

Volume 27, Number 9

Pages 675–760

May 1, 2002



MATT BLUNT

SECRETARY OF STATE

MISSOURI
REGISTER

The *Missouri Register* is an official publication of the state of Missouri, under the authority granted to the secretary of state by sections 536.015 and 536.033, RSMo 2000. Reproduction of rules is allowed; however, no reproduction shall bear the name *Missouri Register* or "official" without the express permission of the secretary of state.

The *Missouri Register* is published semi-monthly by

SECRETARY OF STATE

MAT T BLUNT

Administrative Rules Division

James C. Kirkpatrick State Information Center
600 W. Main
Jefferson City, MO 65101
(573) 751-4015

DIRECTOR

LYNNE C. ANGLE

ADMINISTRATIVE STAFF

SANDY SANDERS

PEGGY TALKEN

EDITORS

BARBARA MCDUGAL

JAMES MCCLURE

ASSOCIATE EDITORS

CURTIS W. TREAT

SALLY L. REID

TIFFANY M. DAVIS

PUBLISHING STAFF

WILBUR Highbarger

CARLA HERTZING

JOHN C. STEGMANN

ISSN 0149-2942, USPS 320-630; periodical postage paid at Jefferson City, MO
Subscription fee: \$56.00 per year

POSTMASTER: Send change of address notices and undelivered copies to:

MISSOURI REGISTER
Office of the Secretary of State
Administrative Rules Division
PO Box 1767
Jefferson City, MO 65102

The *Missouri Register* and *Code of State Regulations* (CSR) are now available on the Internet. The Register address is <http://www.sos.state.mo.us/adrules/moreg/moreg.asp> and the CSR is <http://www.sos.state.mo.us/adrules/csr/csr.asp>. These web sites contain rulemakings and regulations as they appear in the Registers and CSR. These web sites do not contain the official copies of the Registers and CSR. The official copies remain the paper copies published by the Office of the Secretary of State pursuant to sections 536.015 and 536.031, RSMo 2000. While every attempt has been made to ensure accuracy and reliability, the Registers and CSR are presented, to the greatest extent practicable as they appear in the official publications. The Administrative Rules Division may be contacted by e-mail at rules@sosmail.state.mo.us.

The secretary of state's office makes every effort to provide program accessibility to all citizens without regard to disability. If you desire this publication in alternate form because of a disability, please contact the Division of Administrative Rules, PO Box 1767, Jefferson City, MO 65102, (573) 751-4015. Hearing impaired citizens should contact the director through Missouri relay, (800) 735-2966.



IN THIS ISSUE:

FROM THIS ANGLE679

PROPOSED RULES

Department of Agriculture
 Animal Health681

Department of Economic Development
 Public Service Commission691

Department of Elementary and Secondary Education
 Division of School Improvement692
 Teacher Quality and Urban Education694

Department of Natural Resources
 Air Conservation Commission699
 Hazardous Waste Management Commission702

Department of Revenue
 Director of Revenue707

ORDERS OF RULEMAKING

Department of Agriculture
 Animal Health716

Department of Economic Development
 Missouri Board for Architects, Professional Engineers and
 Professional Land Surveyors717
 State Board of Cosmetology719
 Missouri Dental Board720
 Missouri Board of Occupational Therapy720
 State Board of Optometry721
 State Board of Pharmacy721
 Missouri Board for Respiratory Care722

Department of Elementary and Secondary Education
 Teacher Quality and Urban Education723

Department of Mental Health
 Fiscal Management724

Department of Public Safety
 Missouri Gaming Commission725

Department of Social Services
 Missouri Board of Nursing Home Administrators726

Department of Health and Senior Services
 Missouri Health Facilities Review Committee726

Department of Insurance
 Property and Casualty735

Missouri Consolidated Health Care Plan
 Health Care Plan736

IN ADDITIONS

Department of Health and Senior Services
 Missouri Health Facilities Review Committee738

BID OPENINGS

Office of Administration
 Division of Purchasing739

RULE CHANGES SINCE UPDATE740
EMERGENCY RULES IN EFFECT750
REGISTER INDEX752

| Register Filing Deadlines | Register Publication | Code Publication | Code Effective |
|---------------------------------------|---|--|--|
| March 1, 2002 March 15, 2002 | April 1, 2002 April 15, 2002 | April 30, 2002 April 30, 2002 | May 30, 2002 May 30, 2002 |
| April 1, 2002 April 15, 2002 | May 1, 2002 May 15, 2002 | May 31, 2002 May 31, 2002 | June 30, 2002 June 30, 2002 |
| May 1, 2002 May 15, 2002 | June 3, 2002 June 17, 2002 | June 30, 2002 June 30, 2002 | July 30, 2002 July 30, 2002 |
| June 3, 2002 June 17, 2002 | July 1, 2002 July 15, 2002 | July 31, 2002 July 31, 2002 | August 30, 2002 August 30, 2002 |
| July 1, 2002 July 15, 2002 | August 1, 2002 August 15, 2002 | August 31, 2002 August 31, 2002 | September 30, 2002 September 30, 2002 |
| August 1, 2002 August 15, 2002 | September 3, 2002 September 16, 2002 | September 30, 2002 September 30, 2002 | October 30, 2002 October 30, 2002 |
| August 30, 2002 September 16, 2002 | October 1, 2002 October 15, 2002 | October 31, 2002 October 31, 2002 | November 30, 2002 November 30, 2002 |
| October 1, 2002 October 15, 2002 | November 1, 2002 November 15, 2002 | November 30, 2002 November 30, 2002 | December 30, 2002 December 30, 2002 |

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

Missouri Depository Libraries

The *Missouri Register* and the *Code of State Regulations*, as required by the Missouri Depository Documents Law (section 181.100, RSMo 2000), are available in the listed depository libraries, as selected by the Missouri State Library:

| | | | |
|---|--|--|---|
| Jefferson County Library PO Box 1486, 3021 High Ridge High Ridge, MO 63049-1486 (314) 677-8689 | Learning Resources Center Mineral Area College PO Box 1000 Park Hills, MO 63601-1000 (573) 431-4593 | Missouri Western State College Hearnes Learning Resources Ctr. 4525 Downs Drive St. Joseph, MO 64507-2294 (816) 271-5802 | Library University of Missouri-Rolla 1870 Miner Circle Rolla, MO 65409-0060 (573) 341-4007 |
| Jefferson College Library 1000 Viking Drive Hillsboro, MO 63050-2441 (314) 789-3951 | Cape Girardeau Public Library 711 N. Clark Cape Girardeau, MO 63701-4400 (573) 334-5279 | Library North Central Missouri College PO Box 111, 1301 Main Street Trenton, MO 64683-0107 (660) 359-3948 | Kinderhook Regional Library 135 Harwood Ave. Lebanon, MO 65536-3017 (417) 532-2148 |
| St. Louis Public Library 1301 Olive St. St. Louis, MO 63103-2389 (314) 539-0376 | Kent Library Southeast Missouri State University One University Plaza Cape Girardeau, MO 63701-4799 (573) 651-2757 | Missouri Southern State College Spiva Library 3950 East Newman Road Joplin, MO 64801-1595 (417) 625-9770 | ESTEP Library Southwest Baptist University 1601 S. Springfield Street Bolivar, MO 65613-2597 (417) 326-5281 |
| St. Louis University Law Library 3700 Lindell Blvd. St. Louis, MO 63108-3478 (314) 977-2756 | Riverside Regional Library PO Box 389, 204 South Union St. Jackson, MO 63755-0389 (573) 243-8141 | Missouri State Library 600 West Main, PO Box 387 Jefferson City, MO 65102-0387 (573) 751-3075 | Barry-Lawrence Regional Library 213 6th St. Monett, MO 65708-2147 (417) 235-6646 |
| Eden Theological Seminary/ Webster University Eden/Webster Library 475 East Lockwood Ave. St. Louis, MO 63119-3192 (314) 961-2660 | Rutland Library Three Rivers Community College 2080 Three Rivers Blvd. Poplar Bluff, MO 63901-2393 (573) 840-9656 | Missouri State Archives 600 West Main, PO Box 778 Jefferson City, MO 65102-0778 (573) 526-6711 | Lyons Memorial Library College of the Ozarks General Delivery Point Lookout, MO 65726-9999 (417) 334-6411 |
| Thomas Jefferson Library University of Missouri-St. Louis 8001 Natural Bridge Road St. Louis, MO 63121-4499 (314) 516-5084 | Ward Edwards Library Central Missouri State University 142 Edwards Library Warrensburg, MO 64093-5020 (660) 543-4149 | Elmer Ellis Library University of Missouri-Columbia 104 Ellis Library Columbia, MO 65211-5149 (573) 882-6733 | West Plains Campus Library Southwest Missouri State University 123 N. Minnesota West Plains, MO 65775-3414 (417) 256-9865 |
| Washington University Washington University Law Library Campus Box 1171, Mudd Bldg., One Brookings Dr. St. Louis, MO 63130-4899 (314) 935-6484 | Kansas City Public Library 311 East 12th St. Kansas City, MO 64106-2454 (816) 701-3400 | Library State Historical Society of Missouri 1020 Lowry St. Columbia, MO 65201-7298 (573) 882-7083 | Springfield-Greene County Library PO Box 737, 397 E. Central Springfield, MO 65801-0760 (417) 869-4621 |
| St. Louis County Library 1640 S. Lindbergh Blvd. St. Louis, MO 63131-3598 (314) 994-3300 | Law Library University of Missouri-Kansas City 5100 Rockhill Road Kansas City, MO 64110-2499 (816) 235-2438 | Daniel Boone Regional Library PO Box 1267, 100 West Broadway Columbia, MO 65205-1267 (573) 443-3161 | Meyer Library Southwest Missouri State University PO Box 175, 901 S. National Springfield, MO 65804-0095 (417) 836-4533 |
| Maryville University Library 13550 Conway Road St. Louis, MO 63141-7232 (314) 529-9494 | University of Missouri-Kansas City Miller Nichols Library 5100 Rockhill Road Kansas City, MO 64110-2499 (816) 235-1281 | School of Law University of Missouri-Columbia 224 Hulston Hall Columbia, MO 65211-0001 (573) 882-1125 | |
| St. Charles City-County Library Middendorf-Kredell Branch 2750 Hwy K O'Fallon, MO 63366-7859 (314) 978-7997 | B.D. Owens Library Northwest Missouri State University 800 University Drive Maryville, MO 64468-6001 (660) 562-1841 | Central Methodist College Smiley Memorial Library 411 Central Methodist Square Fayette, MO 65248-1198 (660) 248-6292 | |
| Truman State University Pickler Memorial Library 100 E. Normal Kirksville, MO 63501-4221 (660) 785-7416 | River Bluffs Regional Library 927 Felix Street St. Joseph, MO 64501-2799 (816) 232-8151 | | |

