting the requirements of 40 CFR 93.126 and 93.127 should be treated as nonexempt in cases where potential adverse emissions impacts may exist for any reason;

(IV) Making a determination, required by 40 CFR 93.113(c)(1), whether past obstacles to implementation of TCMs which are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether state and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs over other projects within their control. This process shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures;

(V) Notification of transportation plan or TIP revisions or amendments which merely add or delete exempt projects listed in 40 CFR 93.126 or 40 CFR 93.127. In any year when it is intended to prepare a transportation plan revision, TIP or TIP amendment that merely adds or deletes exempt projects, the MPO shall notify all consulting agencies in writing within seven (7) calendar days after taking action to approve such exempt projects. The notification shall include enough information about the exempt projects for the consulting agencies to determine their agreement or disagreement that the projects are exempt under 40 CFR 93.126 or 40 CFR 93.127;

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

(VII) Advising on the horizon years to be used for conformity determinations, in accordance with 40 CFR 93.106;

(VIII) Advising whether the modeling methods and functional relationships used in the model are consistent with acceptable professional practice and are reasonable for the purposes of emission estimation, as specified in 40 CFR 93.122;

(IX) Reviewing the models, databases and other requirements specified in 40 CFR 93.123 and advising if there are grounds for recommending to the EPA regional administrator that these models, databases or requirements are inappropriate. In such an event, the consulting agencies shall propose alternative methods to satisfy the requirements for conformity in accordance with 40 CFR 93.123;

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

(XI) Determining whether the project sponsor or the MPO has demonstrated that the requirements of 40 CFR 93.116–93.119 are satisfied without a particular mitigation or control measure, as provided in 40 CFR 93.125;

(XII) Developing a list of TCMs to be included in the applicable implementation plan; and

(XIII) Choosing conformity tests and methodologies for isolated rural nonattainment and maintenance areas, as required by 40 CFR 93.109(I)(2);

B. An interagency consultation process in accordance with paragraph (3)(A)2. involving the MPO, state and local air quality planning agencies and state and local transportation agencies for the following (except where otherwise provided, the MPO shall be responsible for initiating the consultation process):

(I) Evaluating events which will trigger new conformity determinations in addition to those triggering events established in 40 CFR 93.104. Any of the consulting agencies listed in subparagraph (3)(A)2.C. of this rule may request that the MPO initiate the interagency consultation process to evaluate an event which should, in the opinion of the consulting agency, trigger a need for a conformity determination. The MPO shall initiate appropriate consultation with the other consulting agencies in response to such request, and shall notify the consulting agencies and the requesting agency in writing of its proposed action in response to this evaluation and consultation; and

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

C. Consultation on nonfederal projects.

(I) An interagency consultation process in accordance with paragraph (3)(A)2. of this rule involving the MPO, state and local air quality agencies and state and local transportation agencies shall be undertaken to ensure that plans for construction of regionally significant projects which are not FHWA/FTA projects (including projects for which alternative locations, design concept and scope, or the no-build option are still being considered), including all those by recipients of funds designated under Title 23 U.S.C. or Title 49 U.S.C., are disclosed to the MPO on a regular basis, and to assure that any changes to those plans are immediately disclosed.

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

(III) Any such regionally significant project that has not been disclosed to the MPO in a timely manner shall be deemed not to be included in the regional emissions analysis supporting the conformity determination for the TIP and shall not be consistent with the motor vehicle emissions budget in the applicable implementation plan, for the purposes of 40 CFR 93.121.

(IV) For the purposes of this section and of 40 CFR 93.121, the phrase adopt or approve of a regionally significant project means the first time any action necessary to authorizing a project occurs, such as any policy board action necessary for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to construct the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with construction of the project, or any written decision or authorization from the MPO that the project may be adopted or approved;

D. This interagency consultation process involving the agencies specified in subparagraph (3)(A)2.C. of this rule shall be undertaken for assuming the location and design concept and scope of projects which are disclosed to the MPO as required by subparagraph (3)(A)3.C. of this rule but whose sponsors have not yet decided these features in sufficient detail to perform the regional emissions analysis according to the requirements of 40 CFR 93.122. This process shall be initiated by the MPO;

E The MPO shall undertake an on-going process of consultation with the agencies listed in subparagraph (3)(A)2.C. of this rule for the design, schedule, and funding of research and data collection efforts and regional transportation model development by the MPO. This process shall, as far as practicable, be integrated with the cooperative development of the Unified Planning Work Program under 23 CFR section 450.314; and

F. This process insures providing final documents (including applicable implementation plans and implementation plan revisions) and supporting information to each agency after approval or adoption. This process is applicable to all agencies described in subparagraph (3)(A)1.A. of this rule, including federal agencies.

4. Record keeping and distribution of final documents.

A. It shall be the responsibility of the lead agency designated under subparagraph (3)(A)2.B. of this rule to maintain a complete and accurate record of all agreements, planning and programming processes, and consultation activities required under this rule and to make these documents available for public inspection upon request.

B. It shall be the affirmative responsibilities of the lead agency designated under subparagraph (3)(A)2.B. of this rule to provide to the other consulting agencies copies of any final document or final decision subject to this rule within thirty (30) days of final action by the lead agency.

5. Resolving conflicts.

A. Conflicts among state agencies or between state agencies and the MPO regarding a final action on any conformity determination subject to this rule shall be escalated to the governor if the conflict cannot be resolved by the heads of the involved agencies. Such agencies shall make every effort to resolve any differences, including personal meetings between the heads of such agencies or their policy-level representatives, to the extent possible.

B. It shall be the responsibility of the state air quality agency to provide timely notification to the MPO and other consulting agencies of any proposed conformity determination where the agency identifies a potential conflict which, if unresolved, would, in the opinion of the agency, justify escalation to the governor. To the extent that consultation is not otherwise required under this rule, the state air quality agency shall consult with the other agencies listed in subparagraph (3)(A)2.C. of this rule in advance of escalating a potential conflict to the governor, and, if necessary, shall convene the meetings required under subparagraph (3)(A)5.A. of this rule.

C. When the MPO intends to make a final determination of conformity for a transportation plan, plan revision, TIP or TIP amendment, the MPO shall first notify the director of the state air quality agency of its intention and include in that notification a written response to any comments submitted by the state air quality agency on the proposed conformity determination. Upon receipt of such notification (including the written response to any comments submitted by the state air quality agency), the state air quality agency shall have fourteen (14) calendar days in which to appeal a proposed determination of conformity to the governor. If the Missouri air quality agency appeals to the governor of Missouri, the final conformity determination will automatically become contingent upon concurrence of the governor of Missouri. If the Illinois air quality agency presents an appeal to the governor of Missouri regarding a conflict involving both Illinois and Missouri agencies or the MPO, the final conformity determination will automatically become contingent upon concurrence of both the governor of Missouri and the governor of Illinois. The state air quality agency shall provide notice of any appeal under this subsection to the MPO, the state transportation agency and the Illinois air quality agency. If neither state air quality agency appeals to the governor(s) within fourteen (14) days of receiving written notification, the MPO may proceed with the final conformity determination.

D. The governor may delegate the role of hearing any such appeal under this subsection and of deciding whether to concur in the conformity determination to another official or agency within the state, but not to the head or staff of the state air quality agency or any local air quality agency, the state department of transportation, a state transportation commission or board, any agency that has responsibility for only one (1) of these functions, or an MPO.

6. Interagency consultation procedures—public consultation procedures. Affected agencies making conformity determinations on transportation plans, programs, and projects shall establish a proactive public involvement process which provides opportunity for public review and comment by, at a minimum, providing reasonable public access to technical and policy information considered by the agency at the beginning of the public comment period and prior to taking formal action on a conformity determination for all transportation plans and TIPs, consistent with these requirements and those of 23 CFR 450.316(b). Any charges imposed for public inspection and copying should be consistent with the fee schedule contained in 49 CFR 7.43. In addition, these agencies must specifically address in writing all public comments that known plans for a regionally significant project which is not receiving FHWA or FTA funding or approval have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan or TIP. These agencies shall also provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.

(B) Requirement to Fulfill Commitments to Control Measures (Federal Code Location: 40 CFR 93.122(a)(4)(ii)). Written commitments to control measures that are not included in the transportation plan and TIP must be obtained from the entity or entities with authority and ability to implement the control measures prior to a conformity determination and such commitments must be fulfilled.

(C) Requirement to Fulfill Commitments to Mitigation Measures (Federal Code Location: 40 CFR 93.125(c)). Written commitments to project-level mitigation measures which are conditions for making conformity determinations for a transportation plan or transportation improvement program must be obtained from the project sponsor prior to a positive conformity determination. Project sponsors committing to mitigation measures to facilitate positive conformity determinations must comply with such commitments.]

(3) General Provisions.

(A) General. This section of the rule provides the general aspects of the transportation conformity interagency consultation process.

1. Pursuant to 40 CFR 51.390, this rule provides for interagency consultation (federal, state, and local), resolution of conflicts, public consultation procedures (per 40 CFR 93.105), and written commitments to control measures (40 CFR 93.122(a)(4)(ii)) and mitigation measures (40 CFR 93.125(c)).

2. Such consultation procedures will be undertaken by the MPO, the state transportation agencies, and the FHWA and the FTA with state and local air quality agencies and the EPA prior to making conformity determinations and by state and local air agencies and the EPA with the MPO, the state transportation agencies, and the FHWA and the FTA in developing applicable implementation plans.

(B) Interagency Consultation Procedures. This section of the rule provides the specific aspects of the transportation conformity interagency consultation process.

1. General factors.

A. Representatives of the MPO and the public agencies listed in subsection (2)(B) of this rule will undertake an interagency consultation process in accordance with this section with each other and with the EPA, the FHWA, and the FTA on the development of the transportation conformity state implementation plan (SIP), the transportation plan, the transportation improvement plan (TIP), any revisions to the preceding documents, and all conformity determinations required by this rule.

B. The state air agencies will be the lead agencies responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to the development of applicable transportation related implementation and control strategy SIP revisions for their respective areas of jurisdiction.

C. The East-West Gateway Council of Governments (St. Louis' metropolitan planning agency (MPO)) will be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the interagency consultation process with respect to the development of the long range transportation plan, the TIP, any amendments or revisions thereto, and for providing assistance for technical analyses by employing travel-demand modeling techniques and acquiring all necessary data in the metropolitan area under its jurisdiction.

D. In addition to the lead agencies identified in subparagraphs (3)(B)1.A., B., and C. of this rule, other agencies entitled to actively participate in the interagency consultation process under this rule are listed in subsection (2)(B) of this rule.

E. It will be the role and responsibility of each lead agency in an interagency consultation process, as specified in subparagraphs (3)(B)1.A., B., and C. of this rule, to confer with all other agencies identified in subparagraphs (3)(B)1.A., B., C., and D. of this rule, to provide all appropriate information to those agencies needed for meaningful input, to solicit early and continuing input from those agencies, to conduct the consultation process described in 40 CFR 93.105, to assure policy-level contact with those agencies, to consider the views of each such agency and respond to those views in a period not to exceed thirty (30) days from the date received prior to any final decision on such document, and to assure that such views and written response are made part of the record of any decision or action. Each lead agency will provide all necessary documentation for review at the initiation, or prior to, the review and comment period. Information for scheduled meetings will be distributed to participants at least seven (7) days before the scheduled meeting. It will be the role and responsibility of each agency specified in subparagraphs (3)(B)1.A., B., C., and D. of this rule, when not fulfilling the role and responsibilities of a lead agency, to confer with the lead agency and other participants in the consultation process, to review and comment as appropriate (including comments in writing) on all proposed documents and decisions in a period not to exceed thirty (30) days, to attend consultation and decision meetings, to assure policy-level contact with other participants, to provide input on any area of substantive expertise or responsibility, and to provide technical assistance to the lead agency or consultation process in accordance with this rule when requested.

F. Consultation on specific transportation conformity issues, other than the continual process of keeping all the agencies informed on all conformity and SIP actions, may be initiated at any time during the document development process by any of the agencies specified in subparagraphs (3)(B)1.A., B., C., and D. of this rule. It will be the responsibility of the initiate to ensure that all other agencies identified in subparagraphs (3)(B)1.A., B., C., and D. of this rule, are notified of any such action. All agencies so notified must respond to the issue(s) raised within fourteen (14) days unless an alternate schedule is agreed upon by all participants.

G. It will be the responsibility of the MPO and the state transportation agencies to provide the state and local air agencies with the latest version of the TIP, the statewide transportation improvement plan (STIP), and the transportation plan.

H. It shall be the responsibility of the state air agencies to provide the MPO, state transportation agencies, the FHWA, the FTA, and the EPA with the latest version of the SIP.

I. It will also be the responsibility of each of the agencies specified in subparagraphs (3)(B)1.A., B., C., and D. of this rule to keep their own superiors and constituents properly informed of conformity determinations.

J. The agencies specified in subparagraphs (3)(B)1.A., B., C., and D. of this rule may employ consultant services at their own discretion.

2. Specific roles and responsibilities of various participants in the interagency consultation process will be—

A. The state air agencies listed in subsection (2)(B) of this rule will be responsible in relation to SIP development for—

(I) Developing emissions inventories;

(II) Developing emissions budgets;

(III) Conducting air quality modeling;

(IV) Developing attainment and maintenance demonstrations;

(V) Revising control strategy implementation plans;

(VI) Regulatory Transportation Control Measures (TCMs) intended to provide enforceable emission reductions;

(VII) Compiling motor vehicle emissions factors;

(VIII) Meeting all the EPA reporting requirements related to air quality; and

(IX) Responding to all comments concerning the SIP;

B. The local air agencies will be responsible for their areas of jurisdiction, with the state air agencies being responsible for all remaining counties, as well as being responsible for ensuring that the local air agencies fulfill these tasks. Local air agencies may request assistance from the state air agencies in any of the responsibilities listed here;

C. The MPO defined in subsection (2)(C) of this rule will be responsible in their area of jurisdiction for—

(I) Developing and monitoring transportation plans and TIPs;

(II) Evaluating the transportation impacts and feasibility of TCMs;

(III) Developing transportation and socioeconomic data and latest planning assumptions and providing such data and planning assumptions to the state air agencies for use in air quality analysis;

(IV) Developing system- or facility-based or other programmatic (non-regulatory) TCMs;

(V) Providing technical and policy input on emissions budgets;

(VI) Performing transportation modeling including:

(a) Selecting and evaluating such models;

(b) Documenting their use in conformity determinations; and

(c) Alerting, for comment, the agencies identified in subparagraphs (3)(B)1.A., B., C., and D. of this rule, when any new model is being tested or employed;

(VII) Developing draft and final conformity determination documents for all transportation plans, TIPs, and projects;

(VIII) Monitoring and coding regionally significant projects into the transportation networks;

(IX) Developing statistical information such as vehicle miles traveled, vehicle mix, and vehicle speeds for use in on-road mobile emissions analysis;

(X) Making elections regarding the timeframe of the conformity determination under 40 CFR 93.106(d);

(XI) Identifying planning assumptions and evaluating those assumptions for consistency with SIP assumptions;

(XII) Developing draft documents, record notes, and distribute agendas prior to meetings (in person or by conference calls or other practical electronic means);

(XIII) Providing all appropriate information to those agencies needed for meaningful input and provide all draft and supportive documentation (hard copy or electronic format) in a timely manner to participating agencies; and

(XIV) Preparing the final document subject to interagency consultation will assure that all relevant documents and information are supplied to all participants in the consultation process prior to the release for public review;

D. The state transportation agencies listed in subsection (2)(B) of this rule will be responsible for—

(I) Developing the Statewide Transportation Plan and the STIP;

(II) Providing technical input on new and proposed revisions to motor vehicle emission budgets;

(III) Distributing draft and final environmental documents to other agencies;

(IV) Providing the transportation related information needed for mobile emissions analysis;

(V) Developing the statistical information, such as vehicle miles traveled, vehicle mix, and vehicle speeds, for use in on-road mobile emission analysis for areas outside the MPO boundary;

(VI) Developing the draft document(s) related to the National Environmental Policy Act (NEPA) process, providing it for review, responding to comments, and preparing the final document(s);

(VII) Performing transportation modeling, including:

(a) Selecting and evaluating such models;

(b) Documenting their use in conformity determinations; and

(c) Alerting, for comment, the agencies identified in subparagraphs (3)(B)1.A., B., C., and D. of this rule, when any new model is being tested or employed;

(VIII) Making conformity determinations for areas outside of the MPO boundary;

(IX) Convening consultation to cooperatively choose the appropriate conformity test(s) and methodologies for use in isolated rural nonattainment and maintenance areas, as required by 40 CFR 93.109(n)(2)(iii); and

(X) Convening air quality technical review meetings on specific projects when requested by other agencies or as needed;

E. The FHWA and the FTA will be responsible for—

(I) Ensuring timely action on final determinations of conformity within thirty (30) days of receiving a formal conformity determination after consultation with other agencies as provided in this rule and 40 CFR 93.105;

(II) Providing guidance on conformity and the transportation planning process to participating agencies in interagency consultation; and

(III) Reviewing and commenting on conformity determinations; and

F. The EPA will be responsible for—

(I) Reviewing motor vehicle emissions budgets in submitted SIPs and finding them adequate or inadequate based on adequacy criteria and procedures;

(II) Providing guidance on conformity criteria and procedures to agencies in interagency consultation;

(III) Approving or disapproving submitted SIP revisions (including TCMs);

(IV) Providing modeling and emissions inventory development assistance to the state air agencies, the state transportation agencies, and the MPO; and

(V) Providing comments on the regional emissions analyses and conformity determination of transportation plans, TIPs, and projects.

3. Conformity determinations.

A. All conformity determinations will be initiated by the sponsor of the transportation plan, program, or project subject to the conformity rule.

(I) The MPO will be responsible for initiating conformity determinations for plans, programs, or projects within the specific MPO boundary.

(II) The state transportation agencies will be responsible for initiating conformity determination for plans, programs, or projects external to an MPO boundary including isolated rural nonattainment and maintenance areas as required by 40 CFR 93.109(n)(2)(iii).

