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 proposed rule. If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission. Rules which are proposed to be amended will have new matter printed in boldface type and matter to be deleted placed in brackets.

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

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

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

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

Proposed Amendment Text Reminder:
Boldface text indicates new matter.
[Bracketed text indicates matter being deleted.]

Title 1—OFFICE OF ADMINISTRATION
Division 10—Commissioner of Administration
Chapter 7—Missouri Accountability Portal

PROPOSED RULE

1 CSR 10-7.010 Missouri Accountability Portal

PURPOSE: This rule describes the requirements for reporting information on the Missouri Accountability Portal as required by Senate Substitute #2 for Senate Committee Substitute for House Bill No. 116 (2013).

(1) As used in this section, unless the content clearly indicates otherwise, the following terms shall mean:

(A) Amounts Restricted: The dollar amount of a current budget restriction as it relates to a specific constitutional, statutory, or administratively created fund within a fiscal year;

(B) Bond: A debt security which represents an obligation for the issuer to pay principal and often interest to a bond holder with a period of repayment longer than one (1) year. Bonds do not include revolving lines of credit, loans that are not securitized, or short term indebtedness having an original maturity less than one (1) year (such as revenue anticipation notes);

(C) Department: The Department of Elementary and Secondary Education; Department of Higher Education; Department of Revenue; Department of Transportation; Office of Administration; Department of Agriculture; Department of Natural Resources; Department of Conservation; Department of Economic Development; Department of Insurance, Financial Institutions and Professional Registration; Department of Labor and Industrial Relations; Department of Public Safety; Department of Corrections; Department of Mental Health; Department of Health and Senior Services; or Department of Social Services;

(D) Division: Any state agency assigned to a department for budgetary purposes that is eligible to receive a grant directly from the federal government in the amount of one (1) million dollars or more. Grants awarded directly to a division will be reported with the department to which the division is assigned for budgetary purposes;

(E) Federal Grant: Any grant awarded to a state agency by any agency of the federal government which, at the time of the award, is expected to result in the receipt of one (1) million dollars or more in the aggregate, exclusive of any required state match, program income, rebates, and/or maintenance of effort;

(F) Missouri Accountability Portal: An Internet-based tool consisting of a series of web pages maintained by the Office of Administration that provides the public the ability to view and search financial transactions of state government, and certain information provided by political subdivisions, free of charge as provided in sections 33.087 and 37.850, RSMo;

(G) Political Subdivision: Any city, town, village, school, road district, drainage district, sewer district, water district, levee district, or any other special purpose district, other than a state agency, authorized by the constitution or statutes of the state of Missouri with the authority to incur bonded indebtedness;

(H) Release: A directive from the governor authorizing a state agency to expend appropriated funds that had been subject to a budget restriction authorized by Article 4, Section 27 of the *Missouri Constitution*;

(I) Budget Restriction: A directive from the governor authorized by Article IV, Section 27 of the *Missouri Constitution* reducing the authority of a state agency to expend specific appropriated funds from the state operating budget. "Budget Restriction" does not include the governor's objection (veto) of items or portions of items of appropriation under Article IV, Section 26 of the *Missouri Constitution* and does not include the three percent (3%) appropriation reserve authorized by section 33.290, RSMo;

(J) Transfer: A transfer occurs when one state department/division receives the federal grant award and another state department/division spends the federal grant money; and

(K) Withholding: A Budget Restriction.

(2) The Missouri Accountability Portal shall contain the following expenditure information as reported in Missouri's SAMII accounting system, or any successor system:

(A) Amounts expended on state employee salaries, downloadable and searchable by agency, employee name, or position title;

(B) Amounts expended pursuant to state contracts, downloadable and searchable by agency, category, contract, or vendor;

(C) Tax credits issued, searchable by tax credit category, customer, or geographic area; and

(D) Any other information or reports, or links to other information or reports, deemed helpful to the understanding of state finances as designated by the commissioner of administration.

(3) Expenditure information shall be updated daily.

(4) The Missouri Accountability Portal shall contain the following budget restriction information:

(A) Amounts restricted from state of Missouri budget searchable by individual fund, agency, amount restricted or released, and total amount restricted or released;

(B) Restriction and release information shall be updated as soon as practical following the governor's reporting pursuant to section 37.850.4, RSMo; and

(C) Additional reporting is allowed but not required.

(5) The Office of Administration will provide a web-based, password protected data entry system for those entities required to report bond or debt issuances pursuant to section 37.850.2, RSMo, beginning on November 30, 2013. The data entry system shall have such security measures as the commissioner may prescribe to insure the integrity and security of state information systems and the integrity, security, consistency, and accuracy of the Missouri Accountability Portal.

(6) The data entry system will be comprised of the following fields:

(A) Name of Political Subdivision;

(B) Date of Issuance;

(C) Face Amount of Issuance;

(D) Description of Revenue Stream for Repayment of Bonds Issued Pursuant to Section 99.820, RSMo;

(E) Interest Rate (optional);

(F) Outstanding Balance (optional); and

(G) Description of Project / Purpose (optional).

(7) The Office of Administration assumes no responsibility for the correctness or completeness of the bond and debt information reported and displayed on the Missouri Accountability Portal. Reporting entities shall review all information as it appears on the Missouri Accountability Portal for completeness and accuracy.

(8) Reporting entities will be given an optional field under section (6) above to report and update outstanding debt on an ongoing basis. Debt may be removed if outstanding balance is zero for one (1) year or more. Reporting entities are solely responsible for the timeliness and accuracy of the content.

(9) Each department of state government shall report to the Office of Administration, in a form prescribed by the commissioner of the Office of Administration, a report of the original federal grants, as defined in 1 CSR 10-7.010(1)(E), awarded in its name or in the name of a division assigned to it for budgetary purposes as defined in 1 CSR 10-7.010(1)(D):

(A) The amount of cash it receives pursuant to the federal grant by state fiscal year;

(B) The name of the federal agency disbursing the funds;

(C) The purpose for which the funds are being received; and

(D) In case of a transfer, defined in 1 CSR 10-7.010(1)(J), the name of the state agency receiving the transferred funds, the transferred amount, and the purpose for which the funds were transferred.

(10) In case of a transfer, defined in 1 CSR 10-7.010(1)(J), the department or division from which the funds were transferred shall report to the Office of Administration, in a form prescribed by the commissioner of the Office of Administration, an accounting of how the transferred funds were used and any statistical impact that can be discerned as a result of such usage as reported to it by the department or division receiving the transferred funds pursuant to section 33.087, RSMo. An Internet link to a report required by or prepared for the federal agency disbursing the funds that describes expenditures and measures outcomes shall be sufficient to establish compliance with this section.

AUTHORITY: section 33.087, RSMo Supp. 2013. Original rule filed Sept. 30, 2013.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions approximately thirty-six thousand six hundred fifty-nine dollars ($36,659) in the aggregate plus minimal ongoing costs for data storage and reporting.

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Commissioner of Administration, PO Box 809, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

FISCAL NOTE
PUBLIC COST

I. Department Title: 1-Office of Administration
Division Title: 10-Commissioner of Administration
Chapter Title: 7- Missouri Accountability Portal

Rule Number and Name:	**1 CSR 10-7.010 Missouri Accountability Portal**
Type of Rulemaking:	**Proposed Rule**

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Office of Administration – Information Technology Services Division	Approximately $36,659 in the aggregate for initial programming and testing, plus minimal additional costs for maintenance and data storage continuing for the life of the rule.
State Agencies Required to Report on Federal Grants	Minimal costs for gathering and reporting data on the expenditure of federal grants – continuing over the life of the rule.
Political Subdivisions Required to Report Bonded Indebtedness	Minimal costs for gathering and reporting data on bonded indebtedness incurred after August 28, 2013 – continuing over the life of the rule.

III. WORKSHEET

Section 33.087 – Federal Grant Reporting
Create new database, online update windows, and working with agencies that choose to interface the information to MAP from their legacy systems.
240 work hours programming
56 work hours testing

Create new MAP tab, web pages and download capabilities
160 work hours programming
64 work hours testing

Section 37.850 – Withholding or Release of Funds Reporting
Create new MAP tab, web pages, and download
80 work hours programming
16 work hours testing

Section 37.850 – Bond Reporting
Create new database, online interface to provide information to MAP.
200 work hours programming
64 work hours testing

Create new MAP tab, web pages and download capabilities
120 work hours programming
48 work hours testing

It was estimated in the legislative fiscal note response to SS#2 SCS HB 116 that the total cost would be $89,080 ($85 per hr times 1,048 hrs) for IT consultants. ITSD has chosen to use in-house programmers at

the lower hourly cost of $34.98. The estimated total cost of adding the functionality required by the legislation to the Missouri Accountability Portal is estimated to be approximately $36,659 ($34.98 per hour times 1048 hours).

IV. ASSUMPTIONS

The Office of Administration presented these costs in a legislative fiscal note response to SS#2 SCS HB 116. The costs represented here are driven by the legislation, not the rulemaking. This fiscal note reflects the cost of the legislation based on the implementation choices made by the Office of Administration.

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 3—Wildlife Code: Monetary Values of Fish and Wildlife

PROPOSED AMENDMENT

3 CSR 10-3.010 Monetary Values Established for Fish and Wildlife. The commission proposes to amend section (1) of this rule.

PURPOSE: This amendment corrects the title of a publication referenced within this rule.

(1) Monetary values set out in the publication of the American Fisheries Society entitled *Investigation and [Valuation]* ***Monetary Values*** *of Fish and Freshwater Mussel Kills (AFS Special Publication #30, 2003)* are adopted by the Conservation Commission as the standard for evaluating replacement costs of fish and mussels resulting from kills. This publication is incorporated by reference, as published by the American Fisheries Society, 5410 Grosvenor Lane, Bethesda, MD 20814. This rule does not incorporate any subsequent amendments or additions.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. ***and section 252.240, RSMo 2000.*** *Original rule filed Aug. 2, 1974, effective Aug. 13, 1974. For intervening history, please consult the* ***Code of State Regulations****. Amended: Filed Sept. 27, 2013.*

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 4—Wildlife Code: General Provisions

PROPOSED AMENDMENT

3 CSR 10-4.130 Owner May Protect Property; Public Safety. The commission proposes to amend sections (1) and (4) of this rule.

PURPOSE: This amendment corrects the terminology used when referring to white-tailed deer.

(1) Subject to federal regulations governing the protection of property from migratory birds (including raptors), any wildlife except *[white-tail]* **white-tailed** deer, mule deer, elk, turkeys, black bears, mountain lions, and any endangered species which beyond reasonable doubt is damaging property may be captured or killed by the owner of the property being damaged, or by his/her representative, at any time and without permit, but only by shooting or trapping except by written authorization of the director or, for avian control, of his/her designee. Wildlife may be so controlled only on the owner's property to prevent further damage.

(4) *[White-tail]* **White-tailed** deer, mule deer, elk, turkeys, and endangered species that are causing damage may be killed only with the permission of an agent of the department and by methods authorized by him/her.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. Original rule filed Aug. 15, 1973, effective Dec. 31, 1973. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed Sept. 27, 2013.*

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 5—Wildlife Code: Permits

PROPOSED AMENDMENT

3 CSR 10-5.430 Trout Permit. The commission proposes to amend the purpose statement of this rule.

PURPOSE: This amendment corrects the purpose statement for this rule to reflect current terminology.

PURPOSE: This rule establishes a [stamp] ***permit*** *required for possession and transportation of trout by residents and nonresidents.*

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. ***and section 252.240, RSMo 2000.*** *This rule was previously filed as 3 CSR 10-5.237. This version of rule filed July 22, 1974, effective Dec. 31, 1974. For intervening history, please consult the* ***Code of State Regulations****. Amended: Filed Sept. 27, 2013.*

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 6—Wildlife Code: Sport Fishing: Seasons, Methods, Limits

PROPOSED AMENDMENT

3 CSR 10-6.510 Channel Catfish, Blue Catfish, Flathead Catfish. The commission proposes to amend subsections (1)(A) and (1)(B),

section (2), and subsection (4)(A) of this rule.

PURPOSE: This amendment changes the daily, possession, and length limits of blue catfish on Lake of the Ozarks and Truman Lake.

(1) Daily Limit: Ten (10) channel catfish, five (5) blue catfish and five (5) flathead catfish, except:

(A) *[From the no-fishing zone below Truman Dam downstream throughout the no-boating zone, the daily limit of channel catfish, blue catfish and flathead catfish is four (4) in the aggregate.]* **On Lake of the Ozarks and its tributaries and Truman Lake and its tributaries, the daily and possession limit of blue catfish is ten (10).**

(B) On Bull Shoals Lake, Norfork Lake**,** and Table Rock Lake, the daily limit of channel catfish, blue catfish**,** and flathead catfish is ten (10) in the aggregate.

(2) Methods: Pole and line, trotline, throwline, limb line, bank line**,** or jug line.

(4) Length Limits: No length limits, except:

(A) *[From the no-fishing zone below Truman Dam downstream throughout the no-boating zone, the daily limit of channel catfish, blue catfish and flathead catfish may include only one (1) fish more than twenty-four inches (24") in total length.]* **On Lake of the Ozarks and its tributaries and Truman Lake and its tributaries, blue catfish twenty-six inches (26") to thirty-four inches (34") in total length must be returned to the water unharmed immediately after being caught. The daily limit may not contain more than two (2) blue catfish more than thirty-four inches (34") in total length.**

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. ***and section 252.240, RSMo 2000.*** *Original rule filed June 13, 1994, effective Jan. 1, 1995. For intervening history, please consult the* ***Code of State Regulations****. Amended: Filed Sept. 27, 2013.*

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 6—Wildlife Code: Sport Fishing: Seasons, Methods, Limits

PROPOSED AMENDMENT

3 CSR 10-6.545 White Bass, Yellow Bass, Striped Bass. The commission proposes to amend section (4) of this rule.

PURPOSE: This amendment clarifies there are specific length limit exceptions to the statewide regulation for the daily limit of white bass, yellow bass, striped bass, and their hybrids which allows not more than four (4) fish more than eighteen inches (18") in total length.

(4) Length Limits: No length limits, except the daily limit of white bass, yellow bass, striped bass, and their hybrids may include not more than four (4) fish more than eighteen inches (18") in total length*[.]***, except—**

(A) On Thomas Hill and Long Branch lakes, all white bass, yellow bass, striped bass and their hybrids less than twenty inches (20") in total length must be returned to the water unharmed immediately after being caught*[.]***;**

(B) On the Mississippi River, there is no length limit on white bass, yellow bass, striped bass, and their hybrids*[.]***; and**

(C) On Bull Shoals and Norfork lakes and their tributaries, striped bass less than twenty inches (20") in total length must be returned to the water unharmed immediately after being caught. On these waters, there are no length limits for white bass**, yellow bass,** or their hybrids.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. Original rule filed June 13, 1994, effective Jan. 1, 1995. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed Sept. 27, 2013.*

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 6—Wildlife Code: Sport Fishing: Seasons, Methods, Limits

PROPOSED AMENDMENT

3 CSR 10-6.550 Other Fish. The commission proposes to amend section (1) of this rule.

PURPOSE: This amendment moves a non-hook fishing method to the list of other non-hook fishing methods and clarifies the associated daily limit.

(1) Daily Limit: The daily limit for fish, other than those species listed as endangered in 3 CSR 10-4.111 or defined as game fish, is fifty (50) in the aggregate, if taken by pole and line, trotline, throwline, limb line, bank line, **or** jug line*[, or underwater spearfishing]*. The daily limit if taken by gig, atlatl, bow, crossbow, **grabbing,** snaring, snagging, or *[grabbing]* **underwater spearfishing** is twenty (20), in the aggregate. Bighead carp, common carp, goldfish, grass carp, and silver carp may be taken and possessed in any number.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. Original rule filed June 13, 1994, effective Jan. 1, 1995. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed Sept. 27, 2013.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 7—Wildlife Code: Hunting: Seasons, Methods, Limits

PROPOSED AMENDMENT

3 CSR 10-7.410 Hunting Methods. The commission proposes to amend subsection (1)(Q) of this rule.

PURPOSE: This amendment updates terminology used when referring to urban deer management zones.

(1) Wildlife may be hunted and taken only in accordance with the following:

(Q) Hunter Orange. During the urban *[counties]* **zones**, youth, November, and antlerless portions of the firearms deer hunting season, all hunters shall wear a cap or hat and a shirt, vest, or coat having the outermost color commonly known as hunter orange which shall be plainly visible from all sides while being worn. Camouflage orange garments do not meet this requirement. This requirement shall not apply to migratory game bird hunters, to hunters using archery methods while hunting within municipal boundaries where discharge of firearms is prohibited, to hunters on federal or state public hunting areas where deer hunting is restricted to archery methods, or to hunters in closed counties during the antlerless portion of the firearms deer hunting season.

*AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. Original rule filed July 22, 1974, effective Dec. 31, 1974. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Sept. 27, 2013.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 7—Wildlife Code: Hunting: Seasons, Methods, Limits

PROPOSED AMENDMENT

3 CSR 10-7.431 Deer Hunting Seasons: General Provisions. The commission proposes to amend subsection (7)(C) of this rule.

PURPOSE: This amendment updates terminology used when referring to urban deer management zones.

(7) During the firearms deer hunting season and during managed firearms deer hunts on those areas where such hunts are held, all persons hunting any game, and also adult mentors accompanying them, must wear a cap or hat and a shirt, vest, or coat of the color commonly known as hunter orange, which must be plainly visible from all sides. Camouflage orange garments do not meet this requirement. The following are exempt from this requirement:

(C) All hunters in counties closed during the urban *[counties]* **zones** and antlerless portions;

*AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. Original rule filed April 29, 2004, effective May 15, 2004. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Sept. 27, 2013.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 7—Wildlife Code: Hunting: Seasons, Methods, Limits

PROPOSED AMENDMENT

3 CSR 10-7.433 Deer: Firearms Hunting Season*[s]*. The commission proposes to amend the title of this rule.

PURPOSE: This amendment corrects an inaccurate pluralization of the rule title.

*AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. Original rule filed April 29, 2004, effective May 15, 2004. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Sept. 27, 2013.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 7—Wildlife Code: Hunting: Seasons, Methods, Limits

PROPOSED AMENDMENT

3 CSR 10-7.440 Migratory Game Birds and Waterfowl: Seasons, Limits. The commission proposes to amend subsection (3)(M) and paragraphs (3)(M)1. and (3)(M)2. of this rule.

PURPOSE: This amendment simplifies and clarifies language used to describe the species that may be included in the bag and possession limits for migratory game birds taken with birds of prey.

(3) Seasons and limits are as follows:

(M) Migratory **game** birds**, to include only doves, ducks, mergansers, and coots,** may be taken by hunters with birds of prey as follows (See 3 CSR 10-9.442 for additional provisions about falconry including season lengths and limits for wildlife other than migratory **game** birds. See 3 CSR 10-9.440 for falconry permit requirements.):

1. Doves may be taken from September 1 to December 16 from one-half (1/2) hour before sunrise to sunset. Daily limit: three (3) doves; possession limit: nine (9) doves, except that any *[waterfowl]* **ducks, mergansers, and coots** taken by falconers must be included within these limits; and

2. Ducks, mergansers, and coots may be taken from sunrise to sunset from September 7, 2013, through September 22, 2013, statewide, and from one-half (1/2) hour before sunrise to sunset as follows: in the North Zone, October 19, 2013, through October 20, 2013, October 26, 2013, through December 24, 2013, and February 10, 2014, through March 10, 2014; in the Middle Zone, October 26, 2013, through October 27, 2013, November 2, 2013, through December 31, 2013, and February 10, 2014, through March 10, 2014; and, in the South Zone, November 23, 2013, through November 24, 2013, November 28, 2013, through January 26, 2014, and February 10, 2014, through March 10, 2014. Daily limit: three (3) *[birds]* **ducks, mergansers, and coots** singly or in the aggregate*[, including doves]*; possession limit: nine (9) *[birds]* **ducks, mergansers, and coots** singly or in the aggregate, *[including doves]* **except that any doves taken by falconers must be included within these limits**.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. ***and section 252.240, RSMo 2000.*** *This version of rule filed Sept. 24, 1975, effective Oct. 10, 1975. For intervening history, please consult the* ***Code of State Regulations****. Amended: Filed Sept. 27, 2013.*

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 9—Wildlife Code: Confined Wildlife: Privileges, Permits, Standards

PROPOSED AMENDMENT

3 CSR 10-9.105 General Provisions. The commission proposes to amend section (1) of this rule.

PURPOSE: This amendment adds language to clarify an individual's right of due process before the suspension, revocation, or denial of a permit or privilege if they are found to be out of compliance with this ***Code****.*

(1) Any person holding wildlife in captivity in any manner shall have in his/her possession the prescribed permit or evidence of exemption. *[Renewal of permits is conditioned on compliance with provisions of this Code.]* **The commission may suspend, revoke, or deny a permit or privilege for cause, but not until an opportunity has been afforded for a hearing before the commission or its authorized representative. The hearings under this section shall be a contested case pursuant to Chapter 536, RSMo, and any person aggrieved by a final decision shall be entitled to judicial review as provided in Chapter 536, RSMo.**

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. Original rule filed June 9, 1993, effective Jan. 1, 1994. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed Sept. 27, 2013.*

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions approximately six thousand dollars to nine thousand dollars ($6,000–$9,000) annually. This information is based on two thousand five hundred dollars to four thousand dollars ($2,500–$4,000) expense per case using an Administrative Hearing Judge + five hundred dollars ($500) expense per case for use of a Court Reporter x two (2) contested hearings per year = (five thousand dollars to eight thousand dollars ($5,000 to $8,000) + one thousand dollars ($1,000) = six thousand dollars to nine thousand dollars ($6,000 to $9,000) annually.

PRIVATE COSTS: 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 Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. 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: Department of Conservation
Division Title: 10 Conservation Commission
Chapter Title: 9 Wildlife Code: Confined Wildlife: Privileges, Permits, Standards

Rule Number and Name:	3 CSR 10-9.105 General Provisions
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Conservation	**$6,000 to $9,000**

III. WORKSHEET

{[$2,500 to $4,000 expense per case using an Administrative Hearing Judge] + [$500 expense per case for use of a Court Reporter] * [2 contested hearings per year]}=

{$5,000 to $8,000 + $1,000} =

$6,000 to $9,000

IV. ASSUMPTIONS

- The Department of Conservation currently averages less than one contested hearing for point violations per year.

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 9—Wildlife Code: Confined Wildlife: Privileges, Permits, Standards

PROPOSED AMENDMENT

3 CSR 10-9.110 General Prohibition; Applications. The commission proposes to amend subsection (3)(D), add subsection (3)(E), reletter subsequent subsections, amend new subsection (3)(F), and amend new subparagraphs (3)(F)3.C. and (3)(H)2.C.–F. of this rule.

PURPOSE: This amendment provides for the sale of only the Virile (or "Northern") crayfish (Orconectes virilis) for live bait from instate sources and corrects the common names of crustaceans on the Approved Aquatic Species list.

(3) Fish and crayfish may be bought, sold, transported, propagated, taken, and possessed by any person without permit throughout the year in any number or size and by any method providing—

(D) **Except as further provided in this rule,** *[L]***l**ive crayfish, **other than those prohibited in 3 CSR 10-4.117,** may be imported, bought, or sold only for—

1. Human consumption; or

2. Scientific research conducted by, or food for confined animals held by, an authorized representative of a university, college, school, incorporated city, state, or federal agency, publicly-owned zoo or wildlife or research organization, or other qualified individual.

(E) Only the Virile (or "Northern") crayfish (*Orconectes virilis*) may be purchased for re-sale or sold for use as live bait. Live Virile ("Northern") crayfish may not be imported into the state.

*[(E)]***(F)** That the privileges of this section do not apply to taking or possession in, on**,** or from waters of the state, waters stocked by the state, or waters subject to movements of fishes into and from waters of the state, except—

1. Animals defined as live bait and possessed under provisions of this section may be possessed on the waters of the state for use as live bait except that bighead carp and silver carp may not be used as live bait but may be used as dead or cut bait;

2. Fish cultured by a commercial fish producer that remain in a man-made impoundment following inundation by flooding from waters of the state as defined in this Code shall be considered the property of the impoundment owner; provided the remaining fish species are the same as were present in the impoundment prior to inundation. Any other fish species in the impoundment shall be considered the property of the state and not available for sale, and shall be returned unharmed immediately to the waters of the state when harvested; and

3. With the written authorization of the director, a privately owned impoundment that is entirely confined and located completely upon lands owned or leased by a single person or by two (2) or more persons jointly or as tenants in common or by corporate shareholders, and that is designated as waters of the state, may be used for the commercial production of species listed in the Approved Aquatic Species List in 3 CSR 10-9.110 (3)(G) that were not stocked by the department, provided that—

A. The impoundment owner has in his/her possession a dated, written statement showing the number or weight of each species stocked as proof that such animals were legally obtained from other than waters of the state or from a licensed commercial fisherman;

B. The species being produced may be harvested by the methods and under the conditions specified in the director's written authorization. All other species caught during culture activities must be returned unharmed immediately to the water; and

C. Statewide seasons, methods**,** and limits apply for all other species;

*[(F)]***(G)** That the privileges of this section apply only to the following:

1. Species listed in the Approved Aquatic Species List (including all subspecies, varieties, and hybrids of the same bought, sold, transported, propagated, taken, and possessed for purposes of aquaculture, but excluding transgenic forms);

2. Species frozen or processed for sale as food products;

3. Species incapable of surviving in fresh water;

4. Fish held only in aquaria, tanks, or other containers having water or solid wastes discharged only into septic systems or municipal waste treatment facilities that are designed and operated according to guidelines of the Missouri Department of Natural Resources or that entirely recirculate all of the water so that none of it shall drain into a water body;

5. Species other than fish held only in aquaria, tanks, or other containers that have the following specifications: all containers including the drain pipe or stand pipe must be completely covered with an intact screen of a maximum mesh size of one-sixteenth inch (1/16") square, and having water or solid wastes discharged only into septic systems or municipal waste treatment facilities that are designed and operated according to guidelines of the Missouri Department of Natural Resources or that entirely recirculate all of the water so that none of it shall drain into a water body; and

6. Species or systems that do not meet the conditions of one of paragraphs 1. through 5. above that have been inspected by a representative of the department and received prior written approval from the director. Only closed systems from which the escape of live organisms (including eggs, parasites, and diseases) is not possible will be approved. A system is considered closed when it is contained securely within an enclosed structure having no discharge of water or solid wastes. Any water or solid wastes removed from the system shall be disposed only into septic systems or municipal waste treatment facilities that are designed and operated according to guidelines of the Missouri Department of Natural Resources. Outdoor impoundments are not considered closed systems; and

*[(G)]***(H)** Approved Aquatic Species List.