HOW TO CITE RULES AND RSMo

RULES—Cite material in the *Missouri Register* by volume and page number, for example, Vol. 26, *Missouri Register*, page 27. The approved short form of citation is 26 MoReg 27.

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

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

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

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

RSMo—Cite material in the RSMo by date of legislative action. The note in parentheses gives the original and amended legislative history. The Office of the Revisor of Statutes recognizes that this practice gives users a concise legislative history.



FROM THIS ANGLE

Welcome Back Secretary Blunt!!

We are pleased to announce our boss, Matt Blunt, has returned from his active service with the United States Naval Reserves. Shortly after the terrorist acts of September 11th, Secretary Blunt was mobilized and sent to a security detail in the United Kingdom. He returned to the office on Tuesday, April 16th and we are very happy to have him back. We are very proud of his service to our Country while simultaneously continuing to serve as our Secretary of State. It is great, however, to have him back in Missouri.

New Website

If you have not already done so, please visit our new and improved website — <http://www.sos.state.mo.us/>. We think you will agree our new site is much easier to navigate and has a wealth of information — all right at your fingertips.

Spring Cleaning — Rules cleaning, that is

With the beautiful spring weather, we seem to all get the urge to spring clean, reorganize, straighten, etc. When you commence to do your spring cleaning — remember your rules . . . do they need to be revised, amended . . . do old out-of-date forms need to be removed . . . do you need to refer your readers to your website?

As you commence to spring clean your *rules*, let us know if you need assistance from our office.

Topics? What topics?

If there is a specific topic you would like to see discussed in this column as it pertains to rulemakings, please let us know. We know many of you have questions regarding procedure, rule packet, electronic copy, etc.,

and ask them on a periodic basis — but if there is a specific topic you would like to see discussed, please e-mail us at rules@sosmail.state.mo.us and we will be happy to address your specific topic.

As always, please call us at 751-4015 or e-mail us at the above address if we may be of assistance to you in the rulemaking process.

A handwritten signature in cursive script, appearing to read "Lynne C. Angle".

Lynne C. Angle
Director, Administrative Rules

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

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

An important function of the *Missouri Register* is to solicit and encourage public participation in the rule-making 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 2—DEPARTMENT OF AGRICULTURE
Division 30—Animal Health
Chapter 2—Health Requirements for Movement of
Livestock, Poultry and Exotic Animals**

PROPOSED AMENDMENT

2 CSR 30-2.010 Health Requirements Governing the Admission of Livestock, Poultry and Exotic Animals Entering Missouri. The director is amending subsection (13)(D).

PURPOSE: This amendment changes the requirements for captive cervids entering the state of Missouri to protect Missouri's livestock and wildlife from importation of diseases that potentially pose a threat to the public health, safety and welfare.

*PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material, which is incorporated by reference as a portion of this rule, would be unduly cumbersome or expensive. Therefore, the material, which is so incorporated, is on file with the agency who filed this rule, and with the Office of the Secretary of State. Any interested person may view this material at either agency's headquarters or the same will be made available at the Office of the Secretary of State at a cost not to exceed actual cost of copy reproduction. The entire text of the rule is printed here. This note refers only to the incorporated by reference material. The publication for **Bovine Tuberculosis Eradication Uniform Methods and Rules, Effective January 22, 1999**, can be accessed at www.aphis.usda.gov/vs/disease_eradication.htm and **Brucellosis in Cervidae: Uniform Methods and Rules, Effective September 30, 1998**, can be accessed at the USDA government website at www.aphis.usda.gov/oa/pubs/umr.html.*

(13) Miscellaneous and Exotic Animals. All exotic animals must be accompanied by an official Certificate of Veterinary Inspection showing an individual listing of the common and scientific name(s) of the animal(s) and appropriate descriptions of animal(s) such as sex, age, weight, coloration and the permanent tag number, brand or tattoo identification.

(D) **Captive cervids, prior to entering Missouri, must have an interstate shipping permit issued by the state veterinarian's office and a Certificate of Veterinary Inspection.** *[Elk and deer may] Captive cervids that enter Missouri must be in compliance with [the Cervidae Uniform Methods and Rules for Brucellosis and the Cervidae Uniform Methods and Rules for Tuberculosis] the guidelines as incorporated by reference to the Bovine Tuberculosis Eradication Uniform Methods and Rules, Effective January 22, 1999 and Brucellosis in Cervidae: Uniform Methods and Rules, Effective September 30, 1998. [Elk, red deer, reindeer, fallow deer and sika deer six (6) months of age and over must have one (1) approved negative brucellosis test within thirty (30) days prior to shipment. Cervidae originating from certified brucellosis-free herds may enter on the current herd number and test date. All cervidae six (6) months of age and over must have a negative tuberculosis test using the single cervical method or BTB test within ninety (90) days prior to shipment. Cervidae originating from accredited TB cervidae herds may enter on the current herd number and test date.]*

1. All sexually intact animals six (6) months of age or older, not under quarantine and not affected with brucellosis, must test negative for brucellosis within thirty (30) days prior to movement, except:

A. **Brucellosis-free herd—captive cervids originating from certified brucellosis-free herds may enter on herd status without additional testing provided the certified herd number and current test date is shown on the Certificate of Veterinary Inspection;**

B. **Brucellosis-monitored herd—all sexually intact animals six (6) months of age or older must test negative for brucellosis within ninety (90) days prior to interstate movement provided current test date is shown on the Certificate of Veterinary Inspection.**

2. **Captive cervids not known to be affected with or exposed to tuberculosis and not in a status herd, as defined in the Bovine Tuberculosis Eradication Uniform Methods and Rules, Effective January 22, 1999, must have two (2) negative tuberculosis tests, not less than ninety (90) days apart, using the single cervical method. The second test must be within ninety (90) days prior to movement. Both negative test dates must be listed on the Certificate of Veterinary Inspection.**

Animals must have been isolated from other captive cervids during the testing period.

3. Movement from status herds.

A. Monitored or qualified herd—captive cervids originating from monitored or qualified tuberculosis cervid herds must have one (1) negative tuberculosis test, using the single cervical method, within ninety (90) days of movement. Herd number and current test date must be shown on the Certificate of Veterinary Inspection.

B. Accredited herd—captive cervids originating from accredited tuberculosis-free cervid herds may enter on herd status without additional testing provided the accredited herd number and current test date is shown on the Certificate of Veterinary Inspection.