(III) The MPO and state transportation agencies will employ interagency consultation procedures to ensure compatibility of conformity determinations for the same or overlapping nonattainment or maintenance area(s).

B. It will be the responsibility of the MPO and the state transportation agencies to submit any conformity determinations to the FHWA and the FTA in consultation with the EPA, state air agencies, and local transportation agencies for review and approval before the plan, program, or project subject to the conformity rule may be found to conform or project found to be exempt.

C. All conformity determinations with all supporting documentation and data will be made available for review and comment to the state air agencies and local air agencies, and the FHWA and FTA in consultation with the EPA no less than thirty (30) days prior to presentation to a policy making body (electronic copy acceptable). Shorter review periods may be allowed occasionally in emergency situations with participant concurrence.

D. It is the responsibility of the MPO to make all conformity determinations available to the general public.

E. Conformity determinations at a minimum should include written documentation for:

(I) All the input run streams for the latest mobile emissions model and latest planning assumptions on the date that the conformity analysis began (with the beginning date and the criteria used to identify this date specified) and attestation that the latest mobile emissions model is being used;

(II) Transportation related information and assumptions used for input into the mobile model, such as, vehicle miles traveled, vehicle speeds, and vehicle mix, along with a brief description of the source of this information, including documentation of any transportation related models used; and

(III) A description of the project, plan, or program that is the subject of the conformity or exemption status determination(s).

F. State air agencies and/or local air agencies where applicable will review and provide written comment on final conformity determinations within fourteen (14) days of the date received. This process will consist of—

(I) Review of mobile emissions model inputs and outputs;

(II) Verification that the latest mobile emissions model and planning assumptions are being used;

(III) Review of the reasonableness of transportation related data; and

(IV) Ensuring consistency with the emissions budget and/or the interim emission tests, as applicable.

G. It will be the responsibility of the MPO or the state transportation agencies where applicable, making a conformity determination, to provide the state air agencies and the applicable local air agencies, the FHWA, the FTA, and the EPA with documentation of the conformity determination.

H. It will be the responsibility of the state air agencies to provide the affected MPO, the FHWA, the FTA, the EPA, the local air agencies, and the state transportation agencies with appropriate information regarding any SIP changes that could impact the conformity process.

I. It will be the responsibility of the EPA to provide the state air agencies, the local air agencies, the FHWA, the FTA, the state transportation agencies, and the MPO information regarding changes to the conformity rule that could impact conformity determinations.

J. Emissions reduction credit from control measures that are not included in the transportation plan and TIP and that do not require a regulatory action in order to be implemented may not be included in the emissions analysis unless written commitments to implementation are obtained by the MPO (or the state transportation agencies where applicable) prior to the conformity determination and such commitments must be fulfilled by the implementing entities. This rule satisfies the requirement of 40 CFR 93.122(a)(4)(ii).

K. Written commitments to mitigation measures for project-level mitigation and control measures must be provided by the project sponsors to the FHWA (or the FTA for transit related projects) prior to a positive project-level conformity determination and the project sponsors must comply with such commitments. This rule satisfies the requirement of 40 CFR 93.125(c).

L. In order to assure the most recent planning assumptions are in place at the time the conformity analysis begins, the "time the conformity analysis begins" is to be determined by

interagency consultation and documented. This point in time should occur at the point at which the MPO begins to model the impact of the transportation plan or TIP on travel and/or emissions. New data that becomes available after an analysis begins is required to be used in the conformity determination only if a significant delay in the analysis has occurred as determined through interagency consultation and documented in writing and included in publicly available documentation of conformity analysis.

M. Consultation will be undertaken and conducted in accordance with this rule to evaluate events which will trigger new conformity determinations in addition to those triggering events established in 40 CFR 93.104 including any changes in planning assumptions that may trigger a new conformity determination. The consultation process pursuant to this rule will be initiated by the FHWA, the EPA, the state air agencies, state transportation agencies, or the MPO.

4. Implementation plans.

A. Any proposed revisions to the SIP, which may have a direct or indirect effect upon the motor vehicle emissions budget for an area subject to conformity, will be made available to the MPO specified in this rule, as well as state transportation agencies, the FHWA, the FTA, and the EPA in written or electronic form for their review and comment at least thirty (30) days before presentation to the respective state air commissions.

B. The state air agencies will also provide the public a period from the date of announcement to comment on any proposed SIP revisions which may have a direct or indirect effect upon the motor vehicle emissions budget for an area subject to conformity as defined in subparagraph A. of this paragraph.

C. Any proposed revisions to the SIP will include documentation on methods of analysis, models employed, and purpose of the revision.

5. Other processes.

A. The state air agencies will be responsible for the process whereby the MPO, the local air agencies, the state transportation agencies, the FHWA, the FTA, and the EPA will study and develop supplementary consultation procedures to identify, evaluate, and address, as needed, specific issues. In the absence of supplementary consultation procedures, the state air agencies will include the following items for discussion during interagency consultation meetings in advance of a conformity determination:

(I) Hot spot analysis methods, models, and assumptions;

(II) Determination of regionally significant projects and projects considered to have a significant change in design concept and scope;

(III) Evaluating when exempt projects should be treated as non-exempt;

(IV) Timely implementation of TCMs and processing of TCM substitutions;

(V) Identifying conformity determination triggers other than those established in 40 CFR 93.104; and

(VI) Methods, models, and assumptions for regional emissions analysis.

B. These supplementary procedures in subparagraph A. of this paragraph may be specific for the metropolitan area or each nonattainment or maintenance area subject to the conformity rule.

C. The state air agencies will conduct meetings to discuss any supplementary consultation procedure as needed.

D. Final document distribution for conformity determinations associated with plans, TIPs, and STIPs (occasionally, alternate schedules may be used with concurrence by participants)—

(I) The final air quality conformity determination, necessary supporting documentation, and the plan and TIP will be submitted to the FHWA Division Office, the FTA Regional Office, the EPA Regional Office, the state transportation agencies, state air agencies, and any applicable local air agencies. The EPA will respond in writing to the FTA Regional Office and the FHWA Division Office, as soon as possible, but not later than thirty (30) days from the date received;

(II) Comments will be resolved by the FHWA and the FTA, in concert with the EPA, the MPO, or the state transportation agencies, in their respective areas, as necessary;

(III) The FHWA and the FTA will jointly prepare correspondence to make the conformity finding. Joint conformity findings will be addressed to the MPO with a copy to the state transportation agencies, the EPA, the state air agencies, and any applicable local air agencies. The findings of the FHWA and the FTA together constitute the U.S. Department of Transportation (DOT) conformity findings;

(IV) In the event that the MPO or the state transportation agencies, in their respective areas, wishes to amend the TIP to add projects that are exempt from the conformity analysis requirement, the FHWA or the FTA or both, if necessary, will concur in the amendment and reaffirm the original DOT conformity finding by letter. This reaffirmation letter will reference the date(s) of the original FHWA and FTA findings. In cases where the amendment involves projects that are not exempt, a new conformity analysis and determination will be required, and will, in turn, require a new DOT conformity finding; and

(V) Within fifteen (15) days subsequent to approval of final documents including transportation plans, TIPs, conformity determinations, applicable implementation plans, and implementation plan revisions, the lead agency will provide copies (electronic copies acceptable) of such documents and supporting information to all affected agencies.

E. Generalized hot-spot determination process. Interagency consultation will be undertaken to evaluate and choose a model(s), associated methods, and planning assumptions to be used in hot-spot analyses. The generalized hot-spot determination process (occasionally, alternate schedules may be used with concurrence by participants) entails—

(I) The project sponsor (or the state transportation agencies or the MPO), will seek consensus if the project is believed to be exempt from hot-spot analysis. This can be accomplished through electronic transmittal, providing for a minimum of fourteen (14) days for review. If requested, an additional fourteen (14) days will be provided for review, as well as any additional information needed to make the determination;

(II) If the project is not exempt, the project sponsor (or the state transportation agencies or the MPO) will collect and organize and distribute specific data needed to determine whether nonexempt projects are or are not of air quality concern. This can be accomplished through electronic transmittal, providing for a minimum of fourteen (14) days for review. If requested, an additional fourteen (14) days will be provided for review, as well as any additional information needed to make the determination; and

(III) If it is determined the project is a project of air quality concern, the project sponsor (or the state transportation agencies or the MPO) will then engage and begin a consultation process to evaluate and choose a model (or models) and associated methods and assumptions to be used in hot-spot analysis. The project sponsor (or the state transportation agencies or the MPO) will make a $PM_{2.5}$ hot-spot determination (i.e., project-level conformity determination) and request that other stakeholder agencies comment on the conclusions through formal interagency consultation as provided in this rule.

F. Regionally significant projects. For purposes of regional emissions analysis, the MPO will actively consult with the affected agencies to determine which minor arterials and other transportation projects should be considered "regionally significant" projects (in addition to those functionally classified as principal arterial or higher or fixed guideway systems or extensions that offer an alternative to regional highway travel) and

which projects should be considered to have a significant change in design concept and scope from the transportation plan or TIP. Prior to initiating any final action on these issues, the MPO (or the state transportation agencies, if applicable) will consider the views of each agency that comments and respond in writing.

G. Transportation control measures (TCMs).

(I) For each plan or TIP update, the agencies specified in subparagraphs (3)(A)2.A., B., C., and D. to participate in consultation will review whether past obstacles to implementation of TCMs which are behind the schedule established in the applicable implementation plan are being overcome and whether state and local agencies with influence over approval or funding for TCMs are giving maximum priority to approval or funding for TCMs. If necessary, consideration will be given as to whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures.

(II) Where TCMs are to be included in an applicable implementation plan, a list of TCMs will be developed by the MPO or the state transportation agencies, or both.

H. Exempt projects which may be non-exempt. The MPO (or state transportation agencies where applicable) will commence consultation regarding potentially exempt projects to (occasionally, alternate schedules may be used with concurrence by participants)—

(I) Identify exempt project as defined by 40 CFR 93.126 Table 2 and 40 CFR 93.127 Table 3;

(II) Identify exempt projects and categories of exempt projects which should be treated as non-exempt because they may have adverse air quality impacts and determine appropriate air quality analysis methodologies for analyzing such projects;

(III) Identify transportation plan, TIP, and STIP revisions which add or delete exempt projects, as defined in 40 CFR 93.126 Table 2 and 40 CFR 93.127 Table 3; and

(IV) The MPO (or the state transportation agencies where applicable), will seek consensus from the consultation participants if the project is believed to be exempt. This can be accomplished through electronic transmittal, providing for a minimum of fourteen (14) days for review. If requested, an additional fourteen (14) days will be provided for review, as well as any additional information needed to make the determination.

I. Project disclosure—

(I) The sponsor of any potentially regionally significant project and any agency that is responsible for taking action(s) on any such project, will disclose such project to the state transportation agencies and the MPO in a timely manner. Such disclosure will be made not later than the first occasion on which any of the following actions is sought: any policy board action necessary for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to design or construct the facility, the execution of any indebtedness for the facility, any final action of a board, commission, or administrator authorizing or directing employees to proceed with design, permitting, or construction of the project, or the execution of any contract to design or construct, or any approval needed for any facility that is dependent on the completion of the regionally significant project. To help assure timely disclosure, the sponsor of any potential regionally significant project will disclose to the state transportation agencies and the MPO on a schedule prescribed by the state transportation agencies and the MPO, but no less than annually, each project for which alternatives have been identified through the National Environmental Policy Act (NEPA) process and any preferred alternative that may be a regionally significant project. The consultation process will include assuming the location, design concept, and scope of the project, where the sponsor has not yet decided these features, in sufficient detail to allow the MPO (or the state transportation agencies) to perform a regional emissions analysis. This consultation process pursuant to this rule will be initiated by the state transportation agencies and the MPO; and

(II) In the case of any such regionally significant project that has not been disclosed to the MPO and the other interested agencies participating in the consultation process in a timely manner, such regionally significant project will not be considered to be included in the regional emissions analysis supporting the current conformity determination and not to be consistent with the motor vehicle emissions budget in the applicable implementation plan or interim budget.

K. Transportation model development. An interagency consultation process in accordance with the interagency consultation procedures outlined in this rule will be undertaken for the design, schedule, and funding of research and data collection efforts related to regional transportation model development (such as household travel transportation surveys), to be initiated by MPO.

L. Responding to significant comments. If the written response to a significant comment does not adequately address the commenting agency's concerns, further consultation is to be conducted. If a regularly scheduled meeting is to be held within a reasonable time frame of the receipt of the significant comment, it should be made a part of that meeting's agenda and information on the issue will be forwarded to all involved agencies. If necessary, discussion and resolution of the significant comment will be considered a reason to convene a special meeting with the commenting agency as the requester and the agenda consisting of the significant comment.

6. Resolving conflicts. Any conflict among state agencies or between state agencies and the MPO will be escalated to the governor if the conflict cannot be resolved by the heads of the involved agencies. All agencies involved will make every effort to resolve any differences, including personal meetings between the heads of such agencies or their policy-level representatives, to the extent possible. The appeal process described herein will apply only to the MPO (or the state transportation agencies) approved conformity determinations on the transportation plan, TIP, or projects (including project-level determinations), including any documents directly related to determinations of conformity and conflicts between state agencies or between one (1) or more state agencies and the MPO. Conflicts regarding SIPs should be appealed to the respective state air commissions.

A. In the event that the MPO or the state transportation agencies determine that every effort has been made to address the state air agencies concerns and no further progress is possible, the MPO or the state transportation agencies will notify the directors of the respective state air agencies in writing to this effect. The memorandum will delineate each unresolved issue to be appealed and will include at a minimum:

(I) State the legal basis of the issue/conflict and steps taken to resolve the conflict;

(II) Relevant reference material needed to facilitate review and mediation of the conflict, including all relevant portions of state and federal law and regulations, conformity requirements, and any other relevant documents;

(III) A description of all reasonable alternatives and supporting data and justification for each alternative. Quantify and document the need for the recommended alternative consistent with the Clean Air Act of 1990 et seq. and the applicable state and federal laws and regulations; and

(IV) Explain the consequences of not reaching a resolution.

B. If conflicts concerning conformity determinations cannot be resolved by the interagency consultation procedures, then the state air agencies will notify the agency or agencies involved in the conflict of its intent to escalate the conflict resolution to the office of the governor.

C. The fourteen (14)-calendar day window will commence—

(I) On the date that the directors of the state air agencies and the head of the agency or agencies involved in the conflict officially agree that the conflict cannot be resolved; or

(II) One (1) or more agencies other than the state air agencies request the start of the fourteen (14)-day clock on a specified date, after notifying all other agencies involved of their intent, and the state air agencies agree.

D. If the state air agencies do not contact the office of the governor within the fourteen (14)-calendar day window, then the issue in conflict is considered to be resolved in favor of the agency in conflict with the state air agencies.

E. The governor may delegate his or her role, but not to the head or staff of the state air agencies, the state transportation agencies, a state transportation commission or board, or an MPO.

F. The state air agencies will notify involved parties of the final decision by the office of the governor.

7. Public participation—

A. Each agency subject to conformity will provide the general public a window of opportunity no less than thirty (30) days to review and comment on new conformity determinations before formal action (approval or endorsement by an executive committee of the MPO for submission to the FHWA and the FTA for their finding) is taken on all transportation plans, TIPs, and STIPs, consistent with these requirements and those of 23 CFR 450.316(a). A comment period of no less than fourteen (14) days will be made available to the public on amendments to conformity determinations and associated documents. The state and local air agencies will offer the public the same opportunity to comment before final action on SIPs which may have a direct or indirect effect upon the motor vehicle emissions budget for an area subject to conformity. The notification process will include, at a minimum, public notices and submittals to public depositories. In addition, all public comments that specifically address known plans for a regionally significant project which is not receiving FHWA or FTA funding or approval and has not been properly reflected in the emissions analysis supporting a proposed conformity determination for a transportation plan or TIP, must be responded to in writing within thirty (30) days of the end of the comment period.

B. The public participation procedure defined in subparagraph A. of this paragraph will not be construed as superseding public involvement procedures already in effect for agencies subject to the conformity consultation process, such as the MPO's citizen involvement process, the Missouri Sunshine Law (Chapter 610, RSMo), or any other established process which already meets or exceeds these standards. In addition, this subparagraph does not apply to project-level conformity determinations subject to NEPA where a NEPA public participation process exists.

C. The public or any interested party may also inspect any of the documents related to the conformity process upon request. Any charges imposed on the public for inspection or copying documents related to the conformity process will be consistent with (or no greater than) the fee schedule contained in 49 CFR 7.43.

(4) *[Reports]* **Reporting** and Record*[s]* Keeping. *(Not Applicable)*

AUTHORITY: section 643.050, RSMo 2000. Original rule filed Oct. 4, 1994, effective May 28, 1995. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed July 1, 2010.*

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., September 30, 2010. The public hearing will be held at the Holiday Inn Southeast, Royal C and D room, 9103 E. 39th Street, Kansas City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Interested persons, whether or not heard, may submit a written or email statement of their views until 5:00 p.m., October 7, 2010. Written comments shall be sent to Chief, Air Quality Planning Section, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to apcprule-spn@dnr.mo.gov.

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

PROPOSED AMENDMENT

10 CSR 10-6.070 New Source Performance Regulations. The commission proposes to amend subsection (1)(A). If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency for delegation of enforcement authority. The evidence supporting the need for this proposed rulemaking is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address and phone number listed in the Notice of Public Hearing at the end of this rule. More information concerning this rulemaking can be found at the Missouri Department of Natural Resources' Environmental Regulatory Agenda website, www.dnr.mo.gov/regs/index.html.

PURPOSE: This rule establishes acceptable design and performance criteria for specified new or modified emission sources. The purpose of this rulemaking is to amend 10 CSR 10-6.070 to incorporate 40 CFR part 60 subparts amended between January 1, 2009 and December 31, 2009. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is: elements of the State/EPA work plan and Title V Operating Permit Program requirements.

(1) Applicability.