1. Fishes.
   A. Shovelnose sturgeon *(Scaphirhynchus platorynchus)*
   B. Paddlefish (*Polyodon spathula*)
   C. Spotted gar (*Lepisosteus oculatus*)
   D. Longnose gar (*Lepisosteus osseus*)
   E. Shortnose gar (*Lepisosteus platostomus*)
   F. Bowfin (*Amia calva*)
   G. American eel *(Anguilla rostrata)*
   H. Gizzard shad (*Dorosoma cepedianum*)
   I. Threadfin shad (*Dorosoma petenense*)
   J. Rainbow trout (*Oncorhynchus mykiss*)
   K. Golden trout (*Oncorhynchus aquabonita*)
   L. Cutthroat trout (*Oncorhynchus clarkii*)
   M. Brown trout (*Salmo trutta*)
   N. Brook trout (*Salvelinus fontinalis*)
   O. Coho salmon (*Oncorhynchus kisutch*)
   P. Atlantic Salmon *(Salmo salar)*
   Q. Northern pike (*Esox lucius*)
   R. Muskellunge (*Esox masquinongy*)
   S. Goldfish (*Carassius auratus*)
   T. Grass carp (*Ctenopharyngodon idella*)
   U. Common carp (*Cyprinus carpio*)
   V. Bighead carp *(Hypophthalmichthys nobilis)*
   W. Golden shiner (*Notemigonus crysoleucas*)
   X. Bluntnose minnow (*Pimephales notatus*)
   Y. Fathead minnow (*Pimephales promelas*)
   Z. River carpsucker *(Carpiodes carpio)*
   AA. Quillback *(Carpiodes cyprinus)*
   BB. White sucker *(Catostomus commersoni)*
   CC. Blue sucker *(Cycleptus elongatus)*
   DD. Bigmouth buffalo (*Ictiobus cyprinellus*)
   EE. Black bullhead (*Ameirus melas*)

FF. Yellow bullhead (*Ameirus natalis*)
GG. Brown bullhead (*Ameirus nebulosus*)
HH. Blue catfish (*Ictalurus furcatus*)
II. Channel catfish (*Ictalurus punctatus*)
JJ. Flathead catfish (*Pylodictis olivaris*)
KK. Mosquitofish (*Gambusia affinis*)
LL. White bass (*Morone chrysops*)
MM. Striped bass (*Morone saxatilis*)
NN. Green sunfish (*Lepomis cyanellus*)
OO. Pumpkinseed (*Lepomis gibbosus*)
PP. Warmouth (*Lepomis gulosus*)
QQ. Orangespotted sunfish (*Lepomis humilis*)
RR. Bluegill (*Lepomis macrochirus*)
SS. Longear sunfish (*Lepomis megalotis*)
TT. Redear sunfish (*Lepomis microlophus*)
UU. Smallmouth bass (*Micropterus dolomieu*)
VV. Spotted bass (*Micropterus punctulatus*)
WW. Largemouth bass (*Micropterus salmoides*)
XX. White crappie (*Pomoxis annularis*)
YY. Black crappie (*Pomoxis nigromaculatus*)
ZZ. Yellow perch (*Perca flavescens*)
AAA. Sauger (*Sander canadensis*)
BBB. Walleye (*Sander vitreus*)
CCC. Freshwater drum *(Aplodinotus grunniens)*

2. Crustaceans.
A. Freshwater prawn (*Macrabrachi um rosenbergii*)
B. Pacific white shrimp (*Litopenaeus vannamei*)
C. *[Northern]* **Virile ("Northern")** crayfish (*Orconectes virilis*)
D. White River *[crayfish]* **crawfish** (*Procambarus acutus*)
E. Red Swamp *[crayfish]* **crawfish** (*Procambarus clarkii*)
F. *[Papershell]* **Calico ("Papershell")** crayfish *(Orconectes immunis)*

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. This rule was previously filed as 3 CSR 10-4.110(5), (6), and (10). Original rule filed June 26, 1975, effective July 7, 1975. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed Sept. 27, 2013.*

PUBLIC COST: This proposed amendment will cost the Department of Conservation an estimated one hundred sixty-eight thousand three hundred eighteen dollars ($168,318) annually to develop and conduct crayfish identification training sessions and to administer and verify compliance of live bait sales.

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 Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. 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 ENTITY COST

I. **Department Title: 3 - Department of Conservation**
Division Title: 10 - Conservation Commission
Chapter Title: 9 – Wildlife Code: Confined Wildlife: Privileges, Permits, Standards

Rule Number and Name:	3 CSR 10-9.110 General Prohibition; Applications.
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
MO Department of Conservation	$168,318 annually

III. WORKSHEET

One (1) - Fisheries Research Assistant at $10.73/hr for 2080 hours = $22,318
Two (2) - Conservation Agents at $73,000 annually = $146,000
a. $61,000 annual salary each
b. $4,000 average annual expense per conservation agent
c. $8,200 average for travel costs at $.41/mi for 20,000 miles/year

IV. ASSUMPTIONS

The Fisheries Research Assistant position would be used to develop and assist conservation agents in conducting training programs for live bait producers and dealers in crayfish identification. The two (2) Conservation Agents are needed to inspect live bait sales statewide to ensure only the approved crayfish species is being offered for sale.

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 9—Wildlife Code: Confined Wildlife: Privileges, Permits, Standards

PROPOSED AMENDMENT

3 CSR 10-9.442 Falconry. The commission proposes to amend subsection (2)(D) of this rule.

PURPOSE: This amendment simplifies and clarifies the language used to describe migratory game birds that may be taken with birds of prey.

(2) Only designated species and numbers of birds of prey may be possessed and each bird shall bear a numbered, non-reuseable marker provided by the department. Documented health problems or injuries caused by the band may qualify the permit holder for an exemption to the banding requirement for that raptor, in which case a copy of the exemption paperwork must remain in the permittee's possession when transporting or flying the raptor. If the bird with documented health issues caused by the band is a wild goshawk, Harris's hawk, peregrine falcon, or gyrfalcon an International Organization for Standardization (ISO)-compliant microchip must be used. Birds held under a falconry permit may be used, without further permit, to pursue and take wildlife within the following seasons and bag limits:

(D) Migratory game birds *[and waterfowl]* **to include only doves, ducks, mergansers, and coots** may be taken, possessed, transported, and stored only as provided in federal regulations and this Code. (Regulations for *[waterfowl]* **doves, ducks, mergansers, coots,** and other migratory game birds are determined annually by the commission following receipt of regulations prescribed by the Secretary of the Interior under authority of the Federal Migratory Bird Treaty Act. See 3 CSR 10-7.440.)

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. This rule previously filed as 3 CSR 10-7.442. Original rule filed July 22, 1974, effective Dec. 31, 1974. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed Sept. 27, 2013.*

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 10—Wildlife Code: Commercial Permits: Seasons, Methods, Limits

PROPOSED AMENDMENT

3 CSR 10-10.705 Commercialization. The commission proposes to amend this rule.

PURPOSE: This amendment clarifies an individual's right of due process before the suspension, revocation, or denial of a permit or privilege if they are found to be out of compliance with this Code.

Wildlife may be bought, sold, offered for sale, exchanged, transported, or delivered only under the conditions of the prescribed permit, or as otherwise provided in this chapter. No affidavit, receipt, or other document may be issued or used in lieu of the required permit. Any permit issued or obtained by false statement or through fraud, or while permits are revoked or denied by the commission, shall be invalid. *[As provided in rule 3 CSR 10-5.216, t]***T**he commission may suspend, revoke, or deny a permit or privilege for cause, but not until an opportunity has been afforded for a hearing before the commission or its authorized representative. Hearings under this section shall be *[non]*contested cases *[unless the permittee is entitled by law to a contested case hearing]* **pursuant to Chapter 536, RSMo and any person aggrieved by a final decision shall be entitled to judicial review as provided in Chapter 536, RSMo**.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. Original rule filed Aug. 18, 1970, effective Dec. 31, 1970. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed Sept. 27, 2013.*

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions approximately six thousand dollars to nine thousand dollars ($6,000–$9,000) annually. This information is based on two thousand five hundred dollars to four thousand dollars ($2,500–$4,000) expense per case using an Administrative Hearing Judge + five hundred dollars ($500) expense per case for use of a Court Reporter x two (2) contested hearings per year = (five thousand dollars to eight thousand dollars ($5,000 to $8,000) + one thousand dollars ($1,000) = six thousand dollars to nine thousand dollars ($6,000 to $9,000) annually.

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 Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. 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: Department of Conservation
Division Title: 10 Conservation Commission
Chapter Title: 10 Wildlife Code: Commercial Permits: Seasons, Methods, Limits

Rule Number and Name:	3 CSR 10-10.705 General Provisions
Type of Rulemaking:	Proposed amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Conservation	**$6,000 to $9,000**

III. WORKSHEET

{[$2,500 to $4,000 expense per case using an Administrative Hearing Judge] + [$500 expense per case for use of a Court Reporter] * [2 contested hearings per year]}=

{$5,000 to $8,000 + $1,000} =

$6,000 to $9,000

IV. ASSUMPTIONS

- The Department of Conservation currently averages less than one contested hearing for point violations per year.

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 10—Wildlife Code: Commercial Permits: Seasons, Methods, Limits

PROPOSED AMENDMENT

3 CSR 10-10.744 Commercial Deer Processing: Permit, Privileges, Requirements. The commission proposes to amend sections (1) and (2) of this rule.

PURPOSE: This amendment adds language to clarify privileges afforded to permit holders and removes language which is no longer applicable to this permit.

(1) To commercially process and store **legally acquired** deer **taken from the wild stock of the state**. Fee: twenty-five dollars ($25).

(2) *[To commercially process and store legally acquired deer taken from the wild stock of the state, applicants for a Commercial Deer Processing Permit must qualify by being approved by the Missouri Department of Agriculture as a Custom Exempt Operation. (Refer to Missouri Department of Agriculture for applicable rules and regulations pertaining to Custom Exempt Operation.)]* The commercial processor shall post a notice and inform patrons of the provisions of this rule and shall keep accurate records of all deer processed and stored. These records shall be retained for twelve (12) months. *[Future permits shall be conditioned on compliance with this rule.]* All records and stored deer shall be made available for inspection by an authorized agent of the department at any reasonable time.

*AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. Original rule filed April 28, 1992, effective Dec. 3, 1992. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Sept. 27, 2013.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 11—Wildlife Code: Special Regulations for Department Areas

PROPOSED AMENDMENT

3 CSR 10-11.130 Vehicles, Bicycles, Horses, and Horseback Riding. The commission proposes to add new paragraph (5)(C)8. and renumber subsequent paragraphs of this rule.

PURPOSE: This amendment allows bicycle and equestrian use on Saeger Woods Conservation Area.

(5) Designated multi-use trails are open for use year-round as specified on the following department areas:

(C) Areas with multi-use trails open to bicycling and equestrian use—

1. Bicentennial Conservation Area
2. Big Buffalo Creek Conservation Area
3. Busiek State Forest and Wildlife Area
4. Flag Spring Conservation Area
5. Huckleberry Ridge Conservation Area
6. James A. Reed Memorial Wildlife Area
7. Rockwoods Range
8. **Saeger Woods Conservation Area**
*[8.]***9.** Stockton Lake Management Lands
*[9.]***10.** Wappapello Lake Management Lands
*[10.]***11.** Wire Road Conservation Area

*AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. This rule previously filed as 3 CSR 10-4.115. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Sept. 27, 2013.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 11—Wildlife Code: Special Regulations for Department Areas

PROPOSED AMENDMENT

3 CSR 10-11.180 Hunting, General Provisions and Seasons. The commission proposes to amend section (3) and subsection (5)(F), add subsection (5)(BB), re-letter subsequent subsections, and amend subsections (6)(C) and (12)(A) of this rule.

PURPOSE: This amendment would enable staff to recommend turkey hunting on small public fishing access areas, corrects the names of two conservation areas, establishes hunting regulations on a newly acquired conservation area, and removes turkey from the list of species that may not be hunted on Marais Temps Clair Conservation Area.

(3) Hunting is prohibited on public fishing access areas less than forty (40) acres in size except for deer **and turkey** hunting as authorized in the current *Fall Deer & Turkey Hunting Regulations and Information* booklet published in August and the current *Spring Turkey Hunting Regulations and Information* booklet published in March, which are hereby incorporated in this Code by reference. A printed copy of these booklets can be obtained from the Missouri Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180 and are also available online at www.missouriconservation.org. This rule does not incorporate any subsequent amendments or additions.

(5) Firearms firing single projectiles are prohibited on the following department areas except for deer hunting as authorized in the annual

Fall Deer & Turkey Hunting Regulations and Information booklet:

(F) Brickley Hollow *[Access]* **Conservation Area**

(BB) The Lewis Family, Dean, Anna Mae and David D. Lewis Memorial Conservation Area

*[(BB)]***(CC)** Liberty Bend Conservation Area
*[(CC)]***(DD)** Little Bean Marsh Conservation Area
*[(DD)]***(EE)** Little Dixie Lake Conservation Area
*[(EE)]***(FF)** Little Prairie Conservation Area
*[(FF)]***(GG)** Little River Conservation Area
*[(GG)]***(HH)** Caroline Sheridan Logan Memorial Wildlife Area
*[(HH)]***(II)** Lone Jack Lake Conservation Area
*[(II)]***(JJ)** Lost Valley Fish Hatchery
[*(JJ)*]**(KK)** William Lowe Conservation Area
*[(KK)]***(LL)** Alice Ahart Mansfield Memorial Conservation Area
*[(LL)]***(MM)** Marais Temps Clair Conservation Area
*[(MM)]***(NN)** Mo-No-I Prairie Conservation Area
*[(NN)]***(OO)** Mon-Shon Prairie Conservation Area
*[(OO)]***(PP)** Pacific Palisades Conservation Area
*[(PP)]***(QQ)** Parma Woods Range and Training Center (north portion)
*[(QQ)]***(RR)** Pelican Island Natural Area
*[(RR)]***(SS)** James A. Reed Memorial Wildlife Area
*[(SS)]***(TT)** Reform Conservation Area
*[(TT)]***(UU)** Rocky Barrens Conservation Area
*[(UU)]***(VV)** Saint Stanislaus Conservation Area
*[(VV)]***(WW)** Dr. O. E. and Eloise Sloan Conservation Area
*[(WW)]***(XX)** Sunbridge Hills Conservation Area
*[(XX)]***(YY)** Swift Ditch Access
*[(YY)]***(ZZ)** Tipton Ford Access
*[(ZZ)]***(AAA)** Treaty Line Prairie Conservation Area
*[(AAA)]***(BBB)** Tri-City Community Lake
*[(BBB)]***(CCC)** Valley View Glades Natural Area
*[(CCC)]***(DDD)** Vandalia Community Lake Conservation Area
*[(DDD)]***(EEE)** Archie and Gracie VanDerhoef Memorial State Forest
*[(EEE)]***(FFF)** Victoria Glades Conservation Area
*[(FFF)]***(GGG)** Vonaventure Memorial Forest and Wildlife Area
*[(GGG)]***(HHH)** Wade and June Shelton Memorial Conservation Area
*[(HHH)]***(III)** Wigwam School Access
*[(III)]***(JJJ)** Young Conservation Area

(6) Firearms firing single projectiles are prohibited, except during managed deer hunts, and except furbearers treed with the aid of dogs may be taken with a twenty-two (.22) or smaller caliber rimfire firearm on the following department areas:

(C) Truman Reservoir ML (Designated portion of the Grand River **Bottoms** Wildlife Management Area)

(12) On Marais Temps Clair Conservation Area—

(A) Rabbit, pheasant, woodcock, squirrel, groundhog, furbearer, *[turkey,]* and crow hunting is prohibited; and

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. This rule previously filed as 3 CSR 10-4.115. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed Sept. 27, 2013.*

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 11—Wildlife Code: Special Regulations for Department Areas

PROPOSED AMENDMENT

3 CSR 10-11.184 Quail Hunting. The commission proposes to amend section (1), delete subsection (6)(B), and re-letter subsequent subsections of this rule.

PURPOSE: This amendment removes the quail hunting prohibition on Columbia Bottom Conservation Area to allow managed quail hunts on that area and corrects an improper use of the term "rule" by replacing it with the term "chapter."

(1) Quail hunting is permitted on department areas in accordance with statewide regulations except as further restricted in this *[rule]* **chapter**.

(6) Quail hunting is prohibited on the following department areas:
[(B) Columbia Bottom Conservation Area]
*[(C)]***(B)** Marais Temps Clair Conservation Area
*[(D)]***(C)** James A. Reed Memorial Wildlife Area
*[(E)]***(D)** Saint Stanislaus Conservation Area

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. ***and section 252.240, RSMo 2000.*** *Original rule filed Oct. 10, 2008, effective April 30, 2009. Amended: Filed Sept. 27, 2013.*

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 11—Wildlife Code: Special Regulations for Department Areas

PROPOSED AMENDMENT

3 CSR 10-11.185 Dove Hunting. The commission proposes to amend paragraph (2)(A)6. of this rule.

PURPOSE: This amendment corrects an improper reference to a conservation area.

(2) On the following areas, during the month of September, dove hunters must possess a valid area daily hunting tag while hunting and must accurately report their harvest immediately upon completing their hunting trip:

(A) Dove hunting is permitted during legal shooting hours in accordance with statewide regulations:
1. August A. Busch Memorial Conservation Area
2. Bois D'Arc Conservation Area
3. William R. Logan Conservation Area
4. Pony Express Conservation Area
5. Robert E. Talbot Conservation Area
6. William G. and Erma Parke White Memorial Wildlife Area.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. Material covered in this rule previously filed as 3 CSR 10-11.180. Original rule filed Sept. 12, 2011, effective March 1, 2012. Amended: Filed Sept. 27, 2013.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 11—Wildlife Code: Special Regulations for Department Areas

PROPOSED AMENDMENT

3 CSR 10-11.205 Fishing, Methods and Hours. The commission proposes to amend paragraph (1)(B)30., section (12), and subsection (12)(B) of this rule.

PURPOSE: This amendment adds clarifying language, corrects an improper reference to a conservation area, and expands waters available on Otter Slough Conservation Area for harvest of certain nongame species by atlatl, gig, bow, or crossbow.

(1) On lakes and ponds, fish may be taken only with pole and line and not more than three (3) poles may be used by one (1) person at any time, except as otherwise provided in this chapter.

(B) Carp, buffalo, suckers, and gar may be taken by atlatl, gig, bow, or crossbow during statewide seasons on the following department areas or individually-named lakes:
1. Atlanta Conservation Area
2. Bismarck Conservation Area
3. Blackjack Access
4. Bob Brown Conservation Area
5. Columbia Bottom Conservation Area
6. Cooley Lake Conservation Area
7. Deer Ridge Conservation Area
8. Deroin Bend Conservation Area
9. Duck Creek Conservation Area
10. Eagle Bluffs Conservation Area
11. Femme Osage Slough (Weldon Spring Conservation Area)
12. Connor O. Fewel Conservation Area
13. Fountain Grove Conservation Area
14. Four Rivers Conservation Area (August A. Busch, Jr. Memorial Wetlands at)
15. Franklin Island Conservation Area
16. Grand Pass Conservation Area
17. Hunnewell Lake Conservation Area
18. King Lake Conservation Area
19. Kings Prairie Access
20. Lake Paho Conservation Area
21. Lamine River Conservation Area
22. B. K. Leach Memorial Conservation Area
23. Limpp Community Lake
24. Little Compton Lake Conservation Area
25. Locust Creek Conservation Area
26. Manito Lake Conservation Area
27. Marais Temps Clair Conservation Area
28. Nodaway County Community Lake
29. Nodaway Valley Conservation Area
30. *[Otter Lake ()]*Otter Slough Conservation Area*[)]*
31. Peabody Conservation Area
32. Ralph and Martha Perry Memorial Conservation Area
33. Haysler A. Poague Conservation Area
34. Pony Express Lake Conservation Area
35. Rebel's Cove Conservation Area
36. Schell-Osage Conservation Area
37. Sever (Henry) Lake Conservation Area
38. Settle's Ford Conservation Area
39. Ted Shanks Conservation Area
40. H. F. Thurnau Conservation Area
41. Truman Reservoir Management Lands
42. Worth County Community Lake
43. Worthwine Island Conservation Area

(12) The taking of crayfish, is prohibited on the following **areas**:

(B) **Dan and Maureen** Cover Prairie Conservation Area

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. This rule previously filed as 3 CSR 10-4.115. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed Sept. 27, 2013.*

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 12—Wildlife Code: Special Regulations for Areas Owned by Other Entities

PROPOSED AMENDMENT

3 CSR 10-12.110 Use of Boats and Motors. The commission proposes to remove subsection (2)(M), re-letter subsequent subsections, add subsection (2)(AA), amend section (4) and subsection (6)(G), delete subsection (6)(I), and re-letter subsequent subsections of this rule.

PURPOSE: This amendment reflects a transfer of responsibilities for a lake in St. James from one entity to another, corrects the name of one lake owned by the City of Columbia, acknowledges that there are

two (2) lakes owned by the City of Higginsville, and removes a lake that is no longer managed by the department.

(2) Boats are prohibited on the following areas:
[(M) James Foundation (Scioto Lake);]
*[(N)]***(M)** Jefferson City (McKay Park Lake);
*[(O)]***(N)** Jennings (Koeneman Park Lake);
*[(P)]***(O)** Kirksville (Spur Pond);
*[(Q)]***(P)** Kirkwood (Walker Lake);
*[(R)]***(Q)** Liberty (Fountain Bluff Park Ponds Nos. 1, 2, 3, 4, 5, 6, 7, and 8);
*[(S)]***(R)** Macon County (Fairgrounds Lake);
*[(T)]***(S)** Mexico (Kiwanis Lake);
*[(U)]***(T)** Mineral Area College (Quarry Pond);
*[(V)]***(U)** Mount Vernon (Williams Creek Park Lake);
*[(W)]***(V)** Overland (Wild Acres Park Lake);
*[(X)]***(W)** Potosi (Roger Bilderback Lake);
*[(Y)]***(X)** Raymore (Johnston Lake);
*[(Z)]***(Y)** Rolla (Schuman Park Lake);
*[(AA)]***(Z)** St. Charles (Fountain Lakes Pond, Kluesner Lake, Moore Lake, Skate Park Lake);
(AA) St. James (Scioto Lake)

(4) Only boats without motors may be used on Columbia (Stephens Park Lake, Twin Lakes).

(6) Outboard motors in excess of ten (10) horsepower may be used but must be operated at slow, no-wake speed on the following areas:
(G) *[Higginsville City Lake;]* **Higginsville (Higginsville City Lake, Upper Higginsville City Lake);**
[(I) Iron Mountain City Lake;]
*[(J)]***(I)** La Plata City Lake;
*[(K)]***(J)** Macon City Lake;
*[(L)]***(K)** Marceline (Marceline City Lake, Old Marceline City Reservoir);
*[(M)]***(L)** Mark Twain National Forest (Council Bluff Lake, Palmer Lake);
*[(N)]***(M)** Maysville (Willow Brook Lake);
*[(O)]***(N)** Memphis (Lake Showme);
*[(P)]***(O)** Milan (Elmwood Lake);
*[(Q)]***(P)** Moberly (Rothwell Park Lake, Sugar Creek Lake, and Water Works Lake);
*[(R)]***(Q)** Monroe City (Route J Reservoir);
*[(S)]***(R)** Unionville (Lake Mahoney);
*[(T)]***(S)** Wakonda State Park (Agate Lake and Wakonda Lake); and
*[(U)]***(T)** Watkins Woolen Mill State Park and Historic Site (Williams Creek Lake);

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. This rule previously filed as 3 CSR 10-4.116. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed Sept. 27, 2013.*

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 12—Wildlife Code: Special Regulations for Areas Owned by Other Entities

PROPOSED AMENDMENT

3 CSR 10-12.115 Bullfrogs and Green Frogs. The commission proposes to amend paragraph (1)(A)2., delete paragraph (1)(A)6., renumber subsequent paragraphs, amend new paragraphs (1)(A)8. and (1)(A)9., add paragraph (1)(A)10., delete paragraph (1)(C)1., renumber and amend subsequent paragraphs, and add paragraph (1)(C)6. of this rule.

PURPOSE: This amendment corrects the name of one lake owned by the City of Columbia, reflects a transfer of responsibilities for a lake in St. James from one entity to another, and corrects the format used for an area owned by the University of Missouri to conform to similar references in the Code.