4. Captive cervids from an area that has been reported as a chronic wasting disease (CWD) endemic area or any cervid that has been in an endemic area in the last five (5) years will not be allowed to enter Missouri.

5. Captive cervid from a non-endemic area of a state that has reported confirmed chronic wasting disease (CWD) cases must have participated in a surveillance program for at least three (3) years prior to entering Missouri.

AUTHORITY: section 267.645, RSMo [1994] 2000. This version of rule filed Jan. 24, 1975, effective Feb. 3, 1975. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Nov. 2, 2001, effective Nov. 12, 2001, expires May 10, 2002. Amended: Filed April 10, 2002.

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions less than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment may or may not cost private entities more than five hundred (\$500) depending on the number of cervids entering Missouri.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Agriculture, Division of Animal Health, Taylor H. Woods, D.V.M., State Veterinarian, PO Box 630, 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
PRIVATE COST**

I. RULE NUMBER

| | |
|-----------------------|--|
| Rule Number and Name: | 2 CSR 30-2.010 Health Requirements Governing the Admission of Livestock, Poultry and Exotic Animals Entering Missouri. |
| Type of Rulemaking: | Proposed Amendment |

II. SUMMARY OF FISCAL IMPACT

| Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule: | Classification by types of the business entities which would likely be affected: | Estimate in the aggregate as to the cost of compliance with the rule by the affected entities: |
|--|--|--|
| Unknown | Any individual who brings captive cervids into the state of Missouri. | Estimated cost is \$65 per animal |

III. WORKSHEET

According to the proposed amendment, any captive cervid that enter Missouri must have one (1) brucellosis test and two (2) tuberculosis (TB) tests and a health certificate.

The costs to the individual bringing the animal into Missouri would include one (1) brucellosis test, two (2) TB tests plus having a current health certificate. There may be an additional charge if the accredited veterinarian has to make a trip to the farm in order to test the animals. In many cases, the veterinarian does test the animals on the farm because of space and additional equipment that may be needed for captive cervids. The costs of the services used in this fiscal note are based upon average charges by veterinarians in this state and if the accredited veterinarian has a working relationship with the producer, the cost of the services may be incorporated with previous work or waived

Services:

| | |
|--------------------|-------------------|
| Brucellosis test | \$10.00 |
| Tuberculosis tests | \$10.00 (for one) |
| Farm Call | \$25.00 |
| Health Certificate | \$10.00 |

For one (1) captive cervid to enter Missouri the average cost may be:

| | |
|----------------------|----------------|
| 1 brucellosis test - | -\$10.00 |
| 2 TB tests | - \$20.00 |
| Farm call | - \$25.00 |
| Health Certificate - | <u>\$10.00</u> |
| Total: | \$65.00 |

IV. ASSUMPTIONS

Current regulations require one (1) brucellosis test, one (1) TB test and a health certificate. The only additional expense this proposed amendment is requiring is the second TB test. The number of captive cervids that enter Missouri is unknown and without knowing the exact number involved, the total cost of implementation of an additional test cannot be determined. The charges used in this fiscal note are based on average charges of accredited veterinarians in the state of Missouri, which vary from state to state and from veterinarian to veterinarian.

**Title 2—DEPARTMENT OF AGRICULTURE
Division 30—Animal Health
Chapter 2—Health Requirements for Movement of
Livestock, Poultry and Exotic Animals**

PROPOSED AMENDMENT

2 CSR 30-2.040 Animal Health Requirements for Exhibition.
The director is amending subsection (9)(D).

PURPOSE: This amendment changes captive cervid requirements for exhibition to protect Missouri livestock and wildlife from importation of diseases that potentially pose a threat to the public health, safety and welfare.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material, which is incorporated by reference as a portion of this rule, would be unduly cumbersome or expensive. Therefore, the material, which is so incorporated, is on file with the agency who filed this rule, and with the Office of the Secretary of State. Any interested person may view this material at either agency's headquarters or the same will be made available at the Office of the Secretary of State at a cost not to exceed actual cost of copy reproduction. The entire text of the rule is printed here. This note refers only to the incorporated by reference material. The publication for Bovine Tuberculosis Eradication Uniform Methods and Rules, Effective January 22, 1999, can be accessed at www.aphis.usda.gov/vs/disease_eradication.htm and Brucellosis in Cervidae: Uniform Methods and Rules, Effective September 30, 1998, can be accessed at the USDA government website at www.aphis.usda.gov/oa/pubs/umr.html.

(9) Miscellaneous and Exotic Animals. All exotic animals must be accompanied by an official Certificate of Veterinary Inspection showing an individual listing of the common and scientific name(s) of the animal(s) and appropriate descriptions of animal(s) such as sex, age, weight, coloration and the permanent tag number, brand or tattoo identification.

(D) [Elk and deer may exhibit in Missouri in compliance with the Cervidae Uniform Methods and Rules for Brucellosis and the Cervidae Uniform Methods and Rules for Tuberculosis. Elk, red deer, reindeer, fallow deer and sika deer six (6) months of age and over must have one (1) approved negative brucellosis test within thirty (30) days prior to exhibition. Cervidae originating from certified brucellosis-free herds may exhibit on the current herd number and test date. All cervidae six (6) months of age and over must have a negative tuberculosis test using the single cervical method or BTB test within ninety (90) days prior to exhibition. Cervidae originating from accredited TB cervidae herds may exhibit on the current herd number and test date.] Captive cervids, prior to exhibiting in Missouri, must have an interstate shipping permit issued by the state veterinarian's office and a Certificate of Veterinary Inspection. Captive cervids that enter Missouri for exhibition must be in compliance with the guidelines as incorporated by reference to the Bovine Tuberculosis Eradication Uniform Methods and Rules, Effective January 22, 1999 and Brucellosis in Cervidae: Uniform Methods and Rules, Effective September 30, 1998.

1. All sexually intact animals six (6) months of age or older, not under quarantine and not affected with brucellosis, must test negative for brucellosis within thirty (30) days prior to exhibition, except:

A. Brucellosis-free herd—captive cervids originating from certified brucellosis-free herds may exhibit on herd status without additional testing provided the certified herd number and current test date is shown on the Certificate of Veterinary Inspection.

B. Brucellosis-monitored herd—all sexually intact animals six (6) months of age or older must test negative for brucellosis within ninety (90) days prior to exhibition provided current test date is shown on the Certificate of Veterinary Inspection.

2. Captive cervids not known to be affected with or exposed to tuberculosis and not in a status herd, as defined in the Bovine Tuberculosis Eradication Uniform Methods and Rules, Effective January 22, 1999, must have two (2) negative tuberculosis tests, not less than ninety (90) days apart, using the single cervical method prior to exhibition. The second test must be within ninety (90) days prior to exhibition. Both negative test dates must be listed on the Certificate of Veterinary Inspection. Animals must have been isolated from other captive cervids during the testing period.

3. Movement from status herds.

A. Monitored or qualified herd—captive cervids originating from monitored or qualified tuberculosis cervid herds must have one (1) negative tuberculosis test, using the single cervical method, within ninety (90) days of exhibition. Herd number and current test date must be shown on the Certificate of Veterinary Inspection.

B. Accredited—captive cervids originating from accredited tuberculosis-free cervid herds may exhibit on herd status without additional testing provided the accredited herd number and current test date is shown on the Certificate of Veterinary Inspection.

4. Captive cervids from an area that has been reported as a chronic wasting disease (CWD) endemic area or any cervid that has been in an endemic area in the last five (5) years will not be allowed to exhibit in Missouri.

5. Captive cervids from an area that has been reported as a chronic wasting disease (CWD) endemic area or any cervid that has been in an endemic area in the last five (5) years will not be allowed to enter Missouri.

AUTHORITY: section 267.645, RSMo [1994] 2000. Emergency rule filed June 28, 1977, effective July 8, 1977, expired Nov. 5, 1977. Original rule filed June 28, 1977, effective Oct. 13, 1977. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Nov. 12, 2001, expires May 10, 2002. Amended: Filed April 10, 2002.

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions less than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment may or may not cost private entities more than five hundred dollars (\$500) depending on the number of captive cervids entering Missouri.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Agriculture, Division of Animal Health, Taylor H. Woods, D.V.M., State Veterinarian, PO Box 630, 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 PRIVATE COST

I. RULE NUMBER

| | |
|-----------------------|---|
| Rule Number and Name: | 2 CSR 30-2.040 Animal Health Requirements for Exhibition. |
| Type of Rulemaking: | Proposed Amendment |

II. SUMMARY OF FISCAL IMPACT

| Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule: | Classification by types of the business entities which would likely be affected: | Estimate in the aggregate as to the cost of compliance with the rule by the affected entities: |
|--|--|--|
| Unknown | Any individual who brings captive cervids into the state of Missouri. | Estimated cost is \$65 per animal |

III. WORKSHEET

According to the proposed amendment, any captive cervid that enter Missouri for exhibition must have one (1) brucellosis test, two (2) tuberculosis tests and a health certificate.