(A) The provisions of 40 CFR part 60 promulgated as of June 30, *[2008]* **2009**, and Federal Register Notices *[73 FR 43626, 73 FR 55751, 73 FR 59034, 73 FR 78199, 73 FR 78546, and 73 FR 78549]* **74 FR 51408, and 74 FR 51977** promulgated from July 1, *[2008]* **2009**, through December 31, *[2008]* **2009**, shall apply and are hereby incorporated by reference in this rule, as published by the Office of the Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, DC 20408. This rule does not incorporate any subsequent amendments or additions.

AUTHORITY: section 643.050, RSMo 2000. Original rule filed Dec. 10, 1979, effective April 11, 1980. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed June 18, 2010.*

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., September 30, 2010. The public hearing will be held at the Holiday Inn Southwest, Royal C and D, 9103 East 39th Street, Kansas City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Interested persons, whether or not heard, may submit a written or email statement of their views until 5:00 p.m., October 7, 2010. Written comments shall be sent to Chief, Air Quality Planning Section, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to apcprule-spn@dnr.mo.gov.

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

PROPOSED AMENDMENT

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

PURPOSE: This rule establishes emission control technology, performance criteria, and work practices to achieve emission standards for sources that emit or have the potential to emit hazardous air pollutants. The purpose of this rulemaking is to amend 10 CSR 10-6.075 to incorporate 40 CFR part 63 subparts promulgated or amended between January 1, 2009 and December 31, 2010. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is: elements of the State/EPA work plan and Title V Operating Permit Program requirements.

(1) Applicability.

(A) The provisions of 40 CFR part 63 promulgated as of June 30, *[2008]* **2009**, and Federal Register Notices *[73 FR 37728, 73 FR 39871, 73 FR 40977, 73 FR 42529, 73 FR 42978, 73 FR 64068, 73 FR 72727, 73 FR 76220, 73 FR 78199, and 73 FR 78637]* **74 FR 55683, and 74 FR 46495** promulgated from July 1, *[2008]* **2009**, through December 31, *[2008]* **2009**, shall apply and are hereby incorporated by reference in this rule, as published by the Office of the Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, DC 20408. This rule does not incorporate any subsequent amendments or additions.

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

Subpart Title

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

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

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

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

(L) National Emission Standards for Coke Oven Batteries

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

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

(O) Ethylene Oxide Emissions Standards for Sterilization Facilities

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

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

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

(T) National Emission Standards for Halogenated Solvent Cleaning

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

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

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

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

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

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

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

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

(EE) National Emission Standards for Magnetic Tape Manufacturing Operations

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

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

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

(JJ) National Emission Standards for Wood Furniture Manufacturing Operations

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

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

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

(OO) National Emission Standards for Tanks—Level 1

(PP) National Emission Standards for Containers

(QQ) National Emission Standards for Surface Impoundments

(RR) National Emission Standards for Individual Drain Systems

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

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

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

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

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

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

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

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

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

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

(GGG) National Emission Standards for Pharmaceuticals Production

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(DDDD) National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(GGGGG) National Emission Standards for Hazardous Air Pollutants: Site Remediation

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

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

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

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

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

(PPPPP) National Emission Standards for Hazardous Air Pollutants for Engine Test Cells/Stands

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

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

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

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

(WWWWW) National Emission Standards for Hospital Ethylene Oxide Sterilizers

(YYYYY) National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities

(ZZZZZ) National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources

(BBBBBB) National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities

(CCCCCC) National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities

(DDDDDD) National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production Area Sources

(EEEEEE) National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting Area Sources

(FFFFFF) National Emission Standards for Hazardous Air Pollutants for Secondary Copper Smelting Area Sources

(GGGGGG) National Emission Standards for Hazardous Air Pollutants for Primary Nonferrous Metals Area Sources—Zinc, Cadmium, and Beryllium

(HHHHHH) National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources

(LLLLLL) National Emission Standards for Hazardous Air Pollutants for Acrylic and Modacrylic Fibers Production Area Sources

(MMMMMM) National Emission Standards for Hazardous Air Pollutants for Carbon Black Production Area Sources

(NNNNNN) National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources: Chromium Compounds

(OOOOOO) National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production and Fabrication Area Sources

(PPPPPP) National Emission Standards for Hazardous Air Pollutants for Lead Acid Battery Manufacturing Area Sources

(QQQQQQ) National Emission Standards for Hazardous Air Pollutants for Wood Preserving Area Sources

(RRRRRR) National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing Area Sources

(SSSSSS) National Emission Standards for Hazardous Air Pollutants for Glass Manufacturing Area Sources

(TTTTTT) National Emission Standards for Hazardous Air Pollutants for Secondary Nonferrous Metals Processing Area Sources

(VVVVVV) National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources

(WWWWWW) National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Plating and Polishing Operations

(XXXXXX) National Emission Standards for Hazardous Air Pollutants Area Source Standards for Nine Metal Fabrication and Finishing Source Categories

(YYYYYY) National Emission Standards for Hazardous Air Pollutants for Area Sources: Ferroalloys Production Facilities

(ZZZZZZ) National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Aluminum, Copper, and Other Nonferrous Foundries

(AAAAAAA) National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing

(BBBBBBB) National Emission Standards for Hazardous Air Pollutants for Area Sources: Chemical Preparations Industry

(CCCCCCC) National Emission Standards for Hazardous Air Pollutants for Area Sources: Paints and Allied Products Manufacturing

AUTHORITY: section 643.050, RSMo 2000. Original rule filed May 1, 1996, effective Dec. 30, 1996. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed June 18, 2010.*

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., September 30, 2010. The public hearing will be held at the Holiday Inn Southwest, Royal C and D, 9103 East 39th Street, Kansas City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Interested persons, whether or not heard, may submit a written or email statement of their views until 5:00 p.m., October 7, 2010. Written comments shall be sent to Chief, Air Quality Planning Section, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to apcprule-spn@dnr.mo.gov.

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

PROPOSED AMENDMENT

10 CSR 10-6.080 Emission Standards for Hazardous Air Pollutants. The commission proposes to amend subsections (1)(A) and (B) and section (3). If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency for delegation of enforcement authority. The evidence supporting the need for this proposed rulemaking is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address and phone number listed in the Notice of Public Hearing at the end of this rule. More information concerning this rulemaking can be found at the Missouri Department of Natural Resources' Environmental Regulatory Agenda website, www.dnr.mo.gov/regs/index.html.

PURPOSE: This rule establishes emission standards and performance criteria for new or modified sources emitting hazardous air pollutants. The purpose of this rulemaking is to amend 10 CSR 10-6.080 to incorporate 40 CFR part 61 subparts amended between January 1, 2009 and December, 31, 2009. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is: elements of the State/EPA work plan and Title V Operating Permit Program requirements.

(1) Applicability.

(A) The provisions of 40 CFR part 61 promulgated as of June 30, *[2008]* **2009**, with no additional Federal Register Notices promulgated from July 1, *[2008]* **2009**, through December 31, *[2008]* **2009**, shall apply and are hereby incorporated by reference in this rule, as published by the Office of the Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, DC 20408. This rule does not incorporate any subsequent amendments or additions.

(B) Exceptions to the adoption are as follows:

1. Sections *[60.4, 60.16]* **61.4, 61.16,** and *[60.17]* **61.17** of subpart A;

2. Subparts B, H, I, K, Q, R, T, and W in their entirety; and

3. Those provisions which are not delegable by United States Environmental Protection Agency (EPA). Examples of these include alternative or equivalent methods (for example, sections 61.12(d)(1), 61.13(h)(1)(ii), 61.112(c), 61.164(a)(2), 61.164(a)(3), and 61.244).

(3) The following are the National Emission Standards for Hazardous Air Pollutants (NESHAPs) 40 CFR part 61 subparts that are adopted by reference in subsection (1)(A) of this rule. Individual source operations or installations in these categories are subject to this rule based on *[date of commencement of construction and other]* category specific parameters, as specified in the applicable subpart:

AUTHORITY: section 643.050, RSMo 2000. Original rule filed Dec. 10, 1979, effective April 11, 1980. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed June 18, 2010.*

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., September 30, 2010. The public hearing will be held at the Holiday Inn Southwest, Royal C and D, 9103 East 39th Street, Kansas City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Interested persons, whether or not heard, may submit a written or email statement of their views until 5:00 p.m., October 7, 2010. Written comments shall be sent to Chief, Air Quality Planning Section, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to apcprule-spn@dnr.mo.gov.

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

PROPOSED AMENDMENT

10 CSR 10-6.400 Restriction of Emission of Particulate Matter from Industrial Processes. The commission proposes to amend subsections (2)(B) and (3)(C). If the commission adopts this rule action, it will be the department's intention to submit this rule amendment to the U.S. Environmental Protection Agency to replace the current rule that is 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 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/index.html.

PURPOSE: This regulation restricts the emission of particulate matter in the source gas of an operation or activity except where 10 CSR 10-2.040, 10 CSR 10-3.060, 10 CSR 10-4.040, 10 CSR 10-5.030, and/or 10 CSR 10-6.070 would be applied. This amendment will provide an alternative compliance method using an output concentration limit for corn wet milling drying operations. This will provide consistency, fairness, and operational flexibility for these types of operations. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is the National Starch and Chemical Company's Variance Petition and Order signed March 25, 2010.

(2) Definitions.

(B) Process weight rate is defined as a rate in tons per hour established as follows:

1. The rate of materials introduced to the process which may cause any emission of particulate matter;

2. For continuous or long-run steady-state emission units, the total process weight for the entire period of continuous operation or for a typical portion, divided by the number of hours of that period or portion;

3. For cyclical or batch emission units, the total process weight for a period of time which covers a complete operation or an integral number of cycles, divided by the hours of actual process operation during that period; or

4. Where the nature of any process or operation or the design of any equipment permits more than one (1) interpretation of this section, that interpretation which results in the minimum value for allowable emissions shall apply.

(3) General Provisions.

(C) All existing corn wet milling drying processes shall be equipped with gas cleaning devices *[and so]* operated *[as]* to remove not less than ninety-nine and one-half percent (99.5%) by weight of all particulate matter in the dryer discharge gases **or release not more than one one-hundredth grain of particulate matter per dry standard cubic foot (0.01 gr/dscf) of discharge gas**.

AUTHORITY: section 643.050, RSMo 2000. Original rule filed Jan. 14, 2000, effective Aug. 30, 2000. Amended: Filed Dec. 22, 2000, effective Sept. 30, 2001. Amended: Filed Sept. 9, 2008, effective May 30, 2009. Amended: Filed July 1, 2010.

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., September 30, 2010. The public hearing will be held at the Holiday Inn Southeast, Royal C and D room, 9103 E. 39th Street, Kansas City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Interested persons, whether or not heard, may submit a written or email statement of their views until 5:00 p.m., October 7, 2010. Written comments shall be sent to Chief, Air Quality Planning Section, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to apcprule-spn@dnr.mo.gov.

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 1—Organization and Administration

PROPOSED AMENDMENT

11 CSR 45-1.010 Organization and Administration. The commission is amending section (5) and deleting section (6).

PURPOSE: This amendment updates the address for the filing of all documents with the Missouri Gaming Commission.

(5) Unless otherwise required, all **gaming tax and admission fee records and forms,** application forms, fees, documents, papers**,** and materials to be *[submitted to]* **filed with** the commission shall be submitted to the commission's office in Jefferson City, Missouri.

[(6) Unless otherwise required, all gaming tax and admission

fee records, forms, fees, documents, papers and materials shall be submitted to the commission's office at 11775 Borman Drive, St. Louis MO 63146.]

*AUTHORITY: section[s] 313.004, **RSMo 2000** and **section** 313.805, RSMo [1994] **Supp. 2009**. Emergency rule filed Sept. 1, 1993, effective Sept. 20, 1993, expired Jan. 17, 1994. Emergency rule filed Jan. 5, 1994, effective Jan. 18, 1994, expired Jan. 30, 1994. Original rule filed Sept. 1, 1993, effective Jan. 31, 1994. Amended: Filed Jan. 21, 1997, effective Aug. 30, 1997. Amended: Filed June 30, 2010.*

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

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

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Gaming Commission, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. A public hearing is scheduled for September 8, 2010, at 10:00 a.m., in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.*

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

PROPOSED RULE

11 CSR 45-9.113 Minimum Internal Control Standards—Chapter M

PURPOSE: This rule establishes the minimum internal control standards for surveillance.

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

(1) The commission shall adopt and publish minimum standards for internal control procedures that in the commission's opinion satisfy 11 CSR 45-9.020, as set forth in *Minimum Internal Control Standards* (MICS) Chapter M–Surveillance, which has been incorporated by reference herein, as published by the Missouri Gaming Commission, 3417 Knipp Dr., PO Box 1847, Jefferson City, MO 65102. Chapter M does not incorporate any subsequent amendments or additions as adopted by the commission on June 30, 2010.

AUTHORITY: section 313.004, RSMo 2000 and sections 313.800 and 313.805, RSMo Supp. 2009. Original rule filed June 30, 2010.

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

PRIVATE COST: This proposed rule is estimated to cost private entities eight hundred thirty thousand nine hundred eighteen dollars ($830,918) per year in the aggregate.

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Gaming Commission, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. A public hearing is scheduled for September 8, 2010, at 10:00 a.m., in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.*

FISCAL NOTE
PRIVATE COST

I. Department Title: 11—Department of Public Safety
Division Title: 45—Missouri Gaming Commission
Chapter Title: 9—Internal Control System

Rule Number and Title:	**11 CSR 45-9.113 Minimum Internal Control Standards—Chapter M**
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the 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:
9	**Casinos hiring additional Surveillance staff**	**$830,918 per year**

III. WORKSHEET

Typical cost for the additional Surveillance staff—for example:
Coverage needed 365 days × 24 hours = 8760 working hours per year
$12 per hour × 8760 = $105,120
35 % additional cost for benefits = $36,792
$105,120 + $36,792 = $141,912 per casino

The aggregate cost estimate is based upon actual data provided by the casinos and reflects the assumptions below. Actual personnel cost estimates received from the casinos ranged from a cost savings of $122,000 to an increased cost of $327,775 per year.

IV. ASSUMPTIONS

Actual staffing costs will vary greatly based upon existing staffing above current minimum requirements and prevailing wages and benefits in each local area.

Smaller casinos with less surveillance demand should be granted a variance to allow appropriate staffing to comply with state regulations. It is anticipated that 3 of the 12 casinos will be granted such a variance.

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

PROPOSED RULE

11 CSR 45-9.114 Minimum Internal Control Standards—Chapter N

PURPOSE: This rule establishes the minimum internal control standards for security.

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

(1) The commission shall adopt and publish minimum standards for internal control procedures that in the commission's opinion satisfy 11 CSR 45-9.020, as set forth in *Minimum Internal Control Standards* (MICS) Chapter N–Security, which has been incorporated by reference herein, as published by the Missouri Gaming Commission, 3417 Knipp Dr., PO Box 1847, Jefferson City, MO 65102. Chapter N does not incorporate any subsequent amendments or additions as adopted by the commission on June 30, 2010.

AUTHORITY: section 313.004, RSMo 2000 and sections 313.800 and 313.805, RSMo Supp. 2009. Original rule filed June 30, 2010.

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

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

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Gaming Commission, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. A public hearing is scheduled for September 8, 2010, at 10:00 a.m., in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.*

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

PROPOSED RULE

11 CSR 45-9.118 Minimum Internal Control Standards—Chapter R

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

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

(1) The commission shall adopt and publish minimum standards for internal control procedures that in the commission's opinion satisfy 11 CSR 45-9.020, as set forth in *Minimum Internal Control Standards* (MICS) Chapter R–Forms, which has been incorporated by reference herein, as published by the Missouri Gaming Commission, 3417 Knipp Dr., PO Box 1847, Jefferson City, MO 65102. Chapter R does not incorporate any subsequent amendments or additions as adopted by the commission on June 30, 2010.

AUTHORITY: section 313.004, RSMo 2000 and sections 313.800 and 313.805, RSMo Supp. 2009. Original rule filed June 30, 2010.

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

PRIVATE COST: This proposed rule is estimated to have a one (1)-time cost to private entities of one thousand nine hundred twenty dollars ($1,920) in the aggregate.

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Gaming Commission, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. A public hearing is scheduled for September 8, 2010, at 10:00 a.m., in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.*

FISCAL NOTE
PRIVATE COST

I. Department Title: 11—Department of Public Safety
Division Title: 45—Missouri Gaming Commission
Chapter Title: 9—Internal Control System

Rule Number and Title:	**11 CSR 45-9.118 Minimum Internal Control Standards—Chapter R – Forms**
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the 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:
12	**Licensed riverboats casinos**	**$1,920**

III. WORKSHEET
16 hours labor × $10 per hour = $160
$160 × 12 casinos = $1,920

IV. ASSUMPTIONS—CHAPTER R–FORMS
Currently, this rule affects all 12 licensed casinos–each casino will update forms. Since many of the reports are generated on the computer, it is estimated that 16 hours of labor will be required to update the Duplicate Key Inventory Log.

Cost to the other forms is considered minimal since they may only require an additional field be added to the existing form.

List of Forms in MICS Chapter R:
§7.01 (A) Cards/Dice Inventory Ledgers
§7.01 (I) Duplicate Key Inventory Log
§7.01 (EE) Surveillance Release Log
§7.01 (FF) Surveillance Recording Retention Log
§7.01 (QQ) Visitor Vendor Log
§7.01 (XX) Remote Access Log
§7.01 (CCC) Meter Reading Comparison Report

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 24—Driver License Bureau Rules

PROPOSED AMENDMENT

12 CSR 10-24.430 Back of Driver License, Permits, and Non*[-D]*driver License. The director is amending the title, purpose, section (1), and removing the diagram that appears with the rule in *Code*.

PURPOSE: This amendment adds a permanent disability indicator and a boater identification indicator to the description of variable data which may appear on the back of a driver license, permit, or nondriver license and removes the diagram that appears with the rule.