(1) Bullfrogs and green frogs may be taken during the statewide season only by hand, handnet, atlatl, gig, bow, snagging, snaring, grabbing, or pole and line except as further restricted by this chapter.
(A) Bows may not be used to take frogs on the following areas:
1. Blue Springs (Lake Remembrance);
2. Columbia (Antimi Lake, Cosmo-Bethel Lake, Lake of the Woods, A. Perry Philips Park Lake, Stephens Park Lake, Twin Lakes);
3. Farmington (Giessing Lake, Hager Lake, Thomas Lake);
4. Fulton (Morningside Lake, Truman Lake, Veterans Park Lake);
5. Jackson County (Alex George Lake, Bergan Lake, Bowlin Pond, Prairie Lee Lake, Scherer Lake, Tarsney Lake, Wood Lake, Wyatt Lake);
[6. James Foundation (Scioto Lake);]
*[7.]***6.** Mark Twain National Forest (department-managed portions);
*[8.]***7.** Mexico (Lakeview Lake, Kiwanis Lake);
*[9.]***8.** Moberly (Beuth Park Lake, Rothwell Park Lake, Water Works Lake); *[and]*
*[10.]***9.** Odessa (Lake Venita)*[.]***; and**
10. St. James (Scioto Lake).
(C) The taking of frogs is prohibited on the following areas:
[1. Thomas S. Baskett Wildlife Research and Education Center, except on Ashland Lake]
*[2.]***1.** Bennett Spring State Park**;**
*[3.]***2.** Mark Twain National Forest (Carmen Springs Management Area)**;**
*[4.]***3.** Maramec Spring Park**;**
*[5.]***4.** Montauk State Park**;**
*[6.]***5.** Roaring River State Park**; and**
6. University of Missouri (Thomas S. Baskett Wildlife Research and Education Center), except on Ashland Lake.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. This rule previously filed as 3 CSR 10-4.116. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed Sept. 27, 2013.*

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in

support of or in opposition to this proposed amendment with Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 12—Wildlife Code: Special Regulations for Areas Owned by Other Entities

PROPOSED AMENDMENT

3 CSR 10-12.125 Hunting and Trapping. The commission proposes to delete paragraphs (1)(B)1. and (1)(B)15., renumber subsequent paragraphs, amend new paragraph (1)(B)5., and add new paragraphs (1)(B)28. and (1)(B)34. of this rule.

PURPOSE: This amendment corrects the name of one lake owned by the City of Columbia, reflects a transfer of responsibilities for a lake in St. James from one entity to another, and corrects the format used for an area owned by the University of Missouri to conform to similar references in the Code.

(1) Hunting, under statewide permits, seasons, methods, and limits, is permitted except as further restricted in this chapter and except for deer and turkey hunting as authorized in the annual *Fall Deer & Turkey Hunting Regulations and Information* booklet published in August and annual *Spring Turkey Hunting Regulations and Information* booklet published in March, which are incorporated in this *Code* by reference. A printed copy of these booklets can be obtained from the Missouri Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180 and are also available online at www.missouriconservation.org. This rule does not incorporate any subsequent amendments or additions.

(B) Hunting is prohibited on the following areas:

[1. Thomas S. Baskett Wildlife Research and Education Center;]

*[2.]***1.** Bethany (Old Bethany City Reservoir);

*[3.]***2.** Buchanan County (Gasper Landing);

*[4.]***3.** California (Proctor Park Lake);

*[5.]***4.** Carthage (Kellogg Lake);

*[6.]***5.** Columbia (Antimi Lake, Cosmo-Bethel Lake, Lake of the Woods, Twin Lakes);

*[7.]***6.** Dexter City Lake;

*[8.]***7.** Farmington (Giessing Lake, Hager Lake, Thomas Lake);

*[9.]***8.** Fenton (Preslar Lake, Upper Fabick Lake, Westside Lake);

*[10.]***9.** Fulton (Morningside Lake, Truman Lake, Veterans Park Lake);

*[11.]***10.** Hamilton City Lake;

*[12.]***11.** Harrisonville (North Lake);

*[13.]***12.** Jackson (Rotary Lake);

*[14.]***13.** Jackson County (Alex George Lake, Bergan Lake, Bowlin Pond, Fleming Pond, Lake Jacomo, Prairie Lee Lake, Scherer Lake, Tarsney Lake, Wood Lake, Wyatt Lake);

[15. James Foundation (Scioto Lake);]

*[16.]***14.** Kirksville (Spur Pond);

*[17.]***15.** Lawson City Lake;

*[18.]***16.** Liberty (Fountain Bluff Park Ponds Nos. 1, 2, 3, 4, 5, 6, 7, and 8);

*[19.]***17.** Macon County (Fairgrounds Lake);

*[20.]***18.** Mexico (Lakeview Lake, Kiwanis Lake);

*[21.]***19.** Mineral Area College (Quarry Pond);

*[22.]***20.** Moberly (Rothwell Park Lake, Water Works Lake);

*[23.]***21.** Mount Vernon (Williams Creek Park Lake);

*[24.]***22.** Odessa (Lake Venita);

*[25.]***23.** Overland (Wild Acres Park Lake);

*[26.]***24.** Potosi (Roger Bilderback Lake);

*[27.]***25.** Raymore (Johnston Lake);

*[28.]***26.** Rolla (Schuman Park Lake);

*[29.]***27.** St. Charles (Fountain Lakes Pond, Kluesner Lake, Moore Lake, Skate Park Lake);

28. St. James (Scioto Lake);

*[30.]***29.** St. Louis County (Bee Tree Park Lake, Blackjack Lake, Carp Lake, Creve Coeur Park Lake, Fountain Lake, Island Lake, Jarville Lake, Simpson Park Lake, Spanish Lake, Sunfish Lake);

*[31.]***30.** Savannah City Lake;

*[32.]***31.** Sedalia (Clover Dell Park Lake);

*[33.]***32.** Sedalia Water Department (Spring Fork Lake);

*[34.]***33.** Springfield City Utilities (Lake Springfield);

34. University of Missouri (Thomas S. Baskett Wildlife Research and Education Center);

35. Warrensburg (Lions Lake);

36. Watershed Committee of the Ozarks (Valley Water Mill Lake); and

37. Windsor (Farrington Park Lake).

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. This rule previously filed as 3 CSR 10-4.116. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed Sept. 27, 2013.*

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 12—Wildlife Code: Special Regulations for Areas Owned by Other Entities

PROPOSED AMENDMENT

3 CSR 10-12.135 Fishing, Methods. The commission proposes to amend section (6) of this rule.

PURPOSE: This amendment acknowledges that there are two lakes owned by the City of Higginsville under cooperative management agreement with the department.

(6) Carp, buffalo, gar, and shad may be taken by bow from sunrise to midnight throughout the year on Concordia (Edwin A. Pape Lake) and *[Higginsville City Lake]* **Higginsville (Higginsville City Lake, Upper Higginsville City Lake)**.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. This rule previously filed as 3 CSR 10-4.116. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed Sept. 27, 2013.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 12—Wildlife Code: Special Regulations for Areas Owned by Other Entities

PROPOSED AMENDMENT

3 CSR 10-12.140 Fishing, Daily and Possession Limits. The commission proposes to amend subsections (2)(E) and (2)(J), and section (11) of this rule.

PURPOSE: This amendment corrects the name of a lake owned by the City of Columbia, acknowledges that the department manages two (2) lakes owned by the City of Higginsville, and modifies a closing date to be more consistent with other areas managed in similar fashion.

(2) The daily limit for black bass is two (2) on the following lakes:

(E) Columbia (Stephens Park Lake, Twin Lake**s**);

(J) *[Higginsville City Lake]* **Higginsville (Higginsville City Lake, Upper Higginsville City Lake)**;

(11) On Missouri Western State University (Everyday Pond), fish must be returned to the water unharmed immediately after being caught except that trout may be taken from February 1 through October *[15]* **31**.

*AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. This rule previously filed as 3 CSR 10-4.116. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Sept. 27, 2013.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 12—Wildlife Code: Special Regulations for Areas Owned by Other Entities

PROPOSED AMENDMENT

3 CSR 10-12.145 Fishing, Length Limits. The commission proposes to amend paragraph (2)(A)15., remove paragraph (2)(A)17., renumber subsequent paragraphs, and amend section (6) of this rule.

PURPOSE: This amendment acknowledges that the department manages two (2) lakes owned by the City of Higginsville and removes a lake that is no longer managed by the department.

(2) Black bass more than twelve inches (12") but less than fifteen inches (15") total length must be returned to the water unharmed immediately after being caught, except as follows:

(A) Black bass less than fifteen inches (15") total length must be returned to the water unharmed immediately after being caught on the following lakes:

1. Arrow Rock State Historic Site (Big Soldier Lake);
2. Bethany (Old Bethany City Reservoir);
3. Blue Springs (Lake Remembrance);
4. Big Oak Tree State Park (Big Oak Lake);
5. Butler City Lake;
6. Cameron (Reservoir Nos. 1, 2, and 3, Grindstone Reservoir);
7. Carthage (Kellogg Lake);
8. Columbia (Stephens Park Lake);
9. Concordia (Edwin A. Pape Lake);
10. Confederate Memorial State Historic Site lakes;
11. Dexter City Lake;
12. Farmington (Hager Lake, Giessing Lake, Thomas Lake);
13. Hamilton City Lake;
14. Harrison County Lake;
15. *[Higginsville City Lake]* **Higginsville (Higginsville City Lake, Upper Higginsville City Lake)**;
16. Holden City Lake;
[17. Iron Mountain City Lake;]
*[18.]***17.** Jackson (Litz Park Lake, Rotary Lake);
*[19.]***18.** Jackson County (Alex George Lake, Bergan Lake, Bowlin Pond, Lake Jacomo, Prairie Lee Lake, Scherer Lake, Tarsney Lake, Wood Lake, Wyatt Lake);
*[20.]***19.** Jefferson City (McKay Park Lake);
*[21.]***20.** Keytesville (Maxwell Taylor Park Pond);
*[22.]***21.** Kirksville (Hazel Creek Lake);
*[23.]***22.** Liberty (Fountain Bluff Park Ponds Nos. 1, 2, 3, 4, 5, 6, 7, and 8);
*[24.]***23.** Maysville (Willow Brook Lake);
*[25.]***24.** Mark Twain National Forest (Fourche Lake, Huzzah Pond, Loggers Lake, McCormack Lake, Noblett Lake, Roby Lake);
*[26.]***25.** Mineral Area College (Quarry Pond);
*[27.]***26.** Odessa (Lake Venita);
*[28.]***27.** Pershing State Park ponds;
*[29.]***28.** Potosi (Roger Bilderback Lake);
*[30.]***29.** Raymore (Johnston Lake);
*[31.]***30.** Unionville (Lake Mahoney);
*[32.]***31.** University of Missouri (Dairy Farm Lake No. 1, McCredie Lake);
*[33.]***32.** Warrensburg (Lions Lake);
*[34.]***33.** Watkins Mill State Park Lake; and
*[35.]***34.** Windsor (Farrington Park Lake);

(6) Flathead catfish less than twenty-four inches (24") total length must be returned to the water unharmed immediately after being caught on Concordia (Edwin A. Pape Lake), *[Higginsville City Lake]* **Higginsville (Higginsville City Lake, Upper Higginsville City Lake)**, and St. Louis County (Bee Tree Park Lake, Sunfish Lake).

*AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. This rule previously filed as 3 CSR 10-4.116. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Sept. 27, 2013.*

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. 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 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 20—Division of Learning Services
Chapter 100—Office of Quality Schools

PROPOSED RULE

5 CSR 20-100.265 Charter School Closure

PURPOSE: This rule establishes processes and procedures for charter school sponsors to close a charter school as required by the Missouri Department of Elementary and Secondary Education. These processes and procedures serve as a foundation for closures as authorized by sections 160.400.16(6) and 160.405.15, RSMo Supp. 2013.

(1) Communication. The charter school sponsor (sponsor) will coordinate adequate and timely communication with parents, school staff, and the community regarding the closing of a charter school and the options that are available for student transfer/transition.

(2) Student records. The sponsor will coordinate the transfer of all student records in accordance with privacy rules set forth in the Family Educational Rights and Privacy Act (FERPA) and any applicable state record retention schedules/policies/laws, including, but not limited to:

(A) Conducting a review to determine that all student records are complete and located in a secure location;

(B) Compiling student records into a format that is electronically transferable;

(C) Providing staff for purposes of transferring student records to other schools as the charter school closes; and

(D) Transferring, in a timely manner, all student-related records for retention and historical accessibility to the local school district as required under the Public School Records Retention Schedule (PSRRS) (section 109.255, RSMo 2000).

(3) Business and personnel records. The sponsor shall coordinate efforts regarding all personnel, governance, and financial records that are retained according to the PSRRS.

(4) Submission of final data and reports. The sponsor shall coordinate efforts for the completion of all data and reporting for the closing charter school, including but not limited to:

(A) Annual Secretary of the Board Report (ASBR) by August 15 of the year of closing;

(B) Final audit submitted before December 31 of the year of closing;

(C) Program evaluation reports and final expenditure reports (FER) submitted for all federal/state programs in which the closing charter school participated;

(D) Submission of core data and the Missouri Student Information System (MOSIS) data; and

(E) Required student testing.

(5) Resolution of financial obligations. During the dissolution of a charter school, the sponsor shall coordinate efforts to ensure the meeting of financial obligations associated as required in section 160.415.12, RSMo.

(A) If the charter school does not have sufficient funds to close out the year, the sponsor is expected to utilize state funding secured under section 160.400.11, RSMo, to meet expenses associated with the closure.

(B) The sponsor is responsible for the unobligated assets of charter school and the return of such assets to the Department of Elementary and Secondary Education (department) for disposition according to section 160.405.1(17), RSMo. For unobligated assets (state funds) that are not returned and remain in the possession of the closing charter school board, the sponsor will—

1. Provide quarterly accountability reports on receipts and expenditures;

2. Provide quarterly bank statements for the closing charter school accounts;

3. Monitor expenditures after school closure to ensure such expenditures are essential to the closing process; and

4. Require an independent audit be conducted for any remaining funds if more than three (3) months lapse from the official closure of the charter school.

(6) Disposition of assets. Distribution of materials and equipment purchased with state funds will be determined by the charter school's plan/policy for disposition of assets. The sponsor is responsible for ensuring that the reallocation of equipment and materials from a closed charter school reasonably follow the students to their new school. For equipment and or material exceeding a value of five thousand dollars ($5,000) purchased with federal funds and in accordance with federal guidelines, the sponsor shall provide—

(A) A physical verification that federally purchased equipment or electronic items is conducted;

(B) An inventory of available items be sent to all local educational agencies (LEA) and the district within the physical boundaries of the public school district within sixty (60) days of the school closure;

(C) An opportunity for LEAs/districts interested in acquiring inventory items to send a written request for equipment or materials to the sponsor;

(D) Distribution of equipment or materials based on—

1. Any equipment and material required for an Individual Education Plan (IEP) for a student with disabilities must follow the student to his/her new public school;

2. All equipment and materials purchased with federal IDEA Part B funds must be sent to a public special education program for use by students with disabilities;

3. All materials/equipment purchased with specific funding sources (Perkins, Title I, discretionary grants) must be sent to other LEAs participating in those programs;

4. The percentage of students transferring from the closed charter to the requesting LEAs/district; or

5. By lottery.

AUTHORITY: sections 160.400–160.425 and 161.092, RSMo Supp. 2013. Original rule filed Sept. 27, 2013.

PUBLIC COST: This proposed rule may cost state agencies or political subdivisions between twenty thousand dollars ($20,000) and $3,630,000 in the aggregate.

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

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

of Elementary and Secondary Education, Attention: Dr. Dennis Cooper, Assistant Commissioner, Office of Quality Schools, PO Box 480, Jefferson City, MO 65102-0480, or by email to webreplyimpr-charter@dese.mo.gov To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

FISCAL NOTE
PUBLIC COST

I. **Department Title:** Title 5 - Department of Elementary and Secondary Education
Division Title: Division 20 - Division of Learning Services
Chapter Title: Chapter 100 - Office of Quality Schools

Rule Number and Name:	**5 CSR 20-100.265 Charter School Closure**
Type of Rulemaking:	**Proposed Rule**

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
State Agencies	$0
(32) Colleges/Universities @ $20,000-$110,000.	$ 20,000 - $3,610,000
(1) School Districts @ $20,000	$ 20,000
TOTAL	$ 20,000 - $3,630,000

III. WORKSHEET

State Agencies: In 2012, when a sponsor relinquished sponsorship, the Department assumed sponsorship and closed three (3) charter schools after the school year had ended. The costs involved staff time, moving/storage of equipment/materials supplies, notification of parents and community, and transfer of student records which cost approximately $100,000 per school. This was due, in part, to the timing of the closure. In 2013, when two (2) charters chose to close due to poor performance, the respective sponsors spent between $20,000 and $120,000 to hire additional staff, notify parents/community members, transfer student records, pay attorney fees, disperse assets to other public/charter schools, and prepare final reports.

Sponsors receive 1.5% ADA, up to $125,000 per year to support the operation of charter schools. In a worst case scenario, if a charter had to close all charter schools in its portfolio, the following are estimates are possible.

Name of Sponsor	**Number of Charter Schools**	**Amount ($20,000-$110,000)**
University of Central Missouri	9	$180,000 - $990,000
University of Missouri - Columbia	6	$120,000 - $660,000
University of Missouri - Kansas City	10	$200,000 - $1,100,000
University of Missouri - St. Louis	6	$120,000 - $660,000
Missouri University of Science and Technology	1	$ 20,000 - $110,000
Southeast Missouri State University	1	$ 20,000 - $110,000
Total	33	$20,000 - $3,630,000

IV. ASSUMPTIONS

The sponsor cost estimate is based on closing three (3) charter school buildings in 2012 and two (2) separate experiences in closing charter schools in 2013, along with possible worst case scenarios.

Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 20—Division of Learning Services
Chapter 200—Office of College and Career Readiness

PROPOSED RULE

5 CSR 20-200.290 Physical Fitness Challenge/Assessment "Cade's Law"

PURPOSE: This rule establishes the physical fitness recognition plan for public elementary, middle, and high school students.

(1) For the purposes of Cade's Law, the following terms shall mean:

(A) Team is defined as a group of two (2) or more students participating in a class, course, or grade level during the regular school day and school year as defined by the school's official start and ending dates or summer school;

(B) School includes all Missouri public schools; and

(C) Eligible student is defined as a student who is enrolled in a physical education class and does not have an exemption for taking the physical fitness assessment.

(2) Local Education Agencies (LEAs) collect and report data on aerobic capacity, muscular strength, endurance, and flexibility for all eligible elementary students in grade five (5), middle school students in grade seven (7), and high school students in grade nine (9) who are enrolled in a physical education class for any part of the traditional school year as identified by each LEA's beginning and ending date or summer school. Public schools are encouraged to assess fitness at all grade levels.

(A) Fitness assessments must be administered by a teacher certified in Physical Education by the state of Missouri.

(B) LEAs shall use recommended protocols and ranges to ensure consistency and to measure the components of fitness for students, teams, and schools. Schools may access these resources and materials from the Department of Elementary and Secondary Education (department) website.

(C) Schools shall use the alternative assessment as recommended by the department for students with disabilities.

(3) Individual, team, and school-wide performance are recognized.

(A) Schools are encouraged to recognize students and teams in meeting fitness goals.

1. Students scoring within the healthy range of a fitness area are determined to have met the standard for that area.

2. When the average of a team score in a fitness area fits within a healthy range, that team is determined to have met the standard in that area.

3. Ninety-five percent (95%) of eligible students in the reporting grade span must participate in each assessment for a school to be eligible for department recognition.

4. When the average score of the students in a reporting grade fall within a fitness range, that school is determined to have met that fitness range for the grade level.

5. For the 2014-2015 school year, schools in which twenty-five percent (25%) of eligible students have met three (3) of four (4) fitness ranges shall be recognized by the department. In subsequent years recognition is based on aggregated school fitness data reported to the department.

(B) The department recognizes local education agencies when every school in the LEA meets the school recognition criteria during a school year.

(4) Schools are encouraged to review and use the free resources and materials, including assessment protocols and scoring guides for each fitness component, found on the department's website.

AUTHORITY: sections 161.092 and 161.450, RSMo Supp. 2013. Original rule filed Sept. 27, 2013.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with Department of Elementary and Secondary Education, Attention: Sharon Helwig, Assistant Commissioner, Office of College and Career Readiness, PO Box 480, Jefferson City, MO 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 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 20—Division of Learning Services
Chapter 200—Office of College and Career Readiness

PROPOSED RULE

5 CSR 20-200.300 Training of School Employees in the Care Needed for Students with Diabetes

PURPOSE: The purpose for this rule is to enable schools to ensure a safe learning environment for students with diabetes. These materials are based on the belief that children with diabetes can participate in all academic and non-academic school-related activities. In order for children with diabetes to be successful in school, a comprehensive health plan must be collaboratively developed by families, students, school personnel, and licensed health care providers. The individualized health plan (IHP) implements the Diabetes Medical Management Plan (DMMP) provided by the healthcare provider, physician orders, and provisions appropriate to each student's needs during the school day and for other school-related activities. The IHP must be based upon and consistent with the DMMP.

(1) For purposes of this rule, the following terms shall mean:

(A) Department of Elementary and Secondary Education (department);

(B) Diabetes Medical Management Plan (DMMP)—a document developed by the student's personal health care team that sets out the health services needed by the student at school and is signed by the student's personal health care team and parent/guardian;

(C) Diabetes—a chronic disease in which blood glucose (sugar) levels are above normal;

(D) School—shall include any public school located within the state of Missouri;

(E) School employee—shall include any person employed by a Local Education Agency (LEA), any person employed by a local health department who is assigned to an LEA, or any subcontractor designated for this function; and

(F) Trained diabetes personnel—a school employee who volunteers to be trained in accordance with this rule. Such employee need not be a health care professional.

(2) The parent or guardian of each student with diabetes who seeks diabetes care while at school should submit to the school a Diabetes Medical Management Plan (DMMP), which upon receipt shall be reviewed by the school. The DMMP is developed by the student's personal health care team that sets out the health services needed by the student at school and is signed by the student's personal health care team and parent/guardian. The plan covers how, when, and

under what circumstances the student should receive blood glucose monitoring and injections of insulin as well as steps to take in case of an emergency.

(A) Schools must obtain written permission from the student's parent/guardian to allow monitoring of the student's blood glucose and to administer insulin by injection or the delivery system used by the student. This written permission should be included in the DMMP.

(3) Section 167.803, RSMo, requires schools choosing to adopt these guidelines to train at least three (3) school employees at each school attended by a student with diabetes. A school employee shall not be subject to any penalty or disciplinary action for refusing to serve as trained diabetes personnel.

(A) Training shall be coordinated by a school nurse, if the school district or charter school has a school nurse, and provided by a school nurse or another health care professional with expertise in diabetes. Such training shall take place prior to the commencement of each school year, or as needed when a student with diabetes is newly enrolled at a school or a student is newly diagnosed with diabetes, but in no event more than thirty (30) days following such enrollment or diagnosis. Local boards of education or charter school governing boards shall ensure that the school nurse or other health care professional provides follow-up training and supervision as necessary. Coordination, delegation, and supervision of care shall be performed by a school nurse or other qualified health care professional.

(B) Training shall include, but not be limited to—

1. Understanding the appropriate actions to take when blood glucose levels are outside of the target ranges indicated by a student's DMMP;

2. Understanding physician instructions concerning diabetes medication drug dosage, frequency, and the manner of administration;

3. Performance of finger-stick blood glucose checking, ketone checking, and recording the results;

4. The administration of glucagon and insulin and the recording of results;

5. Understanding how to perform basic insulin pump functions;

6. Recognizing complications that require emergency assistance; and

7. Understanding recommended schedules and food intake for meals and snacks, the effect of physical activity upon blood glucose levels, and actions to be implemented in the case of schedule disruption.

(C) Schools shall document training provided under section 167.803, RSMo. Specifically, schools shall record the name, title, and credentials of the health care professional providing the training, and the names and titles of the school personnel receiving training as trained diabetes personnel.

(D) Schools will assure that trained personnel have mastered training competencies. Suggested resources for developing a diabetes skills checklist can be found on the department's website.

(E) The department recommends that all trained diabetes personnel and other school personnel be familiar with recommended resources available on the department's website.

(4) Each school shall review and implement the DMMP provided by the parent/guardian of a student with diabetes who seeks diabetes care while at school. Generally, the school nurse is the most appropriate person in the school setting to provide care management for a student with diabetes. Other trained diabetes personnel shall be available as necessary.

(A) The school nurse or at least one (1) trained diabetes personnel shall be on site at each school and available during regular school hours and during all school sponsored activities, including school-sponsored before school and after school care programs, field trips, extended off-site excursions, extracurricular activities, and on buses when the bus driver has not completed the necessary training, to provide care to each student with a DMMP being implemented by the school. For purposes of field trips, the parent/guardian, or designee of such parent/guardian, of a student with diabetes may, at the discretion of the school, accompany such student on a field trip.

(B) Each LEA may provide training in the recognition of hypoglycemia and hyperglycemia and actions to take in response to emergency situations to all school personnel who have primary responsibility for supervising a child with diabetes during some portion of the school day and to bus drivers responsible for the transportation of a student with diabetes.

(C) In accordance with the request of a parent/guardian of a student with diabetes and the student's DMMP, the school nurse or, in the absence of the school nurse, trained diabetes personnel shall perform functions including, but not limited to, responding to blood glucose levels that are outside of the student's target range; administering glucagon; administering insulin, or assisting a student in administering insulin through the insulin delivery system the student uses; providing oral diabetes medications; checking and recording blood glucose levels and ketone levels, or assisting a student with such checking and recording; and following instructions regarding meals, snacks, and physical activity.

(D) Upon written request of a student's parent/guardian and if authorized by the student's DMMP, a student with diabetes shall be permitted to perform blood glucose checks, administer insulin through the insulin delivery system the student uses, treat hypoglycemia and hyperglycemia, and otherwise attend to the monitoring and treatment of his/her diabetes in the classroom, in any area of the school or school grounds, and at any school-related activity, and he/she shall be permitted to possess on his/her person at all times all necessary supplies and equipment to perform such monitoring and treatment functions. Schools should encourage parents to provide backup supplies for each child to the school nurse in the event the student does not have them in possession when needed.

(5) Sample forms of DMMPs are available on the department website.

(A) A DMMP shall be signed by a health care professional.

(B) A DMMP shall—

1. Outline the dosage, delivery system, and schedule for blood glucose monitoring, insulin/medication administration, glucagon administration, ketone monitoring, meals and snacks, physical activity and include the student's usual symptoms of hypoglycemia and hyperglycemia, and their recognition and treatment;

2. Include emergency contact information; and

3. Address the student's level of self-care and management.

(C) A DMMP should be completed and submitted to the school at least annually.