The costs to the individual bringing the animal into Missouri for exhibition would include one (1) brucellosis test, two (2) TB tests plus having a current health certificate. There may be an additional charge if the accredited veterinarian has to make a trip to the farm in order to test the animals. In many cases, the veterinarian does test the animals on the farm because of space and additional equipment that may be needed for captive cervids. The costs of the services used in this fiscal note are based upon average charges by veterinarians in this state and if the accredited veterinarian has a working relationship with the producer, the cost of the services may be incorporated with previous work or waived.

Services:

| | |
|--------------------|-------------------|
| Brucellosis test | \$10.00 |
| Tuberculosis tests | \$10.00 (for one) |
| Farm Call | \$25.00 |
| Health Certificate | \$10.00 |

For one (1) captive cervid to enter Missouri for exhibition the average cost may be:

| | |
|----------------------|----------------|
| 1 brucellosis test - | -\$10.00 |
| 2 TB tests | - \$20.00 |
| Farm call | - \$25.00 |
| Health Certificate - | <u>\$10.00</u> |
| Total: | \$65.00 |

IV. ASSUMPTIONS

Current regulations require one (1) brucellosis test, one (1) TB test and a health certificate. The only additional expense this proposed amendment is requiring on captive cervids entering Missouri for exhibition is the second tuberculosis test. The number of cervids that enter Missouri for exhibition is unknown and without knowing the exact number involved, the total cost of implementation of an additional test cannot be determined. The charges used in this fiscal note are based on average charges of accredited veterinarians in the state of Missouri, which vary from state to state and veterinarian to veterinarian

**Title 2—DEPARTMENT OF AGRICULTURE
Division 30—Animal Health
Chapter 6—Livestock Markets**

PROPOSED AMENDMENT

2 CSR 30-6.020 Duties and Facilities of the Market/Sale Veterinarian. The director is amending subsection (7)(D).

PURPOSE: This amendment changes the requirements of captive cervids sold through a licensed livestock market/sale in the state of Missouri to protect Missouri livestock and wildlife from importation of diseases that potentially pose a threat to the public health, safety and welfare.

*PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material, which is incorporated by reference as a portion of this rule, would be unduly cumbersome or expensive. Therefore, the material, which is so incorporated, is on file with the agency who filed this rule, and with the Office of the Secretary of State. Any interested person may view this material at either agency's headquarters or the same will be made available at the Office of the Secretary of State at a cost not to exceed actual cost of copy reproduction. The entire text of the rule is printed here. This note refers only to the incorporated by reference material. The publication for *Bovine Tuberculosis Eradication Uniform Methods and Rules, Effective January 22, 1999*, can be accessed at www.aphis.usda.gov/vs/disease_eradication.htm and *Brucellosis in Cervidae: Uniform Methods and Rules, Effective September 30, 1998*, can be accessed at the USDA government website at www.aphis.usda.gov/oa/pubs/umr.html.*

(7) Miscellaneous and Exotic Animals. All exotic animals presented for exchange, barter, lease or sale at a licensed livestock market/sale must be accompanied by an official Certificate of Veterinary Inspection showing an individual listing of the common and scientific name/s/(s) of the animal(s) and appropriate descriptions of animal(s) such as sex, age, weight, coloration and the permanent tag number, brand or tattoo identification.

(D) [Elk and deer may be sold through a market/sale in Missouri in compliance with the *Cervidae Uniform Methods and Rules for Brucellosis and the Cervidae Uniform Methods and Rules for Tuberculosis*. Elk, red deer, reindeer, fallow deer and sika deer six (6) months of age and over must have one (1) approved negative brucellosis test within thirty (30) days prior to arrival at the market/sale. Cervidae originating from certified brucellosis-free herds may be sold through a market/sale on the current herd number and test date. All cervidae six (6) months of age and over must have a negative tuberculosis test using the single cervical method or BTB test within ninety (90) days prior to arrival at the market/sale. Cervidae originating from accredited TB cervidae herds may be sold through a market/sale on the current herd number and test date.] Captive cervids from out-of-state sold through a market/sale in Missouri must have an interstate shipping permit issued by the state veterinarian's office and a Certificate of Veterinary Inspection. Captive cervids from out-of-state that arrive at a market/sale must be in compliance with the guidelines as incorporated by reference to the *Bovine Tuberculosis Eradication Uniform Methods and Rules, Effective January 22, 1999* and *Brucellosis in Cervidae: Uniform Methods and Rules, Effective September 30, 1998*. Movement of Missouri origin captive cervids must be in compliance with Missouri's intrastate movement regulations.

1. All sexually intact animals six (6) months of age or older, not under quarantine and not affected with brucellosis,

must test negative for brucellosis within thirty (30) days prior to arrival at the market/sale, except:

A. Brucellosis-free herd—captive cervids originating from certified brucellosis-free herds may be sold through a market/sale on the current herd number and test date;

B. Brucellosis-monitored herd—all sexually intact animals six (6) months of age or older must test negative for brucellosis within ninety (90) days prior to arrival at the market/sale.

2. Captive cervids not known to be affected with or exposed to tuberculosis, and not in a status herd as defined in the *Bovine Tuberculosis Eradication Uniform Methods and Rules, Effective January 22, 1999*, must have two (2) negative tuberculosis tests, not less than ninety (90) days apart, using the single cervical method. The second test must be within ninety (90) days prior to arrival at the market/sale.

3. Movement from status herds.

A. Monitored or qualified herd—captive cervids originating from monitored or qualified tuberculosis cervid herds must have one (1) negative tuberculosis test, using the single cervical method, within ninety (90) days prior to arrival at the market/sale.

B. Accredited herd—captive cervids originating from accredited tuberculosis-free cervid herds may be sold through a market/sale on the current herd number and test date.

4. Captive cervids from an area that has been reported as a chronic wasting disease (CWD) endemic area or any cervid that has been in an endemic area in the last five (5) years will not be allowed to move through a Missouri livestock market/sale.

5. Captive cervid from a non-endemic area of a state that has reported confirmed chronic wasting disease (CWD) cases must have participated in a surveillance program for at least three (3) years prior to moving through a Missouri livestock market/sale.

AUTHORITY: section 277.160, RSMo Supp. [1998] 2000. Original rule filed June 15, 1990, effective Dec. 31, 1990. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Nov. 2, 2001, effective Nov. 12, 2001, expires May 10, 2002. Amended: Filed April 10, 2002.

PUBLIC COST: This proposed amendment will cost the state agencies or political subdivisions less than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment may or may not cost private entities more than five hundred dollars (\$500) depending on the number of captive cervids entering Missouri.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Agriculture, Division of Animal Health, Taylor H. Woods, D.V.M., State Veterinarian, PO Box 630, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of the notice in the Missouri Register. No public hearing is scheduled.

**FISCAL NOTE
PRIVATE COST**

I. RULE NUMBER

| | |
|-----------------------|---|
| Rule Number and Name: | 2 CSR 30-6.020 Duties and Facilities of the Market/Sale Veterinarian. |
| Type of Rulemaking: | Proposed Amendment |

II. SUMMARY OF FISCAL IMPACT

| Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule: | Classification by types of the business entities which would likely be affected: | Estimate in the aggregate as to the cost of compliance with the rule by the affected entities: |
|--|--|--|
| Unknown | Any individual who brings captive cervids into the state of Missouri. | Estimated cost is \$65 per animal |

III. WORKSHEET

According to the proposed amendment, any captive cervid that arrive from out-of-state at a Missouri market/sale must have one (1) brucellosis test, two (2) tuberculosis (TB) tests and a health certificate.

The costs to the individual bringing the animal to the market/sale would include one (1) brucellosis test, two (2) TB tests plus having a current health certificate. There may be an additional charge if the accredited veterinarian has to make a trip to the farm in order to test the animals. In many cases, the veterinarian does test the animals on the farm because of space and additional equipment that may be needed for captive cervids. The costs of the services used in this fiscal note are based upon average charges by veterinarians in this state and if the accredited veterinarian has a working relationship with the producer, the cost of the services may be reduced or waived.