*PURPOSE: This rule complies with section 302.181, RSMo, which provides for a form to be utilized for designating anatomical gifts as provided in section [194.240] **194.255**, RSMo, and the name and address of the person designated as the licensee's attorney-in-fact for the purposes of a durable power of attorney for health care decisions.*

(1) The *[attached]* information*[, included herein,]* **that** may be printed on the back of a person's driver license, permit, or non*[-]*driver license*[. It]* includes endorsements, restrictions, two (2)-dimensional bar code, **permanent disability indicator, boater identification indicator,** and areas for indicating whether the person has taken a skills test, for designating anatomical gifts, and for designating the name and address of the licensee's attorney-in-fact for the purposes of a durable power of attorney for health care decisions.

*AUTHORITY: sections 302.181, [RSMo 2000.] **302.171, 302.182, and 302.184, RSMo Supp. 2009.** Original rule filed Sept. 15, 1995, effective March 30, 1996. For intervening history, please consult the **Code of State Regulations**. Emergency amendment filed June 21, 2010, effective July 1, 2010, expires Dec. 28, 2010. Amended: Filed June 21, 2010.*

PUBLIC COST: This proposed amendment will cost affected state agencies or political subdivisions approximately eighteen thousand, nine hundred ninety-two dollars ($18,992) in the aggregate.

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Revenue, Legal Services Division, PO Box 475, Jefferson City, MO 65105-0475. To be considered comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

FISCAL NOTE
PUBLIC COST

I. Department Title: **Title 12 – DEPARTMENT OF REVENUE**
Division Title: **Division 10 – Director of Revenue**
Chapter Title: **Chapter 24 – Driver License Bureau Rules**

Rule Number and Name:	12 CSR 10-24.430 Back of Driver License, Permits, and Nondriver License
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Missouri Department of Revenue	**$8,992.50**
Office of Administration/Information Technology Services Division	**$10,000.00**

III. WORKSHEET

Missouri Department of Revenue – Personnel Services Bureau – Update web page, develop new physician's statement (web and hardcopy versions), update office procedures, and update driver guide (web and hardcopy versions) to add the permanent disability and boater indicators to the back of the driver and nondriver license.	
Administrative Analyst III	10 hrs @ $22 = $220.00
Management Analysis Spec I	40 hrs @ $20.00 = $800.00
Management Analysis Spec I	40 hrs @ $20.00 = $800.00
Missouri Department of Revenue – Driver License Bureau – Draft web updates, forms, procedures and requirements, test plan development and user testing to add the permanent disability and boater indicators to the back of the driver and nondriver license.	
Administrative Analyst	120 hrs @ $24 (1 1/2) per hr = $2880.00
Management Analysis Spec I I	160 hrs @ $23 per hr = $3680.00
Revenue Band Manager	20 hrs @ $30 per hr = $600.00
Missouri Department of Revenue – Forms cost for physician's statement	
Physician Statement	.025 x 500 = $12.50
Total	**$8,992.50**

Office of Administration/Information Technology Services Division – Design, program and test changes to the Missouri Electronic Driver License (MEDL) software and supporting applications to add the permanent disability and boater indicators to the back of the driver and nondriver license.	
Contractor Staff	100 hrs @ $100 per hr = $10,000.00
Total	**$10,000.00**

IV. ASSUMPTIONS

This proposed amendment establishes the cost to implement the provisions of HB683. The estimates are based on the Department's experience in implementing similar requirements. To determine the cost, the Department used its knowledge of the system and prior programming experience, estimated the number of hours, and used current staff salaries.

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 24—Driver License Bureau Rules

PROPOSED RULE

12 CSR 10-24.480 Boater Identification Indicator on Driver or Nondriver License

PURPOSE: This rule establishes the cost and criteria for placement of a boater identification indicator on a driver or nondriver license.

(1) To obtain a boater identification indicator on the back of a driver or nondriver license, the applicant must present a boater identification card issued by the Missouri State Water Patrol indicating the applicant has complied with the provisions of section 306.127, RSMo.

(2) A cost of one dollar ($1) will be charged to the applicant in addition to any fees required under law or state regulation for placement of the boater identification indicator on a driver or nondriver license.

(A) An applicant will be required to pay the one dollar ($1)-cost only upon initial issuance of the boater identification indicator on each document type—driver or nondriver license—received. Applicants renewing or updating a driver or nondriver license with a current indicator will not incur any cost to retain the indicator.

(B) The one dollar ($1)-cost will not be charged to applicants requesting to remove a boater identification indicator. Any fees required under law or state regulation to obtain the new, renewal, or duplicate driver or nondriver license will apply.

AUTHORITY: section 302.184, RSMo Supp. 2009. Emergency rule filed June 21, 2010, effective July 1, 2010, expires Dec. 28, 2010. Original rule filed June 21, 2010.

PUBLIC COST: This proposed rule will cost affected state agencies or political subdivisions approximately eighteen thousand, six hundred twenty dollars ($18,620) in the aggregate.

PRIVATE COST: This proposed rule could cost private entities two thousand, eighty dollars ($2,080) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Revenue, Legal Services Division, PO Box 475, Jefferson City, MO 65105-0475. To be considered comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

FISCAL NOTE
PUBLIC COST

I. Department Title: **Title 12 – DEPARTMENT OF REVENUE**
Division Title: **Division 10 – Director of Revenue**
Chapter Title: **Chapter 24 – Driver License Bureau Rules**

Rule Number and Name:	12 CSR 10-24.480 Boater Identification Indicator on Driver or Nondriver License
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Missouri Department of Revenue	**$8,620.00**
Office of Administration/Information Technology Services Division	**$10,000.00**

III. WORKSHEET

Missouri Department of Revenue – Personnel Services Bureau – Update web page, update office procedures, update driver guide (web and hardcopy versions).	
Administrative Analyst III	30 hrs @ $22 = $660.00
Management Analysis Spec I	40 hrs @ $20.00 = $800.00
Missouri Department of Revenue – Driver License Bureau – Draft web updates, forms, procedures, requirements, test plan development and user testing.	
Administrative Analyst	120 hrs @ $24 (1 1/2) per hr = $2880.00
Management Analysis Spec II	160 hrs @ $23 per hr = $3680.00
Revenue Band Manager	20 hrs @ $30 per hr = $600.00
Total	**$8,620.00**

Office of Administration/Information Technology Services Division – Design, program and test changes to the Missouri Electronic Driver License (MEDL) software and supporting applications.	
Contractor Staff	100 hrs @ $100 per hr = $10,000.00
Total	**$10,000.00**

IV. ASSUMPTIONS

This proposed rule establishes the cost to implement the provisions of HB683. The estimates are based on the Department's experience in implementing similar requirements. To determine the cost, the Department used its knowledge of the system and prior programming experience, estimated the number of hours, and used current staff salaries.

FISCAL NOTE
PRIVATE COST

I. Department Title: Title 12 – DEPARTMENT OF REVENUE
Division Title: Division 10 – Director of Revenue
Chapter Title: Chapter 24 – Driver License Bureau Rules

Rule Number and Name:	12 CSR 10-24.480 Boater Identification Indicator on Driver or Nondriver License
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the 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:
2080	**Estimated number of citizens that may elect to add the "boater" indicator to their driver or nondriver license**	**$2,080**

Any resident of this state who possesses a boater identification card issued by the Missouri State Water Patrol under section 306.127, RSMo, may apply to the Department of Revenue to have a notation placed on the person's driver license or nondriver license indicating that such person has complied with the provisions of section 306.127, RSMo.

III. WORKSHEET

The Missouri State Water Patrol issues an average of 8,318 boater identification cards per year.

- 2006 issued 9,428
- 2007 issued 6,922
- 2008 issued 8,010
- 2009 issued 8,913

Total 33,273

33,273 / 4 = an average of 8,318 x 25% = 2080 x $1.00 = $2,080 per year

IV. ASSUMPTIONS

This proposed rule establishes the cost to implement the provisions of HB683. The Department cannot determine the actual number of citizens that will elect to have the indicator added to their driver or nondriver license. Adding the indicator is optional and therefore is not mandated by law. The Department assumes for the purpose of this fiscal note that 25% of the citizens that have a boater identification card will elect to add the indicator to their driver or nondriver license.

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 24—Driver License Bureau Rules

PROPOSED RULE

12 CSR 10-24.485 Permanent Disability Indicator on Driver or Nondriver License

PURPOSE: This rule establishes the criteria for placement of a permanent disability indicator on a driver or nondriver license.

(1) As used in this rule, the term "permanently disabled" means having a physical or mental impairment, which substantially limits one's ability to perform one (1) or more major life activities and is permanent in nature, as determined by a licensed physician, physical therapist, or occupational therapist licensed pursuant to Chapter 334, RSMo, or other authorized licensed healthcare practitioner.

(2) As used in this rule, the term "healthcare practitioner" means a licensed physician, physical therapist, or occupational therapist licensed under Chapter 334, RSMo, or other authorized healthcare provider, licensed under the laws of the state of Missouri and approved by the director of revenue.

(3) To obtain a permanent disability indicator on a driver or nondriver license, an applicant at the time of application for an initial, renewal, or duplicate driver or nondriver license shall present a medical statement, as provided in section (1), completed and certified by a healthcare practitioner as provided in section (2).

(4) The issuance of a permanent disability indicator or notation on a driver or nondriver license is not for the purpose of any determination of eligibility or entitlement to any benefit or accommodation.

AUTHORITY: section 302.182, RSMo Supp. 2009. Emergency rule filed June 24, 2010, effective July 4, 2010, expires Dec. 31, 2010. Original rule filed June 24, 2010.

PUBLIC COST: This rule will cost affected state agencies or political subdivisions approximately eighteen thousand, nine hundred ninety-two dollars ($18,992) in the aggregate.

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Revenue, Legal Services Division, PO Box 475, Jefferson City, MO 65105-0475. To be considered comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

FISCAL NOTE
PUBLIC COST

I. Department Title: **Title 12 – DEPARTMENT OF REVENUE**
Division Title: **Division 10 – Director of Revenue**
Chapter Title: **Chapter 24 – Driver License Bureau Rules**

Rule Number and Name:	12 CSR 10-24.485 Permanent Disability Indicator on Driver or Nondriver License
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Missouri Department of Revenue	**$8,992.50**
Office of Administration/Information Technology Services Division	**$10,000.00**

III. WORKSHEET

Missouri Department of Revenue – Personnel Services Bureau – Update web page, develop new physician's statement (web and hardcopy versions), update office procedures, update driver guide (web and hardcopy versions).	
Administrative Analyst III	10 hrs @ $22 = $220.00
Management Analysis Spec I	40 hrs @ $20.00 = $800.00
Management Analysis Spec I	40 hrs @ $20.00 = $800.00
Missouri Department of Revenue – Driver License Bureau – Draft web updates, forms, procedures, requirements, test plan development and user testing.	
Administrative Analyst	120 hrs @ $24 (1 1/2) per hr = $2880.00
Management Analysis Spec I I	160 hrs @ $23 per hr = $3680.00
Revenue Band Manager	20 hrs @ $30 per hr = $600.00
Missouri Department of Revenue – Forms cost for physician's statement	
Physician Statement	.025 x 500 = $12.50
Total	**$8,992.50**

Office of Administration/Information Technology Services Division – Design, program and test changes to the Missouri Electronic Driver License (MEDL) software and supporting applications.	
Contractor Staff	100 hrs @ $100 per hr = $10,000.00
Total	**$10,000.00**

IV. ASSUMPTIONS

This proposed rule establishes the cost to implement the provisions of HB683. The estimates are based on the Department's experience in implementing similar requirements. To determine the cost, the Department used its knowledge of the system and prior programming experience, estimated the number of hours, and used current staff salaries.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 15—Hospital Program

PROPOSED AMENDMENT

13 CSR 70-15.010 Inpatient Hospital Services Reimbursement Plan; Outpatient Hospital Services Reimbursement Methodology. The division is amending sections (3), (4), (15), (16), and (18).

PURPOSE: This amendment provides the State Fiscal Year (SFY) 20I1 trend factor and specifies that it will not be applied in determining payments; clarifies the per diem rate, Direct Medicaid payments, and uninsured payments for facilities that do not have a fourth prior year base cost report and facilities previously certified for MO HealthNet that had terminated and are reopening; indicates the Missouri Specific Trend factor will not be applied in determining payments; and clarifies the safety net adjustment relating to the uninsured payment for Department of Mental Health (DMH) facilities.

(3) Per Diem Reimbursement Rate Computation. Each hospital shall receive a MO HealthNet per diem rate based on the following computation.

(B) Trend Indices (TI). Trend indices are determined based on the four (4)-quarter average DRI Index for DRI-Type Hospital Market Basket as published in *Health Care Costs* by DRI/McGraw-Hill for each State Fiscal Year (SFY) 1995 to 1998. Trend indices starting in SFY 1999 will be determined based on CPI Hospital indexed as published in *Health Care Costs* by DRI/McGraw-Hill for each State Fiscal Year (SFY).

1. The TI are—
   A. SFY 1994—4.6%
   B. SFY 1995—4.45%
   C. SFY 1996—4.575%
   D. SFY 1997—4.05%
   E. SFY 1998—3.1%
   F. SFY 1999—3.8%
   G. SFY 2000—4.0%
   H. SFY 2001—4.6%
   I. SFY 2002—4.8%
   J. SFY 2003—5.0%
   K. SFY 2004—6.2%
   L. SFY 2005—6.7%
   M. SFY 2006—5.7%
   N. SFY 2007—5.9%
   O. SFY 2008—5.5%
   P. SFY 2009—5.5%
   Q. SFY 2010—3.9%
   R. SFY 2011—3.2%—The 3.2% trend shall not be applied in determining the per diem rate, Direct Medicaid payments, or uninsured payments.

2. The TI for SFY 1996 through SFY 1998 are applied as a full percentage to the OC of the per diem rate and for SFY 1999 the OC of the June 30, 1998, rate shall be trended by 1.2% and for SFY 2000 the OC of the June 30, 1999, rate shall be trended by 2.4%. The OC of the June 30, 2000, rate shall be trended by 1.95% for SFY 2001.

3. The per diem rate shall be reduced as necessary to avoid any negative Direct Medicaid *[P]***p**ayments computed in accordance with subsection (15)(B).

4. A facility previously enrolled for participation in the MO HealthNet Program, which either voluntarily or involuntarily terminates its participation in the MO HealthNet Program and which reenters the MO HealthNet Program, shall have its MO HealthNet rate determined in accordance with section (4).

(4) Per Diem Rate—New Hospitals.

(B) Facilities Reimbursed by Medicare on a DRG Basis. In the absence of adequate cost data, a new facility's MO HealthNet rate *[may]* **shall** be ninety percent (90%) of the average-weighted, statewide per diem rate *[for two (2) fiscal years following the facility's initial fiscal year as a new facility. The MO HealthNet rate for the third fiscal year will be the facility's MO HealthNet rate for its second fiscal year indexed forward by the inflation index for the current fiscal year. The MO HealthNet rate]* for **the year it became certified to participate in the MO HealthNet Program until a prospective rate is determined on** the facility's fourth fiscal year *[will be determined]* **cost report** in accordance with sections (1)–(3) of this plan. **If the facility's fourth fiscal year cost report does not include any Medicaid costs, the facility shall continue to receive the initial rate, and the prospective rate will be determined from the facility's fifth fiscal year cost report.**

(C) In addition to the MO HealthNet rate determined by either subsection (4)(A) or (4)(B), the MO HealthNet per diem rate for a new hospital licensed after February 1, 2007, shall include an adjustment for the hospital's estimated Direct Medicaid Add-On payment per patient day, as determined in subsection (15)(C), until the facility's fourth fiscal year. The MO HealthNet rate for the facility's fourth fiscal year will be determined in accordance with sections (1)–(3) of this plan. The facility's Direct Medicaid Add-On adjustment will then no longer be included in the per diem rate but shall be calculated as a separate Add-On payment, as set forth in section (15). **If the facility's fourth fiscal year cost report does not include any Medicaid costs, the facility shall continue to receive the Direct Medicaid Add-On as an adjustment to its initial rate. The prospective rate will be determined on the facility's fifth fiscal year cost report at which time the facility's Direct Medicaid Add-On adjustment will no longer be included in the per diem but be calculated as a separate Add-On payment, as set forth in section (15).**

(15) Direct Medicaid Payments.

(B) Direct Medicaid payment will be computed as follows:

1. The MO HealthNet share of the inpatient FRA assessment will be calculated by dividing the hospital's inpatient Medicaid patient days by the total inpatient hospital patient days from the hospital's base cost report to arrive at the inpatient Medicaid utilization percentage. This percentage is then multiplied by the inpatient FRA assessment for the current SFY to arrive at the increased allowable MO HealthNet costs for the inpatient FRA assessment. The MO HealthNet share of the outpatient FRA assessment will be calculated by dividing the hospital's outpatient MO HealthNet charges by the total outpatient hospital charges from the base cost report to arrive at the MO HealthNet utilization percentage. This percentage is then multiplied by the outpatient FRA assessment for the current SFY to arrive at the increased allowable MO HealthNet costs for the outpatient FRA assessment;

2. The unreimbursed MO HealthNet costs are determined by subtracting the hospital's per diem rate from its trended per diem costs. The difference is multiplied by the estimated MO HealthNet patient days for the current SFY plus the out-of-state days from the fourth prior year cost report trended to the current SFY. The estimated MO HealthNet patient days for the current SFY shall be the better of the sum of the Fee-for-Service (FFS) days plus managed care days or the days used in the prior SFY's Direct Medicaid payment calculation. The FFS days are determined from a regression analysis of the hospital's FFS days from February 1999 through December of the second prior SFY. The managed care days are based on the FFS days determined from the regression analysis, as follows: The FFS days are factored up by the percentage of FFS days to the total of FFS days plus managed care days from the hospital's fourth prior year cost report. The difference between the FFS days and the FFS days factored up by the FFS days' percentage are the managed care days.

A. Effective January 1, 2010, the estimated MO HealthNet patient days shall be the better of the sum of the FFS days plus managed care days or the days used in the prior SFY's Direct Medicaid payment calculation (i.e., for SFY 2010, prior SFY would be SFY 2009) adjusted downward by twenty-five percent (25%) of the difference between the sum of the FFS days plus managed care days and the days used in the prior SFY's Direct Medicaid payment calculation.