(D) Emergency contact information and any medical history contained in the DMMP may be updated at any time without signature or assistance of a health care professional.

(7) No physician, nurse, school employee, charter school, or school district shall be liable for civil damages or subject to disciplinary action under professional licensing regulations or school disciplinary policies as a result of the activities authorized by sections 167.800 to 167.824, RSMo, when such acts are committed as an ordinarily reasonably prudent person would have acted under the same or similar circumstances.

AUTHORITY: sections 161.092 and 167.800 to 167.824, RSMo Supp. 2013. Original rule filed Sept. 27, 2013.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with Department of Elementary and Secondary Education, Attention: Sharon Helwig, Assistant Commissioner, Office of College and Career Readiness, PO Box 480, Jefferson City, MO 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 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 20—Division of Learning Services
Chapter 500—Office of Adult Learning and Rehabilitation Services

PROPOSED AMENDMENT

5 CSR 20-500.120 Definitions. The State Board of Education is amending the purpose and sections (1), (3), (4), (5), and adding sections (6) and (7).

PURPOSE: This amendment is to update the rule to reflect the name change from the Division of Vocational Rehabilitation to the Office of Adult Learning and Rehabilitation Services, to update the language for clarity, and to add definitions pursuant to the Rehabilitation Act of 1973 as amended, 29 U.S.C. section 701 et. seq.

PURPOSE: This rule establishes definitions for the State Board of Education through the [Division of Vocational Rehabilitation] ***Office of Adult Learning and Rehabilitation Services****, Department of Elementary and Secondary Education for the standards and procedures to provide vocational rehabilitation* ***(VR)*** *services for applicants and eligible individuals with disabilities pursuant to the Rehabilitation Act of 1973 as amended,* ***[and the Code of Federal Regulations] 29 U.S.C. section 701 et. seq.***

(1) Comparable *[S]*services. Services available under any other program (other than a program carried out under this title)**,** which contribute*[s]* to the achievement of the individual's rehabilitation goal.

(3) Disability related expenses. Medication, therapy, medical treatment, prosthetic appliances, repairs to equipment, etc., **which directly relates to an individual or family member with a disability and is** not covered by insurance, Medicare, Medicaid, or other third party payee*[s, which directly relates to an individual's disability]*.

(4) Independent individual for financial needs purposes. Any individual who meets any one (1) of the following criteria: is *[twenty-three (23)]* **twenty-four (24)** years old; a veteran of the U.S. Armed Forces; a ward of the court; both parents are deceased; has legal dependents other than **a** spouse; **is** married and not claimed as an income tax exemption during the current tax year; **is** unmarried and not claimed as an income tax exemption during the past two (2) years *[and has not lived for more than twelve (12) weeks in the home of the parent(s)/guardian during each of the past two (2) tax years]*.

(5) Dependent. An individual not meeting any of the criteria as an independent **individual for financial needs purposes**. When the client is a dependent, *[Division of Vocational Rehabilitation's (DVR's)]* **the vocational rehabilitation** *[F]***f**inancial *[A]***a**pplication must be completed by the parent(s)/guardian *[and their income will]* **to** determine the individual's eligibility for services based on financial need.

(6) A secondary service is a service (e.g., child care) that may be required by the eligible individual or an eligible individual's family member to enable the individual to complete the primary rehabilitation service(s).

(7) Extreme medical risk is a probability of substantially increasing functional impairment or death if medical services including mental health services are not provided expeditiously as recommended by an appropriate licensed medical professional.

AUTHORITY: section 161.092, ***RSMo Supp. 2013, and*** *sections 178.600, 178.610****,*** *and 178.620, RSMo [1994]* ***2000****. This rule previously filed as 5 CSR 90-4.100. Original rule filed Dec. 17, 1999, effective Aug. 30, 2000. Moved to 5 CSR 20-500.120, effective Aug. 16, 2011. Amended: Filed Sept. 27, 2013.*

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Elementary and Secondary Education, Attention: Jeanne Loyd, Assistant Commissioner, Office of Adult Learning and Rehabilitation Services, 3024 Dupont Circle, Jefferson City, MO, 65109 or by email at info@vr.dese.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 2—Income Tax

PROPOSED RULE

12 CSR 10-2.052 New Apportionment Method

PURPOSE: This rule sets out the availability of the new apportionment method provided in section 143.451.2(3), RSMo, as amended in HB 128, enacted by the 97th General Assembly (2013).

(1) In general, if a corporation files its original income tax return on or after August 28, 2013, it may elect the new apportionment method authorized by section 143.451.2(3), RSMo, to compute its Missouri corporate taxable income from sources in this state.

(2) Definition of Terms.

(A) "Corporation" is an entity defined in section 143.441.1(1), RSMo.

(B) "Income tax return" is the Missouri corporate income tax return for the taxable year.

(C) "New apportionment method" is the method of computing an interstate division of income under section 143.451.2(3), RSMo.

(D) "Original return" is the initial income tax return filed for a taxable year, and does not mean an amended income tax return filed for a taxable year for which a corporation has previously filed any income tax return.

(E) "Taxable year" is the same tax period the corporation used for reporting its federal income tax liability under the Internal Revenue Code of 1986, as amended.

(3) Basic Application. An eligible corporation may elect to use the new apportionment method to compute its Missouri corporate taxable income from sources in this state on its original income tax

return. The election to use the new apportionment method is available for any original income tax return that is filed on or after August 28, 2013, regardless of the taxable year for which the original income tax return is being filed. This election is not available for any income tax return that was filed on or before August 27, 2013.

(4) Eligibility. The election to use the new apportionment method is only available to a corporation that is eligible to compute an interstate division of income under section 143.451.2, RSMo.

(A) Current filings. The election to use the new apportionment method is reported on the original income tax return filed for the taxable year that was filed on or after August 28, 2013. The election to use the new apportionment method is not revocable and cannot be changed on any subsequent amended income tax return for the taxable year.

(B) Prior filings. The election to use the new apportionment method is not available on any amended return regardless of when filed.

(5) Examples.

(A) A corporation operates during the taxable year January 1, 2013 through December 31, 2013. It sells tangible property and has income resulting from transactions partially in this state and partially in another state or states. It may elect to use the new apportionment method in determining its interstate division of income for purposes of computing its Missouri taxable income when it files its original income tax return on April 15, 2014.

(B) A corporation operates during the taxable year January 1, 2012 through December 31, 2012. It sells tangible property and has income resulting from transactions partially in this state and partially in another state or states. It may elect to use the new apportionment method in determining its interstate division of income for purposes of computing its Missouri taxable income if it files (under an extension of time to file) its original income tax return for this taxable year on or after August 28, 2013.

(C) A corporation operates during the taxable year January 1, 2012 through December 31, 2012. It sells tangible property and has income resulting from transactions partially in this state and partially in another state or states. It may not elect to use the new apportionment method in determining its interstate division of income for purposes of computing its Missouri taxable income if it has filed its original income tax return for this taxable year on or before August 27, 2013.

AUTHORITY: section 143.961, RSMo 2000, and section 143.451.2(3), RSMo Supp. 2013. Original rule filed Sept. 18, 2013.

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

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

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

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 4—Conditions of Participant Participation, Rights and Responsibilities

PROPOSED RULE

13 CSR 70-4.120 Department is the Payer of Last Resort, Department's Lien for Recovery, Participant's Duty of Cooperation

PURPOSE: This rule establishes the procedures for MO HealthNet's cost recovery of medical expenses from liable third party payments, settlements, awards, judgments and insurance contracts and a participant's duty to cooperate.

(1) Definitions. The following definitions shall apply for purposes of this regulation.

(A) "Assignment" is the legal transfer from a participant to the division of the participant's right to recovery of medical expenses from a liable third party.

(B) "Assist" shall include, but not be limited to, providing full disclosure of all relevant information regarding a claim against a liable third party or insurer to the division; fully completing any and all forms requested by the division, provision of a Health Insurance Portability and Accountability Act (HIPAA) release to the division when requested; execution of any authorizations necessary to obtain release of any information the division requires in pursuit of the recovery; filing claims with potentially liable insurers when requested by the division; providing documentation of any and all settlement agreements, awards or judgments related to claims against liable third parties; and timely responding to requests for information from insurers after a claim has been submitted.

(C) "Division" means the MO HealthNet Division of the Department of Social Services.

(D) "Identify" shall mean providing complete names, addresses, telephone numbers, and other relevant contact and location information of all potentially liable third parties, their attorneys, agents and insurers.

(E) "Liable third party" includes any person, corporation, or institution, any employer as defined under Missouri's workers' compensation laws, and any public agency or private agency, who is liable, either pursuant to contract or otherwise, to an individual receiving public assistance on account of personal injury, disease or disability or benefits arising from a health insurance plan to which the individual may be entitled.

(F) "Medical expense" and "medical expenses" are the cost of items and services provided under the Missouri State Medicaid Plan by the division on behalf of a participant which are related to the participant's claim against a liable third party, expressly excluding capitation fees or payments to vendors.

(G) "Medical treatment" means medical treatment rendered to a participant related to the participant's claim against a liable or potentially liable third party or insurer.

(H) "Notify" shall mean a written communication to the division of all relevant facts and information known which may be delivered to the division by United States Postal Service, facsimile transmission, or email.

1. In any case where written communication by a participant not represented by an attorney or other legal representative is not possible or is not reasonable due to disability requiring accommodation, the participant may substitute oral communication to the division either in person or by telephonic communication. The division shall provide the participant with written confirmation of the substitute oral communication and detail its contents.

2. Communication to the division from a licensed attorney or legal representative of a participant shall be in writing, or if done orally be followed up by written confirmation of that communication and its detailed contents.

(I) "Participant" is an individual who applies for, is determined eligible for and receives MO HealthNet benefits provided under sections 208.151 to 208.158 or section 208.204, RSMo.

(J) "Person" is any human being or other entity legally recognized as a person under Missouri law, including but not limited to, a corporation, cooperative, partnership, limited liability company, sole

proprietorship, mutual, insurer, and governmental entity or sub-division.

(K) "Timely" shall mean within a reasonable time, however—

1. In no case shall notification to the division occur later than ten (10) business days from the date of discovery or knowledge of the act or information to be disclosed by the participant to the division; and

2. In no case shall notification to the division occur less than thirty (30) days prior to an anticipated or potential settlement, compromise, judgment, award or agreement regarding a participant's claim against a liable third party or potentially liable insurer.

(2) Payer of last resort. The MO HealthNet Division is the payer of last resort of medical assistance benefits to be paid on behalf of a participant, unless otherwise specified by law.

(A) Liable third parties shall meet their legal obligation to pay claims on behalf of a participant before the division pays for a participant's medical assistance benefits related to the participant's claim against the liable third party.

(B) When the division pays medical expenses on behalf of a participant, it shall pursue recovery of the cost of those medical expenses from any liable third party or insurer to the extent recovery is cost effective.

(3) Assignment right to recover medical expenses. Each participant assigns to the division all rights to recovery of medical expenses from liable third parties pursuant to section 208.215.4, RSMo, and by the terms of the voluntary application for assistance submitted to the Family Support Division.

(A) The assignment is limited to recovery of medical expenses only.

(B) The assignment is a claim which automatically attaches to any payments or benefits for past medical treatment the participant recovers or expects to recover from a liable third party or insurer.

(C) No attempt to compromise or release the assigned right to recovery of medical expenses shall be effective, enforceable, or valid without the prior written agreement of the division.

(4) MO HealthNet Division has a lien against recovery for past medical treatment.

(A) The division shall be entitled to any payments or benefits recovered, or to be recovered, by or on behalf of a participant from a liable third party or insurer to the extent the payment is compensation for past medical treatment.

(B) The division shall be entitled to the medical treatment portion of any payments, settlements, awards, judgments and insurance contracts benefits owed to or paid to or on behalf of the participant from any liable third party or insurer, including insurance contracts owned by the participant, up to the amount of medical expenses paid on behalf of the participant.

(C) No claim of the division shall attach, or be deemed to attach, to any portion of a recovery from a liable third party other than that portion which is compensation of past medical treatment.

(D) The participant, the participant's attorney, the participant's appointed representative, a liable third party, insurance carrier, or other interested party may request in writing that the division provide notice of the amount of the division's current claim.

(E) A notice of claim to a liable third party shall set forth the current amount of the claim. That claim amount shall be valid for thirty (30) days from the date of the notice. The claim amount may increase or decrease over time depending upon the submission and payment of provider claims and credits. It shall be the responsibility of the participant to obtain a valid claim amount from the division when the current claim amount is older than thirty (30) days when seeking to recover medical expenses from a liable third party.

(F) A notice of claim sent to a liable third party shall not include supporting documentation unless the liable third party has provided the division previously with a valid HIPAA release from the participant authorizing that disclosure. The division shall not be obligated to provide supporting documentation in order to have a valid lien without a valid authorization for release of that information from the participant, absent a court order requiring such disclosure or protective order with conditions of disclosure.

(G) Any potentially liable third party who is aware, or reasonably should be aware, of the claim or lien of the department for recovery of medical expenses due to a participant shall keep the department advised of its current contact information, including but not limited to mailing address and telephone number.

(5) MO HealthNet Division only has a lien against recovery for past medical treatment. Participants, their attorney(s), agents, and other representatives, liable or potentially liable third parties, and insurers shall allocate in settlement agreements that portion of the settlement which is recovery for past medical treatment.

(A) Payment to the division shall be deemed as payment from that portion of the settlement which is recovery for past medical treatment.

(B) The division shall not be bound by, and may object to, any settlement or allocation for medical treatment that does not include the full amount of medical expenses paid by the division.

(C) Where a settlement or judgment does not allocate an amount that is recovery for past medical treatment, the division shall allocate as recovery for past medical treatment the lesser of the amount of medical expenses paid by the division or one-half (1/2) of the gross recovery from any and all liable third parties and insurers unless an individualized allocation can be demonstrated.

(D) Participants, their attorney(s), agents, and other representatives may demonstrate an individualized allocation of recovery for past medical treatment where the division has objected to a proposed allocation or a settlement or judgment is unallocated by presenting documentation on behalf of the participant to support an individualized allocation. The division may consider documentation of any combination of the following factors as they relate to the incident when determining an individualized allocation:

1. The amount of medical expenses and past medical treatment paid by and on behalf of the participant;

2. The amount of future medical treatment expected to be accrued by the participant;

3. The amount of lost wages claimed by the participant;

4. Evidence of paralysis, permanent injury, and/or scarring or disfigurement; and

5. Other factors as they relate to the specific circumstances of the participant's claim.

(E) The burden of proof shall be on the participant to demonstrate that the division is entitled to recover less than an amount established above.

(F) Parties dissatisfied with the amount allocated as recovery for past medical treatment may seek judicial determination of the amount owed to the division under section 208.215.9, RSMo.

(6) The computerized records of the MO HealthNet Division are prima facie evidence of medical expenses paid on behalf of the participant. The computerized records of MO HealthNet Division which are certified by a custodian of those records are prima facie evidence of the money expended on behalf of a participant in any court or administrative proceeding.

(7) Duty of participant, agents, and third parties to cooperate with the division. Participants, their attorney(s), agents, and other representatives, and liable or potentially liable third parties shall fully cooperate with and assist the division, as required by section 208.215.4, RSMo, by providing information identifying liable third parties, providing information to assist the division in pursuit of any resources available from liable third parties and insurers, and in obtaining any resources to which the participant has a claim so the division can recover reimbursement for medical expenses. The duty

continues and includes the duty to timely supplement as new information is discovered or known by the participant and the participant's attorneys, agents, and other representatives.

(A) No participants, attorneys, agents or other legal representatives shall have the authority to bind the division to any settlement or compromise of any lien or claim of the division without prior written authorization from the division.

(B) Participants, their attorneys, agents, and legal representatives, and liable or potentially liable third parties shall clearly disclose in any settlement or compromise of claims against liable third parties the portion of the recovery which is compensation for medical expenses the division has paid on behalf of the participant.

(C) Cooperation shall include, but not be limited to, the following:

1. Timely notifying the division of any accident, incident, act or occurrence which may give rise to a claim against a liable third party for medical expenses;

2. Timely identifying to the division all potentially liable third parties, liable third parties' legal representatives, and potentially liable insurers;

3. Timely assisting the division in recovering its claim for medical expenses from liable third parties;

4. Timely identifying to the division all legal representatives of the participant with authority to act or inquire on the participant's behalf, including but not limited to, attorneys, personal representatives, holders of power of attorney, guardians, custodians, and trustees;

5. Timely notifying the division any time the participant files a lawsuit or makes a demand against any liable party, potentially liable insurer, or other entity which may be an available resource for payment of medical expenses; and

6. Timely notifying the division in writing of the dollar amount of any settlement, award, or judgment which is compensation for medical treatment related to the third party's liability with accompanying explanation for how that amount was determined and documentation of any settlement agreements.

(D) Notification to the division. All notifications to the division under this section shall be delivered as follows:

1. By mail through the United States Postal Service or other postal or package service, to MO HealthNet Division, Cost Recovery Unit, PO Box 6500, 615 Howerton Court, Jefferson City, MO 65102; or

2. By facsimile transmission (573-526-1162) to MO HealthNet Division, Cost Recovery Unit; or

3. By email to MO HealthNet Division, Cost Recovery Unit sent to the email address costrecovery@dss.mo.gov; or

4. By telephonic communication (573-751-2005) to MO HealthNet Division, Cost Recovery Unit.

(8) Release of right to recover medical expenses. No release, satisfaction, or other form of compromise of the right to recovery of medical expenses from a liable third party shall be valid, effective, or enforceable without the prior express written agreement and acceptance by the division.

(A) Any attempt by any person or entity to cause that right to recovery of medical expenses to be released, satisfied, or otherwise compromised shall be void ab initio and no defense of any claim against any person by the division absent the division's prior express written agreement and acceptance of that release, satisfaction, or other compromise.

(B) Any release, satisfaction, or other compromise executed or agreed to by the participant without the prior express written agreement of the division shall be prima facie evidence of the participant's failure to cooperate and intent to defraud the division of its right to recovery of medical expenses.

(9) Form of notification to the division and for request for claim amount. Notification to the department and requests for claim amount shall be made in writing and directed to the MO HealthNet Division in one of the manners specified above in subsection (7)(D) of this rule.

(A) Notifications and requests shall contain, at a minimum, the participant's name, date of birth, participant number, Social Security number, date of incident or injury, and the names of attorneys, insurers, and other authorized agents of the participant.

(B) Incomplete notifications and requests will be returned to the requestor for completion without processing.

(C) Requests from agents of the participant must be accompanied by a letter of representation on the agent's official letterhead and must include a valid, currently dated, HIPAA release signed by the participant or a person with verifiable authority to sign for release of the participant's protected information.

(D) Claim update requests must not be submitted until the original claim request has been fully processed and a response sent.

(E) Failure to comply will result in rejection of premature claim update requests.

(10) Pro rata lien reduction for attorney fees. A participant, his agents, or attorneys may request from the division a pro-rata reduction of the lien amount based upon the total attorney fees and reasonable expenses approved by the division and actually incurred by the participant in pursuit of the claims against the liable third party(s).

(A) Any request for a pro rata reduction in the lien shall be made to the division in writing and include all necessary information and supporting documentation regarding the settlement or recovery, including, but not limited to:

1. The total amount of settlement or recovery;

2. The total amount of the settlement or recovery which is compensation for past medical treatment related to the incident;

3. The total amount of contractual attorney fees incurred;

4. The total amount of reasonable division-approved expenses;

5. A detailed listing of the claimed expenses with individual items and amounts claimed; and

6. A copy of any written documentation of the settlement or recovery terms.

A. All settlement documentation and information shall be kept strictly confidential by the division and its staff.

(B) No pro rata reduction shall be binding without prior written assurance by the participant or his or her representative that the reported settlement or recovery is final and includes all sources of recovery from the liable third party.

(C) If there are multiple liable third party sources of recovery then the request shall clearly specify a bulk pro rata on all the recoveries or a separate pro rata for each separate recovery and identify any unpaid claims not yet recovered.

(D) The pro rata reduction shall be determined using the following pro rata formula:

1. The participant's total actual attorney's fees and approved expenses divided by the total recovery equals a percentage; and

2. The total due the division times that percentage equals the amount that is the division's pro rata share of attorney's fees and expenses; and

3. The total due the division less the division's pro rata share identified above equals the dollar amount of the reduced pro rata lien due the division.

(11) Procedure for participant's handling receipt of money or benefits from liable third party or insurer. Upon receipt of money or benefits from a liable third party or insurer the participant, his agents, and attorneys shall immediately notify the division and either—

(A) Pay the division from the recovery for related past medical treatment up to the full amount of the division's current claim of medical expenses paid by the division on behalf of the participant within sixty (60) days of receipt of the money or benefits; or

(B) Place the full amount of the recovery in a trust account for the benefit of the division and immediately institute a proceeding for

judicial or administrative determination of the division's rights to that portion of the recovery which is compensation for related past medical treatment the division has paid on behalf of the participant.

(12) Insurance payments where the division asserts a claim. Any payment by any insurer which is from medical payment coverage is subject to the claim and lien of the division for recovery of medical expenses up to the total amount of the department's lien.

(13) Informal process to dispute the amount of the division's lien. If a participant disputes the amount of the lien claimed by the division, the participant or the participant's attorney shall first make a written request to the division within fifteen (15) days of notification of the division's lien amount to review the lien amount for specific alleged errors for correction before seeking other avenues for resolution of the dispute.

(A) Those items which may be reviewed informally for correction may include, but are not limited to:

1. Miscalculation of pro rata reduction;
2. Inclusion of charges for services not related to the participant's claim against the liable third party giving rise to the lien claim;
3. Omission of charges for services related to the participant's claim against the liable third party giving rise to the lien claim;
4. Incorrect amounts billed or paid for medical assistance;
5. Miscalculation within the billing statement;
6. Claims that the treatments billed were not actually provided to the participant; and
7. Claims that the person identified in the billing statement is not the same person identified in the division's lien.

(B) Written requests for informal review of a disputed lien shall be delivered to the MO HealthNet Division, Cost Recovery Unit, PO Box 6500, 615 Howerton Court, Jefferson City, MO 65102 or may be sent by facsimile transmission.

(C) Participants not represented by an attorney or other legal representative may request informal review by oral communication in person or by telephone by calling the Cost Recovery Unit if written communication is not a reasonable form of communication due to disability or other extenuating circumstance.

(D) Upon receipt of a complete and detailed request for informal review due to a participant's dispute of the lien, the division shall provide a written response to the requesting participant, or his or her representative.

(E) If the informal dispute procedure does not resolve the dispute of the lien to the satisfaction of the participant, the participant may seek resolution of the disputed lien through the procedures set out in section 208.080, RSMo, after receipt of the division's written response following the division's review of the dispute.

(F) Failure to pursue resolution through this informal procedure before seeking resolution through other avenues shall be a defense of failure to exhaust administrative remedies for the division.

AUTHORITY: sections 208.201 and 208.215, RSMo Supp. 2013. Original rule filed Sept. 26, 2013.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Social Services, 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 20—Pharmacy Program

PROPOSED AMENDMENT

13 CSR 70-20.060 Professional Dispensing Fee. The division is updating the purpose statement and sections (1) and (2) and removing the form.

PURPOSE: This amendment updates the amount of the professional dispensing fee added to the MO HealthNet maximum allowable payment for prescriptions filled or refilled by a pharmacy provider from three dollars ($3.00) to four dollars eighty-four cents ($4.84), removes information referencing the rescinded rule 13 CSR 70-20.110, and updates the form titled: "Long Term Care Pharmacy Dispensing Fee Provider Specialty Application." It also updates references to agency name, changes recipient to participant, and revises Medicaid to MO HealthNet.

PURPOSE: The *[Division of Medical Services]* **MO HealthNet Division** establishes the amount of the fee reimbursable for the professional dispensing of each *[Medicaid-]* **MO HealthNet** covered prescription by a pharmacy provider, raises the current dispensing fee from *[two dollars seventy-five cents to three dollars]* **three dollars ($3) to four dollars eighty-four cents ($4.84)** and establishes a long-term care prescription fee add-on **of fifteen cents (15¢)**.

(1) A dispensing fee of *[three dollars ($3)]* **four dollars eighty-four cents ($4.84)** shall be added to the *[Medicaid]* **MO HealthNet** maximum allowable payment for each *[Missouri Medicaid]* **MO HealthNet** reimbursable prescription filled or refilled by a pharmacy provider.

[(A) The dispensing fee allowed for the dispensing of only those drugs as specified in 13 CSR 70-20.110 for the treatment of acquired immunodeficiency syndrome shall be set at ten percent (10%) of the maximum allowable drug payment.]

*[(B)]***(A)** The professional dispensing fees as provided in this rule shall not be included in the computation of the *[Missouri Medicaid]* **MO HealthNet** maximum allowable drug payment for *[recipient]* **participant** cost-sharing purposes.

(2) All pharmacy providers supplying prescribed *[Medicaid-]* **MO HealthNet** covered drugs to *[recipients]* **participants** in long-term care facilities shall receive an additional fifteen cent (15¢)*[-]*/dispensing fee per claim provided they—

(B) Certify to the *[Division of Medical Services]* **MO HealthNet Division**, on a form**, included herein,** and in the manner prescribed by the division, that they—

1. Provide this dispensing service to their long-term care facility resident patients;
2. Provide emergency services twenty-four (24) hours a day with seven (7) days a week availability; and
3. Have ability and willingness to assist in accessing medications through the *[Medicaid]* **MO HealthNet** Exception Process; and

(C) Indicate, as prescribed by the *[Division of Medical Services]* **MO HealthNet Division**, on each claim that the prescription was provided in packaging qualifying for the dispensing fee add-on to a *[recipient]* **participant** in a long-term care facility.

*AUTHORITY: sections 208.153[, RSMo Supp. 1991] and 208.201, RSMo Supp. [1987] **2013**. Original rule filed Dec. 15, 1987, effective March 11, 1988. Amended: Filed Sept. 26, 2013.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of 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 20—Pharmacy Program

PROPOSED AMENDMENT

13 CSR 70-20.071 Multiple Source Drugs for Which There Exists a Federal Upper Limit on Reimbursement. The division is amending the purpose statement and sections (1)–(2).