Services:

| | |
|--------------------|-------------------|
| Brucellosis test | \$10.00 |
| Tuberculosis tests | \$10.00 (for one) |
| Farm Call | \$25.00 |
| Health Certificate | \$10.00 |

For one (1) captive cervid to enter Missouri the average cost may be:

| | |
|----------------------|----------------|
| 1 brucellosis test - | -\$10.00 |
| 2 TB tests | - \$20.00 |
| Farm call | - \$25.00 |
| Health Certificate - | <u>\$10.00</u> |
| Total: | \$65.00 |

IV. ASSUMPTIONS

Current regulations require one (1) brucellosis test, one (1) TB test and a health certificate. The only additional expense this proposed amendment is requiring on captive cervids arriving at a market/sale in Missouri is the second tuberculosis test. The number of captive cervids that enter Missouri and go through a market/sale is unknown and without knowing the exact number involved, the total cost of implementation of an additional test cannot be determined. The charges used in this fiscal note are based on average charges of accredited veterinarians in the state of Missouri which vary from state to state and from veterinarian to veterinarian

Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 240—Public Service Commission
Chapter 2—Practice and Procedure

PROPOSED AMENDMENT

4 CSR 240-2.075 Intervention. The commission is amending sections (6) and (7).

PURPOSE: The purpose of this amendment is to clarify the proceedings applicable to amici curiae and to impose on intervenors an obligation to file a responsive pleading.

(6) Any person not a party to a case may petition the commission for leave to file a brief as an *amicus curiae*. **The petition for leave must state the petitioner's interest in the matter and explain why an amicus brief is desirable and how the matters asserted are relevant to the determination of the case.** The brief may be submitted simultaneously with the petition. Unless otherwise ordered by the commission, the brief must be filed no later than seven (7) days after the parties have filed their initial briefs. If leave to file a brief as an *amicus curiae* is granted, the brief shall be deemed filed on the date submitted. An *amicus curiae* may not file a reply brief.

(7) Any party whose application to intervene is granted shall, within thirty (30) days thereafter or such other period as the commission may order, file a responsive pleading to the application, complaint or tariff that is the subject of the contested case, specifically admitting or denying each fact asserted therein.

AUTHORITY: section 386.410, RSMo [Supp. 1998] 2000. Original rule filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed March 26, 2002.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Dale Hardy Roberts, Secretary, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. Comments should refer to Case No. AX-2002-157 and be filed with an original and six (6) copies. A public hearing is scheduled for Monday, June 10, 2002, at 10:00 a.m. in Room 310 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri, for interested persons to appear and respond to commission questions.

SPECIAL NEEDS: This hearing will be held in a building which meets accessibility standards required by the Americans with Disabilities Act. If you need additional accommodations to participate in this public hearing, please call the Public Service Commission's Hotline at 1 (800) 392-4211 (voice) or 1 (800) 829-7541 (TDD) prior to the hearing.

Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 240—Public Service Commission
Chapter 2—Practice and Procedure

PROPOSED AMENDMENT

4 CSR 240-2.115 [Nonunanimous] Stipulations and Agreements. The commission is amending sections (1) and (2) and deleting section (3).

PURPOSE: The purpose of this amendment is to clarify the proceedings applicable to, and the effects of, stipulations and agreements in commission practice.

(1) *[A nonunanimous stipulation and agreement is any stipulation and agreement which is entered into by fewer than all parties and where one (1) or more parties requests a hearing of one (1) or more issues. If no party requests a hearing, the commission may treat the stipulation and agreement as a unanimous stipulation and agreement.]* Stipulations and Agreements.

(A) The parties may at any time file a stipulation and agreement as a proposed resolution of all or any part of a contested case. Any such stipulation and agreement must contain stipulated facts sufficient to support the resolution proposed by the parties. A stipulation and agreement shall be filed as a pleading.

(B) The commission may resolve all or any part of a contested case on the basis of a stipulation and agreement.

(2) *[If a hearing is requested, the commission shall grant the request.]* Nonunanimous Stipulations and Agreements.

(A) A nonunanimous stipulation and agreement is any stipulation and agreement which is entered into by fewer than all of the parties.

(B) Each party shall have seven (7) days from the filing of a nonunanimous stipulation and agreement to file an objection to the nonunanimous stipulation and agreement. Failure to file a timely objection shall constitute a full waiver of that party's right to a hearing. A conditional assent to a nonunanimous stipulation and agreement shall be regarded as a non-conditional assent and not as an objection.

(C) If no party timely objects to a nonunanimous stipulation and agreement, the commission may treat the nonunanimous stipulation and agreement as a unanimous stipulation and agreement.

(D) A nonunanimous stipulation and agreement to which a timely objection has been filed shall be considered to be merely a position of the signatory parties to the stipulated position.

(E) If a nonunanimous stipulation and agreement resolves only issues as to which a party has stated no position and filed no testimony, such party need not join in the nonunanimous stipulation and agreement for it to be considered unanimous and an objection filed by such party shall have no effect.

[[3] A nonunanimous stipulation and agreement shall be filed as a pleading. Each party shall have seven (7) days from the filing of the nonunanimous stipulation and agreement to file a request for a hearing. Failure to file a timely request for hearing shall constitute a full waiver of that party's right to a hearing.]

AUTHORITY: section 386.410, RSMo [Supp. 1998] 2000. Original rule filed June 9, 1987, effective Sept 15, 1987. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed March 26, 2002.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: *Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Dale Hardy Roberts, Secretary, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. Comments should refer to Case No. AX-2002-158 and be filed with an original and six (6) copies. A public hearing is scheduled for Monday, June 10, 2002, at 10:00 a.m. in Room 310 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri, for interested persons to appear and respond to commission questions.*

SPECIAL NEEDS: *This hearing will be held in a building which meets accessibility standards required by the Americans with Disabilities Act. If you need additional accommodations to participate in this public hearing, please call the Public Service Commission's Hotline at 1 (800) 392-4211 (voice) or 1 (800) 829-7541 (TDD) prior to the hearing.*

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 240—Public Service Commission Chapter 2—Practice and Procedure

PROPOSED RULE

4 CSR 240-2.117 Summary Disposition of Contested Cases

PURPOSE: *This rule provides for disposition of a contested case by disposition in the nature of summary judgment or judgment on the pleadings.*

(1) Summary Determination.

(A) Any party may by motion, with or without supporting affidavits, seek disposition of all or any part of a contested case by summary determination at any time after the filing of a responsive pleading, if there is a respondent, or at any time after the close of the intervention period. However, a motion for summary determination shall not be filed less than twenty (20) days prior to the hearing except by leave of the commission.

(B) Motions for summary determination shall state with particularity in separately numbered paragraphs each material fact as to which the movant claims there is no genuine issue, with specific references to the pleadings, testimony, discovery, or affidavits that demonstrate the lack of a genuine issue as to such facts. Each motion for summary determination shall have attached thereto a separate legal memorandum explaining why summary determination should be granted and testimony, discovery or affidavits not previously filed that are relied on in the motion. The movant shall serve the motion for summary determination upon all other parties not later than the date upon which the motion is filed with the commission.

(C) Not more than ten (10) days after a motion for summary determination is served, any party may file and serve on all parties a response in opposition to the motion for summary determination. Attached thereto shall be any testimony, discovery or affidavits not previously filed that are relied on in the response. The response shall admit or deny each of movant's factual statements in numbered paragraphs corresponding to the numbered paragraphs in the motion for summary determination, shall state the reason for each denial, shall set out each additional material fact

that remains in dispute, and shall support each factual assertion with specific references to the pleadings, testimony, discovery, or affidavits. The response may also have attached thereto a legal memorandum explaining why summary determination should not be granted.

(D) For good cause shown, the commission may continue the motion for summary determination for a reasonable time to allow an opposing party to conduct such discovery as is necessary to permit a response to the motion for summary determination.

(E) The commission shall grant the motion for summary determination if the pleadings, testimony, discovery, affidavits, and memoranda on file show that there is no genuine issue as to any material fact and that any party is entitled to relief as a matter of law as to all or any part of the contested case. The commission may order summary determination against the moving party. An order granting summary determination shall include findings of fact and conclusions of law.

(F) If the commission grants a motion for summary determination, but does not dispose thereby of the entire contested case, it shall hold an evidentiary hearing to resolve the remaining issues. Those facts found in the order granting partial summary determination shall be established for purposes of the hearing.

(G) The commission may hear oral argument on a motion for summary determination.

(2) Determination on the Pleadings—On its own motion or on the motion of any party, the commission may dispose of all or any part of a contested case on the pleadings whenever such disposition is not otherwise contrary to law.