(I) The FFS days plus managed care days are determined as follows: The FFS days are determined by applying a trend to the second prior Calendar Year (CY) days (i.e., for SFY 2010, second prior CY would be 2008) as determined from the state's Medicaid Management Information System (MMIS). The trend is determined from a regression analysis of the hospital's FFS days from February 1999 through December of the second prior CY. The managed care days are based on the FFS days determined from the regression analysis, as follows: The FFS days are factored up by the percentage of FFS days to the total of FFS days plus managed care days from the hospital's fourth prior year cost report. The difference between the FFS days and the FFS days factored up by the FFS days' percentage are the managed care days.

(II) The days used in the prior SFY's Direct Medicaid payment calculation adjusted downward by twenty-five percent (25%) are determined as follows: The days used in the prior SFY's Direct Medicaid payment calculation are compared to the sum of the FFS days plus managed care days as determined in part (15)(B)2.A.(I). If the hospital has greater estimated days as used in the prior SFY's Direct Medicaid payment calculation than the sum of the FFS days plus managed care days as determined in part (15)(B)2.A.(I), the difference between the days is multiplied by twenty-five percent (25%), and this amount is removed from the estimated days used in the prior SFY's Direct Medicaid payment calculation to arrive at the current year's estimated days.

B. Effective July 1, 2010, the estimated MO HealthNet patient days shall be the better of the sum of the FFS days plus managed care days or the days used in the SFY 2009 Direct Medicaid payment calculation adjusted downward by fifty percent (50%) of the difference between the sum of the FFS days plus managed care days and the days used in the SFY 2009 Direct Medicaid payment calculation.

(I) The FFS days plus managed care days are determined as set forth in part (15)(B)2.A.(I).

(II) The days used in the prior SFY's Direct Medicaid payment calculation adjusted downward by fifty percent (50%) are determined as follows: The days used in the prior SFY's Direct Medicaid payment calculation are compared to the sum of the FFS days plus managed care days as determined in part (15)(B)2.A.(I). If the hospital has greater estimated days as used in the prior SFY's Direct Medicaid payment calculation than the sum of the FFS days plus managed care days as determined in part (15)(B)2.A.(I), the difference between the days is multiplied by fifty percent (50%) and this amount is removed from the estimated days used in the prior SFY's Direct Medicaid payment calculation to arrive at the current year's estimated days.

C. Effective July 1, 2011, the estimated MO HealthNet patient days shall be the better of the sum of the FFS days plus managed care days or the days used in the SFY 2009 Direct Medicaid payment calculation adjusted downward by seventy-five percent (75%) of the difference between the sum of the FFS days plus managed care days and the days used in the SFY 2009 Direct Medicaid payment calculation.

(I) The FFS days plus managed care days are determined as set forth in part (15)(B)2.A.(I).

(II) The days used in the prior SFY's Direct Medicaid payment calculation adjusted downward by seventy-five percent (75%) are determined as follows: The days used in the prior SFY's Direct Medicaid payment calculation are compared to the sum of the FFS days plus managed care days as determined in part (15)(B)2.A.(I). If the hospital has greater estimated days as used in the prior SFY's Direct Medicaid payment calculation than the sum of the FFS days plus managed care days as determined in part (15)(B)2.A.(I), the difference between the days is multiplied by seventy-five percent (75%) and this amount is removed from the estimated days used in the prior SFY's Direct Medicaid payment calculation to arrive at the current year's estimated days.

D. Effective July 1, 2012, the estimated MO HealthNet patient days shall be the sum of the FFS days plus managed care days. The FFS days plus managed care days are determined as set forth in part (15)(B)2.A.(I).

E. The trended cost per day is calculated by trending the base year costs per day by the trend indices listed in paragraph (3)(B)1., using the rate calculation in subsection (3)(A). In addition to the trend indices applied to inflate base period costs to the current fiscal year, base year costs will be further adjusted by a Missouri Specific Trend. The Missouri Specific Trend will be used to address the fact that costs for Missouri inpatient care of MO HealthNet residents have historically exceeded the compounded inflation rates estimated using national hospital indices for a significant number of hospitals. The Missouri Specific Trend will be applied at one and one-half percent (1.5%) per year to the hospital's base year. For example, hospitals with a 1998 base year will receive an additional six percent (6%) trend, and hospitals with a 1999 base year will receive an additional four and one-half percent (4.5%) trend.

(I) Effective for dates of service beginning July 1, 2010, the Missouri Specific Trend shall no longer be applied to inflate base period costs.

F. For hospitals that meet the requirements in paragraphs (6)(A)1., (6)(A)2., and (6)(A)4. of this rule (safety net hospitals), the base year cost report may be from the third prior year, the fourth prior year, or the fifth prior year. For hospitals that meet the requirements in paragraphs (6)(A)1. and (6)(A)3. of this rule (first tier Disproportionate Share Hospitals), the base year operating costs may be the third or fourth prior year cost report. The MO HealthNet Division shall exercise its sole discretion as to which report is most representative of costs. For all other hospitals, the base year operating costs are based on the fourth prior year cost report. For any hospital that has both a twelve (12)-month cost report and a partial year cost report, its base period cost report for that year will be the twelve (12)-month cost report.

G. The trended cost per day does not include the costs associated with the FRA assessment, the application of minimum utilization, the utilization adjustment, and the poison control costs computed in paragraphs (15)(B)1., 3., 4., and 5.;

3. The minimum utilization costs for capital and medical education is calculated by determining the difference in the hospital's cost per day when applying the minimum utilization as identified in paragraph (5)(C)4., and without applying the minimum utilization. The difference in the cost per day is multiplied by the estimated MO HealthNet patient days for the SFY;

4. The utilization adjustment cost is determined by estimating the number of MO HealthNet inpatient days the hospital will not provide as a result of the managed care health plans limiting inpatient hospital services. These days are multiplied by the hospital's cost per day to determine the total cost associated with these days. This cost is divided by the remaining total patient days from its base period cost report to arrive at the increased cost per day. This increased cost per day is multiplied by the estimated MO HealthNet days for the current SFY to arrive at the MO HealthNet utilization adjustment.

A. Effective January 1, 2010, hospitals other than safety net hospitals as defined in subsection (6)(B) will receive sixty-seven percent (67%) of the utilization adjustment calculated in accordance with paragraph (15)(B)4. Safety net hospitals will continue to receive one hundred percent (100%) of the adjustment calculated in accordance with paragraph (15)(B)4.

B. Effective July 1, 2010, hospitals other than safety net hospitals as defined in subsection (6)(B), children's hospitals as defined in subsection (2)(S), and specialty pediatric hospitals as defined in

subsection (2)(P) will receive thirty-four percent (34%) of the utilization adjustment calculated in accordance with paragraph (15)(B)4. Children's hospitals and specialty pediatric hospitals will receive fifty percent (50%) of the adjustment calculated in accordance with paragraph (15)(B)4. Safety net hospitals will continue to receive one hundred percent (100%) of the adjustment calculated in accordance with paragraph (15)(B)4.

C. Effective July 1, 2011, the utilization adjustment will no longer apply to any hospital other than safety net hospitals as defined in subsection (6)(B), children's hospitals as defined in subsection (2)(S), and specialty pediatric hospitals as defined in subsection (2)(P). Children's hospitals and specialty pediatric hospitals will continue to receive fifty percent (50%) of the adjustment calculated in accordance with paragraph (15)(B)4. Safety net hospitals will continue to receive one hundred percent (100%) of the adjustment calculated in accordance with paragraph (15)(B)4.

5. The poison control cost shall reimburse the hospital for the prorated MO HealthNet managed care cost. It will be calculated by multiplying the estimated MO HealthNet share of the poison control costs by the percentage of managed care participants to total MO HealthNet participants; and

6. Prior to July 1, 2006, the costs for including out-of-state Medicaid days is calculated by subtracting the hospital's per diem rate from its trended per diem cost and multiplying this difference by the out-of-state Medicaid days from the base year cost report. Effective July 1, 2006, the costs for including out-of-state Medicaid days is calculated by subtracting the hospital's per diem rate from its trended per diem cost and multiplying this difference by the out-of-state Medicaid days as determined from the regression analysis performed using the out-of-state days from the fourth, fifth, and sixth prior year cost reports.

(C) For new hospitals that do not have a base cost report, Direct Medicaid payments shall be estimated as follows:

1. Hospitals receiving Direct Medicaid payments shall be divided into quartiles based on total beds;

2. Direct Medicaid payments shall be individually summed by quartile and then divided by the total beds in the quartile to yield an average Direct Medicaid payment per bed;

3. The number of beds for the new hospital without the base cost report shall be multiplied by the average Direct Medicaid payment per bed to determine the hospital's estimated Direct Medicaid payment for the current state fiscal year; and

4. For a new hospital licensed after February 1, 2007, estimated total Direct Medicaid payments for the current state fiscal year shall be divided by the estimated MO HealthNet patient days for the new hospital's quartile to obtain the estimated Direct Medicaid adjustment per patient day. This adjustment per day shall be added to the new hospital's MO HealthNet rate as determined in section (4), so that the hospital's Direct Medicaid payment per day is included in its per diem rate, rather than as a separate *[addon]* **Add-On** payment. When the hospital's per diem rate is determined from its fourth prior year cost report in accordance with sections (1)–(3), the facility's Direct Medicaid payment will be calculated in accordance with subsection (15)(B) and reimbursed as an *[addon]* **Add-On** payment rather than as part of the per diem rate. If the hospital is defined as a critical access hospital, its MO HealthNet per diem rate and Direct Medicaid payment will be determined in accordance with subsection (5)(F).

5. A facility previously enrolled for participation in the MO HealthNet Program, which either voluntarily or involuntarily terminates its participation in the MO HealthNet Program and which reenters the MO HealthNet Program, shall have its Direct Medicaid payments determined in accordance with subsection (15)(C).

(16) Safety Net Adjustment. A safety net adjustment, in lieu of the Direct Medicaid Payments and Uninsured Add-Ons, shall be provided for each hospital which qualified as disproportionate share under the provision of paragraph (6)(A)4. The safety net adjustment payment shall be made prior to the end of each federal fiscal year.

(B) The safety net adjustment for facilities which qualify under subparagraph (6)(A)4.D. of this regulation shall be computed in accordance with the Direct Medicaid *[P]***p**ayment calculation described in section (15) and **up to one hundred percent (100%) of** the uninsured costs calculation described in subsection (18)(B) of this regulation. The safety net adjustment will include the last three (3) quarters of the SFY ending June 30 and the first quarter of the next SFY beginning July 1 to correspond with the FFY of October 1 to September 30.

(18) In accordance with state and federal laws regarding reimbursement of unreimbursed costs and the costs of services provided to uninsured patients, reimbursement for each State Fiscal Year (SFY) (July 1–June 30) shall be determined as follows:

(B) Uninsured Add-Ons. The hospital shall receive eighty-nine percent (89%) of the uninsured costs prorated over the SFY. Hospitals which contribute through a plan approved by the director of health to support the state's poison control center, the Primary Care Resource Initiative for Missouri (PRIMO), and Patient Safety Initiatives shall receive ninety percent (90%) of its uninsured costs prorated over the SFY. **DMH hospitals shall receive up to one hundred percent (100%) of their uninsured costs.** The uninsured Add-On will include:

(C) For new hospitals that do not have a base cost report, uninsured payments shall be estimated as follows:

1. Hospitals receiving uninsured payments shall be divided into quartiles based on total beds;

2. Uninsured payments shall be individually summed by quartile and then divided by the total beds in the quartile to yield an average uninsured payment per bed; *[and]*

3. The numbers of beds for the new hospital without the base cost report shall be multiplied by the average uninsured payment per bed*[.]***; and**

4. A facility previously enrolled for participation in the MO HealthNet Program, which either voluntarily or involuntarily terminates its participation in the MO HealthNet Program and which reenters the MO HealthNet Program, shall have its uninsured payments determined in accordance with subsection (18)(C).

AUTHORITY: sections 208.152, 208.153, 208.201, and 208.471, RSMo Supp. 2009. This rule was previously filed as 13 CSR 40-81.050. Original rule filed Feb. 13, 1969, effective Feb. 23, 1969. For intervening history, please consult the ***Code of State Regulations****. Emergency amendment filed June 17, 2010, effective July 1, 2010, expires Dec. 27, 2010. Amended: Filed June 17, 2010.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in SFY 2011, which period covers the anticipated aggregate public cost of the amended rule.

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be delivered by regular mail, express or overnight mail, in person, or by courier within thirty (30) days after publication of this notice in the ***Missouri Register****. If to be hand-delivered, comments must be brought to the MO HealthNet Division at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 15—Hospital Program

PROPOSED AMENDMENT

13 CSR 70-15.110 Federal Reimbursement Allowance (FRA). The division is amending section (1) and adding section (19).

PURPOSE: This amendment will specify the trends to be applied to the inpatient and outpatient adjusted net revenues determined from the FRA fiscal year cost report, clarify the estimated inpatient and outpatient adjusted net revenues for hospitals without a base year cost report, and establish the Federal Reimbursement Allowance assessment effective for dates of service beginning July 1, 2010, at five and forty-five hundredths percent (5.45%) of each hospital's inpatient and outpatient adjusted net revenues as determined from its FRA fiscal year cost report.

(1) Federal Reimbursement Allowance (FRA). FRA shall be assessed as described in this section.

(A) Definitions.

1. Bad debts—Amounts considered to be uncollectible from accounts and notes receivable that were created or acquired in providing services. Allowable bad debts include the costs of caring for patients who have insurance, but their insurance does not cover the particular service procedures or treatment rendered.

2. Base cost report—Desk-reviewed Medicare/Medicaid cost report. When a hospital has more than one (1) cost report with periods ending in the base year, the cost report covering a full twelve (12)-month period will be used. If none of the cost reports covers a full twelve (12) months, the cost report with the latest period will be used. If a hospital's base cost report is less than or greater than a twelve (12)-month period, the data shall be adjusted, based on the number of months reflected in the base cost report, to a twelve (12)-month period.

3. Charity care—Those charges written off by a hospital based on the hospital's policy to provide health care services free of charge or at a reduced charge because of the indigence or medical indigence of the patient.

4. Contractual allowances—Difference between established rates for covered services and the amount paid by third-party payers under contractual agreements. The Federal Reimbursement Allowance (FRA) is a cost to the hospital, regardless of how the FRA is remitted to the MO HealthNet Division, and shall not be included in contractual allowances for determining revenues. Any redistributions of MO HealthNet payments by private entities acting at the request of participating health care providers shall not be included in contractual allowances or determining revenues or cost of patient care.

5. Department—Department of Social Services.

6. Director—Director of the Department of Social Services.

7. Division—MO HealthNet Division, Department of Social Services.

8. Engaging in the business of providing inpatient health care—Accepting payment for inpatient services rendered.

9. Federal Reimbursement Allowance (FRA)—The fee assessed to hospitals for the privilege of engaging in the business of providing inpatient health care in Missouri. The FRA is an allowable cost to the hospital.

10. Fiscal period—Twelve (12)-month reporting period determined by each hospital.

11. Gross hospital service charges—Total charges made by the hospital for inpatient and outpatient hospital services that are covered under 13 CSR 70-15.010.

12. Hospital—A place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment, or care for not fewer than twenty-four (24) hours in any week of three (3) or more nonrelated individuals suffering from illness, disease, injury, deformity, or other abnormal physical conditions; or a place devoted primarily to provide for not fewer than twenty-four (24) hours in any week, medical or nursing care for three (3) or more nonrelated individuals. The term hospital does not include convalescent, nursing, shelter, or boarding homes as defined in Chapter 198, RSMo.

13. Hospital revenues subject to FRA assessment effective July 1, 2008—Each hospital's inpatient adjusted net revenues and outpatient adjusted net revenues subject to the FRA assessment will be determined as follows:

A. Obtain "Gross Total Charges" from Worksheet G-2, Line 25, Column 3, of the *[most recent]* **third prior year** cost report *[that is available]* **(i.e., FRA fiscal year cost report)** for *[a]* **the** hospital. Charges shall exclude revenues for physician services. Charges related to activities subject to the Missouri taxes assessed for outpatient retail pharmacies and nursing facility services shall also be excluded. "Gross Total Charges" will be reduced by the following:

(I) "Nursing Facility Charges" from Worksheet C, Part I, Line 35, Column 6.

(II) "Swing Bed Nursing Facility Charges" from Worksheet G-2, Line 5, Column 1.

(III) "Nursing Facility Ancillary Charges" as determined from the Department of Social Services, MO HealthNet Division, nursing home cost report. (Note: To the extent that the gross hospital charges, as specified in subparagraph (1)(A)13.A. above, include long-term care charges, the charges to be excluded through this step shall include all long-term care ancillary charges including skilled nursing facility, nursing facility, and other long-term care providers based at the hospital that are subject to the state's provider tax on nursing facility services.)

(IV) "Distinct Part Ambulatory Surgical Center Charges" from Worksheet G-2, Line 22, Column 2.

(V) "Ambulance Charges" from Worksheet C, Part I, Line 65, Column 7.

(VI) "Home Health Charges" from Worksheet G-2, Line 19, Column 2.

(VII) "Total Rural Health Clinic Charges" from Worksheet C, Part I, Column 7, Lines 63.50–63.59.

(VIII) "Other Non-Hospital Component Charges" from Worksheet G-2, Lines 6, 8, 21, 21.02, 23, and 24.

B. Obtain "Net Revenue" from Worksheet G-3, Line 3, Column 1. The state will ensure this amount is net of bad debts and other uncollectible charges by survey methodology.

C. "Adjusted Gross Total Charges" (the result of the computations in subparagraph (1)(A)13.A.) will then be further adjusted by a hospital-specific collection-to-charge ratio determined as follows:

(I) Divide "Net Revenue" by "Gross Total Charges."

(II) "Adjusted Gross Total Charges" will be multiplied by the result of part (1)(A)13.C.(I) to yield "Adjusted Net Revenue."