PURPOSE: This amendment updates the division's name, changes recipient to participant, and changes the federal Health Care Financing Administration to Centers for Medicare & Medicaid Services.

*PURPOSE: This rule establishes, via regulation, the Department of Social Services, [Division of Medical Services'] **MO HealthNet Division** upper limits on reimbursement for selected multiple source drugs, in response to the implementation of new federal guidelines.*

(1) The *[federal Health Care Financing Administration]* **Centers for Medicare and Medicaid Services** has established policy that federal matching funds will be provided for certain multiple source drugs, at the appropriate match rate, of an amount not to exceed specified upper limits of reimbursement. The specific upper limits of reimbursement are communicated to state Medicaid agencies periodically, with effective dates designated.

(2) As specified in 13 CSR 70-20.070, reimbursement for multiple source drugs shall be made in an amount not to exceed the federal upper limit, unless prior authorization is obtained by the prescribing physician. Prior authorization **requests for trade name drugs** must be obtained by telephone or by mailing a completed Drug Prior Authorization Form to the *[Division of Medical Services]* **MO HealthNet Division** to allow reimbursement at the trade name price. The *[Medicaid] **MO HealthNet** Pharmacy Manual* and updating bulletins shall provide the detailed listing of the specific drug products that shall not be reimbursed in an amount that exceeds the federal upper limit**, and is incorporated by reference and made a part of this rule as published by the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109, at its website, www.dss.mo.gov/mhd, November 1, 2013**.

*AUTHORITY: sections 208.153[, RSMo Supp. 1991] and 208.201, RSMo Supp. [1987] **2013**. Emergency rule filed Oct. 19, 1987, effective Oct. 29, 1987, expired Feb. 25, 1988. Emergency amendment filed Oct. 29, 1987, effective Nov. 8, 1987, expired March 6, 1988. Original rule filed Dec. 1, 1987, effective Feb. 11, 1988. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Sept. 26, 2013.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of 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 20—Pharmacy Program

PROPOSED AMENDMENT

13 CSR 70-20.200 Drug Prior Authorization Process. The division is amending the purpose statement and sections (2)–(10).

PURPOSE: This amendment updates the division's name, division website, and changes recipient to participant.

*PURPOSE: This rule establishes the division process by which drugs may be restricted under Section 4401 of P.L. 101-508 (Omnibus Budget Reconciliation Act of 1990) and are determined to be appropriate for inclusion as a regular benefit of the [Missouri Medicaid] **MO HealthNet** program or through prior authorization.*

(2) This rule establishes a *[Medicaid]* **MO HealthNet** Drug Prior Authorization Committee in the Department of Social Services, *[Division of Medical Services]* **MO HealthNet Division**. The committee shall be composed of three (3) practicing physicians licensed pursuant to Chapter 334, RSMo; three (3) practicing pharmacists licensed pursuant to Chapter 338, RSMo, one (1) of whom shall hold a doctoral degree in pharmacy (Pharm. D.); and one (1) registered professional nurse, as defined in Chapter 335, RSMo, practicing in a long-term care setting. All members shall be appointed by the director of the Department of Social Services. The members shall serve for a term of four (4) years. Members of the committee shall receive no compensation for their services, but shall be reimbursed for their actual and necessary expenses incurred, as approved by the *[Division of Medical Services]* **MO HealthNet Division** out of appropriations made for that purpose. The *[Medicaid]* **MO HealthNet** Drug Prior Authorization Committee shall meet quarterly. The proposed dates for the meetings shall be announced for one (1) calendar year at the last meeting of the previous calendar year. If a meeting date is changed the new date must be posted at *[www.dss.mo.gov/dms]* **www.dss.mo.gov/mhd** for at least thirty (30) days prior to the originally scheduled meeting.

(3) All persons eligible for medical assistance benefits shall have access to all pharmaceutical products for which there is federal

financial participation except those drugs that may be restricted under Section 4401 of P.L. 101-508 (Omnibus Budget Reconciliation Act of 1990). The *[Medicaid]* **MO HealthNet** *[d]***D**rug *[p]***P**rior *[a]***A**uthorization *[c]***C**ommittee shall review those drugs that may be restricted and recommend those appropriate for inclusion as a regular benefit of the *[Missouri Medicaid]* **MO HealthNet** program or through prior authorization.

(5) If the division finds that the data enumerated in section (4) of this rule has been documented, the *[Medicaid]* **MO HealthNet** Drug Prior Authorization Committee shall hold a public hearing prior to making recommendations to the department and prior to any final decision by the division to require prior authorization for that pharmaceutical product, class**,** or category.

(6) The tentative meeting agenda of the *[Medicaid]* **MO HealthNet** Drug Prior Authorization Committee with the classes to be discussed shall be posted on the *[Division of Medical Services]* **MO HealthNet Division** website *[(www.dss.mo.gov/dms)]* **(www.dss.mo.gov/mhd)** approximately fourteen (14) days prior but no less than seven (7) days prior to the meeting.

(A) The specific therapeutic class or classes to be considered at the next regularly scheduled *[Medicaid]* **MO HealthNet** Drug Prior Authorization Committee meeting shall be placed on the current agenda or posted on the website approximately thirty (30) days prior to the scheduled meeting.

(C) Following the consideration of all presented information, the committee shall make their final recommendation to the *[Division of Medical Services]* **MO HealthNet Division** by a majority vote of the members of the committee present thereto in a recorded roll call vote.

(D) The specific therapeutic class or classes recommended for restriction by means of step therapy, clinical edit, fiscal edit**,** or preferred drug list shall be available on the division website at *[www.dss.mo.gov/dms]* **www.dss.mo.gov/mhd** approximately fifteen (15) calendar days after the meeting.

(7) The recommendations from the *[Medicaid]* **MO HealthNet** Drug Prior Authorization Committee shall be referred to the Drug Utilization Review (DUR) Board for placement upon the agenda of the next regularly scheduled meeting. The DUR board may accept or alter the recommendations from the *[Medicaid]* **MO HealthNet** Drug Prior Authorization Committee in arriving at their recommendation for the *[Division of Medical Services]* **MO HealthNet Division**. If provided to the division fourteen (14) days in advance of the DUR board meeting, clinically relevant written material shall be presented before the recommendation is considered by the DUR board. The DUR board, at their sole discretion, may entertain clinically relevant public comment up to fifteen (15) minutes in aggregate per medication. The responsibility of scheduling the presentation shall rest with the manufacturer of the drug product. Any changes recommended by the DUR board shall be made available via the approved minutes of the DUR board meeting in a timely fashion, at least thirty (30) days prior to the implementation of the recommendations.

(8) After all recommendations have been reviewed and accepted, the *[Division of Medical Services]* **MO HealthNet Division** staff shall coordinate the implementation of the recommendations. All pertinent information relating to edit schedule and edit criteria shall be made available to the public by reasonable means, including, but not limited to, posting on the division website in a timely fashion following the DUR board meeting. Changes to the *[Medicaid]* **MO HealthNet** pharmacy benefit will be posted on a timely basis on the division website. In addition, information on covered medications shall be made available to the public for use with a personal digital assistant device. As determined by the division, patients stabilized on certain restricted medications shall be allowed to access such medication through the *[Medicaid]* **MO HealthNet** program for as long as the *[Medicaid]* **MO HealthNet** program determines that it is fiscally prudent and clinically supported.

(9) On an annual basis, the *[Medicaid]* **MO HealthNet** Drug Prior Authorization Committee shall review all criteria in place, including prior authorization, step therapy, clinical edits, fiscal edits, and the preferred drug list. Annual reviews will be staggered and scheduled to occur at the scheduled meeting closest to completion of a full calendar year after approval of the criteria. If additional clinical or fiscal information is available since the original consideration, interested parties shall have the opportunity to address the committee and request reconsideration of prior authorization, step therapy, clinical edits, fiscal edits, and preferred drug list criteria. All requests shall be scheduled with the division fourteen (14) days in advance of the meeting. All such presentations shall be clinically relevant and limited to a maximum of fifteen (15) minutes. The responsibility of scheduling the presentation shall rest with the manufacturer of the drug product.

(10) The division shall not otherwise restrict the prescribing and dispensing of covered outpatient prescription drugs (other than Drug Efficacy Study Implementation (DESI) drugs as designated by federal law) pursuant to this rule without consulting the Drug Prior Authorization Committee. The division may limit the number of prescriptions allowed for each medical assistance *[recipient]* **participant**.

*AUTHORITY: sections 208.153 and 208.201, RSMo [2000] **Supp. 2013**. Original rule filed Feb. 3, 1992, effective Aug. 6, 1992. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Sept. 26, 2013.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of 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—*[Division of Medical Services]* *MO HealthNet Division*
Chapter 50—Hospice Services Program

PROPOSED AMENDMENT

13 CSR 70-50.010 Hospice Services Program. The division is amending the purpose statement and sections (1)–(7), and adding a new section (10).

PURPOSE: This amendment changes the name of Missouri's medical assistance program to MO HealthNet, revises the name of the administering agency to MO HealthNet Division, changes reference to program recipients to participants, updates Department of Health to Department of Health and Senior Services, updates the division's

website address, and adds incorporated by reference material. This amendment also adds clarification on the administration of this program, provides the website address for hospice covered and non-covered services, adds clarification for payment for nursing facility room and board, removes cost sharing text, and adds records retention information.

PURPOSE: This rule establishes the regulatory basis for administration of a medical assistance program of hospice care as mandated by House Bill 1139, 84th General Assembly, ***section 208.152, RSMo****. More specific details of the conditions for provider participation, criteria, and methodology of provider reimbursement, [recipient]* ***participant*** *eligibility, and amount, duration, and scope of services covered are included in the provider program manual. The Missouri Title XIX Hospice Services Program is similar to the Title XVIII Medicare Hospice Services program as defined and prescribed in Title 42,* ***Code of Federal Regulations*** *part 418.*

(1) Administration. The Hospice Program shall be administered by the Department of Social Services, *[Division of Medical Services]* **MO HealthNet Division**. The medical services covered and not covered, the program limitations **under which services are covered,** and the maximum allowable fees for all covered services shall be determined by the *[Department of Social Services, Division of Medical Services]* **MO HealthNet Division and shall be included in the MO HealthNet Hospice Provider Manual, which is incorporated by reference and made part of this rule as published by the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109, at its website at www.dss.mo.gov/mhd, November 1, 2013. This rule does not incorporate any subsequent amendments or additions. Hospice services covered by the MO HealthNet program shall include only those that are clearly shown to be medically necessary. The division reserves the right to affect changes in services, limitations, and fees with proper notification to MO HealthNet hospice providers**.

(2) Persons Eligible. *[Any person who is]* **Participants** eligible for medical assistance benefits from the Department of Social Services *[is]* **are** certified by a physician to be terminally ill with a medical prognosis of life expectancy of six (6) months or less if the illness runs its normal course and who elects hospice benefits is eligible. The individual must agree to seek only palliative care for the duration of the hospice enrollment*[.]* **with the following exception:**

(A) Hospice services for a child under twenty-one (21) years of age may be concurrent with the care related to curative treatment of the condition for which a diagnosis of a terminal illness has been made.

(3) Enrollment of *[Recipient]* **Participant**. The components involved in hospice enrollment are—physician certification; election procedures, including election statement, revocation**,** and change; the assignment of an attending physician; and the development of the plan of care.

(B) Election Procedures. To elect hospice services, an individual must file a Hospice Election Statement with a *[Medicaid]* **MO HealthNet** participating hospice provider. An election may also be filed by a representative acting pursuant to state law. With respect to an individual granted the power of attorney for the *[recipient]* **participant**, state law determines the extent to which the individual may act on the patient's behalf.

1. Election period. An election to receive hospice care will be considered to continue through the initial election period and through any subsequent election periods without a break in care as long as the individual remains in the care of the hospice and does not revoke the election.

2. Waiver of *[Medicaid]* **MO HealthNet** fee-for-service payments related to the terminal illness. In order to elect hospice services, the individual must waive all rights to *[Medicaid]* **MO HealthNet** payments for services that would be covered under the Medicare program for the duration of the election of hospice care for the following services:

A. Hospice care provided by a hospice other than the hospice designated by the individual (unless provided under arrangements made by the designated hospice); and

B. Any *[Medicaid]* **MO HealthNet** services that are related to the treatment of the terminal condition for which hospice care was elected or a related condition, or that are equivalent to hospice care except for services—

(I) Provided (either directly or under arrangement) by the designated hospice;

(II) Provided by another hospice under arrangements made by the designated hospice; *[or]*

(III) Provided by the individual's attending physician if that physician is not an employee of the designated hospice or receiving compensation from the hospice for those services*[.]***; or**

(IV) Provided to a child under twenty-one (21) and such services are curative treatment services for the condition for which a diagnosis of terminal illness has been made, as required by the federal Patient Protection and Affordable Care Act (PPACA), P.L. 111-148, section 2302.

3. Election, revocation**,** and change of hospice.

A. Election periods. An individual may elect to receive hospice care during one (1) or more of the following election periods:

(I) An initial ninety- (90-)*[-]* day period;

(II) A subsequent ninety- (90-)*[-]* day period; and

(III) Unlimited subsequent sixty- (60-)*[-]* day periods.

B. Election statement. The election statement must include the following items of information:

(I) Identification of the particular hospice that will provide care to the individual;

(II) The individual's or representative's acknowledgment that s/he has been given a full understanding of hospice care;

(III) The individual's or representative's acknowledgment that s/he understands that certain *[Medicaid]* **MO HealthNet** services are waived by the election;

(IV) The effective date of the election;

(V) The name of the attending physician;

(VI) The signature of the individual or representative; and

(VII) The signature of the witness when the *[recipient's]* **participant's** representative signs the form.

C. Revocation. An individual or representative may revoke the election of hospice care at any time. To revoke the election of hospice care, the individual, or representative, must file a revocation of hospice benefit statement with the hospice. This statement must include a signed statement that the individual revokes the election for *[Medicaid]* **MO HealthNet** coverage of hospice care for the remainder of that election period. The date that the revocation is to be effective is the date of the signature or may be a later date subsequent to the date of signature. The individual forfeits coverage for any remaining days in that election period. The individual or representative*[,]* may not designate an effective date earlier than the date that the revocation statement is signed. Upon revoking the election of *[Medicaid]* **MO HealthNet** coverage of hospice care for a particular election period, an individual resumes *[Medicaid]* **MO HealthNet** coverage of the benefits waived when hospice care was elected. An individual may elect at any time to receive hospice coverage for any other hospice election periods for which s/he is eligible.

D. Change of *[h]***H**ospice. An individual may change, once in each election period, the designation of the particular hospice from which s/he elects to receive hospice care. The change of the designated hospice is not considered a revocation of the election. To change the designation of hospice providers, the individual must file with the hospice from which s/he has received care and with the newly designated hospice a signed statement that includes the following information: the name of the hospice from which the individual has received

care, the name of the hospice from which s/he plans to receive care, and the date the change is to be effective.

(C) Attending Physician. The attending physician is a doctor of medicine or osteopathy and is identified by the individual, at the time s/he elects to receive hospice care, as having the most significant role in the determination and delivery of the individual's medical care. The attending physician is the *[recipient's]* **participant's** physician of choice who participates in the establishment of the plan of care and works with the hospice team in caring for the patient. The physician continues to give the medical orders and may have privileges in the hospice inpatient care. *[Medicaid]* **MO HealthNet** will make payments directly to a hospice *[recipient's]* **participant's** attending physician if the physician is not employed by the hospice provider.

(D) Plan of Care. *[After an individual has been certified as terminally ill and has elected hospice services, a plan of care must be established before services can be rendered. All services rendered to the recipient must be consistent with the plan of care. In establishing the initial plan of care, the member of the basic interdisciplinary group who assesses the patient's needs must meet with or call at least one (1) other group member (nurse, physician, medical social worker or counselor) before writing the initial plan of care. At least one (1) of the persons involved in developing the initial plan of care must be a nurse or a physician and the physician must sign the plan of care. This plan must be established on the same day as the assessment if the day of assessment is to be a covered day of hospice care. The other two (2) members of the basic interdisciplinary group must review the initial plan of care and provide their input to the process of establishing the plan of care within two (2) calendar days following the day of assessment. Signatures of all parties are required.]* **The hospice must conduct and document in writing a patient-specific comprehensive assessment that identifies the patient's need for hospice care and services and the patient's need for physical, psychosocial, emotional, and spiritual care. This assessment includes all areas of hospice care related to the palliation and management of the terminal illness and related conditions. The hospice registered nurse must complete an initial assessment within forty-eight (48) hours after the election of hospice care. The hospice interdisciplinary group, in consultation with the individual's attending physician (if any), must complete the comprehensive assessment no later than five (5) calendar days after the election of hospice care. The hospice must designate an interdisciplinary group or groups which, in consultation with the patient's attending physician, must prepare a written plan of care for each patient. The plan of care must specify the hospice care and services necessary to meet the patient and family-specific needs identified in the comprehensive assessment as such needs relate to the terminal illness and related conditions. The hospice interdisciplinary group (in collaboration with the individual's attending physician, if any) must review, revise, and document the individualized plan as frequently as the patient's condition requires, but no less than every fifteen (15) calendar days. The plan of care must be maintained in the patient's record and made available to the MO HealthNet Division or its agent upon request.**

(4) Provider Participation. To be eligible for participation in the *[Missouri Medicaid]* **MO HealthNet** Hospice Program, a provider must meet the following criteria:

(B) Be licensed by the Missouri State Department of Health **and Senior Services** as a hospice provider; and

(C) Be enrolled as a *[Medicaid]* **MO HealthNet** hospice provider.

(5) Benefits and Limitations. All services must be performed by appropriately qualified personnel. Nursing care, medical social services, and counseling are core hospice services and must routinely be provided directly by hospice employees. A hospice must ensure that substantially all the core services are routinely provided directly by hospice employees. A hospice may use contracted staff, if necessary, to supplement hospice employees in order to meet the needs of patients during periods of peak patient loads or under extraordinary circumstances. If contracting is used, the hospice must maintain professional, financial, and administrative responsibility for the services and must assure that the qualifications of staff and services provided meet all requirements. *[The following services are hospice-covered services when specified in the individual's plan of care:]* **Hospice covered services are identified in section 13 of the MO HealthNet Hospice Provider Manual which may be referenced at www.dss.mo.gov/mhd. The individual's plan of care must specify what hospice services are needed.**

[(A) Nursing care provided by or under the supervision of a registered nurse (RN);

(B) Medical social services provided by a social worker who has at least a bachelor's degree from a school accredited or approved by the Council on Social Work Education and who is working under the direction of a physician;

(C) Physician's services performed either directly or under contract with the hospice by a doctor of medicine or osteopathy to meet the general medical needs of the individual to the extent that these needs are not met by the attending physician;

(D) Counseling services must be available to both the patient and the family members or other persons caring for the individual at home. Counseling, including dietary counseling, may be provided both for the purpose of training the individual's family or other caregiver to provide care and for the purpose of helping the individual and those caring for him/her to adjust to the individual's approaching death;

(E) There must be an organized program for the provision of bereavement services under the supervision of a qualified professional. The plan of care for these services should reflect family needs, as well as a clear delineation of services to be provided and the frequency of service delivery (up to one (1) year following the death of the patient);

(F) Dietary counseling, when required, must be provided by a qualified individual;

(G) Spiritual counseling must include notice to the patient as to the availability of clergy;

(H) Counseling may be provided by other members of the interdisciplinary group as well as by other qualified professionals as determined by the hospice;

(I) Short-term inpatient care required for procedures necessary for pain control or acute or chronic symptom management provided in a participating hospice inpatient unit, or a participating hospital, or nursing facility (NF) that additionally meets the special hospice standards regarding staffing and patient areas;

(J) Short-term inpatient respite care furnished as a means of providing respite for the individual's family or other persons caring for the individual at home. The participating hospice inpatient unit, or a participant hospital, or NF must meet the special hospice standards regarding staffing and patient areas.

(K) Medical appliances and supplies including all drugs and biologicals used primarily for the relief of pain and symptom control related to the individual's terminal illness.

1. Appliances may include covered durable medical equipment as well as other self-help and personal comfort items related to the palliation or management of the patient's terminal illness.

2. Equipment is provided by the hospice for use in the patient's home while s/he is under hospice care.

3. Medical supplies include those that are part of the written plan of care;

(L) Home Health Aide Services Furnished by Certified Aides. Home health aides may provide personal care services and perform household services to maintain a safe and sanitary environment in areas of the home used by the patient. Examples of these services are: changing the bed linen or light cleaning and laundering essential to the comfort and cleanliness of the patient. Aide services must be provided under the general supervision of an RN. Home health aide services must be available and adequate in frequency to meet the needs of the patient, as defined in the plan of care;

(M) Homemaker services furnished to provide assistance in personal care, maintenance of a safe and healthy environment and services to enable the individual to carry out the treatment plan;

(N) Physical therapy, occupational therapy and speech/language pathology services for purposes of symptom control or to enable the individual to maintain activities of daily living and basic functional skills. When provided, the services must be offered in a manner consistent with accepted standards of practice; and.

(O) Any other item or service which is specified in a patient's Plan of Care and for which Medicaid may pay.]

(6) *[The following services are not covered through the hospice program:*

(A) Any services provided by inappropriately qualified personnel;

(B) Any service or treatment not listed in the individual's plan of care;

(C) Any service or treatment that is not directly related to pain control or palliation of the recipient's terminal illness;

(D) Nurse's aide services not under the supervision of an RN;

(E) Inpatient services beyond the boundaries of the inpatient cap; and

(F) Respite care over five (5) days per calendar month.] **Non covered services are identified in section 13 of the MO HealthNet Hospice Provider Manual which may be referenced at www.dss.mo.gov/mhd.**

(7) Reimbursement. Hospice services, as defined in this rule and provided by qualified providers, shall be reimbursed for dates of service beginning on or after May 15, 1989. The reimbursement rate for hospice services includes all covered services related to the treatment of the terminal illness, including the administrative and general supervisory activities performed by physicians who are employees of or working under arrangements made with the hospice. These activities would generally be performed by the physician serving as the medical director and the physician member of the hospice interdisciplinary group. Group activities would include participation in the establishment of plans of care, supervision of care and services, periodic review and updating of plans of care, and establishment of governing policies. The costs for these services are included in the reimbursement rates for routine home care, continuous home care**,** and inpatient respite care.

(B) Nursing Home Room and Board. *[Medicaid-]***MO HealthNet-**eligible individuals residing in *[Medicaid]* **MO HealthNet**-certified NFs who meet the hospice eligibility criteria may elect *[Medicaid]* **MO HealthNet** hospice care services. In addition to the routine home care or continuous home care per-diem rates, an amount may be paid to the hospice to cover the nursing home room and board costs. The hospice will reimburse the nursing home. *[Room and board include the performance of personal care services that a caregiver would provide if the individual were at home. These services include assistance in the activities of daily living: washing and grooming, toileting, dressing, meal service, socializing (companionship, hobbies, and the like), administration of medication, maintaining the cleanliness of the resident's bed and room and supervising and assisting in the use of durable medical equipment and prescribed therapies (for example, range of motion exercises, speech and language exercises).]*

1. There must be a written agreement between the hospice and the nursing home under which the hospice takes full responsibility for the professional management of the individual's hospice care and the nursing home agrees to provide room and board to the individual. The hospice and the nursing home will retain a copy of the agreement.

2. For purposes of the *[Medicaid]* **MO HealthNet** hospice benefit, a NF can be considered the individual's residence.

3. Payment for **nursing facility (**NF**)** room and board will be determined in accordance with rates established under section 1902(a)(13) of the Social Security Act. **It is the responsibility of the hospice provider to be aware of the NF reimbursement rate and whether it is a final rate or if it is subject to change. The MO HealthNet Division may recoup payments made to hospice providers for NF room and board if the nursing facility reimbursement rate changes retroactively.**

(C) Physician Services. *[Medicaid]* **MO HealthNet** will reimburse the hospice provider for certain physician services, such as direct patient care services, furnished to individual patients by hospice employees and for physician services furnished under arrangements made by the hospice unless the patient care services were furnished on a volunteer basis. *[Medicaid]* **MO HealthNet** will reimburse the hospice for attending physician services when the physician is employed by the hospice. These physician services will be reimbursed in accordance with *[Medicaid]* **MO HealthNet** reimbursement policy for physician services based on the lower of the actual charge or the *[Medicaid]* **MO HealthNet** maximum allowable amount for the specific service.

(D) Limitation on Payments for Inpatient Care. Payments to hospice providers for inpatient care must be limited according to the number of days of inpatient care furnished to *[Medicaid]* **MO HealthNet** patients. During the twelve**-** (12**-**)*[-]* month period beginning November 1 of each year and ending October 31, the aggregate number of inpatient days (both for general inpatient care and inpatient respite care) may not exceed twenty percent (20%) of the aggregate total number of days of hospice care provided to all *[Medicaid recipients]* **MO HealthNet participants** during that same period. This limitation is applied once each year, at the end of the hospice's cap period (11/1–10/31). For purposes of this computation, if it is determined that the inpatient rate should not be paid, any days for which the hospice receives payment at a home care rate will not be counted as inpatient days. Any excess reimbursement will be refunded by the hospice.

(9) General Regulations. *[This rule shall not encompass all of the general regulations of the Medicaid program. These regulations, however, shall be in effect for hospice services.]* **General regulations of the MO HealthNet program apply to the hospice program.**

(10) Records Retention. Sanctions may be imposed by the MO HealthNet agency against a provider for failing to make available, and disclosing to the MO HealthNet agency or its authorized agents, all records relating to services provided to MO HealthNet participants or records relating to MO HealthNet payments, whether or not the records are comingled with non-Title XIX (Medicaid) records in compliance with 13 CSR 70-3.030. These records must be retained for five (5) years from the date of service. Fiscal and medical records coincide with and fully document services billed to the MO HealthNet agency. Providers must furnish or make the records available for inspection or audit by the Department of Social Services or its representative upon request. Failure to furnish, reveal, or retain adequate documentation for

services billed to the MO HealthNet program, as specified above, is a violation of this regulation.