AUTHORITY: *section 386.410, RSMo 2000. Original rule filed March 26, 2002.*

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: *Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Dale Hardy Roberts, Secretary, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. Comments should refer to Case No. AX-2002-159 and be filed with an original and six (6) copies. A public hearing is scheduled for Monday, June 10, 2002, at 10:00 a.m. in Room 310 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri, for interested persons to appear and respond to commission questions.*

SPECIAL NEEDS: *This hearing will be held in a building which meets accessibility standards required by the Americans with Disabilities Act. If you need additional accommodations to participate in this public hearing, please call the Public Service Commission's Hotline at 1 (800) 392-4211 (voice) or 1 (800) 829-7541 (TDD) prior to the hearing.*

Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION

Division 50—Division of [Instruction] School Improvement

Chapter 340—[Supervision of Instruction] School Improvement and Accreditation

PROPOSED AMENDMENT

5 CSR 50-340.030 [Policies and Standards for School Media and School Learning Resources Centers] *Standards for Missouri School Library Media Centers*. The State Board of Education is amending the title, Purpose and section (1).

PURPOSE: *This proposed amendment is to update the guidelines for library media centers.*

PURPOSE: *The Division of [Instruction] School Improvement in the Department of Elementary and Secondary Education [establishes standards for the accreditation and classification of public school districts. This rule establishes the standards for public school districts' media and school learning resources centers] provides guidelines for public school districts, media, and school library media centers.*

(1) *[The media standards for school learning resources centers set forth the general guidelines for the establishment and operation of centers; set standards for various types of media, materials and equipment school districts must have available to meet the classification standards; and set a recommended expenditure per pupil to maintain and operate learning resources centers.] The Standards for Missouri School Library Media Centers establish guidelines for a variety of print and nonprint resources needed to support the teaching and learning of staff and students. The standards also recommend facility space and expenditures per pupil to maintain and operate library media centers.*

AUTHORITY: *section 161.092, RSMo [1986] 2000. Original rule filed Nov. 5, 1969, effective July 1, 1970. Rescinded and readopted: Filed Oct. 15, 1980, effective Jan. 15, 1981. Amended: Filed March 29, 2002.*

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, ATTN: Lisa Walters, Library Media and Technology Consultant, Curriculum Services, 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 50—Division of School Improvement
Chapter 340—School Improvement and Accreditation
PROPOSED AMENDMENT

5 CSR 50-340.110 *Policies and Standards Relating to Academically Deficient Schools*. The State Board of Education is amending the Purpose and sections (1), (2) and (3).

PURPOSE: *This proposed amendment clarifies definitions and reflects the Department of Elementary and Secondary Education's ability to identify, support and assist academically deficient schools.*

PURPOSE: *This rule establishes the criteria and procedures to be used to identify academically deficient schools and sets the stan-*

dards to be used for an educational audit [in order to implement section 160.538, RSMo].

(1) For the purposes of this rule—/:

(A) A “school” shall mean a grouping of grade levels reported by a school district under a building number used for reporting school data to the Department of Elementary and Secondary Education (DESE). A physical structure may contain more than one (1) “school.” A school designated as an elementary school, a middle school, a junior high school or a high school and assigned a number by [the department] DESE shall be included in the listing of schools subject to this rule;

(B) “Concerned school” means any school which [meets the criteria in subsections (2)(A) and (2)(B)] **has thirty percent (30%) or more students in the Step 1 and Progressing levels** using the results of the Missouri Assessment Program (MAP)/, the assessment system developed pursuant to the provisions of section 160.518, RSMo. **Only schools containing one (1) or more of the assessed grade levels shall be considered as a concerned school];**

(C) “State-determined academically deficient school” shall mean a concerned school whose MAP results for two (2) consecutive testing years place the school in the lowest [fifty (50)] **twenty (20) schools** when considering the percent of students who score in Step 1 and Progressing levels on the MAP and who are [identified as] **declared** academically deficient by the State Board of Education (the board);

(D) “Locally determined academically deficient school” shall mean a school in a district whose graduation rate is below sixty-five percent (65%) as defined in [section 160.011, RSMo,] **state law that meets the [fifteen] thirty percent [(15%)] (30%) or more students in the Step 1 and Progressing levels on the MAP [criteria set in subsection (2)(B)] and is determined to be academically deficient by the local board of education;**

(2) Determination of academically deficient schools by the state [—] **shall be as follows:**

[(A) *The list of potential concerned schools will first be made by identifying all schools in K–12 districts whose average graduation rate for the most recent three (3) years is lower than one (1) standard deviation below the mean graduation rate for all K–12 districts for the most recent three (3) years in addition to all schools in K–8 districts;]*

[(B)] (A) Concerned schools will be those [from subsection (2)(A)] that have [fifteen] **thirty percent [(15%)] (30%)** or more students in Step 1 and Progressing levels using the MAP results. This percent will be determined by adding the numbers of students scoring at the Step 1 and Progressing levels in each subject area assessed in the school for the most recent two (2) years. That sum will be divided by the corresponding sum of the “reportable students” on the same MAP assessments administered in that school, and will be stated as a percent, carried to four (4) places;

[(C)] (B) Each year, the lowest [fifty (50) concerned] **twenty (20) performing schools (excluding academically deficient schools)** will be considered for an educational audit. The lowest [fifty (50)] **twenty (20) schools** will be determined by ranking of the percent of students scoring in Step 1 and Progressing levels as determined by applying the criteria [in subsection (2)(B)] above. No more than five (5) schools in one (1) school district shall be identified for an audit in any one (1) year; *therefore, if five (5) schools are identified from one (1) district prior to identifying a total of fifty (50) schools, all other schools from that district will be removed from consideration and the next lowest schools from the remaining list will be identified until the total is fifty (50)].* Schools identified as academically deficient in a single district shall not exceed ten (10). At no time can there be more than a total of [one hundred (100)] **fifty**

(50) schools either identified for an audit team visit or awaiting the second audit team visit;

[(D)] (C) Within sixty (60) days of the identification of a concerned school, the [State Board of Education] board shall appoint an audit team of at least ten (10) people as described in [section 160.538.2(4), RSMo] state law, and designate the chairperson of the committee for any school identified in the lowest [fifty (50)] twenty (20) as determined [by subsections (2)(A), (B) and (C)] above. A [Department of Elementary and Secondary Education] DESE state supervisor cannot be on a team relating to an academically deficient school in a school district which she/he supervises;

[(E)] (D) If, after considering relevant information and data provided by the school, the audit team finds that the school is an academically deficient school, the audit team shall determine the factors that contributed to the lack of student achievement which resulted in that finding using research based educational practices and the Missouri School Improvement Program (MSIP) Performance Standards. The audit team shall report the factors and the findings to the [State Board of Education] board within one hundred twenty (120) days of its appointment. An audit team which finds a reasonable explanation for the low state assessment scores shall report such to the [State Board of Education] board;

[(F)] (E) The [State Board of Education] board shall declare any school which an audit team finds academically deficient to be academically deficient. The [State Board of Education] board shall, within sixty (60) days of its decision, appoint a management team of at least ten (10) people [as described in section 160.538.2(4), RSMo] pursuant to state law, for each school so designated. A management team may serve more than one (1) school. No person, except [Department of Elementary and Secondary Education] DESE personnel, can serve on a management team while serving on an audit team for the same school;

[(G)] (F) Within sixty (60) days of their appointment, the management team shall study the audit report and the factors that contribute to the deficiency and shall make recommendations that the team believes are appropriate and necessary in the management and administration of the school to promote increased student achievement.

1. In addition, [W]with consideration given to the financial condition of the district and the school, the team may make recommendations that local resources be more effectively utilized, additional local resources be given to the school, and/or that additional state resources be allocated to the school. The [items outlined in section 160.538.2(5), RSMo, and section 160.538.5, RSMo,] recommendations shall be considered in the recommendations to the [state] board.

2. The [State Board of Education] board shall allocate from the "statewide areas of critical need" money to fund the operation of the management teams and to provide resources specified by the management teams needed in the academically deficient school and approved by the [State Board of Education] board pursuant to [section 160.530.2(1), RSMo] state law; and

[(H)] A school which has received the second visit of the audit team and remains an academically deficient school shall not be counted against the maximum number of schools referred to subsections (1)(C) through (G) or be placed in the listing of schools from lowest to highest pursuant to subsection (2)(C); and

[(I)] (G) A school shall remain an academically deficient school until the second educational audit is conducted at least two (2) school years after the year of the filing of the management team's report with the [State Board of Education] board and the audit determines the building to be no longer academically deficient and so recommends to the [State Board of Education] board.