D. Obtain "Gross Inpatient Charges" from Worksheet G-2, Line 25, Column 1, of the most recent cost report that is available for a hospital.

E. Obtain "Gross Outpatient Charges" from Worksheet G-2, Line 25, Column 2, of the most recent cost report that is available for a hospital.

F. Total "Adjusted Net Revenue" will be allocated between "Net Inpatient Revenue" and "Net Outpatient Revenue" as follows:

(I) "Gross Inpatient Charges" will be divided by "Gross Total Charges."

(II) "Adjusted Net Revenue" will then be multiplied by the result to yield "Net Inpatient Revenue."

(III) The remainder will be allocated to "Net Outpatient Revenue."

G. The trend indices listed *[in 13 CSR 70-15.010(3)(B) and the Missouri Specific Trend defined in 13 CSR 70-15.010(15)(B)2.A.]* **below** will be applied to the apportioned inpatient adjusted net revenue and outpatient adjusted net revenue in

order to inflate or trend forward the adjusted net revenues from the *[base cost report]* **FRA** fiscal year **cost report** to the current state fiscal year to determine the inpatient and outpatient adjusted net revenues subject to the FRA assessment.

(I) SFY 2009 = 5.50%
(II) SFY 2009 Missouri Specific Trend = 1.50%
(III) SFY 2010 = 3.90%
(IV) SFY 2010 Missouri Specific Trend = 1.50%
(V) SFY 2011 = 3.20%

14. Net operating revenue—Gross charges less bad debts, less charity care, and less contractual allowances times the trend indices listed in 13 CSR 70-15.010(3)(B).

15. Other operating revenues—The other operating revenue is total other revenue less government appropriations, less donations, and less income from investments times the trend indices listed in 13 CSR 70-15.010(3)(B).

(B) Each hospital*[, except public hospitals which are operated primarily for the care and treatment of mental disorders and any hospital operated by the Department of Health and Senior Services,]* engaging in the business of providing inpatient health care in Missouri shall pay an FRA. The FRA shall be calculated by the Department of Social Services.

1. The FRA shall be sixty-three dollars and sixty-three cents ($63.63) per inpatient hospital day from the 1991 base cost report for Federal Fiscal Year 1994. For succeeding periods, the FRA shall be as described beginning with section (2) and going forward.

2. If a hospital does not have a fourth prior year base cost report, inpatient and outpatient adjusted net revenues shall be estimated as follows:

A. Hospitals required to pay the FRA**, except safety net hospitals,** shall be divided in quartiles based on total beds;

B. *[Average inpatient and outpatient adjusted net revenues shall be individually summed and divided by the total beds in the quartile to yield an average inpatient and outpatient adjusted net revenue per bed;]* **The inpatient adjusted net revenue shall be summed for each quartile and divided by the total beds in the quartile to yield an average inpatient adjusted net revenue per bed. The number of beds for the hospital without the base cost report shall be multiplied by the average inpatient adjusted net revenue per bed to determine the estimated inpatient adjusted net revenue;** and

C. *[Finally, the number of beds for the hospital without the base cost report shall be multiplied by the average inpatient and outpatient adjusted net revenue per bed.]* **The outpatient adjusted net revenue shall be summed for each quartile and divided by the number of facilities in the quartile to yield an average outpatient adjusted net revenue per facility which will be the estimated outpatient adjusted net revenue for the hospital without the base cost report.**

3. The FRA assessment for hospitals that merge operation under one (1) Medicare and MO HealthNet provider number shall be determined as follows:

A. The previously determined FRA assessment for each hospital shall be combined under the active MO HealthNet provider number for the remainder of the state fiscal year after the division receives official notification of the merger; and

B. The FRA assessment for subsequent fiscal years shall be based on the combined data for both facilities.

(19) Beginning July 1, 2010, the FRA assessment shall be determined at the rate of five and forty-five hundredths percent (5.45%) of each hospital's inpatient adjusted net revenues and outpatient adjusted net revenues as set forth in paragraph (1)(A)13. The FRA assessment rate of five and forty-five hundredths percent (5.45%) will be applied individually to the hospital's inpatient adjusted net revenues and outpatient adjusted net revenues. The hospital's total FRA assessment is the sum of the assessment determined from its inpatient adjusted net revenue plus the assessment determined for its outpatient adjusted net revenue.

AUTHORITY: section 208.201, RSMo Supp. 2009 and sections 208.453 and 208.455, RSMo 2000. Emergency rule filed Sept. 21, 1992, effective Oct. 1, 1992, expired Jan. 28, 1993. Emergency rule filed Jan. 15, 1993, effective Jan. 25, 1993, expired May 24, 1993. Original rule filed Sept. 21, 1992, effective June 7, 1993. For intervening history, please consult the ***Code of State Regulations****. Emergency amendment filed June 17, 2010, effective July 1, 2010, expires Dec. 27, 2010. Amended: Filed June 17, 2010.*

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in SFY 2011, which period covers the anticipated aggregate public cost of the amended rule.

PRIVATE COST: This proposed amendment is expected to cost private entities $917,569,686 in SFY 2011.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be delivered by regular mail, express or overnight mail, in person, or by courier within thirty (30) days after publication of this notice in the ***Missouri Register****. If to be hand-delivered, comments must be brought to the MO HealthNet Division at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.*

FISCAL NOTE
PRIVATE COST

I. Department Title: Title 13 - Department of Social Services
Division Title: Division 70 - MO HealthNet Division
Chapter Title: Chapter 15 – Hospital Program

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

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the 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:
149	**Hospitals**	**Estimated cost for SFY 2011 $917.6 million**

III. WORKSHEET

	No. of Facilities	Trended Inpatient Revenues	Trended Outpatient Revenues	Total
Private Facilities	103	$8,213,274,292	$6,044,110,127	
FRA Assessment Rate		5.45%	5.45%	
		$447,623,449	$329,404,002	$777,027,451
Public Facilities	46	$1,471,496,439	$1,107,260,185	
FRA Assessment Rate		5.45%	5.45%	
		$80,196,556	$60,345,680	$140,542,236
Total Assessment	149	$527,820,005	$389,749,682	$917,569,687

IV. ASSUMPTIONS

This fiscal note reflects the total assessment to be collected during SFY 2011 and is an increase of approximately $32 million over SFY 2010.

The fiscal note is based on establishing the FRA assessment rate at 5.45% effective for dates of service beginning July 1, 2010. The FRA assessment rate of 5.45% is levied upon Missouri hospitals' trended, inpatient and outpatient net adjusted revenue in accordance with the Missouri Partnership Plan.

As indicated above, 46 of the total 149 hospitals are owned or controlled by the state, counties, cities, or hospital districts.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 20—Pharmacy Program

PROPOSED AMENDMENT

13 CSR 70-20.320 Pharmacy Reimbursement Allowance. The division is amending section (2).

PURPOSE: This amendment establishes the Pharmacy Reimbursement Allowance beginning July 1, 2010, at one and ninety-seven hundredths percent (1.97%) of gross retail prescription receipts.

(2) Payment of the PRA.

(E) PRA Rates.

1. The PRA tax rate will be a uniform effective rate of *[one and twenty hundredths percent (1.20%)]* **one and ninety-seven hundredths percent (1.97%)** with an aggregate annual adjustment, by the MO HealthNet Division, not to exceed five hundredths percent (.05%) based on the pharmacy's total prescription volume.

2. *[Beginning January 1, 2010, the PRA tax rate will be a uniform effective rate of one and eighty-two hundredths percent (1.82%) with an aggregate quarterly adjustment, by the MO HealthNet Division, not to exceed five tenths percent (0.5%) based on the pharmacy's total prescription volume.*

3.] The maximum rate shall be five percent (5%).

*AUTHORITY: sections 208.201 and 338.505, RSMo Supp. [2008] **2009**. Emergency rule filed June 20, 2002, effective July 1, 2002, expired Feb. 27, 2003. Original rule filed July 15, 2002, effective Feb. 28, 2003. For intervening history, please consult the **Code of State Regulations**. Emergency amendment filed June 17, 2010, effective July 1, 2010, expires Dec. 27, 2010. Amended: Filed June 17, 2010.*

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

PRIVATE COST: This proposed amendment will cost private entities $99.2 million annually.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be delivered by regular mail, express or overnight mail, in person, or by courier within thirty (30) days after publication of this notice in the **Missouri Register**. If to be hand-delivered, comments must be brought to the MO HealthNet Division at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.*

FISCAL NOTE
PRIVATE COST

I. Department Title: Department of Social Services
Division Title: MO HealthNet Division
Chapter Title: Pharmacy Program

Rule Number and Title:	13 CSR 70-20.320 Pharmacy Reimbursement Allowance
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
1,200	Retail Pharmacies	$99.2 million

III. WORKSHEET

IV. ASSUMPTIONS

The tax is based on gross retail prescription receipts reported via an affidavit by the pharmacies. Total gross retail prescription receipts for calendar year 2009 were approximately $5.034 billion. The tax rate for the year is estimated at 1.97%, therefore, the fiscal impact is estimated at $99.2 million.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 30—Division of Regulation and Licensure
Chapter 1—Controlled Substances

PROPOSED AMENDMENT

19 CSR 30-1.074 Dispensing Without a Prescription. The department is adding a new section (1), renumbering the old section (1) to section (2) and amending it, and adding new section (3).

PURPOSE: This amendment establishes specific requirements and restrictions regarding transmission of information regarding sales of methamphetamine precursors to a statewide electronic database.

(1) Definitions. For the purposes of this rule, the following terms shall apply:

(A) "Dispenser" means a pharmacist, intern pharmacist, or registered pharmacy technician who sells, dispenses, or otherwise provides methamphetamine precursor products to purchasers;

(B) "Methamphetamine precursor products" means both Schedule V pseudoephedrine products and any other drug product containing any detectable amount of ephedrine, pseudoephedrine, or phenylpropanolamine, including the salts or optical isomers or salts of optical isomers or ephedrine, its salts or optical isomers, or salts of optical isomers of ephedrine, pseudoephedrine, or phenylpropanolamine; and

(C) "Valid photo identification" means forms of identification issued in the United States by a U.S. state, territory, or U.S. federal government that contain a photograph and date of birth.

*[(1)]***(2) Dispensing Without a Prescription.** A controlled substance listed in Schedule V which is not a prescription drug *[and determined]* under the federal Food, Drug and Cosmetic Act**, and is not a methamphetamine precursor product,** may be dispensed by a pharmacist without a prescription to a purchaser at retail; provided, that—

[(A) Products that are designated Schedule V controlled substances which contain any detectable amount of pseudoephedrine, its salts or optical isomers, or salts of optical isomers or ephedrine, its salts or optical isomers, or salts of optical isomers may be sold, distributed or otherwise provided only by a pharmacist or pharmacy ancillary personnel as authorized by the Missouri State Board of Pharmacy;]

*[(B)]***(A)** Dispensing *[of any other substance listed in Schedule V]* is made only by a pharmacist and not by a nonpharmacist employee even if under the supervision of a pharmacist (although after the pharmacist has fulfilled his/her professional and legal responsibilities, the actual cash transaction, credit transaction**,** or delivery may be completed by a nonpharmacist); **and**

*[(C)]***(B)** Dispensing, sale, distribution**,** or otherwise providing is limited to*[:*

1. Not] **not** more than two hundred forty cubic centimeters (240 cc) or eight ounces (8 oz.) of any controlled substance containing opium, nor more than one hundred twenty cubic centimeters (120 cc) or four ounces (4 oz.) of any other controlled substance**,** nor more than forty-eight (48) dosage units of any controlled substance containing opium, nor more than twenty-four (24) dosage units of any other controlled substance may be dispensed at retail to the same purchaser in any given forty-eight (48)-hour period*[;]***.**

[2. Within any thirty (30)-day period, not more than any number of packages of any drug product containing any detectable amount of ephedrine or pseudoephedrine in any total amount greater than nine (9) grams, or any of their salts or optical isomers, or salts of optical isomers, either as:

A. The sole active ingredient; or

B. One of the active ingredients of a combination drug; or

C. A combination of any of the products specified in subsections (A) and (B) of this section;

(D) The purchaser is at least eighteen (18) years of age;

(E) The pharmacist requires every purchaser of a Schedule V controlled substance not known to him/her to furnish suitable photo identification (including proof of age where appropriate);

(F) Pharmacists and registered pharmacy technicians shall implement and maintain a written or electronic log of each transaction.

1. Such log shall include the following information:

A. The name and address of the purchaser;

B. The amount of the compound, mixture, or preparation purchased;

C. The date of each purchase; and

D. The name or initials of the pharmacist or registered pharmacy technician who dispensed, sold, distributed, or otherwise provided the compound, mixture, or preparation to the purchaser.

2. An auxiliary written log shall be established for the documentation of Schedule V substances dispensed, sold, distributed or otherwise provided if the electronic log is inoperative for any reason.

3. Any electronic log described in subsection (F) must be capable of providing a listing of utilization of any Schedule V substance for a minimum of the preceding twelve (12)-month period. Utilization information shall be available by both specific Schedule V product and purchaser name;

(G) A prescription is not required for distribution or dispensing of the substance pursuant to any other federal, state or local law.]

(3) Methamphetamine precursor products may be sold, dispensed, distributed, or otherwise provided only as follows:

(A) Products that are designated Schedule V controlled substances which contain any detectable amount of pseudoephedrine, ephedrine, phenylpropanolamine, their salts or optical isomers, or salts of their optical isomers may be sold, distributed, or otherwise provided only by a pharmacist or pharmacy ancillary personnel as authorized by the Missouri State Board of Pharmacy;

(B) Dispensers of methamphetamine precursor products shall exercise reasonable care in assuring that the purchaser has not exceeded the three and six-tenths (3.6)-grams limit per day or the nine (9)-gram limit per thirty (30)-day period;

(C) Dispensers shall utilize the real-time electronic pseudoephedrine tracking system established and maintained by the Missouri Department of Health and Senior Services (DHSS);

(D) Methamphetamine precursor products regulated by Missouri law as controlled substances shall only be sold to customers eighteen (18) years of age or older who present a valid photo identification;

(E) Any dispenser who sells, dispenses, or otherwise provides any methamphetamine precursor product shall submit the following information to the DHSS electronic database at the time of purchase:

1. Date and time of transaction;

2. Pharmacy identification information, including:

A. National Council for Prescription Drug Programs identification number; or

B. National Association of Boards of Pharmacy identification number; or

C. Vendor assigned site and/or pharmacy identifier;

3. Purchaser information, including the following fields:

A. Purchaser's given or first name;

B. Purchaser's middle name (if any);

C. Purchaser's surname or last name;

D. The purchaser's full name shall be entered into the database without the use of initials or nicknames;

E. Purchaser's date of birth; and

F. Purchaser's address, including number, street, city, state, and zip code;

4. Identification of the form of valid photo identification presented by the purchaser; including issuing agency of the photo identification and identification number appearing on the photo identification;

5. Purchaser's signature;

6. Dispenser identification, including:

A. The name of the individual performing the transaction, or

B. The initials of the individual performing the transaction;

7. Transaction number, assigned by the database provider/vendor;

8. Purchase transaction information, including the following:

A. Product Universal Product Code (UPC);

B. Product National Drug Code (NDC) (optional);

C. Unique product description; and

D. Purchase quantity, in grams as—

(I) Product grams per box and number of boxes in transaction;

(II) Product grams per dosage form such as tablet, capsule, or milliliter, and number of dosages per transaction; or

(III) Other mechanism identified by the database provider/vendor; and

9. Form of pseudoephedrine in a manner defined by the database provider/vendor, including but not limited to:

A. Tablet;

B. Capsule;

C. Liquid-filled gelcap; or

D. Liquid;

(F) Purchaser information provided and entered into the DHSS electronic database shall be the same as that on the presented identification. Full names shall be used and not merely initials or a nickname;

(G) If the DHSS electronic database is not available at the time of the sale of the methamphetamine precursor product, the information to be provided in subsection (3)(E) above shall be recorded manually and entered into the DHSS electronic database as soon as practicable after the system is back online, as specified in subsection (3)(I). Signatures shall be captured on paper and then may be scanned to the database;

(H) Every dispenser who sells, dispenses, or otherwise provides any methamphetamine precursor product shall maintain a bound logbook in addition to the electronic database system. The logbook shall be used for documenting a clear audit trail of any alterations, changes, or deletions to the original transaction record and sales that occurred during system failures, including date and time of entry into the database, justification, and resultant contacts with law enforcement because the override button was used;

(I) In the event that the DHSS electronic database is unavailable for five (5) minutes or more due to a failure on the DHSS network or because of a failure attributable to systems other than the DHSS, the dispenser may continue with the transaction until the system is available. All information required to be captured with each transaction shall be retained and documented. The information may be entered into the database where it may be held pending until the system comes back online, or all of the required information for transactions occurring during the time the DHSS electronic database is unavailable must be recorded manually and entered into the DHSS electronic database by the registrant as soon as is practicable, but within no more than forty-eight (48) hours following the resumption of operability. Documentation shall also identify the reason for the late entry into the DHSS electronic database;

(J) At least once each month, the pharmacist-in-charge shall review the logbook of changes and the changes captured by the database to see what changes and alterations pharmacy employees have entered regarding sales of methamphetamine precursors. The date and time that the pharmacist-in-charge conducts this monthly review shall be documented in the bound logbook maintained by the pharmacy in addition to the electronic system;

(K) Documentation in the bound logbook shall be maintained in a readily retrievable manner for two (2) years from the date of the transaction and available for inspection and copying by authorized DHSS employees and law enforcement;

(L) Denials of Sales and Dispensings.

1. Except as provided in subsection (D) of this section, if an individual attempts to purchase a methamphetamine precursor product in violation of the three and six-tenths (3.6) gram per day or nine (9) gram per month quantity restrictions or age restriction established by sections 195.017 and 195.417, RSMo, the dispenser shall refuse to make the sale.

2. Sales of methamphetamine precursor products shall be denied to purchasers who are not at least eighteen (18) years of age.

3. Sales of methamphetamine precursor products shall be denied to purchasers who are not able to produce a valid government issued identification card with the required information displayed on it.