*AUTHORITY: sections 208.152, 208.153, and 208.201, RSMo [2000] **Supp. 2013**. Emergency rule filed May 17, 1989, effective May 27, 1989, expired Sept. 13, 1989. Original rule filed May 17, 1989, effective Aug. 11, 1989. Amended: Filed June 18, 1991, effective Dec. 9, 1991. Amended: Filed Sept. 2, 1993, effective April 9, 1994. Amended: Filed Aug. 24, 2001, effective March 30, 2002. Amended: Filed Sept. 26, 2013.*

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions two hundred fifty-four thousand one hundred dollars ($254,100) in the aggregate.

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

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

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

Rule Number and Name:	13 CSR 70-50.010 Hospice Services Program
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
MO HealthNet Division	$254,100 per year

III. WORKSHEET

	Avg Annual Cost Per Participant	Projected Number of Children	Percent of Cost	Cost
Federal	$7,700.00	33	0.64	$162,624
General Revenue	$7,700.00	33	0.36	$ 91,476
Total				$254,100

IV. ASSUMPTIONS

1. The number of children under the age of 21 participating in hospice will increase by approximately 33.
2. Participants wishing to continue treatment services previously could not elect the hospice benefit under federal law.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 60—Durable Medical Equipment Program

PROPOSED AMENDMENT

13 CSR 70-60.010 Durable Medical Equipment Program. The division is amending sections (1), (6), and (8).

PURPOSE: This amendment updates the incorporated by reference material date in sections (1) and (6) and removes the word "volume" in section (8).

(1) Administration. The MO HealthNet *[d]***D**urable *[m]***M**edical *[e]***E**quipment (DME) program shall be administered by the Department of Social Services, MO HealthNet Division. The services and items covered and not covered, the program limitations, and the maximum allowable fees for all covered services shall be determined by the Department of Social Services, MO HealthNet Division and shall be included in the DME provider manual and bulletins, which are incorporated by reference and made a part of this rule as published by the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65102, at its website at www.dss.mo.gov/mhd, *[December 15, 2008]* **November 1, 2013**. This rule does not incorporate any subsequent amendments or additions.

(6) Covered Services. It is the provider's responsibility to determine the coverage benefits for a MO HealthNet eligible participant based on his or her type of assistance as outlined in the DME manual and bulletins. Reimbursement will be made to qualified participating DME providers only for DME items, determined by the participant's treating physician or advanced practice nurse in a collaborative practice arrangement to be medically necessary. Specific procedure codes that are covered under the DME program are listed in Section 19 of the DME provider manual and bulletins, which are incorporated by reference and made a part of this rule as published by the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65102, at its website at www.dss.mo.gov/mhd, *[December 15, 2008]* **November 1, 2013**. This rule does not incorporate any subsequent amendment or additions. These items must be for use in the participant's home when ordered in writing by the participant's physician or advanced practice nurse in a collaborative practice arrangement. Although an item is classified as DME, it may not be covered in every instance. Coverage is based on the fact that the item is reasonable and necessary for treatment of the illness or injury, or to improve the functioning of a malformed or permanently inoperative body part and the equipment meets the definition of DME. Even though a DME item may serve some useful, medical purpose, consideration must be given by the physician or advanced practice nurse in a collaborative arrangement and the DME supplier to what extent, if any, it is reasonable for MO HealthNet to pay for the item as opposed to another realistically feasible alternative pattern of care. Consideration should be given by the physician or advanced practice nurse in a collaborative practice arrangement and the DME supplier as to whether the item serves essentially the same purpose as equipment already available to the participant. If two (2) different items each meet the need of the participant, the less expensive item must be employed, all other conditions being equal.

(8) Durable medical equipment for participants who are in a nursing facility or inpatient hospital. DME is not covered for those participants residing in a nursing home. DME is included in the nursing home per diem rate and not paid for separately with the exception of custom and power wheelchairs, prosthetic devices, and *[volume]* ventilators. DME that is used while the participant is in inpatient hospital care is not paid for separately under the DME program. These costs are recognized as part of the hospital's inpatient per diem rate.

AUTHORITY: sections 208.153 and 208.201, RSMo Supp. [2008] ***2013****. Original rule filed Nov. 1, 2002, effective April 30, 2003. For intervening history, please consult the* ***Code of State Regulations****. Amended: Filed Sept. 26, 2013.*

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of 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 70—Therapy Program

PROPOSED AMENDMENT

13 CSR 70-70.010 Therapy Program. The division is amending sections (1), (3), and (7).

PURPOSE: This amendment updates the reference date in section (1), and the terminology in sections (3) and (7) to reflect current program requirements.

(1) Administration. The MO HealthNet therapy program shall be administered by the Department of Social Services, MO HealthNet Division. The therapy services covered and not covered, the limitations under which services are covered, and the maximum allowable fees for all covered services shall be determined by the MO HealthNet Division and shall be included in the therapy provider manual and bulletins, which are incorporated by reference and made a part of this rule as published by the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109, at its website at www.dss.mo.gov/mhd, *[November 15, 2008]* **November 1, 2013**. This rule does not incorporate any subsequent amendments or additions. Therapy services shall include only those which are clearly shown to be medically necessary as determined by the treating physician. The division reserves the right to affect changes in services, limitations, and fees with notification to therapy providers by amending this rule.

(3) Provider Participation.

(B) The enrolled MO HealthNet provider shall agree to*[:]*—

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

2. On request furnish to the *[MO HealthNet agency]* **Department of Social Services** or State Medicaid Fraud Control Unit any information regarding payments claimed by the provider for furnishing services under the plan.

(7) Records Retention. Sanctions may be imposed by the *[MO HealthNet agency]* **Department of Social Services** against a provider for failing to make available, and disclosing to the *[MO HealthNet agency]* **Department of Social Services** or its authorized agents, all records relating to services provided to MO HealthNet participants or records relating to MO HealthNet payments, whether or not the records are commingled with non-Title XIX (Medicaid) records in compliance with 13 CSR 70-3.030. These records must be retained for five (5) years from the date of service. Fiscal and medical records coincide with and fully document services billed to the MO HealthNet agency. Providers must furnish or make the records available for inspection or audit by the Department of Social Services or its representative upon request. Failure to furnish, reveal, or retain adequate documentation for services billed to the MO HealthNet program, as specified above, is a violation of this regulation.

*AUTHORITY: sections 208.153 and 208.201, RSMo Supp. [2008] **2013**. Original rule filed Nov. 1, 2002, effective May 30, 2003. Amended: Filed June 1, 2006, effective Dec. 30, 2006. Amended: Filed Oct. 15, 2008, effective May 30, 2009. Amended Filed: Sept. 26, 2013.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of 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 98—
*[Psychiatric/Psychology/Counseling/Clinical Social Work Program] **Behavioral Health Services***

PROPOSED AMENDMENT

13 CSR 70-98.015 *[Psychiatric/Psychology/Counseling/Clinical Social Work Program]* ***Behavioral Health Services Program*** **Documentation**. The division is amending the chapter title, purpose statement, and sections (1), (2), (3), (4), and (5).

PURPOSE: This amendment is needed to address the name change of Psychiatric/Psychology/Counseling/Clinical Social Work Program to Behavioral Health Services Program; eliminate reference to a specific version of The International Classification of Diseases (ICD); and update reference to Physicians Provider Manual Section.

*PURPOSE: This rule establishes the regulatory basis for the documentation requirements of services provided through the MO HealthNet [psychiatric/psychology/counseling/clinical social work program] **behavioral health services**. The Health Insurance Portability and Accountability Act (HIPAA) mandates that states allow providers to bill for services using the standard current procedural terminology (CPT) code sets, however, it does not require states to add coverage for services that it does not currently cover. The MO HealthNet Division (MHD) has not added coverage of services previously not covered; however, it is redefining limitations based on standard code definitions, and clarification to MO HealthNet policy.*

(1) Administration. The MO HealthNet *[psychiatric/psychology/counseling/clinical social work]* **behavioral health services** program shall be administered by the Department of Social Services, MO HealthNet Division (MHD). The services covered and not covered*[,]* **and** the limitations under which services are covered*[, and the maximum allowable fees for all covered services]* shall be determined by MHD and shall be included in the *MO HealthNet [Psychology/Counseling]* ***Behavioral Health Services*** *Provider Manual* and Section 13*[.57]* of the *Physician's Provider Manual*, which are incorporated by reference in this rule and available through the Department of Social Services, MO HealthNet Division website at www.dss.mo.gov/mhd*[, December 1, 2008]* **November 1, 2013**. This rule does not incorporate any subsequent amendments or additions. *[Psychiatric/psychology/counseling/clinical social work]* **Behavioral health** services shall include only those which are clearly shown to be medically necessary.

(2) Persons Eligible. The MO HealthNet Program pays for approved MO HealthNet services for *[psychiatric/psychology/counseling/clinical social work]* **behavioral health** services when furnished within the provider's scope of practice. The participant must be eligible on the date the service is furnished. Participants may have specific limitations for *[psychiatric/psychology/counseling/clinical social work]* **behavioral health** services according to the type of assistance for which they have been determined eligible. It is the provider's responsibility to determine the coverage benefits for a participant based on their type of assistance as outlined in the provider program manual. The provider shall ascertain the patient's MO HealthNet and managed care or other lock-in status before any service is performed. The participant's eligibility shall be verified in accordance with methodology outlined in the provider program manual.

(3) Provider Participation. To be eligible for participation in the MO HealthNet *[psychiatric/psychology/counseling/clinical social work]* **behavioral health services** program, a provider must meet the licensing criteria specified for his or her profession and be an enrolled MO HealthNet provider.

(4) Documentation Requirements for *[Psychiatric/Psychology/Counseling/Clinical Social Work]* **Behavioral Health** Services. Documentation must be in narrative form, fully describing each session billed. A check-off list or pre-established form will not be accepted as sole documentation. Progress notes shall be written and

maintained in the patient's medical record for each date of service for which a claim is filed. Progress notes for *[psychiatric/psychology/counseling/clinical social work]* **behavioral health** services shall specify*[:]*—

(5) A plan of treatment is a required document in the overall record of the patient.

(A) A treatment plan must be developed by the provider based on a diagnostic evaluation that includes examination of the medical, psychological, social, behavioral, and developmental aspects of the participant's situation and reflects the need for *[psychiatric/psychological/counseling/clinical social work]* **behavioral health** services. If the service is for a child who is in the legal custody of the Children's Division, a copy of the treatment plan shall be provided to the Children's Division in order for the provider to retain reimbursement for the covered service(s).

(D) The treatment plan shall be reviewed on a periodic basis to evaluate progress toward treatment goals and outcomes and to update the plan.

1. Each person shall directly participate in the review of his or her individualized treatment plan.

2. The frequency of treatment plan reviews shall be based on the individual's level of care or other applicable program rules. The occurrence of a crisis or significant clinical event may require a further review and modification of the treatment plan.

3. The individualized treatment plan shall be updated and changed as indicated.

4. Each treatment plan update shall include the therapist assessment of current symptoms and behaviors related to diagnosis, progress to treatment goals, justification of changed or new diagnosis, response to other concurrent treatments such as family or group therapy and medications.

5. The therapist's plan for continuing treatment and/or termination from therapy and aftercare shall be considerations expressed in each treatment plan update.

6. A diagnostic assessment from a MO HealthNet enrolled provider shall be documented in the patient's case record, which shall assist in ensuring an appropriate level of care, identifying necessary services, developing an individualized treatment plan, and documenting the following:

A. Statement of needs, goals, and treatment expectations from the individual requesting services. The family's perceptions are also obtained, when appropriate and available;

B. Presenting situations/problem and referral source;

C. History of previous psychiatric and/or substance abuse treatment including number and type of admissions;

D. Current medications and identifications of any medications allergies and adverse reactions;

E. Recent alcohol and drug use for at least the past thirty (30) days and, when indicated, a substance use history that includes duration, patterns, and consequences of use;

F. Current psychiatric symptoms;

G. Family, social, legal, and vocational/educational status and functioning. The collection and assessment of historical data is also required unless short-term crisis intervention or detoxification are the only services being provided;

H. Current use of resources and services from other community agencies;

I. Personal and social resources and strengths, including the availability and use of family, social, peer, and other natural supports; and

J. Multi-axis diagnosis or diagnostic impression in accordance with the current edition of the *Diagnostic and Statistical Manual* of the American Psychiatric Association or the *International Classification of Diseases*, *[Ninth Revision, Clinical Modification]* (ICD*[9-CM]*). The ICD*[9-CM]* **coding** is required for billing purposes.

7. When interactive therapy is billed, the provider must document the need for this service and the equipment, devices, or other mechanism of equipment used.

8. When care is completed, the aftercare plan shall include, but is not limited to, the following:

A. Dates began and ended;

B. Frequency and duration of visits;

C. Target symptoms/behaviors addressed;

D. Interventions;

E. Progress to goals achieved;

F. Final diagnosis; and

G. Final recommendations including further services and providers, if needed, and activities recommended to promote further recovery.

*AUTHORITY: sections 208.152, 208.153, and 208.201, RSMo Supp. [2008] **2013**. Original rule filed Nov. 14, 2003, effective June 30, 2004. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Sept. 26, 2013.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of 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 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 200—Insurance Solvency and Company Regulation
Chapter 2—Reinsurance and Assumptions

PROPOSED AMENDMENT

20 CSR 200-2.100 Credit for Reinsurance. The department is amending this rule so that the regulation is consistent with the National Association of Insurance Commissioners (NAIC) Credit for Reinsurance Model Act and Regulation and section 375.246, RSMo, which was amended by HB 133 (2013). The department is deleting the current exhibits and replacing them with new exhibits. The department is also adding new exhibits 6, 7, and 8.

PURPOSE: This amendment is intended to make this regulation consistent with the National Association of Insurance Commissioners (NAIC) Credit for Reinsurance Model Act and Regulation and section 375.246, RSMo, which grants the director with the authority to determine minimum capital and surplus and financial strength ratings

requirements for an assuming insurer to maintain in order to be certified by the director as being allowed to post reduced collateral with an emergency rulemaking. The department is deleting the current exhibits and replacing them with new exhibits. The department is also adding new exhibits 6, 7, and 8.

(1) If any provision*[s]* of this rule, or the*[ir]* application **of the provision** to any person or circumstance, *[are]* **is** held invalid, *[that determination shall not affect other provisions or applications of this rule which can be given effect without the invalid provision or application and to that end the provisions of this rule are separable]* **the remainder of this rule, and the application of the provision to persons or circumstances other than those to which it is held invalid, shall not be affected**.

(2) **Credit for Reinsurance—Reinsurer Licensed in this State**. Pursuant to section 375.246.1(1), RSMo, the director shall allow credit for reinsurance ceded by a domestic insurer to **an** assuming insurer*[s which were]* **that was** licensed in this state as of *[the]* **any** date *[of the ceding insurer's statutory financial statement]* **on which statutory financial statement credit for reinsurance is claimed**. For purposes of this rule, an insurer whose certificate of authority has been suspended or revoked for one (1) or more of the grounds set forth in section 375.881.1(1), (2), or (3), RSMo, shall be deemed not licensed in this state.

(3) Credit for Reinsurance—Accredited Reinsurers.

(A) Pursuant to section 375.246.1(2), RSMo, the director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer *[which]* **that** is accredited as a reinsurer in this state as of the date *[of the ceding insurer's statutory financial statement]* **on which statutory financial statement credit for reinsurance is claimed**. An accredited reinsurer *[is one which]* **must**—

1. File*[s]* with the director the following:

A. A properly executed *[application for approval as an authorized reinsurer]* **Reinsurer Application**, the form of which is set forth as Exhibit 1 of this rule, included herein **revised September 23, 2013, or any form which substantially comports with the specified form**;

B. A certified copy of *[a letter or]* a certificate of authority or *[of compliance as]* **other acceptable** evidence that *[the company]* **it** is licensed to transact insurance or reinsurance in at least one (1) state or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one (1) state;

C. A properly executed appointment of the director to acknowledge or receive service of process, the form of which is set forth as Exhibit 2 of this rule included herein, **revised September 23, 2013, or any form which substantially comports with the specified form**;

D. A properly executed **Certificate of Assuming Insurer** (Form AR-1), which is set forth as Exhibit 3 of this rule included herein, **revised September 23, 2013, or any form which substantially comports with the specified form,** as evidence of its submission to this state's jurisdiction and to this state's authority to examine its books and records;

E. A copy of its articles of incorporation or association, as amended, duly certified by the proper officer of the state under whose laws it is organized or incorporated;

F. A copy of its bylaws, certified by its secretary;

G. *[A biographical sketch of its directors and officers as listed in its annual statement, accompanied by the original signatures of those directors and officers, the form of which is set forth as Exhibit 4 of this rule, included here]* **The National Association of Insurance Commissioner (NAIC) Uniform Certificate of Authority Application (UCAA) Form 11 Biographical Affidavit, the form of which is included herein as Exhibit 4 of this rule, revised September 23, 2013, or any form which substantially comports with the specified form; and**

H. A copy of the registration statement of any holding company system if it is a member of such a system*[; and]***.**

[I. Its most currently dated audited financial report;]

2. File*[s with the director in addition to its initial application, and annually after that, prior to March 1 of each year,]* a *[certified]* **annually with the director a** copy of *[the]* **its** annual statement *[it has]* filed with the insurance department of its state of domicile or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance, *[including an actuarial certification and management discussion and analysis]* **and a copy of its most recent audited financial statement.**

3. Include*[s]*, with the documents required to be filed under **the** preceding provisions of *[this]* section **(3) of this rule,** the appropriate filing fees as set forth in section 374.230, RSMo; and

4. Maintain*[s]* a surplus as regards policyholders in an amount not less than twenty (20) million dollars**,** *[and whose accreditation has not been denied by the director within ninety (90) days of its submission or, in the case of companies with a surplus as regards policyholders of less than twenty (20) million dollars, whose accreditation has been approved by the director]* **or obtain the affirmative approval of the director upon a finding that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers**.

(B) If the director determines that the assuming insurer has failed to meet or maintain any of these qualifications, *[s/he]* **the director may**, upon written notice and **opportunity for a** hearing, *[may]* **suspend or** revoke the accreditation. *[No c]***C**redit shall **not** be allowed a domestic ceding insurer **under section (3) of this rule, if the assuming insurer's accreditation has been revoked by the director, or if the reinsurance was ceded while the assuming insurer's accreditation was under suspension by the director** *[with respect to reinsurance ceded on or after December 31, 1991, if the assuming insurer's accreditation has been denied or revoked by the director after notice and hearing]*.

(4) Credit for Reinsurance—*[Qualified]* Reinsurer Domiciled *[and Licensed]* in Another State.

(A) Pursuant to section 375.246.1(3), RSMo, the director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer *[which is qualified as a reinsurer as of the date of the ceding insurer's statutory financial statement. A qualified reinsurer is one which]* **that as of any date on which statutory financial statement credit for reinsurance is claimed**—

1. Files *[the following]* with the director*[:]***—**

A properly executed *[application for approval as an authorized reinsurer]* **Reinsurer Application**, the form of which is set forth as Exhibit 1 of this rule, **included herein, revised September 23, 2013, or any form which substantially comports with the specified form**;

[B. Certified copy of a letter or a certificate of authority or of compliance as evidence that the company is licensed to transact insurance or reinsurance in at least one (1) state or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one (1) state; and]

*[C.]***B.** A properly executed appointment of the director to acknowledge or receive service of process, the form of which is set forth as Exhibit 2 of this rule**, included herein, revised September 23, 2013, or any form which substantially comports with the specified form**; **and**

C. A properly executed Form AR-2, the form of which is included herein as Exhibit 5 of this rule, revised September 23, 2013, or any form which substantially comports with the specified form, as evidence of its submission to this state's authority to examine its books and records.

2. Files with the director in addition to its initial *[application]* **filing**, and annually after that, prior to March 1 of each year, a certified copy of the annual statement it has filed with the insurance department of its state of domicile or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance, including an actuarial certification and management discussion and analysis required as part of the *[National Association of Insurance Commissioner (]*NAIC*[)]* annual statement requirements;

[3. Files with the director a properly executed Form AR-2, the form of which is set forth as Exhibit 5 of this rule, included herein, as evidence of its submission to this state's authority to examine its books and records;]

*[4.]***3.** Is domiciled *[and licensed]* in (or, in the case of a United States branch of an alien assuming insurer, is entered through *[and licensed in]*) a state *[which]* **that** employs standards regarding credit for reinsurance substantially similar to those applicable under *[the Law on Credit Reinsurance,]* section 375.246, RSMo (the Act) and this rule;

*[5.]***4.** Includes with the documents required to be filed under preceding provisions of *[this]* section **(4) of this rule,** the appropriate filing fees as set forth in section 374.230, RSMo; and

*[6.]***5.** Maintains a surplus as regards policyholders in an amount not less than twenty (20) million dollars.

(B) The provisions of *[this]* section **(4) of this rule** relating to surplus as regards policyholders shall not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system. As used in this section, **"**substantially similar**"** standards means credit for reinsurance standards *[which]* **that** the director determines equal or exceed the standards of **Reinsurance Model Act (**the Act**)** and this rule.

(5) Credit for Reinsurance—Reinsurers Maintaining Trust Funds.

(A) Pursuant to section 375.246.1(4), RSMo, the director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which, as of *[the]* **any** date *[of the ceding insurer's statutory financial statement]* **on which statutory financial statement credit for reinsurance is claimed, and thereafter for so long as credit for reinsurance is claimed and therefore for so long as credit for reinsurance is claimed**, maintains a trust fund in an amount prescribed in this rule in a qualified United States financial institution as defined in section 375.246.3(2), RSMo, for the payment of the valid claims of its United States *[policyholders and]* **domiciled** ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the director substantially the same information as that required to be reported on the NAIC annual statement form by licensed insurers, to enable the director to determine the sufficiency of the trust fund.

(B) The following requirements apply to the following categories of assuming insurer:

1. The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to *[business written in the]* **reinsurance ceded by** United States **domiciled insurers**, and in addition, **the assuming insurer shall maintain** a trusteed surplus of not less than twenty (20) million dollars**, except as provided in paragraph (5)(B)2. of this rule**;

2. At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three (3) full years, the director with principal regulatory oversight of the trust may authorize a reduction in the required trusteed surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of United States ceding insurers, policyholders, and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including, when applicable, the lines of business involved, the stability of the incurred loss estimates and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trusteed surplus may not be reduced to an amount less than thirty percent (30%) of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust.

*[2.]***3.** The trust fund for a group *[of]* **including incorporated and** individual unincorporated underwriters shall consist of**:** *[funds in trust in an amount not less than the group's aggregate liabilities attributable to business written in the United States and, in addition, the group shall maintain a trusteed surplus of which one hundred (100) million dollars shall be held jointly for the benefit of the United States ceding insurers of any member of the group. The group shall make available to the director annual certifications by the group's domiciliary regulator and its independent public accountants of the solvency of each underwriter member of the group; and]*

A. For reinsurance ceded under reinsurance agreements with an inception, amendment, or renewal date on or after January 1, 1993, funds in trust in an amount not less than the respective underwriters' several liabilities attributable to business ceded by United States domiciled ceding insurers to any underwriter of the group;

B. For reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of this rule, funds in trust in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States; and

C. In addition to these trusts, the group shall maintain a trusteed surplus of which one-hundred (100) million dollars shall be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all the years of the account.

4. The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members. The group shall, within ninety (90) days after its financial statements are due to be filed with the group's domiciliary regulator, provide to the director—

A. An annual certification by the group's domiciliary regulator of the solvency of each underwriter member of the group; or

B. If a certification is unavailable, a financial statement, prepared by independent public accountants, of each underwriter member of the group.

*[3.]***5.** The trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholders' surplus of ten (10) billion dollars (calculated and reported in substantially the same manner as prescribed by the annual statement instructions and *Accounting Practices and Procedures Manual* of the NAIC) and which **has** continuously *[has]* transacted an insurance business outside the United States for at least three (3) years immediately prior to making application for accreditation, shall**—**

A. *[c]***C**onsist of funds in trust in an amount not less than the assuming insurer's **several** liabilities attributable to business ceded by United States **domiciled** ceding insurers to any members of the group pursuant to reinsurance contracts issued in the name of *[that]* **such** group *[and, in addition, the group shall]***;**

B. *[m]***M**aintain a joint trusteed surplus of which one hundred (100) million dollars shall be held jointly for the benefit of United States **domiciled** ceding insurers of any member of the group*[. The group shall file a]***; and**

C. File with the director the following forms:

(I) A Reinsurer Application, the form of which is

included herein as Exhibit 1 of this rule, revised September 23, 2013, or any form which substantially comports with the specified form;

(II) A properly executed Form AR-1 **the form of which is included herein as Exhibit 3 of this rule, revised September 23, 2013, or any form which substantially comports with the specified form,** as evidence of the submission to this state's authority to examine the books and records of any of its members and shall certify that any member examined will bear the expense of any examination*[.]*; **and**

(III) *[The group shall make available to the director annual certifications by the member's domiciliary regulators and their independent public accountants of the solvency of each member of the group.]* **Includes with the documents required to be filed under preceding provisions of section (5) of this rule the appropriate filing fees as set forth in section 374.230, RSMo**.

D. Within ninety (90) days after the statements are due to be filed with the group's domiciliary regulator, the group shall file with the director an annual certification of each underwriter member's solvency by the member's domiciliary regulators, and financial statements, prepared by independent public accountants, of each underwriter member of the group.