1. If a school is found to be still academically deficient after the second educational audit[-];

A. Then the local board may suspend, after due process, the indefinite contracts of "contributing teachers";

B. The commissioner of education may, upon recommendations of the second audit team, conduct a recall election of board members;

C. The local board may not grant tenure to any probationary teacher until one (1) year after the academically deficient designation is lifted; and

D. The local board may not issue new contracts or renew contracts to either the superintendent or the principal for a period of longer than one (1) year [section 160.538.4, RSMo].

2. The building will remain an academically deficient school until the [State Board of Education] board determines that performance on the MAP has improved sufficiently to warrant the change in status.

3. A school which has received the second visit of the audit team and remains an academically deficient school shall not be counted against the maximum number of schools identified as either concerned or academically deficient schools.

(3) Determination of academically deficient schools by the local board of education:

(A) A local board may designate a school within its jurisdiction as an academically deficient school if that school is a concerned school and [meets the criteria set out in subsection (2)(B)] has thirty percent (30%) or more students in the Step 1 and Progressing levels using the MAP results; and

(B) The local board may suspend or terminate contracts of contributing teachers, principals, and any administrators having responsibility for the school, [subject to sections 168.114 to 168.120, RSMo or section 168.221, RSMo whichever is applicable,] pursuant to state law, and reconstitute the school with new teachers and administrative staff.

AUTHORITY: sections 160.538.1, 160.538.2 and 161.092, RSMo 2000. Previously filed as 5 CSR 30-340.010. Original rule filed Sept. 5, 1996, effective March 30, 1997. Rescinded and readopted: Filed March 22, 1999, effective Sept. 30, 1999. Amended: Filed Sept. 27, 2001, effective May 30, 2002. Amended: Filed March 29, 2002.

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: Ginny Vandelight, Assistant Director, School Improvement and Accreditation, 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 80—Teacher Quality and Urban Education Chapter 850—Professional Development

PROPOSED RESCISSION

5 CSR 80-850.010 Administrative Procedures for the Teacher Education Scholarship Program. This rule established requirements for the administration of the Teacher Education Scholarship Program.

PURPOSE: This rule is being rescinded and resubmitted as changes are being proposed.

AUTHORITY: sections 160.276, 160.278, 160.281 and 161.283, RSMo 1986. Original rule filed Dec. 2, 1985, effective Feb. 24, 1986. Amended: Filed Aug. 1, 1989, effective Nov. 27, 1989. Rescinded: Filed March 29, 2002.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Department of Elementary and Secondary Education, Attention: Janet Goeller, Director of Teacher Recruitment and Retention, Division of Teacher Quality and Urban Education, 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 80—Teacher Quality and Urban Education Chapter 850—Professional Development

PROPOSED RULE

5 CSR 80-850.010 Administrative Procedures for the Teacher Education Scholarship Program

PURPOSE: The Excellence in Education Act of 1985 (sections 160.276, 160.278, 160.281 and 160.283, RSMo) establishes a program to be administered by the Department of Elementary and Secondary Education (DESE) that makes scholarships in the amount of two thousand dollars (\$2,000) per recipient (one-half this amount to be provided by the state and one-half to be provided by participating colleges or universities) available for students who make a commitment to a teaching career and who enroll in a college program leading to certification to teach in the public schools of Missouri. This rule sets forth the qualifications required of applicants for the scholarships, the criteria to be used in selecting scholarship recipients, the conditions that participating colleges or universities must meet, procedures for matching recipients with participating colleges or universities, terms to which a scholarship recipient must agree and repayment procedures to be followed by recipients who fail to fulfill their commitment to become certificated to teach or to teach in the public schools of Missouri.

- (1) Eligible applicants are defined as residents of Missouri who:
 - (A) Are high school seniors, students in a four (4)-year college or university located in Missouri, or students enrolled in a junior or community college located in Missouri;
 - (B) Make a commitment to pursue an approved teacher education program and enroll as full-time students in a four (4)-year college or university located in Missouri;
 - (C) Have achieved scores on an accepted nationally-normed test of academic ability, such as the Scholastic Aptitude Test (SAT), the American College Test (ACT) or the School-College Ability Test (SCAT), which place them at or above the eighty-fifth percentile; or have achieved a high school grade point average which ranks them in the upper fifteen percent (15%) of their high school graduating class or as calculated at the end of the sixth semester; and

- (D) Meet the requirements for entry into an approved teacher education program in Missouri.

- (2) Each student wishing to apply for a scholarship shall submit an application to the Department of Elementary and Secondary Education (DESE) in a form required by DESE by February 15 in order to be considered for the award of a scholarship for the fall term.

- (3) Each application shall contain information as may be required to enable DESE to select recipients under the provisions of this rule.

- (4) Each applicant will be notified by April 1 whether the applicant has or has not been selected as a recipient.

- (5) Recipients will be selected from the group of eligible applicants on the basis of each applicant's level of performance in the following areas:

- (A) Participation in school and community activities;
- (B) Demonstrated leadership abilities;
- (C) Effective interpersonal skills;
- (D) Wide range of interest;
- (E) Career interest in teaching; and
- (F) Effective communication skills.

- (6) Annually, DESE shall appoint a selection committee whose assignment shall be to rank the eligible applicants on the basis of the criteria listed above in accordance with rating scales developed by DESE. The list of ranked applicants shall be used in assigning each recipient to the college or university of the applicant's choice.

- (7) In the event that there are more eligible applicants than can be granted scholarships because insufficient funds have been appropriated, scholarships shall be awarded in sequence according to the rank order of the eligible applicants.

- (8) In the event that a designated recipient declines to accept a scholarship, the scholarship shall be offered to the next highest ranked eligible applicant, if any.

- (9) After recipients have been selected in accordance with the criteria listed in this rule, each recipient will be matched, in rank order, with the applicant's first choice of college or university until all openings at a college or university have been filled; after that, recipients who have designated that college or university as first choice will be matched in rank order with openings at colleges and universities that they indicated as second or third choice, respectively.

- (10) DESE shall notify each participating college or university of the names and addresses of scholarship recipients who have been matched with that institution.

- (11) Following notification that the applicant has been selected to receive a scholarship, the applicant shall respond to DESE to accept or decline the scholarship no later than April 15.

- (12) After a recipient has completed admission and registration procedures at the matched college or university and is ready to attend class at the beginning of the fall semester of the program year (fiscal year), the financial aid officer or scholarship awards officer shall give the recipient a check from the state in the amount of five hundred dollars (\$500) and a check from the college or university in the amount of five hundred dollars (\$500), both checks made payable to the recipient (or the recipient and parent or guardian, if the recipient is under eighteen (18) years of age). At the beginning of the spring semester of the program year (fiscal year), a similar procedure shall occur.

(13) On the two (2) occasions, at the beginning of the first and second semesters after the recipient has completed all enrollment requirements and is ready to attend class and when the checks from the state and the college or university are delivered to the student, the recipient (and parents or guardians, if the recipient is under eighteen (18) years of age) shall sign a promissory note which obligates the student to fulfill the commitment to be made by recipients and included in this rule, with the provision that funds received under the terms of this rule shall be repaid according to the terms of this rule if the student defaults on the commitments.

(14) Participating colleges or universities must:

- (A) Be located in Missouri;
- (B) Offer a teacher education program approved by DESE;
- (C) Provide matching funds of one thousand dollars (\$1,000) per scholarship recipient to match, dollar for dollar, funds made available by the state;
- (D) Not use state funds for the matching funds;
- (E) Indicate prior to each year of participation, upon the request of DESE, the number of scholarships that will be matched;
- (F) Report annually on October 1, in the form requested by DESE, the status of all scholarship recipients who attended the college or university during preceding years until such time as they graduate or leave the college or university;
- (G) Confirm annually on October 1, in the form requested by DESE, the status of recipients who are currently enrolled as first-time students;
- (H) Report immediately to DESE the name of any enrolled recipient who ceases study leading to teacher certification;
- (I) Agree to pay matching funds to recipients on terms no more restrictive than those established by DESE with regard to the state funds provided to recipients and if they elect to seek repayment, the terms of the repayment schedule shall be no more restrictive than the repayment terms established by the state for students who default; and
- (J) Agree to serve as agent for the state in obtaining notarized signatures of recipients (or of recipients and parents or guardians, if the recipient is under eighteen (18) years of age) on promissory notes which will be sent by DESE to the designated college official along with the payment checks sent for recipients. The college or university agrees to return the signed and notarized promissory notes to DESE.