4. In the event that the dispenser perceives that refusal of the purchase may place him or her in imminent physical harm, then the dispenser may use the database safety override function to proceed with the transaction, provided that—

A. When jeopardy is no longer perceived, the dispenser shall immediately contact local law enforcement to report the purchase; and

B. The dispenser shall document in their manual log, the circumstance, the individual contacted at the local law enforcement agency, and the date and time of that contact;

(M) Pharmacy Employees. Employees in a pharmacy shall be assigned individual personal passwords to identify their own transactions in the database.

1. Pharmacy employees shall only use their own passwords for their own transactions and shall not dispense or make a sale under the password of another person.

2. The database computer shall not be left on and unattended so that another person can use the previous user's password. Users shall close out their personal access when their activities are completed.

3. The pharmacist-in-charge shall be responsible for insuring pharmacy employees have adequate password privileges. The pharmacist-in-charge shall insure that new employees have their own personal passwords and also insure that ex-employees have their passwords removed from the system;

(N) Access to Database by Law Enforcement and Regulatory Agencies.

1. Access to the database and controlled substance records shall be made available to those agencies with authority under Chapter 195 and Chapter 338, RSMo.

2. Law enforcement agencies and regulatory agencies shall only have the ability to read and review and shall not be able to enter data or change records.

3. It shall be the responsibility of each agency's administrator, chief, sheriff, or other chief executive officer to insure—

A. Only authorized employees have access to the database;

B. Employees only use their own passwords and passwords are not shared;

C. Each employee adheres to all state and federal laws regarding confidentiality; and

D. As employees change, that new passwords are assigned to new employees and passwords of ex-employees or transferred employees are removed. The chief, sheriff, or chief executive officer of the law enforcement or regulatory agency shall notify the DHSS in writing when an employee's access is to be added or removed; and

(O) Method for Enforcement Agencies to Gain or Alter Access to the Database.

1. Requests submitted to the DHSS to add or remove an employee from access to the database shall—

A. Be submitted in writing on the agency's letterhead;

B. State whether this is a request for an employee to be granted access to the database or a request to remove an employee's access;

C. Provide the employee's full name and title;

D. Provide the employee's Missouri POST certification number if the employee is a sworn law enforcement officer; and

E. Be signed by the chief, sheriff, or chief executive officer of the requesting agency.

2. Multiple requests for multiple employees and actions may be submitted on one (1) letter.

3. The DHSS shall notify the provider of the database in writing of persons who are given access or have access removed.

4. The DHSS may restrict access to the database to a limited number of people in each agency, depending on the size of the agency, their locations, and number of sworn officers engaged in the actual enforcement of controlled substance laws.

*AUTHORITY: sections 195.017 and 195.417, RSMo Supp. [2005] **2009**, and sections 195.030, 195.050, and 195.195, RSMo 2000. Original rule filed April 14, 2000, effective Nov. 30, 2000. Emergency amendment filed Aug. 18, 2005, effective Aug. 28, 2005, expired Feb. 23, 2006. Amended: Filed Sept. 1, 2005, effective Feb. 28, 2006. Amended: Filed June 29, 2010. Emergency amendment filed July 9, 2010, effective Sept. 28, 2010, expires March 26, 2011.*

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions four hundred ninety-six thousand, seven hundred eighty-seven dollars and twenty-nine cents ($496,787.29) in the aggregate.

PRIVATE COST: This proposed amendment will cost private entities three hundred fifty-five thousand, seven hundred forty-three dollars ($355,743) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Michael Boeger, Administrator, Department of Health and Senior Services, Bureau of Narcotics and Dangerous Drugs at PO Box 570, Jefferson City, MO 65102-0570. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

FISCAL NOTE
PUBLIC COST

I. Department Title: Title 19—Department of Health and Senior Services

Division Title: Division 30—Division of Regulation and Licensure

Chapter Title: Chapter 1—Controlled Substances

Rule Number and Name:	19 CSR 30-1.074 Dispensing Without a Prescription
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Agencies Enforcing Pseudoephedrine Laws	Costs of Desktop Computers	Costs of Training Drug Enforcement Staff	Total Estimated Costs
Missouri State Highway Patrol	$8,445	$1,015.04	$9,460.04
Department of Health & Senior Services	$2,815	$106.58	$2,921.58
Dept. of Insurance, Financial Inst. and Professional Registration	$5,067	$327.67	$5,394.67
Missouri Municipal Police Departments	$378,899	$33,650	$412,549
County Sheriff Offices	$64,182	$2,280	$66,462
TOTAL AGGREGATE COSTS			$496,787.29

III. WORKSHEET

Missouri State Highway Patrol—Computers and Training:
15 desktop computers at $563 each for the 15 Missouri State Highway Patrol locations = $8,445.

32 drug enforcement employees from the Missouri State Highway Patrol will receive 1 hour of database training. 32 employees x average hourly wage of $31.72 = $1,015.04.

Missouri Department of Health and Senior Services—Computers and Training:
5 desktop computers at $563 each for 5 employees of the Bureau of Narcotics and Dangerous Drugs. 5 employees x $563 = $2,815

5 employees for the Department of Health and Senior Services to receive training for one hour. 5 employees x one hour of their wages = $106.58

Missouri Department of Insurance, Financial Institutions and Professional Registration—Board of Pharmacy—Computers and Training:
9 Desktop computers; one for their central office and then 8 district inspectors.
9 computers x $563 each = $5,067

8 inspectors will receive 1 hour of training on the database. 1 hour of each inspector's time at their current wage will be $327.67, per the state's Accountability Portal.

Municipal Law Enforcement Agencies:
673 desktop computers at $563 each for each municipal law enforcement agency in Missouri. 673 computers x $563 = $378,899

Each municipal department would send two officers. This is 1,346 officers.
1,346 officers x hourly wage of $25 per hour = $33,650

Missouri Sheriffs' Offices—Computers and Training:
114 county sheriffs' offices and one computer for each office. 114 computers at $563 each. 114 x $563 = $64,182.

114 counties would send 2 deputies for training. This would be 228 deputies.
The average hourly wage is $10 per hour. 228 x $10 = $2,280.

IV. ASSUMPTIONS

1. It is assumed for this fiscal note that no state, county, or municipal law enforcement agencies have a desktop computer with internet access.

2. The prices of 97 desktop computers was collected online from Dell, Hewlett-Packard, WalMart, Target, Best Buy and Staples. The average cost of a desktop computer was $563.

3. The Missouri State Highway Patrol will need database access from their headquarters building, the location of the Drug & Crime Division, the Missouri Intelligence and Analysis Center, and also Troops A,B,C,D,E,F,G.H, and I, as well as 3 satellite locations for a total of 15 locations.

4. The Missouri State Highway Patrol provided that they have 32 narcotic enforcement positions with an average hourly wage of $31.72 This was provided by Captain Luke Vislay of the Division of Drug Detection and Crime Control.

5. The Missouri Department of Health and Senior Services' Bureau of Narcotics and Dangerous Drugs has 5 employees that will each have one computer and receive one hour of training. The cost of wages for one hour was taken from the state's accountability portal.

6. The Department of Insurance, Financial Institutions and Professional Registration's Board of Pharmacy has 8 inspectors in the field. They will need 8 computers plus one computer in the central office for a total of 9 computers. The 8 inspectors will receive

one hour of training. Their hourly wages were taken from the state's accountability portal.

7. According to the Missouri Department of Public Safety, there are 673 municipal police departments in Missouri. Each agency would have at least one computer and each agency would have two persons trained on the database. The average salary was obtained from the Missouri Police Chiefs Association.

8. Sheldon Lineback of the Missouri Police Chief's Association estimated that the average wage of a Missouri police officer is $25 per hour. There are 673 municipal agencies that could send 2 officers each. 1346 employees x $25 = $33,650.

9. There are 114 county sheriffs' offices. Each agency would have at least one computer and each agency would send two deputies for training. The average salary/hourly wage for a deputy was provided by Major Greg Thomas, President of the Missouri Deputy Sheriff's Association.

10. The hourly wages figured into this fiscal note are the hourly rates without fringe benefits being figured in.

11. **Assumed Factors to Mitigate Costs**:
    A. The vast majority of all law enforcement agencies already have computers in them for report writing and record keeping. The computers are also connected so they may gain access to MULES, NCIC, and the licensing information at the Missouri Department of Revenue.

    B. The vendor providing the training will provide training to law enforcement agencies at multiple locations throughout the state of Missouri so that agencies will not have to send personnel to Jefferson City, Missouri.

    C. At this time law enforcement officers have to visit each pharmacy individually to obtain pseudoephedrine records. The records must then be compiled into a spreadsheet to determine what people are buying pseudoephedrine in what quantities. The database will eliminate law enforcement's need to visit pharmacies individually, provide written requests, obtain printouts and then compile the records.

FISCAL NOTE
PRIVATE COST

I. **Department Title:** Title 19—Department of Health and Senior Services

Division Title: Division 30—Division of Licensure and Regulation

Chapter Title: Chapter One—Controlled Substances

Rule Number and Title:	19 CSR 30-1.074 Dispensing Without a Prescription
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
1,305 Retail Pharmacies	Retail Pharmacies	$355,743

III. WORKSHEET

261 retail pharmacies x $563 (desktop computer) = $146,943

261 retail pharmacies x $500 (electronics to capture signatures) = $130,500

1,305 pharmacists at $60 per hour, receiving one hour of training.

1,305 x $60 = $78,300

IV. ASSUMPTIONS

1. The Department of Health and Senior Services registers 1,305 retail pharmacies with the authority to dispense meth precursor products. According to the Missouri Pharmacy Association and also research from the state's database vendor, it is believed that:
   A. 80%, or 1,044 pharmacies are chain drugs stores that already have computers in place with connectivity and also point-of-sale (POS) capability to capture electronic signatures.
   B. It is assumed that the remaining 20%, or 261 retail pharmacies do not have any computer at all. We estimated the cost of all 261 independent pharmacies would have purchase a computer. We estimated that these 261 pharmacies would have to obtain a separate POS device for capturing an electronic signature.

2. The prices of 97 desktop computers were collected online from Dell, Hewlett-Packard, WalMart, Target, Best Buy and Staples. The average cost of a desktop computer was $563.

3. The prices of 22 POS electronic devices to capture electronic signatures was collected on line. The average cost was $418. We added in an estimated cost for tax, shipping and handling and rounded the estimated cost to $500.

4. The vendor providing the database will provide training to pharmacists on how to enter data into the database. The training is to be one hour. According to the Missouri Pharmacy Association the average hourly wage for a Missouri pharmacist is $60. This $60 dollar hourly rate is without fringe benefits.

5. This rule is limited and applies to only retail pharmacies that are dispensing Schedule V controlled substances containing methamphetamine precursors. Although state and federal law mandates a log for businesses selling pseudoephedrine products, other non-pharmacy businesses are not required to submit reports to a database regarding their sales of exempted drugs such as pseudoephedrine products that are in liquid forms like syrups and liquid filled gel caps. Grocery stores, convenience stores, gas stations, and other retail outlets that are not pharmacies and do not sell Schedule V drugs are not required to report a database pursuant to statute.

5. Assumed Factors to Mitigate Costs:
   - A. Retail pharmacies already have pre-existing computers and connectivity in them so that they may routinely transmit and receive prescription records from other pharmacies, Medicaid, Medicare, insurance companies and third party payers.
   - B. The vendor providing the training will make multiple presentations around the state in different regional areas so that pharmacist may attend a training class in their general area of the state.
   - C. Retail pharmacies belonging to national chains already have the software and mechanisms in place for the data to be automatically transmitted with each transaction, basically invisible to the pharmacy employee. The database vendor has stated that upon implementation of this rule, they can automatically receive and report transactions from the national chain drug stores. They said that 80% of the pharmacies and data are from national chains. The remaining 20% are independent pharmacies.
   - D. At this time law enforcement officers have to visit each pharmacy individually to obtain pseudoephedrine records. The records must then be compiled into a spreadsheet to determine what people are buying pseudoephedrine in what quantities. The database will eliminate law enforcement's need to visit pharmacies individually, provide written requests, obtain printouts and then compile the records.
   - E. Pursuant to existing state and federal laws, pharmacies are already required to maintain a log of pseudoephedrine sales and capture the information required.
   - F. The database vendor will provide educational materials and tutorials on their website so that new pharmacy employees needing training can access this through their website and they may not have to come to a class.

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

PROPOSED RESCISSION

22 CSR 10-2.070 Coordination of Benefits. This rule establishes the policy of the board of trustees in regard to the coordination of benefits (COB) in the Missouri Consolidated Health Care Plan.

PURPOSE: This rule is being rescinded and a new rule with the same subject matter is being proposed in its place.

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****. Rescinded: Filed July 1, 2010.*

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, Richard Bowles, 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 RULE

22 CSR 10-2.070 Coordination of Benefits

PURPOSE: This rule establishes the policy of the board of trustees in regard to the coordination of benefits (COB) in the Missouri Consolidated Health Care Plan.

(1) If a member is also covered under any other plan (as defined here) and is entitled to benefits or other services for which benefits are payable under Missouri Consolidated Health Care Plan (MCHCP), the benefits under MCHCP will be adjusted as shown in this rule.

(A) This coordination of benefits (COB) provision applies to MCHCP when a member has health care coverage under more than one (1) plan.

(B) If this COB provision applies, the order of benefit determination rules should be looked at first. Those rules determine whether the benefits of MCHCP are determined before or after those of another plan. The benefits of MCHCP—

1. Shall not be reduced when, under the order of benefit determination rules, MCHCP determines its benefits before another plan; but

2. May be reduced when, under the order of benefits determination rules, another plan determines its benefits first.

(2) Definitions. The following words and terms, when used in this rule, shall have the following meanings unless the context clearly indicates otherwise:

(A) Allowable expenses.

1. Allowable expense means the necessary, reasonable, and customary item of expense for health care when the item of expense is covered at least in part under any of the plans involved, except where a statute requires a different definition.

2. Notwithstanding this definition, items of expense under coverages, such as dental care, vision care, prescription drug, or hearing-aid programs, may be excluded from the definition of allowable expense. A plan which provides benefits only for any of these items of expense may limit its definition of allowable expenses to like items of expense.

3. When a plan provides benefits in the form of service, the reasonable cash value of each service will be considered as both an allowable expense and a benefit paid.

4. The difference between the cost of a private hospital room and the cost of a semi-private hospital room is not considered an allowable expense under this definition unless the patient's stay in a private hospital room is medically necessary in terms of generally accepted medical practice.

5. When COB is restricted in its use to specific coverage in a contract (for example, major medical or dental), the definition of allowable expense must include the corresponding expenses or services to which COB applies.

6. When benefits are reduced under a primary plan because a covered person does not comply with the plan provisions, the amount of this reduction will not be considered an allowable expense. Examples of these provisions are those related to second surgical opinions, precertification of admissions or services, and preferred provider arrangements.

A. Only benefit reductions based upon provisions similar in purpose to those described previously and which are contained in the primary plan may be excluded from allowable expenses.

B. This provision shall not be used to refuse to pay benefits because a health maintenance organization (HMO) member has elected to have health care services provided by a non-HMO provider and the HMO, pursuant to its contract, is not obligated to pay for providing those services;

(B) Claim. A request for benefits of a plan to be provided or paid is a claim. The benefit claimed may be in the form of—

1. Services (including supplies);

2. Payment for all or a portion of the expenses incurred;

3. A combination of paragraphs (2)(B)1. and 2.; or

4. An indemnification;

(C) Claim determination period means a calendar year. However, it does not include any part of a year during which a person has no coverage under this plan or any part of a year before the date this COB provision or similar provision takes effect;

(D) Coordination of benefits. This is a provision establishing an order in which plans pay their claims;

(E) Plan includes:

1. Group insurance and group subscriber contracts;

2. Uninsured arrangements of group or group-type coverage;

3. Group or group-type coverage through HMOs and other prepayment, group practice, and individual practice plans;

4. Group-type contracts. Group-type contracts are contracts which are not available to the general public and can be obtained and maintained only because of membership in or connection with a particular organization or group. Group-type contracts answering this description may be included in the definition of plan, at the option of the insurer or the service provider and the contract client, whether or not uninsured arrangements or individual contract forms are used and regardless of how the group-type coverage is designed (for example, franchise or blanket). Individually underwritten and issued guaranteed renewable policies would not be considered group-type even though purchased through payroll deduction at a premium savings to the insured since the insured would have the right to maintain or

renew the policy independently of continued employment with the employer. Note: The purpose and intent of this provision are to identify certain plans of coverage which may utilize other than a group contract but are administered on a basis more characteristic of group insurance. These group-type contracts are distinguished by two (2) factors—1) they are not available to the general public, but may be obtained only through membership in, or connection with, the particular organization or group through which they are marketed (for example, through an employer payroll withholding system) and 2) they can be obtained only through that affiliation (for example, the contracts might provide that they cannot be renewed if the insured leaves the particular employer or organization, in which case they would meet the group-type definition). On the other hand, if these contracts are guaranteed renewable allowing the insured the right to renewal regardless of continued employment or affiliation with the organization, they would not be considered group-type;

5. Group or group-type hospital indemnity benefits which exceed one hundred dollars ($100) per day;

6. The medical benefits coverage in group, group-type, and individual automobile no-fault type contracts but, as to traditional automobile fault contracts, only the medical benefits written on a group or group-type basis may be included; and

7. Medicare or other governmental benefits. That part of the definition of plan may be limited to the hospital, medical, and surgical benefits of the governmental program;

(F) Plan shall not include:

1. Individual or family insurance contracts;

2. Individual or family subscriber contracts;

3. Individual or family coverage under other prepayment, group practice, and individual practice plans;

4. Group or group-type hospital indemnity benefits of one hundred dollars ($100) per day or less;

5. School accident-type coverages. These contracts cover grammar, high school, and college students for accidents only, including athletic injuries, either on a twenty-four (24)-hour basis or on a to-and-from-school basis; and

6. A state plan under Medicaid and shall not include a law or plan when its benefits are in excess of those of any private insurance plan or other nongovernmental plan; and

(G) Primary plan/secondary plan. The order of benefit determination rules state whether MCHCP is a primary plan or secondary plan as to another plan covering this person. When MCHCP is a primary plan, its benefits are determined before those of the other plan and without considering the other plan's benefits. When MCHCP is a secondary plan, its benefits are determined after those of the other plan and may be reduced because of the other plan's benefits. When there are more than two (2) plans covering the person, MCHCP may be a primary plan as to one (1) or more other plans and may be a secondary plan as to a different plan(s).