(C) **Trust Instrument.**

1. *[That trust shall be established in a form]* **Credit for reinsurance shall not be granted unless the form of the trust and any amendments to the trust have been** approved by **either** the director *[and complying with section 375.246.1., RSMo and this section.]* **or commissioner of the state where the trust is domiciled or the director or commissioner of another state who, pursuant to the terms of the trust instrument, has accepted responsibility for regulatory oversight of the trust. The form of the trust and any trust amendments also shall be filed with the director or commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled.** The trust instrument shall provide that—

*[1.]***A.** Contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied thirty (30) days after entry of the final order of any court of competent jurisdiction in the United States;

*[2.]***B.** Legal title to the assets of the trust shall be vested in the trustee for the benefit of the grantor's United States *[policyholders and]* ceding insurers, their assigns and successors in interest;

*[3.]***C.** The trust shall be subject to examination as determined by the director;

*[4.]***D.** The trust shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, shall have outstanding obligations under reinsurance agreements subject to the trust; **and**

*[5.]***E.** No later than February 28 of each year, the trustees of the trust shall report to the director in writing setting forth the balance *[of]* **in** the trust and listing the trust's investments at the preceding year-end**,** and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the *[next]* following December 31*[; and]*

[6. No amendment to the trust shall be effective unless reviewed and approved in advance by the director].

2. Trust Assets.

A. Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by subparagraph (5)(C)2.A. of this rule, or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the director with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the director with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund.

B. The assets shall be distributed by and claims shall be filed with and valued by the director with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled applicable to the liquidation of domestic insurance companies.

C. If the director with regulatory oversight over the trust determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States beneficiaries of the trust, the director with regulatory oversight over the trust shall return the assets, or any part thereof, to the trustee for distribution in accordance with the trust agreement.

D. The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this provision.

(D) For purposes of this subsection, the term "liabilities" shall mean the assuming insurer's gross liabilities attributable to reinsurance ceded by United States domiciled insurers excluding liabilities that are otherwise secured by acceptable means, and, shall include:

1. For business ceded by domestic insurers authorized to write accident and health, and property and casualty insurance—

A. Losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer;

B. Reserves for losses reported and outstanding;

C. Reserves for losses incurred but not reported;

D. Reserves for allocated loss expenses; and

E. Unearned premiums.

2. For business ceded by domestic insurers authorized to write life, health, and annuity insurance—

A. Aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums;

B. Aggregate reserves for accident and health policies;

C. Deposit funds and other liabilities without life or disability contingencies; and

D. Liabilities for policy and contract claims.

(E) Assets deposited in trusts established pursuant to section 375.246.1, RSMo, of this rule shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States financial institution as defined in section 375.246.3(1), RSMo, clean, irrevocable, unconditional, and "evergreen" letters of credit issued or confirmed by a qualified United States financial institution, as defined in section 375.246.3(1), RSMo, and investments of the type specified in subsection (5)(E) of this rule, but investments in or issued by an entity controlling, controlled by or under common control with either the grantor or beneficiary of the trust shall not exceed five percent (5%) of total investments. No more than twenty percent (20%) of the total of the investments in the trust may be foreign investments authorized under paragraphs (5)(E)1., (5)(E)3., subparagraph (5)(E)6.B., or paragraph (5)(E)7. of this rule, and no more than ten percent (10%) of the total of the investments in the trust may be securities denominated in foreign currencies. For purposes of applying the preceding sentence, a depository receipt denominated in United States dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency. The assets of a trust established to satisfy the requirements of section 375.246.1(4), RSMo, shall be invested only as follows:

1. Government obligations that are not in default as to principal or interest, that are valid and legally authorized and that are issued, assumed, or guaranteed by—

A. The United States or by any agency or instrumentality of the United States;

B. A state of the United States;

C. A territory, possession, or other governmental unit of the United States;

D. An agency or instrumentality of a governmental unit referred to in subparagraphs (5)(E)1.B. and C. of this rule if the obligations shall be by law (statutory or otherwise) payable, as to both principal and interest, from taxes levied or by law required to be levied or from adequate special revenues pledged or otherwise appropriated or by law required to be provided for making these payments, but shall not be obligations eligible for investment under subparagraph (5)(E)1.D. of this rule, if payable solely out of special assessments on properties benefited by local improvements; or

E. The government of any other country that is a member of the Organization for Economic Cooperation and Development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

2. Obligations that are issued in the United States, or that are dollar denominated and issued in a non-United States market, by a solvent United States institution (other than an insurance company) or that are assumed or guaranteed by a solvent United States institution (other than an insurance company) and that are not in default as to principal or interest if the obligations—

A. Are rated A or higher (or the equivalent) by the securities rating agency recognized by the Securities Valuation Office of the NAIC, or if not so rated, are similar in structure and other material respects to other obligations of the same institution that are so rated;

B. Are insured by at least one (1) authorized insurer (other than the investing insurer or a parent, subsidiary, or affiliate of the investing insurer) licensed to insure obligations in this state and, after considering the insurance, are rated AAA (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC; or

C. Have been designated as Class One or Class Two by the Securities Valuation Office of the NAIC;

3. Obligations issued, assumed, or guaranteed by a solvent non-United States institution chartered in a country that is a member of the Organization for Economic Cooperation and Development or obligations of United States corporations in a non-United States currency, provided that in either case the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

4. An investment made pursuant to the provisions of paragraphs (5)(E)1., 2., or 3. of this rule shall be subject to the following additional limitations:

A. An investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities shall not exceed five percent (5%) of the assets of the trust;

B. An investment in any one mortgage-related security shall not exceed five percent (5%) of the assets of the trust;

C. The aggregate total investment in mortgage-related securities shall not exceed twenty-five percent (25%) of the assets of the trust; and

D. Preferred or guaranteed shares issued or guaranteed by a solvent United States institution are permissible investments if all of the institution's obligations are eligible as investments under subparagraphs (5)(E)2.A. and (5)(E)2.C. of this rule, but shall not exceed two percent (2%) of the assets of the trust.

5. As used in this rule—

A. "Mortgage-related security" means an obligation that is rated AA or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC and that either—

(I). Represents ownership of one (1) or more promissory notes or certificates of interest or participation in the notes (including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of the notes, certificates, or participation of amounts payable under, the notes, certificates or participation), that—

(a) Are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 U.S.C.A. Section 5402(6), whether the manufactured home is considered real or personal property under the laws of the state in which it is located; and

(b) Were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or state housing authority, or by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to 12 U.S.C.A. Sections 1709 and 1715-b, or, where the notes involve a lien on the manufactured home, by an institution or by a financial institution approved for insurance by the Secretary of Housing and Urban Development pursuant to 12 U.S.C.A. Section 1703; or

(II) Is secured by one (1) or more promissory notes or certificates of deposit or participations in the notes (with or without recourse to the insurer of the notes) and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, or notes meeting the requirements of subparts (5)(E)5.A.(I)(a) and (5)(E)5.A.(I)(b) of this rule;

B. "Promissory note," when used in connection with a manufactured home, shall also include a loan, advance, or credit sale as evidenced by a retail installment sales contract or other instrument.

6. Equity Interests.

A. Investments in common shares or partnership interests of a solvent United States institution are permissible if—

(I) Its obligations and preferred shares, if any, are eligible as investments under paragraph (5)(E)6. of this rule; and

(II) The equity interests of the institution (except an insurance company) are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 U.S.C. sections 78a to 78kk or otherwise registered pursuant to that Act, and if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the Financial Industry Regulatory Authority, or successor organization. A trust shall not invest in equity interest under part (5)(E)6.A.(II) of this rule an amount exceeding one percent (1%) of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company;

B. Investments in common shares of a solvent institution organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development, if—

(I) All its obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC; and

(II) The equity interests of the institution are registered on a securities exchange regulated by the government of a country that is a member of the Organization for Economic Cooperation and Development;

C. An investment or loan upon any one institution's outstanding equity interests shall not exceed one percent (1%) of the assets of the trust. The cost of an investment in equity interests made pursuant to subparagraph (5)(E)6.C. of this rule, when added to the aggregate cost of other investments in equity interests then held pursuant to subparagraph (5)(E)6.A. of this rule, shall not exceed ten percent (10%) of the assets in the trust;

7. Obligations issued, assumed, or guaranteed by a multinational development bank, provided the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC.

8. Investment companies.

A. Securities of an investment company registered pursuant to the Investment Company Act of 1940, 15 U.S.C. section 80a, are permissible investments if the investment company—

(I) Invests at least ninety percent (90%) of its assets in the types of securities that qualify as an investment under paragraphs (5)(E)1., (5)(E)2., or (5)(E)3. of this rule or invests in securities that are determined by the director to be substantively similar to the types of securities set forth in paragraphs (5)(E)1., (5)(E)2., or (5)(E)3. of this rule; or

(II) Invests at least ninety percent (90%) of its assets in the types of equity interests that qualify as an investment under subparagraph (5)(E)6.A. of this rule;

B. Investments made by a trust in investment companies under subparagraph (5)(E)8.B. of this rule shall not exceed the following limitations:

(I) An investment in an investment company qualifying under part (5)(E)8.A.(I) of this rule shall not exceed ten percent (10%) of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall not exceed twenty-five percent (25%) of the assets in the trust; and

(II) Investments in an investment company qualifying under part (5)(E)8.A.(II) of this rule shall not exceed five percent (5%) of the assets in the trust, and the aggregate amount of investment in qualifying investment companies shall be included when calculating the permissible aggregate value of equity interests pursuant to subparagraph (5)(E)6.A. of this rule.

9. Letters of Credit.

A. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the director), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

B. The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct, or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence and/or willful misconduct.

(F) A specific security provided to a ceding insurer by an assuming insurer pursuant to section (7) of this rule shall be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer pursuant to section (5) of this rule.

(6) Credit for Reinsurance—Certified Reinsurers.

(A) Pursuant to section 375.246.1(5), RSMo, the director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in this state at all times for which statutory financial statement credit for reinsurance is claimed under section (6) of this rule. The credit allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the director. The security shall be in a form consistent with the provisions of sections 375.246.1(5) and 375.246.2, RSMo, and sections (9), (10), or (11) of this rule. The amount of security required in order for full credit to be allowed shall correspond with the following requirements:

1. Ratings	Security Required
Secure – 1	0%
Secure – 2	10%
Secure – 3	20%
Secure – 4	50%
Secure – 5	75%
Vulnerable – 6	100%

2. Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions.

3. The director shall require the certified reinsurer to post one hundred percent (100%), for the benefit of the ceding insurer or its estate, security upon the entry of an order or rehabilitation, liquidation, or conservation against the ceding insurer.

4. In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverables for a period of one (1) year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence as recognized by the director. The one (1) year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as reported on the NAIC annual financial statement related specifically to the catastrophic occurrence will be included in the deferral:

A. Line 1: Fire;
B. Line 2: Allied Lines;
C. Line 3: Farmowners multiple peril;
D. Line 4: Homeowners multiple peril;
E. Line 5: Commercial multiple peril;
F. Line 9: Inland Marine;
G. Line 12: Earthquake; and
H. Line 21: Auto physical damage.

5. Credit for reinsurance under section (6) of this rule shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, shall only be subject to section (6) of this rule with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.

6. Nothing in section (6) of this rule shall prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under section (6) of this rule.

(B) Certification Procedure.

1. The director shall post notice on the department's website promptly upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The director may not take final action on the application until at least thirty (30) days after posting the notice required by paragraph (6)(B)1. of this rule.

2. The director shall issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer. Included in such notice shall be the rating assigned the certified reinsurer in accordance with subsection (6)(A) of this rule. The director shall publish a list of all certified reinsurers and their ratings.

3. In order to be eligible for certification, the assuming insurer shall meet the following requirements:

A. The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a Qualified Jurisdiction, as determined by the director pursuant to subsection (6)(C) of this rule.

B. The assuming insurer must maintain capital and surplus, or its equivalent, of no less than two hundred-fifty (250) million dollars calculated in accordance with subparagraph (6)(B)4.H. of this rule. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least two hundred-fifty (250) million dollars and a central fund containing a balance of at least two hundred-fifty (250) million dollars.

C. The assuming insurer must maintain financial strength ratings from two (2) or more rating agencies deemed acceptable by the director. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings will be one (1) factor used by the director in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following: Standard & Poor's, Moody's Investors Service, Fitch Ratings, A.M. Best Company, or any other nationally recognized statistical rating organization.

D. The certified reinsurer must comply with any other requirements reasonably imposed by the director.

4. Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include, but are not limited to, the following:

A. The certified reinsurer's financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table below. The director shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two (2) financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification—

Ratings	Best	S & P	Moody's	Fitch
Secure – 1	A++	AAA	Aaa	AAA
Secure – 2	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-
Secure – 3	A	A+, A	A1, A2	A+, A
Secure – 4	A-	A-	A3	A-
Secure – 5	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-
Vulnerable – 6	B, B-, C++, C+, C, C-, D, E, F	BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD

B. The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;

C. For certified reinsurers domiciled in the United States, a review of the most recent applicable NAIC Annual Statement Blank, either Schedule F (for property/casualty reinsurers) or Schedule S (for life and health reinsurers);

D. For certified reinsurers not domiciled in the United States, a review annually of the NAIC Form CR-F (for property/casualty reinsurers) or Form CR-S (for life and health reinsurers).

E. The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers' Schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than ninety (90) days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership;

F. Regulatory actions against the certified reinsurer;

G. The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subparagraph (6)(B)4.H. of this rule;

H. For certified reinsurers not domiciled in the United States, audited financial statements (audited United States GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a United States GAAP basis, or, with the permission of the state insurance commissioner, audited IFRS statements with reconciliation to United States GAAP certified by an officer of the company), regulatory filings, and actuarial opinion (as filed with the non-United States jurisdiction supervisor). Upon the initial application for certification, the director will consider audited financial statements for the last three (3) years filed with its non-United States jurisdiction supervisor;

I. The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;

J. A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves United States ceding insurers. The director shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and

K. Any other information deemed relevant by the director.

5. Based on the analysis conducted under subparagraph (6)(B)4.E. of this rule of a certified reinsurer's reputation for prompt payment of claims, the director may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to United States ceding insurers, provided that the director shall, at a minimum, increase the security the certified reinsurer is required to post by one (1) rating level under subparagraph (6)(B)4.A. of this rule if the director finds that—

A. More than fifteen percent (15%) of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of ninety (90) days or more which are not in dispute and which exceed one hundred thousand dollars ($100,000) for each cedent; or

B. The aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by ninety (90) days or more exceeds fifty (50) million dollars.

6. The assuming insurer must submit a properly executed Form CR-1, the form of which is included herein as Exhibit 6 of this rule, revised September 23, 2013, or any form which substantially comports with the specified form, as evidence of its submission to the jurisdiction of this state, appointment of the director as an agent for service of process in this state, and agreement to provide security for one hundred percent (100%) of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if it resists enforcement of a final United States judgment. The director shall not certify any assuming insurer that is domiciled in a jurisdiction that the director has determined does not adequately and promptly enforce final United States judgments or arbitration awards.

7. The certified reinsurer must agree to meet applicable information filing requirements as determined by the director, both with respect to an initial application for certification and on an ongoing basis. The applicable information filing requirements are as follows:

A. Notification within ten (10) days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing such changes and the reasons therefore;

B. Annually, the NAIC Form CR-F or CR-S, the forms of which are included herein as Exhibits 7 and 8, respectively, of this rule, revised September 23, 2013, or any form which substantially comports with the specified form as applicable;

C. Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subparagraph (6)(B)7.D. of this rule;

D. Annually, audited financial statements (audited United States GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a United States GAAP basis, or, with the permission of the state insurance commissioner, audited IFRS statements with reconciliation to United States GAAP certified by an officer of the company), regulatory filings, and actuarial opinion (as filed with the certified reinsurer's supervisor). Upon the initial certification, audited financial statements for the last three (3) years filed with the certified reinsurer's supervisor;

E. At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from United States domestic ceding insurers;

F. A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level;

G. Includes with the documents required to be filed under preceding provisions of section (6) of this rule the appropriate filing fees as set forth in section 374.230, RSMo; and

H. Any other information that the director may reasonably require.

8. The information required to be filed pursuant to paragraph (6)(B)7. of this rule shall be deemed records which are open to the inspection of the public in accordance with sections 374.070 and 610.011, RSMo. Any insurance company claiming that such filings are trade secrets or proprietary information shall comply with the procedures as set forth in 20 CSR 10-2.400(8).

9. Change in Rating or Revocation of Certification.

A. In the case of a downgrade by a rating agency or other disqualifying circumstance, the director shall, upon written notice, assign a new rating to the certified reinsurer in accordance with the requirements of subparagraph (6)(B)4.A. of this rule.

B. The director shall have the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time, if the certified reinsurer fails to meet or maintain its obligations or security requirements under section (6) of this rule, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the director to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.

C. If the rating of a certified reinsurer is upgraded by the director, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the director shall require the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the director, the director shall require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.

D. Upon revocation of the certification of a certified reinsurer by the director, the assuming insurer shall be required to post security in accordance with section (8) of this rule in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust in accordance with section (5) of this rule, the director may allow additional credit equal to the ceding insurer's *pro rata* share of such funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that

certified reinsurer may not be denied credit for reinsurance for a period of three (3) months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the director to be at high risk of uncollectibility.

(C) Qualified Jurisdictions.

1. If, upon conducting an evaluation under section (6) of this rule with respect to the reinsurance supervisory system of any non-United States assuming insurer, the director determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the director shall publish notice and evidence of such recognition in an appropriate manner. The director may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.

2. In order to determine whether the domiciliary jurisdiction of a non-United States assuming insurer is eligible to be recognized as a qualified jurisdiction, the director shall evaluate the reinsurance supervisory system of the non-United States jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and the extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the United States. The director shall determine the appropriate approach for evaluating the qualifications of such jurisdictions, and create and publish a list of jurisdictions whose reinsurers may be approved by the director as eligible for certification. A qualified jurisdiction must agree to share information and cooperate with the director with respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the director, include but are not limited to the following:

A. The framework under which the assuming insurer is regulated;

B. The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance;

C. The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction;

D. The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used;

E. The domiciliary regulator's willingness to cooperate with United States regulators in general and the director in particular;

F. The history of performance by assuming insurers in the domiciliary jurisdiction;

G. Any documented evidence of substantial problems with the enforcement of final United States judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the director has determined that it does not adequately and promptly enforce final United States judgments or arbitration awards;

H. Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or successor organization; and

I. Any other matters deemed relevant by the director.

3. A list of qualified jurisdictions shall be published through the NAIC Committee Process. The director may consider this list in determining qualified jurisdictions. If the director approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the director shall provide thoroughly documented justification with respect to the criteria provided under subsection (8)(C) of this rule.

4. United States jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions.

(D) Recognition of Certification Issued by an NAIC Accredited Jurisdiction.

1. If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the director has the discretion to defer to that jurisdiction's certification, and to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed Form CR-1, the form of which is included herein as Exhibit 6 of this rule, revised September 23, 2013, or any form which substantially comports with the specified form, and such additional information as the director requires. The assuming insurer shall be considered to be a certified reinsurer in this state.

2. Any change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in this state as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the director of any change in its status or rating within ten (10) days after receiving notice of the change.

3. The director may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with subparagraph (6)(B)7.A. of this rule.

4. The director may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer. Unless the director suspends or revokes the certified reinsurer's certification in accordance with subparagraph (6)(B)7.B. of this rule, the certified reinsurer's certification shall remain in good standing in this state for a period of three (3) months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this state.

(E) Mandatory Funding Clause. In addition to the clauses required under section (12) of this rule, reinsurance contracts entered into or renewed under section (6) of this rule shall include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under section (6) of this rule for reinsurance ceded to the certified reinsurer.

(F) The director shall comply with all reporting and notification requirements that may be established by the NAIC with respect to certified reinsurers and qualified jurisdictions.

*[(6)]***(7)** Credit for Reinsurance Required by Law. Pursuant to section 375.246.1*[(5)]***(6)**, RSMo, the director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of section 375.246.1(1), (2), (3)**,** *[or]* (4), **or (5),** RSMo, but only *[with respect]* **as** to the insurance of risks located in jurisdictions where *[that]* **the** reinsurance is required by the applicable law or regulation of that jurisdiction. As used in this section, **"**jurisdiction**"** means *[any]* state**,** district**,** or territory of the United States and any lawful national government.

*[(7)]***(8) Asset or** Reduction From Liability for Reinsurance Ceded to an Unauthorized Assuming Insurer **not Meeting the Requirements of Sections (2) Through (7) of this Rule**.

(A) Pursuant to section 375.246.2., RSMo, the director shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of section 375.246.1., RSMo, in an amount not exceeding the liabilities carried by the ceding insurer. *[That]* **The** reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with *[the]* **such** assuming insurer as security for the payment of obligations under *[it]* **the reinsurance contract**. *[That]* **The** security *[must]* **shall** be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution as defined in section 375.246.3(2), RSMo. This security may be in the form of any of the following:

*[(A)]***1.** Cash;

*[(B)]***2.** Securities listed by the Securities Valuation Office of the NAIC**, including those deemed exempt from filing as defined by the Purpose and Procedures Manual of the Securities Valuation Office,** and qualifying as admitted assets;

*[(C)]***3.** Clean, irrevocable, unconditional and **"**evergreen**"** letters of credit issued or confirmed by a qualified United States institution, as defined in section 375.246.3(1), RSMo, effective no later than December 31 of the year for which filing is being made**,** and in the possession of**, or in trust for,** the ceding *[company]* **insurer** on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation), **shall,** notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, *[shall]* continue to be acceptable as security until their expiration, extension, renewal, modification or amendment**,** whichever first occurs; *[and]* **or**

*[(D)]***4.** Any other form of security acceptable to the director *[and approved by the attorney general]*.

(B) An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to *[subsections (7)(A)–(C)]* **section (8)** of this rule shall be allowed only when the requirements of section *[(8), (9) or (10)]* **(12) and the applicable portions of sections (9), (10), or (11)** of this rule *[are met]* **have been satisfied**.

*[(8)]***(9)** Trust Agreements Qualified Under Section *[(7)]* **(8)**.

(A) As used in *[this]* section **(9) of this rule**—

1. **"**Beneficiary**"** means the entity for whose sole benefit the trust has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes, and is limited to, the court-appointed domiciliary receiver (including conservator, rehabilitator**,** or liquidator);

2. **"**Grantor**"** means the entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited assuming insurer; and

3. **"**Obligations,**"** as used in paragraph *[(8)]***(9)**(B)11. of this rule, means—

A. Reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;

B. Reserves for reinsured losses reported and outstanding;

C. Reserves for reinsured losses incurred but not reported; and

D. Reserves for allocated reinsured loss expenses and unearned premiums.

(B) Required Conditions.

1. The trust agreement shall be entered into between the beneficiary, the grantor and a trustee**,** which shall be a qualified United States financial institution as defined in section 375.246.3(2), RSMo.

2. The trust agreement shall create a trust account into which assets shall be deposited.

3. All assets in the trust account shall be held by the trustee at the trustee's office in the United States*[, except that a bank may apply for the director's permission to use a foreign branch office of that bank as trustee for trust agreements established pursuant to this section. If the director approves the use of that foreign branch office as trustee, then its use must be approved by the beneficiary in writing and the trust agreement must provide that the written notice described in subparagraph (8)(B)4.A. of this rule also must be presentable, as a matter of legal right, at the trustee's principal office in the United States]*.

4. The trust agreement shall provide that—

A. The beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;

B. No other statement or document is required to be presented in order to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;

C. It is not subject to any conditions or qualifications outside of the trust agreement; and

D. It shall not contain references to any other agreements or documents except as provided for *[under]* **in** paragraph**s** *[(8)]***(9)**(B)11. **and (9)(B)12.** of this rule.

5. The trust agreement shall be established for the sole benefit of the beneficiary.

6. The trust agreement shall require the trustee to—

A. Receive assets and hold all assets in a safe place;

B. Determine that all assets are in the form that the beneficiary, or the trustee upon direction by the beneficiary, **may** whenever necessary*[, may]* negotiate any **such** assets, without consent or signature from the grantor or any other person or entity;

C. Furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;

D. Notify the grantor and the beneficiary within ten (10) days**,** of any deposits to or withdrawals from the trust account;

E. *[Take immediately, upon]* **Upon** written demand of the beneficiary, **immediately take** any **and all** steps necessary to transfer absolutely and unequivocally all right, title**,** and interest in the assets held in the trust account to the beneficiary and deliver physical custody of these assets to the beneficiary; and

F. Allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee **may**, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset *[may]* withdraw *[the]* **such** asset upon condition that the proceeds are paid into the trust account.

7. The trust agreement shall provide that at least thirty (30) days, but not more than forty-five (45) days, prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary.

8. The trust agreement shall be made subject to and governed by the laws of the state in which the trust is *[established]* **domiciled**.

9. The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying *[compensation]* **commission** to, or reimbursing the expenses of, the trustee. **In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the director), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.**

10. The trust agreement shall provide that the trustee shall be liable for its *[own]* negligence, willful misconduct**,** or lack of good faith. **The failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence and/or willful misconduct.**

11. Notwithstanding other provisions of this rule, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, *[this]* **the** trust agreement*[, notwithstanding any other conditions in this rule,]* may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, **only** for the following purposes:

A. To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums

due to the ceding insurer if not otherwise paid by the assuming insurer;

B. To make payment to the assuming insurer of any amounts held in the trust account that exceed one hundred-two percent (102%) of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or

C. Where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten (10) days prior to that termination date, to withdraw amounts equal to those obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution as defined in section 375.246.3(2), RSMo, apart from its general assets, in trust for those uses and purposes specified in subparagraphs *[(8)]***(9)**(B)11.A. and B. **of this rule** as may remain executory after **such** withdrawal and for any period after the termination date.

12. *[The reinsurance agreement entered into in conjunction with a trust agreement may contain, but need not contain, the provisions required by subparagraph (8)(D)1.B. of this rule, so long as the required conditions are included in the trust agreement.]* **Notwithstanding other provisions of this rule, when a trust agreement is established to meet the requirements of section (8) of this rule in conjunction with a reinsurance agreement covering life, annuities, or accident and health risks, where it is customary to provide a trust agreement for a specific purpose, the trust agreement may provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:**

A. To pay or reimburse the ceding insurer for—

(I) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies; and

(II) The assuming insurer's share under the specific reinsurance agreement of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurer, under the terms and provisions of the policies reinsured under the reinsurance agreement;

B. To pay to the assuming insurer amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; or

C. Where the ceding insurer has received notification of termination of the trust and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer, and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution apart from its general assets, in trust for the uses and purposes specified in subparagraphs (9)(B)12.A. and (9)(B)12.B. of this rule as may remain executory after withdrawal and for any period after the termination date.

13. Either the reinsurance agreement or the trust agreement must stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States bank and payable in United States dollars, and investments permitted by the Insurance Code or any combination of the above, provided investments in or issued by an entity controlling, controlled by, or under common control with either the grantor or the beneficiary of the trust shall not exceed five percent (5%) of total investments. The agreement may further specify the types of investments to be deposited. If the reinsurance agreement covers life, annuities, or accident and health risks, then the provisions required by paragraph (9)(B)13. of this rule must be included in the reinsurance agreement.

(C) Permitted Conditions.

1. The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not *[fewer]* **less** than ninety (90) days after *[receipt by]* the beneficiary and grantor *[of]* **receive** the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not *[fewer]* **less** than ninety (90) days after *[receipt by]* the trustee and the beneficiary *[of]* **receive** the notice, provided that *[this]* **no such** resignation or removal shall *[not]* be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor*[,]* and all assets in the trust have been duly transferred to the new trustee.

2. The grantor may have the full and unqualified right to vote any shares of stock in the trust account and *[from time-to-time]* to receive **from time-to-time** payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any interest or dividends either shall be forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.

3. The trustee may be given authority to invest**,** and accept substitutions of**,** any funds in the account, provided that no investment or substitution shall be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest those funds and to accept substitutions *[which]* **that** the trustee determines are at least equal in **current fair** market value to the assets withdrawn and that are consistent with the restrictions in subparagraph *[(8)]***(9)**(D)1.B. of this rule.

4. The trust agreement may provide that the beneficiary*[, at any time,]* may **at any time** designate a party to which all or part of the trust assets are to be transferred. *[That t]***T**ransfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.

5. The trust agreement may provide that, upon termination of the trust account, all assets not **previously** withdrawn *[previously]* by the beneficiary **shall**, with written approval by the beneficiary, *[shall]* be delivered over to the grantor.

(D) Additional Conditions Applicable to Reinsurance Agreements.

1. A reinsurance agreement*[, which is entered into in conjunction with a trust agreement and the establishment of a trust account,]* may contain provisions that*[:]***—**

A. Require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer**,** and specifying what *[that]* **the** agreement is to cover;

[B. Stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash (United States legal tender), certificates of deposit (issued by a United States bank and payable in United States legal tender) and investments of the types permitted by the Insurance Code or any combination of the previously mentioned; provided, that investments are issued by an institution that is not the parent, subsidiary or affiliate of either the grantor or the beneficiary. The reinsurance agreement may further specify the types of investments to be deposited. Where a trust agreement is entered into in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health, then that trust agreement may contain the provisions required by paragraph (8)(D)1. in lieu of including those provisions in the reinsurance agreement;]

*[C.]***B.** Require the assuming insurer, prior to depositing assets with the trustee, to execute assignments*[,]* **or** endorsements in blank,

or **to** transfer legal title to the trustee of all shares, obligations or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, *[whenever necessary,]* may **whenever necessary** negotiate *[any]* **these** assets without consent or signature from the assuming insurer or any other entity;

*[D.]***C.** Require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and

*[E.]***D.** Stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including, without limitation, any liquidator, rehabilitator, receiver**,** or conservator of *[that]* **such** company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

(I) To **pay or** reimburse the ceding insurer for the assuming insurer's share **under the specific reinsurance agreement** of premiums returned**, but not yet recovered from the assuming insurer,** to the owners of policies reinsured under the reinsurance agreement because of cancellation of *[those]* **such** policies;

(II) To **pay or** reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement;

(III) *[To fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer liabilities for policies ceded under the agreement. That account shall include, but not be limited to, amounts for policy reserves, claims and losses incurred (including losses incurred but not reported), loss adjustment expenses and unearned premium reserves]* **To pay or reimburse the ceding insurer for any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer**; and

(IV) To *[pay any other amounts the ceding insurer claims are due under the reinsurance agreement]* **make payment to the assuming insurer of amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer**.

2. The reinsurance agreement also may contain provisions that—

A. Give the assuming insurer the right to seek approval from the ceding insurer**, which shall not be unreasonably or arbitrarily withheld,** to withdraw from the trust account **all or** any part of the trust assets and transfer those assets to the assuming insurer*[;]***,** provided—

(I) The assuming insurer **shall**, at the time of that withdrawal, *[shall]* replace the withdrawn assets with other qualified assets having a **current fair** market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount; or

(II) After *[that]* withdrawal and transfer, the **current fair** market value of the trust account is no less than one hundred**-**two percent (102%) of the required amount. *[The ceding insurer shall not unreasonably or arbitrarily withhold its approval;]*

B. Provide for*[—*

(I) The] **the** return of any amount withdrawn in excess of the actual amounts*[—]* required for part*[s (8)(D)1.E.(I)–(III) or, in the case of part (8)(D)1.E.(IV), any amounts that are subsequently determined not to be due; and]* **(9)(D)1.D.(I)-(IV) of this rule, and for interest payments at a rate not in excess of the prime rate of interest on such amounts.**

[(II) Interest payments, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to part (8)(D)1.E.(III); and]

C. Permit the award by any arbitration panel or court of competent jurisdiction of—

(I) Interest at a rate different from that provided in *[part (8)(D)1.B.(II)]* **subparagraph (9)(D)2.B. of this rule**;

(II) Court *[of]* **or** arbitration costs;

(III) Attorney's fees; and

(IV) Any other reasonable expenses.

*[3.]***(E)** Financial reporting. A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with this department in compliance with the provisions of this rule when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but *[that]* **such** reduction shall be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

*[4.]***(F)** Existing agreements. Notwithstanding the effective date of this rule, *[January 1, 1992,]* any trust agreement or underlying reinsurance agreement in existence prior to January 1, *[1991]* **2013,** will continue to be acceptable until December 31, *[1991]* **2013**, at which time the agreements will have to be in full compliance with this rule for the trust agreement to be acceptable.

*[5.]***(G)** The failure of any trust agreement to specifically identify the beneficiary as defined in subsection *[(8)]***(9)**(A) of this rule shall not be construed to affect any actions or rights which the director may take or possess pursuant to the provisions of the laws of this state.

*[(9)]***(10)** Letters of Credit Qualified Under Section *[(7)]* **(8)**.

(A) The letter of credit must be clean, irrevocable**,** *[and]* unconditional*[,]* and issued or confirmed by a qualified United States financial institution as defined in section 375.246.3(1), RSMo. The letter of credit shall contain an issue date and *[date of]* expiration **date** and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit also shall indicate that it is not subject to any condition or qualifications outside **of** the letter of credit. In addition, the letter of credit itself shall not contain reference to any other agreements, documents or entities, except as provided in paragraph *[(9)(I)1.]* **(10)(H)1.** of this rule. As used in *[this]* section **(10) of this rule**, **"**beneficiary**"** means the domestic insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes, and is limited to, the court-appointed domiciliary receiver (including conservator, rehabilitator**,** or liquidator).

(B) The heading of the letter of credit may include a boxed section which contains the name of the applicant and other appropriate notations to provide a reference for *[that]* **the** letter of credit. The boxed section shall be clearly marked to indicate that *[the]* **such** information is for internal identification purposes only.

(C) The letter of credit shall contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect *[to the letter of credit]* **thereto**.

(D) The term of the letter of credit shall be for at least one (1) year and shall contain an **"**evergreen clause**"** *[which]* **that** prevents the expiration of the letter of credit without due notice from the issuer. The **"**evergreen clause**"** shall provide for a period of no less than thirty (30) days' notice prior to *[expiry]* **expiration** date or nonrenewal.

(E) The letter of credit shall state whether it is subject to *[or]* **and** governed by the laws of this state or the *Uniform Customs and*

Practice for Documentary Credits of the International Chamber of Commerce (Publication *[400]* **600**) **(UCP 600) or *International Standby Practices of the International Chamber of Commerce Publication 590* (ISP98), or any successor publication,** and all drafts drawn **there**under *[the letter of credit]* shall be presentable at an office in the United States of a qualified United States financial institution.

(F) If the letter of credit is made subject to the *Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce* (Publication *[400]* **500**), **or any successor publication,** then the letter of credit **shall** specifically *[shall]* address and *[make provision]* **provide** for an extension of time to draw against the letter of credit in the event that one (1) or more of the occurrences specified in Article *[19]***17** of Publication *[400]* **500 or any other successor publication,** occur.

[(G) The letter of credit shall be issued or confirmed by a qualified United States financial institution authorized to issue letters of credit, pursuant to section 375.246.3(1), RSMo.]

*[(H)]***(G)** If the letter of credit is issued by a *[qualified United States]* financial institution authorized to issue letters of credit, other than a qualified United States financial institution as described in subsection *[(9)(G)]* **(10)(A)** of this rule, then the following additional requirements shall be met:

1. The issuing *[qualified United States]* financial institution shall formally designate the *[conforming]* **confirming** qualified United States financial institution as its agent for the receipt and payment of the drafts; and

2. The **"**evergreen clause**"** shall provide for thirty (30) days' notice prior to *[expiry]* **expiration** date for nonrenewal.

*[(I)]***(H)** Reinsurance Agreement Provisions.

1. The reinsurance agreement*[,]* in conjunction with which the letter of credit is obtained*[,]* may contain provisions *[which]* **that***[:]***—**

A. Require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover;

B. Stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer*[,]* pursuant to the provisions of the reinsurance agreement*[,]* may be drawn upon at any time, notwithstanding any other provisions in *[that]* **the** agreement**,** and shall be utilized by the ceding insurer or its successors in interest only for one (1) or more of the following reasons:

(I) To **pay or** reimburse the ceding insurer for **the** assuming insurer's share *[of premiums returned to the owners of policies reinsured]* under the **specific** reinsurance agreement **of premiums returned, but not yet recovered from the assuming insurers, to the owners of policies reinsured under the reinsurance agreement** on account of cancellations of those policies;

(II) To **pay or** reimburse the ceding insurer for the assuming insurer's share**,** *[of surrenders and benefits or losses paid by the ceding insurer]* under the *[terms and provisions of the policies reinsured under the]* **specific** reinsurance agreement**, of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurers, under the terms and provisions of the policies reinsured under the reinsurance agreement**;

[(III) To fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer's liabilities for policies ceded under the agreement (that amount shall include, but not be limited to, amounts for policy reserves, claims and losses incurred and unearned premium reserves); and]

*[(IV)]***(III)** To pay **or reimburse the ceding insurer for** any other amounts **necessary to secure the credit or reduction from liability for reinsurance taken by** the ceding insurer *[claims are due under the reinsurance agreement]*; and

(V) Where the letter of credit will expire without renewal or be reduced or replaced by a letter of credit for a reduced amount and where the assuming insurer's entire obligations under the reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of the liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer and exceed the amount of any reduced or replacement letter of credit, and deposit those amounts in a separate account in the name of the ceding insurer in a qualified United States financial institution apart from its general assets, in trust for such uses and purposes specified in part (10)(H)1.B.(I) of this rule as may remain after withdrawal and for any period after the termination date.

C. *[Apply all of the previously mentioned provisions of paragraph (9)(I)1. of this rule]* **All of the provisions of paragraph (10)(H)1. of this rule shall be applied** without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

2. Nothing contained in paragraph *[(9)(I)1.]* **(10)(H)1.** of this rule shall preclude the ceding insurer and assuming insurer from providing for—

A. An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to part *[(9)(I)]***(10)(H)**1.B.(III) of this rule; or

B. The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the **above** *[previously mentioned]* or*[, in the case of part (9)(I)1.B.(IV) of this rule,]* any amounts that are subsequently determined not to be due.

[3. When a letter of credit is obtained in conjunction with a reinsurance agreement covering risks other than life, annuities and health, where it is customary practice to provide a letter of credit for a specific purpose, then that reinsurance agreement, in lieu of subparagraph (9)(I)1.B. of this rule, may require that the parties enter into a trust agreement which may be incorporated into the reinsurance agreement or be a separate document.]

[(J) A letter of credit may not be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with this department unless an acceptable letter of credit with the filing ceding insurer as beneficiary has been issued on or before the date of filing of the financial statement. Further, the reduction for the letter of credit may be up to the amount available under the letter of credit but no greater than the specific obligation under the reinsurance agreement which the letter of credit was intended to secure.]

*[(10)]***(11) Other Security.** A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.

*[(11)]***(12)** Reinsurance Contract. Credit will not be granted**, nor an asset or reduction from liability allowed,** to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of sections (2), (3), (4), (5)**, (6),** or (7) of this rule or otherwise in compliance with section 375.246.1., RSMo after the adoption of this rule unless the reinsurance agreement includes:

(A) A proper insolvency clause which *[shall be substantially similar to the following:]* **stipulates that reinsurance is payable directly to the liquidator or successor without diminution regardless of the status of the ceding company consistent with section 375.246.5(2), RSMo, or is substantially similar to the following:**

1. In the event of the insolvency of the company, this reinsurance shall be payable directly to the **ceding** company, or to its liquidator, receiver, conservator**,** or statutory successor on the basis of the liability of the company without diminution because of the insolvency of the **ceding** company**,** or because the liquidator, receiver,

conservator**,** or statutory successor of the company has failed to pay all or a portion of any claim. *[It is agreed, h]***H**owever, *[that]* the liquidator, receiver, conservator**,** or statutory successor of the company shall give written notice to the reinsurers of the pendency of a claim against the company indicating the policy or bond reinsurance which claim would involve a possible liability on the part of the reinsurers within a reasonable time after that claim is filed in the conservation or liquidation proceeding or in the receivership, and that during the pendency of that claim the reinsurers may investigate that claim and interpose, at their own expense, in the proceeding where that claim is to be adjudicated any defense(s) they may deem available to the company or its liquidator, receiver, conservator**,** or statutory successor. This expense incurred by the reinsurers shall be chargeable, subject to the approval of the court, against the company as part of the expense of conservation or liquidation to the extent of a *pro rata* share of the benefit which may accrue to the company solely as a result of the defense undertaken by the reinsurers;

2. Where two (2) or more reinsurers are involved in the same claim and a majority in interest elect to interpose defense to that claim, the expense shall be apportioned in accordance with the terms of the reinsurance agreement as though that expense had been incurred by the company; and

3. This insolvency clause shall not preclude the reinsurer from asserting any excuse or defense to payment of this reinsurance other than the excuses or defenses of the insolvency of the company and the failure of the company's liquidator, receiver, conservator**,** or statutory successor to pay all or a portion of any claim; *[and]*

(B) A provision *[in which]* **pursuant to section 375.246.1(7), RSMo, whereby** the assuming insurer, if an unauthorized assuming insurer, has submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States, has agreed to comply with all requirements necessary to give that court or panel jurisdiction, has designated an agent upon whom service of process may be effected**,** and has agreed to abide by the final decision of that court or panel*[.]***; and**

(C) A proper reinsurance intermediary clause, if applicable, which stipulates that the credit risk for the intermediary is carried by the assuming insurer.

*[(12)]***(13) Contracts Affected.** All new and renewal reinsurance transactions entered into after January 1, *[1991]* **2014** shall conform to the requirements of the Act and this rule if credit is to be given to the ceding insurer for *[that]* **such** reinsurance.

[(13) Authority. This rule is promulgated pursuant to the authority granted by sections 374.045 and 375.246, RSMo.]

EXHIBIT 1
Reinsurer Application

Instructions

This application is to be completed by all insurance companies/associations who wish to transact business in the State of Missouri as accredited reinsurer, a reinsurer domiciled in another state, or a reinsurer maintaining trust funds.

PART 1—TYPE OF APPLICATION

[ ] New [ ] Amended [ ] Renewal For Year Ending 20_____

PART 2—IDENTIFYING DATA

Name_____
(Full Name of Insurer)

_____
Home Address Street City State Zip + 4

_____
Mail Address Street or P. O. Box City State Zip + 4

PART 3—KIND OF REINSURER

[ ] Accredited Reinsurer (Chapter 375.246.1(2))

[ ] Reinsurer Domiciled in Another State (Chapter 375.246.1(3))

[ ] Reinsurer Maintaining Trust Fund (Chapter 375.246.1(4))

PART 4—CURRENT BUSINESS

[ ] Currently licensed to transact insurance or reinsurance business in the state of

_____.

[ ] Alien company which has United States branch licensed to transact insurance business in the state of_____.

[ ] Alien company with no United States branch licensed to transact insurance business.

PART 5—AUTHORIZED OFFICER SIGNATURE

Dated: _____

By: _____
(Name of Officer)

_____
(Title of Officer)

EXHIBIT 2
Appointment of Director to Acknowledge or Receive Service of Process

_____ a corporation organized under the
(Name of Insurer)
laws of _____ and thereby authorized to transact the business of _____ insurance, desires to transact such business within the State of Missouri, pursuant to the laws thereof: and whereas, in and by Section 375.906, RSMo.

NOW, THEREFORE, in accordance with the terms and requirements of Section 375.906, RSMo, the said _____ does, by these presents, appoint and
(Name of Insurer)
authorize the Director of the Department of Insurance, Financial Institutions and Professional Registration of the state of Missouri, for the purpose mentioned in Section 375.906, RSMo, to do any and all the things in said Section specified in its behalf to be done, by said Director, the Deputy Director, or the Chief Clerk, of the Department of Insurance Financial Institutions and Professional Registration of the State of Missouri, including receipt of service of process which shall be valid and binding, and be deemed personal service upon the company, so long as it shall have any policies or liabilities outstanding in the State of Missouri.

IN WHITNESS WHEREOF, the said company (in accordance with a resolution of its Board of Directors duty adopted on the _____day of _____, 20___, a certified copy of which appears on reverse side), hath caused these presents to be subscribed by its President and its corporate seal to be hereto affixed, attested by its Secretary, at the city of

_____, State of _____on the _____day of _____, 20__.

Attest:

_____
PRESIDENT

_____
SECRETARY

COPY OF RESOLUTION

I, _____, Secretary of _____
(Name of Insurer)

a corporation existing under the laws of _____, do hereby certify that the following is true and correct copy, from corporate records of said corporation, of a resolution duly adopted by the Board of Directors thereof, at a _____meeting of said Board, a quorum thereof present and acting, on the _____day of _____, 20____,

To wit:

"RESOLVED, That the president and secretary of this company are hereby authorized to execute in behalf of said company, under the corporate seal thereof, a written instrument in accordance with the insurance laws of the State of Missouri appointing and authorizing the Director of the Department of Insurance, Financial Institutions and Professional Registration of the State of Missouri (by whomsoever such office of Director may be held and exercised under the laws of the State of Missouri), for the purpose mentioned in section 375.906 RSMo, to do any and all the things in behalf of this company specified in said section to be done by said Director, and further consenting that service of process as therein referred to shall be valid and binding, and be deemed personal service upon this company so long as it shall have any policies or liabilities outstanding in the State of Missouri."

And I do further certify that the said resolution has never been rescinded or reconsidered and still remains in force.

GIVEN AND CERTIFED, at the principal office of said company in the city of _____ State of _____with the common seal thereof hereto affixed by undersigned, having custody of the same as secretary of said company, this _____day of _____, 20___.

ATTEST: _____Secretary.

EXHIBIT 3

FORM AR-1
Certificate of Assuming Accredited Insurer

I, _____, _____ of
(Name of Officer) *(Title of Officer)*

_____, the assuming insurer under
(Name of Assuming Insurer)

a reinsurance agreement(s) with one (1) or more insurers domiciled in Missouri, hereby certify that

_____ ("Assuming Insurer")
(Name of Assuming Insurer):

1. Submits to the jurisdiction of any court of competent jurisdiction in Missouri for the adjudication of any issues arising out of the reinsurance agreement(s), agrees to comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal. Nothing in this paragraph constitutes or should be understood to constitute a waiver of Assuming Insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. This paragraph is not intended to conflict with or override the obligation of the parties to the reinsurance agreement(s) to arbitrate their disputes if such an obligation is created in the agreement(s).

2. Designates the director of Missouri Department of Insurance, Financial Institutions and Professional Registration as its lawful attorney upon whom may be served any lawful process in any action, suit or proceeding arising out of the reinsurance agreement(s) instituted by or on behalf of the ceding insurer.

3. Submits to the authority of the director of Missouri Department of Insurance, Financial Institutions and Professional Registration to examine its books and records and agrees to bear the expense of any such examination.

4. Submits with this form a current list of insurers domiciled in Missouri reinsured by Assuming Insurer and undertakes to submit additions to or deletions from the list of the insurance director at least once per calendar quarter.

Dated:_____ By: _____
(Name of Officer)

_____ _____
(Name of Assuming Insurer) *(Title of Officer)*

Applicant Name (Company): _____ NAIC No. _____
FEIN: _____

EXHIBIT 4

BIOGRAPHICAL AFFIDAVIT

To the extent permitted by law, this affidavit will be kept confidential by the state insurance regulatory authority.

(Print or Type)

Full name, address and telephone number of the present or proposed entity under which this biographical statement is being required (Do Not Use Group Names).

_____

_____

_____

In connection with the above-named entity, I herewith make representations and supply information about myself as hereinafter set forth. (Attach addendum or separate sheet if space hereon is insufficient to answer any question fully.) IF ANSWER IS "NO" OR "NONE," SO STATE.

1. Affiant's Full Name (Initials Not Acceptable): First:_____ Middle:_____ Last:_____

2. a. Are you a citizen of the United States?

   Yes ☐ No ☐

   b. Are you a citizen of any other country?

   Yes ☐ No ☐

   If yes, what country? _____

3. Affiant's occupation or profession:_____

4. Affiant's business address:_____

   Business telephone: _____ Business Email: _____

5. Education and training:

College/University	City/State	Dates Attended (MM/YY)	Degree Obtained

Graduate Studies	College/University	City/State	Dates Attended (MM/YY)	Degree Obtained

Other Training: Name	City/State	Dates Attended (MM/YY)	Degree/Certification Obtained

Note: If affiant attended a foreign school, please provide full address and telephone number of the college/university. If applicable, provide the foreign student Identification Number in the space provided in the Biographical Affidavit Supplemental Information.

Applicant Name (Company): ____________________ NAIC No. ____________________
FEIN: ____________________

6. List of memberships in professional societies and associations:

Name of Society/Association	Contact Name	Address of Society/Association	Telephone Number of Society/Association

7. Present or proposed position with the applicant entity: ____________________

____

8. List complete employment record for the past twenty (20) years, whether compensated or otherwise (up to and including present jobs, positions, partnerships, owner of an entity, administrator, manager, operator, directorates or officerships). Please list the most recent first. Attach additional pages if the space provided is insufficient. It is only necessary to provide telephone numbers and supervisory information for the past ten (10) years.

Beginning/Ending
Dates (MM/YY): ________ - ________ Employer's Name: ____________________

Address: ____________________ City: ____________________ State/Province: ____________________

Country: ____________ Postal Code: __________ Phone: __________ Offices/Positions Held: ____________________

Type of Business: ____________________ Supervisor/Contact: ____________________

Beginning/Ending
Dates (MM/YY): ________ - ________ Employer's Name: ____________________

Address: ____________________ City: ____________________ State/Province: ____________________

Country: ____________ Postal Code: __________ Phone: __________ Offices/Positions Held: ____________________

Type of Business: ____________________ Supervisor/Contact: ____________________

Beginning/Ending
Dates (MM/YY): ________ - ________ Employer's Name: ____________________

Address: ____________________ City: ____________________ State/Province: ____________________

Country: ____________ Postal Code: __________ Phone: __________ Offices/Positions Held: ____________________

Type of Business: ____________________ Supervisor/Contact: ____________________

Beginning/Ending
Dates (MM/YY): ________ - ________ Employer's Name: ____________________

Address: ____________________ City: ____________________ State/Province: ____________________

Country: ____________ Postal Code: __________ Phone: __________ Offices/Positions Held: ____________________

Type of Business: ____________________ Supervisor/Contact: ____________________

Revised 04/16/13
FORM 11

Applicant Name (Company): _____ NAIC No. _____
FEIN: _____

9. a. Have you ever been in a position which required a fidelity bond?

Yes ☐ No ☐

If any claims were made on the bond, give details: _____

b. Have you ever been denied an individual or position schedule fidelity bond, or had a bond canceled or revoked?

Yes ☐ No ☐

If yes, give details: _____

10. List any professional, occupational and vocational licenses (including licenses to sell securities) issued by any public or governmental licensing agency or regulatory authority or licensing authority that you presently hold or have held in the past. For any non-insurance regulatory issuer, identify and provide the name, address and telephone number of the licensing authority or regulatory body having jurisdiction over the license (s) issued. If your professional license number is your Social Security Number (SSN) or embeds your SSN or any sequence of more than five numbers that are reasonably identifiable as your SSN, then write SSN for that portion of the professional license number that is represented by your SSN. (For example, "SSN", "12-SSN-345" or "1234-SSN" (last 6 digits)). Attach additional pages if the space provided is insufficient.

_____

Organization/Issuer of License: _____ Address: _____

City: _____ State/Province: _____ Country: _____ Postal Code: _____

License Type: _____ License #: _____ Date Issued (MM/YY): _____

Date Expired (MM/YY): _____ Reason for Termination: _____

Non-Insurance Regulatory Phone Number (if known): _____

Organization/Issuer of License: _____ Address: _____

City: _____ State/Province: _____ Country: _____ Postal Code: _____

License Type: _____ License #: _____ Date Issued (MM/YY): _____

Date Expired (MM/YY): _____ Reason for Termination: _____

Non-Insurance Regulatory Phone Number (if known): _____

11. In responding to the following, if the record has been sealed or expunged, and the affiant has personally verified that the record was sealed or expunged, an affiant may respond "no" to the question. Have you ever:

a. Been refused an occupational, professional, or vocational license or permit by any regulatory authority, or any public administrative, or governmental licensing agency?

Yes ☐ No ☐

b. Had any occupational, professional, or vocational license or permit you hold or have held, been subject to any judicial, administrative, regulatory, or disciplinary action?