(3) Order of Benefit Determination Rules.

(A) General. When there is a basis for a claim under MCHCP and another plan. MCHCP is a secondary plan which has its benefits determined after those of the other plan, unless—

1. The other plan has rules coordinating its benefits with those of MCHCP; and

2. Both those rules and MCHCP rules require MCHCP benefits be determined before those of the other plan.

(B) Rules. MCHCP determines its order of benefits using the first of the following rules which applies:

1. Nondependent/dependent. The benefits of the plan which covers the person as an employer or subscriber (that is, other than as a dependent) are determined before those of the plan which covers the person as a dependent; except that—if the person is also a Medicare beneficiary, and as a result of the rule established by the Title XVIII of the Social Security Act and implementing regulations, Medicare is—

A. Secondary to the plan covering the person as a dependent;

B. Primary to the plan covering the person as other than a dependent (for example, a retired employee), then the benefits of the plan covering the person as a dependent are determined before those of the plan covering that person as other than a dependent;

C. Primary if the person is eligible for Medicare due to disability; and

D. Primary after the first thirty (30) months if the person is eligible for Medicare due to end stage renal disease;

2. Dependent child/parents not separated or divorced. When MCHCP and another plan cover the same child as a dependent of different persons, called parents—

A. The benefits of the plan of the parent whose birthday falls earlier in a year are determined before those of the plan of the parent whose birthday falls later in that year; but

B. If both parents have the same birthday, the benefits of the plan which covered one (1) parent longer are determined before those of the plans which covered the other parent for a shorter period of time;

3. Dependent child/separated or divorced. If two (2) or more plans cover a person as a dependent child of divorced or separated parents, benefits for the child are determined in this order:

A. First, the plan of the parent with custody of the child;

B. Then, the plan of the spouse of the parent with the custody of the child;

C. Then, the plan of the parent not having custody of the child; and

D. Finally, the plan of the spouse of the parent not having custody of the child. However, if the specific terms of a court decree state that one (1) of the parents is responsible for the health care expense of the child and the entity obligated to pay or provide the benefits of the plan of that parent or spouse of the other parent has actual knowledge of those terms, the benefits of that plan are determined first. The plan of the other parent shall be the secondary plan. This paragraph does not apply with respect to any claim determination period or plan year during which any benefits are actually paid or provided before the entity has that actual knowledge;

4. Joint custody. If the specific terms of a court decree state that the parents shall share joint custody, without stating that one (1) of the parents is responsible for the health care expenses of the child, the plans covering the child shall follow the order of benefit determination rules outlined in paragraph (3)(B)2.;

5. Dependent child/parents both parents covered by MCHCP. If both parents are covered by MCHCP and both parents cover the child as a dependent, MCHCP will not coordinate benefits with itself; and

6. Longer/shorter length of coverage. If none of the previous rules determines the order of benefits, the benefits of the plan which covered a person longer are determined before those of the plan which covered that person for the shorter term.

(4) Effect on the Benefits of MCHCP. This section applies, which in accordance with section (3), Order of Benefit Determination Rules, MCHCP is a secondary plan as to one (1) or more other plans. In that event, the benefits of MCHCP may be reduced under this section so as not to duplicate the benefits of the other plan. The other plan's payment is subtracted from what MCHCP or its claims administrator would have paid in absence of this COB provision. If there is any balance, MCHCP or its claims administrator will pay the difference not to exceed what it would have paid in absence of this COB provision.

(5) Right to Receive and Release Needed Information. Certain facts are needed to apply these COB provisions. MCHCP or its claims administrator has the right to decide which facts it needs. MCHCP or its claims administrator may get needed facts from or give them to any other organization or person. MCHCP or its claims administrator need not tell, or get the consent of, any person to do this. Each person claiming benefits under MCHCP must give MCHCP or its claims administrator any facts it needs to pay the claim.

(6) A payment made under another plan may include an amount which should have been paid under MCHCP. If it does, MCHCP or its claims administrator may pay that amount to the organization which made the payment. That amount will then be treated as though it were a benefit paid under MCHCP. MCHCP or its claims administrator will not have to pay that amount again. The term, payment made includes providing benefits in the form of services, in which case payment made means reasonable cash value of the benefits provided in the form of services.

(7) If the amount of the payments made by MCHCP or its claims administrator is more than it should have paid under this COB provision, MCHCP or its claims administrator may recover the excess from one (1) or more of—

(A) The person it has paid or for whom it has paid;

(B) Insurance companies; or

(C) Other organizations. The amount of the payments made includes the reasonable cash value of any benefits provided in the form of services.

(8) MCHCP shall, with respect to COB and recoupment of costs, exercise all rights and remedies as permitted by law.

AUTHORITY: sections 103.059 and 103.089, 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****. Rescinded and readopted: Filed July 1, 2010.*

PUBLIC COST: The fiscal impact of this proposed rule is estimated to be a $5,800,000 savings annually in the aggregate for state agencies.

PRIVATE COST: This proposed rule will cost private entities $5,800,000 annually in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Consolidated Health Care Plan, Richard Bowles, 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. Department Title: 22 - Missouri Consolidated Health Care Plan
Division Title: Division 10
Chapter Title: Chapter 2

Rule Number and Name:	22 CSR 10-2.070 Coordination of Benefits
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost/(Savings) of Compliance in the Aggregate
Missouri Consolidated Health Care Plan	**($5,800,000)**

III. WORKSHEET

Estimated cost (savings) is the annual cost (savings) to MCHCP for calendar year 2011 for changing the coordination of benefits method used when a member has health coverage under more than one plan.

IV. ASSUMPTIONS

- **Cost estimate is based on current enrollment by plan and 2010 total premiums, projected to 2011 using a 7 percent trend rate.**
- **Total enrollment under MCHCP Plans remains relatively constant.**
- **Actual costs will vary based upon actual utilization of services.**

FISCAL NOTE
PRIVATE COST

I. Department Title: 22 - Missouri Consolidated Health Care Plan
Division Title: Division 10
Chapter Title: Chapter 2

Rule Number and Title:	22 CSR 10-2.070 Coordination of Benefits
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the 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:
		$5,800,000

III. WORKSHEET

- **Estimated cost is the annual increased cost for all MCHCP subscribers for calendar year 2011 for changing the coordination of benefits method used when a member has health coverage under more than one plan.**

IV. ASSUMPTIONS

- **Cost estimate is based on current enrollment by plan and 2010 total premiums, projected to 2011 using a 7 percent trend rate.**
- **Total enrollment under MCHCP Plans remains relatively constant.**
- **Actual costs for individual subscribers will vary based upon actual utilization of services.**

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 3—Public Entity Membership

PROPOSED RESCISSION

22 CSR 10-3.070 Coordination of Benefits. This rule establishes the policy of the board of trustees in regard to the coordination of benefits (COB) in the Missouri Consolidated Health Care Plan.

PURPOSE: This rule is being rescinded and a new rule with the same subject matter is being proposed in its place.

AUTHORITY: section 103.059, RSMo 2000. Emergency rule filed Dec. 20, 2004, effective Jan. 1, 2005, expired June 29, 2005. Original rule filed Dec. 20, 2004, effective June 30, 2005. Rescinded: Filed July 1, 2010.

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, Richard Bowles, 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 3—Public Entity Membership

PROPOSED RULE

22 CSR 10-3.070 Coordination of Benefits

PURPOSE: This rule establishes the policy of the board of trustees in regard to the coordination of benefits (COB) in the Missouri Consolidated Health Care Plan.

(1) If a member is also covered under any other plan (as defined here) and is entitled to benefits or other services for which benefits are payable under Missouri Consolidated Health Care Plan (MCHCP), the benefits under MCHCP will be adjusted as shown in this rule.

(A) This coordination of benefits (COB) provision applies to MCHCP when a member has health care coverage under more than one (1) plan.

(B) If this COB provision applies, the order of benefit determination rules should be looked at first. Those rules determine whether the benefits of MCHCP are determined before or after those of another plan. The benefits of MCHCP—

1. Shall not be reduced when, under the order of benefit determination rules, MCHCP determines its benefits before another plan; but

2. May be reduced when, under the order of benefits determination rules, another plan determines its benefits first.

(2) Definitions. The following words and terms, when used in this rule, shall have the following meanings unless the context clearly indicates otherwise:

(A) Allowable expenses.

1. Allowable expense means the necessary, reasonable, and customary item of expense for health care when the item of expense is covered at least in part under any of the plans involved, except where a statute requires a different definition.

2. Notwithstanding this definition, items of expense under coverages, such as dental care, vision care, prescription drug, or hearing-aid programs, may be excluded from the definition of allowable expense. A plan which provides benefits only for any of these items of expense may limit its definition of allowable expenses to like items of expense.

3. When a plan provides benefits in the form of service, the reasonable cash value of each service will be considered as both an allowable expense and a benefit paid.

4. The difference between the cost of a private hospital room and the cost of a semi-private hospital room is not considered an allowable expense under this definition unless the patient's stay in a private hospital room is medically necessary in terms of generally accepted medical practice.

5. When COB is restricted in its use to specific coverage in a contract (for example, major medical or dental), the definition of allowable expense must include the corresponding expenses or services to which COB applies.

6. When benefits are reduced under a primary plan because a covered person does not comply with the plan provisions, the amount of this reduction will not be considered an allowable expense. Examples of these provisions are those related to second surgical opinions, precertification of admissions or services, and preferred provider arrangements.

A. Only benefit reductions based upon provisions similar in purpose to those described previously and which are contained in the primary plan may be excluded from allowable expenses.

B. This provision shall not be used to refuse to pay benefits because a health maintenance organization (HMO) member has elected to have health care services provided by a non-HMO provider and the HMO, pursuant to its contract, is not obligated to pay for providing those services;

(B) Claim. A request for benefits of a plan to be provided or paid is a claim. The benefit claimed may be in the form of—

1. Services (including supplies);

2. Payment for all or a portion of the expenses incurred;

3. A combination of paragraphs (2)(B)1. and 2.; or

4. An indemnification;

(C) Claim determination period means a calendar year. However, it does not include any part of a year during which a person has no coverage under this plan or any part of a year before the date this COB provision or similar provision takes effect;

(D) Coordination of benefits. This is a provision establishing an order in which plans pay their claims;

(E) Plan includes:

1. Group insurance and group subscriber contracts;

2. Uninsured arrangements of group or group-type coverage;

3. Group or group-type coverage through HMOs and other prepayment, group practice, and individual practice plans;

4. Group-type contracts. Group-type contracts are contracts which are not available to the general public and can be obtained and maintained only because of membership in or connection with a particular organization or group. Group-type contracts answering this description may be included in the definition of plan, at the option of the insurer or the service provider and the contract client, whether or not uninsured arrangements or individual contract forms are used and regardless of how the group-type coverage is designed (for example, franchise or blanket). Individually underwritten and issued guaranteed renewable policies would not be considered group-type even though purchased through payroll deduction at a premium savings to the insured since the insured would have the right to maintain or renew the policy independently of continued employment with the employer. Note: The purpose and intent of this provision are to identify certain

plans of coverage which may utilize other than a group contract but are administered on a basis more characteristic of group insurance. These group-type contracts are distinguished by two (2) factors—1) they are not available to the general public, but may be obtained only through membership in, or connection with, the particular organization or group through which they are marketed (for example, through an employer payroll withholding system) and 2) they can be obtained only through that affiliation (for example, the contracts might provide that they cannot be renewed if the insured leaves the particular employer or organization, in which case they would meet the group-type definition). On the other hand, if these contracts are guaranteed renewable allowing the insured the right to renewal regardless of continued employment or affiliation with the organization, they would not be considered group-type;

5. Group or group-type hospital indemnity benefits which exceed one hundred dollars ($100) per day;

6. The medical benefits coverage in group, group-type, and individual automobile no-fault type contracts but, as to traditional automobile fault contracts, only the medical benefits written on a group or group-type basis may be included; and

7. Medicare or other governmental benefits. That part of the definition of plan may be limited to the hospital, medical, and surgical benefits of the governmental program;

(F) Plan shall not include:

1. Individual or family insurance contracts;

2. Individual or family subscriber contracts;

3. Individual or family coverage under other prepayment, group practice, and individual practice plans;

4. Group or group-type hospital indemnity benefits of one hundred dollars ($100) per day or less;

5. School accident-type coverages. These contracts cover grammar, high school, and college students for accidents only, including athletic injuries, either on a twenty-four (24)-hour basis or on a to-and-from-school basis; and

6. A state plan under Medicaid and shall not include a law or plan when its benefits are in excess of those of any private insurance plan or other nongovernmental plan; and

(G) Primary plan/secondary plan. The order of benefit determination rules state whether MCHCP is a primary plan or secondary plan as to another plan covering this person. When MCHCP is a primary plan, its benefits are determined before those of the other plan and without considering the other plan's benefits. When MCHCP is a secondary plan, its benefits are determined after those of the other plan and may be reduced because of the other plan's benefits. When there are more than two (2) plans covering the person, MCHCP may be a primary plan as to one (1) or more other plans and may be a secondary plan as to a different plan(s).

(3) Order of Benefit Determination Rules.

(A) General. When there is a basis for a claim under MCHCP and another plan. MCHCP is a secondary plan which has its benefits determined after those of the other plan, unless—

1. The other plan has rules coordinating its benefits with those of MCHCP; and

2. Both those rules and MCHCP rules require MCHCP benefits be determined before those of the other plan.

(B) Rules. MCHCP determines its order of benefits using the first of the following rules which applies:

1. Nondependent/dependent. The benefits of the plan which covers the person as an employer or subscriber (that is, other than as a dependent) are determined before those of the plan which covers the person as a dependent; except that—if the person is also a Medicare beneficiary, and as a result of the rule established by the Title XVIII of the Social Security Act and implementing regulations, Medicare is—

A. Secondary to the plan covering the person as a dependent;

B. Primary to the plan covering the person as other than a dependent (for example, a retired employee), then the benefits of the plan covering the person as a dependent are determined before those of the plan covering that person as other than a dependent;

C. Primary if the person is eligible for Medicare due to disability; and

D. Primary after the first thirty (30) months if the person is eligible for Medicare due to end stage renal disease;

2. Dependent child/parents not separated or divorced. When MCHCP and another plan cover the same child as a dependent of different persons, called parents—

A. The benefits of the plan of the parent whose birthday falls earlier in a year are determined before those of the plan of the parent whose birthday falls later in that year; but

B. If both parents have the same birthday, the benefits of the plan which covered one (1) parent longer are determined before those of the plans which covered the other parent for a shorter period of time;

3. Dependent child/separated or divorced. If two (2) or more plans cover a person as a dependent child of divorced or separated parents, benefits for the child are determined in this order—

A. First, the plan of the parent with custody of the child;

B. Then, the plan of the spouse of the parent with the custody of the child;

C. Then, the plan of the parent not having custody of the child; and

D. Finally, the plan of the spouse of the parent not having custody of the child. However, if the specific terms of a court decree state that one (1) of the parents is responsible for the health care expense of the child and the entity obligated to pay or provide the benefits of the plan of that parent or spouse of the other parent has actual knowledge of those terms, the benefits of that plan are determined first. The plan of the other parent shall be the secondary plan. This paragraph does not apply with respect to any claim determination period or plan year during which any benefits are actually paid or provided before the entity has that actual knowledge;

4. Joint custody. If the specific terms of a court decree state that the parents shall share joint custody, without stating that one (1) of the parents is responsible for the health care expenses of the child, the plans covering the child shall follow the order of benefit determination rules outlined in paragraph (3)(B)2.;

5. Dependent child/parents both parents covered by MCHCP. If both parents are covered by MCHCP and both parents cover the child as a dependent, MCHCP will not coordinate benefits with itself; and

6. Longer/shorter length of coverage. If none of the previous rules determines the order of benefits, the benefits of the plan which covered a person longer are determined before those of the plan which covered that person for the shorter term.

(4) Effect on the Benefits of MCHCP. This section applies, which in accordance with section (3), Order of Benefit Determination Rules, MCHCP is a secondary plan as to one (1) or more other plans. In that event, the benefits of MCHCP may be reduced under this section so as not to duplicate the benefits of the other plan. The other plan's payment is subtracted from what MCHCP or its claims administrator would have paid in absence of this COB provision. If there is any balance, MCHCP or its claims administrator will pay the difference not to exceed what it would have paid in absence of this COB provision.

(5) Right to Receive and Release Needed Information. Certain facts are needed to apply these COB provisions. MCHCP or its claims administrator has the right to decide which facts it needs. MCHCP or its claims administrator may get needed facts from or give them to any other organization or person. MCHCP or its claims administrator need not tell, or get the consent of, any person to do this. Each person claiming benefits under MCHCP must give MCHCP or its claims administrator any facts it needs to pay the claim.

(6) A payment made under another plan may include an amount

which should have been paid under MCHCP. If it does, MCHCP or its claims administrator may pay that amount to the organization which made the payment. That amount will then be treated as though it were a benefit paid under MCHCP. MCHCP or its claims administrator will not have to pay that amount again. The term, payment made includes providing benefits in the form of services, in which case payment made means reasonable cash value of the benefits provided in the form of services.

(7) If the amount of the payments made by MCHCP or its claims administrator is more than it should have paid under this COB provision, MCHCP or its claims administrator may recover the excess from one (1) or more of—

(A) The person it has paid or for whom it has paid;

(B) Insurance companies; or

(C) Other organizations. The amount of the payments made includes the reasonable cash value of any benefits provided in the form of services.

(8) MCHCP shall, with respect to COB and recoupment of costs, exercise all rights and remedies as permitted by law.

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