(15) Before receiving any funds from the state or from a college or university under terms of the Teacher Education Scholarship Program, each designated recipient must agree to the following terms and conditions:

- (A) To enroll in and complete a college program designed to qualify the recipient for a Missouri teaching certificate within five (5) years from the date of receiving funds under the scholarship program (three (3) years in the case of students transferring from a junior or community college);
- (B) To teach on a full-time basis for a period of five (5) years in a Missouri public elementary or secondary school after receiving a teaching certificate;
- (C) To notify DESE annually on October 1, in the form and on the schedule prescribed by DESE, of the applicant's current status as a student during years of college attendance and as a teacher following receipt of teacher certification;
- (D) To repay the scholarship funds received from the state in accordance with terms set forth in this rule if any one (1) of the following events occurs:

1. The recipient ceases study leading to teacher certification for any reason, including, but not limited to:

- A. Change of career goal as evidenced by the nature of courses selected in colleges;
- B. Discontinuance of college attendance;

C. Dismissal, suspension or expulsion from college for any reason; or

D. Enrollment and attendance during any semester in less than twelve (12) semester hours (less than full-time) in a program leading to certification to teach in Missouri public schools, except that nonattendance or enrollment in less than twelve (12) semester hours during the summer term shall not affect the status of the recipient;

2. The recipient fails to be hired for or to accept a full-time teaching position in a Missouri public school within ten (10) months of receiving certification to teach in Missouri public schools; or

3. The recipient fails to teach on a full-time basis for a period of five (5) years in a Missouri public elementary or secondary school.

(16) If a recipient does not complete requirements for certification to teach in public elementary and secondary schools in Missouri in accordance with the terms of this rule, the scholarship amount shall be considered as a loan to the recipient and interest at the rate of nine and one-half percent (9 1/2%) per year shall be charged on the unpaid balance of the amount received from the state from the date the recipient ceased study leading to teacher certification until the amount received has been paid back to the state.

(17) If a recipient fails to be hired for or to accept a full-time teaching position in a Missouri public elementary or secondary school within ten (10) months after receiving certification to teach in Missouri public elementary or secondary schools, the scholarship amount shall be considered as a loan to the recipient and interest at the rate of nine and one-half percent (9 1/2%) per year shall be charged on the unpaid balance of the amount received from the state from the date ten (10) months after receiving certification until the amount has been paid back to the state.

(18) If a recipient does not continue to teach on a full-time basis in a Missouri public elementary or secondary school for a period of five (5) years after receiving a degree, the scholarship amount shall be considered as a loan to the recipient and interest at the rate of nine and one-half percent (9 1/2%) per year shall be charged on the unpaid balance of the amount received from the date the recipient ceases to teach until the amount received has been paid back to the state. For each year, up to five (5) years, that the recipient teaches in a Missouri public elementary or secondary school, one-fifth (1/5) of the amount received under the scholarship program shall be applied against the total amount received and shall not be subject to repayment.

(19) The amount received (plus interest) shall be repaid to the state within two (2) years of the date of default; except that repayment shall not be triggered for a period of not more than:

(A) One (1) year by a recipient's returning to full-time study after two (2) years of teaching in a Missouri public elementary or secondary school; or

(B) One (1) semester by a recipient's requesting and receiving maternity leave from a Missouri public school district if the recipient returns to a teaching position in a Missouri public elementary or secondary school following this interruption of employment.

(20) The obligation to teach on a full-time basis in a Missouri public elementary or secondary school for a period of five (5) years following certification shall not be altered by any such moratorium on the requirement to repay the scholarship funds.

(21) The state board may set aside fifteen percent (15%) of the scholarships for awards to qualified minority recipients.

(22) Exceptions. A recipient who wishes to request an exception to any of the terms of this rule must submit their request in writing

to DESE. DESE shall respond to each such request within thirty (30) days following receipt of the request and may schedule a hearing not more than forty-five (45) days following receipt of the request to receive testimony. A ruling on each request shall be rendered not more than fifteen (15) days following the hearing.

AUTHORITY: sections 160.276, 160.278, 160.281 and 160.283, RSMo 2000. Original rule filed Dec. 2, 1985, effective Feb. 24, 1986. Amended: Filed Aug. 1, 1989, effective Nov. 27, 1989. Rescinded and readopted: Filed March 29, 2002.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions two hundred forty-one thousand, five hundred thirty dollars (\$241,530) for Fiscal Year 2003, after the Governor's three percent (3%) reserve, with the cost recurring annually for the life of the rule based upon yearly appropriations from the General Assembly.

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 Elementary and Secondary Education. Attention: Janet Goeller, Director of Teacher Recruitment and Retention, Division of Teacher Quality and Urban Education, PO Box 480, Jefferson City, MO 65102-0480. To be considered, comments must be received with thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

**FISCAL NOTE
PUBLIC COST**

I. RULE NUMBER

Title: 5 – Department of Elementary and Secondary Education

Division: 80 – Division of Teacher Quality and Urban Education

Chapter: 850 – Professional Development

Rule Number and Name: 5 CSR 80-850.010 Administrative Procedures for the Teacher Education Scholarship Program

Type of Rulemaking: Proposed Rule

II. SUMMARY OF FISCAL IMPACT

| Affected Agency or Political Subdivision | Estimated Cost of Compliance in the Aggregate |
|--|---|
| Department of Elementary and Secondary Education | \$241,530 for FY 2003 after the Governor's 3% reserve, with the cost recurring annually for the life of the rule based upon yearly appropriations from the General Assembly |

The current public cost of this rule for the Department of Elementary and Secondary Education is estimated to be \$241,530 for Fiscal Year 2003 after the Governor's 3% reserve, with the cost recurring annually for the life of the rule based upon yearly appropriations from the General Assembly.

The scholarship money is distributed to students who make a commitment to a teaching career and who enroll in a college program leading to certification to teach in the public schools of Missouri.

The school matching fund cost is estimated to be one dollar for each dollar that the Department of Elementary and Secondary Education provides for Fiscal Year 2003, with the cost recurring annually for the life of the rule.

III. WORKSHEET

The Department of Elementary and Secondary Education administers the Teacher Education Scholarship Program. The scholarship award program provides financial assistance to students who make a commitment to a teaching career and who enroll in a college program leading to certification to teach in the public schools of Missouri.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 10—Air Conservation Commission
Chapter 2—Air Quality Standards and Air Pollution
Control Rules Specific to the Kansas City Metropolitan
Area

PROPOSED AMENDMENT

10 CSR 10-2.260 Control of Petroleum Storage, Loading and Transfer. The commission proposes to add new subsection (1)(F), renumber original subsection (1)(F) and amend subsections (5)(A) and (5)(B). If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency to replace the current rule in the Missouri State Implementation Plan.

PURPOSE: This proposed amendment corrects errors that were found when reviewing the previously adopted amendment. The tank sizes and thus the filling mechanisms and emissions venting controls in subsections (5)(A) and (5)(B) had been switched. The large tanks should have the sophisticated poppeted filling mechanisms and Stage I vapor recovery equipment rather than the simple controls used on small tanks. A definition for Stage I vapor recovery has also been added to section (1) Definitions for rule clarity. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is the Rule Comment Form from staff dated September 14, 2001 advising of the discrepancy in the rule. This evidence is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address and phone number listed in the Notice of Public Hearing at the end of this rule.

(1) Definitions.

(F) Stage I vapor recovery system—A system used to capture the gasoline vapors that would otherwise be emitted when a gasoline storage tank is refilled by a tank truck.

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

(5) Gasoline Transfer.

(A) No owner or operator of a gasoline storage tank or delivery vessel shall cause or permit the transfer of gasoline from a delivery vessel into a gasoline storage tank with a capacity greater than [two thousand (2,000)] two hundred fifty (250) gallons unless—

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

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

3. Each storage tank is vented via a conduit that is:

A. At least two inches (2") inside diameter;

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

C. Equipped with a pressure/vacuum valve that is CARB certified and MO/PETP approved at three inches water column pressure/eight inches water column vacuum (3" wcp/8" wcv). When the owner or operator provides documentation that the system is CARB certified for a different valve and will not function properly with a 3" wcp/8" wcv valve, the valve shall be MO/PETP approved. All pressure/vacuum valves shall be bench tested prior to installation. Initial fueling facilities shall have MO/PETP approved pressure/vacuum valves.

(B) Stationary storage tanks with a capacity [of two hundred fifty to] greater than two thousand [(250–2,000)] (2,000) gallons shall also be equipped with a Stage I vapor recovery system in addition to the requirements of subsection (5)(A) and the

delivery vessels to these tanks shall be in compliance with section (6) of this rule.

1. The vapor recovery system shall collect no less than ninety percent (90%) by volume of the vapors displaced from the stationary storage tank during gasoline transfer and shall return the vapors via a vapor-tight return line to the delivery vessel. After the effective date of this rule, all coaxial systems shall be equipped with poppeted fittings.

2. A delivery vessel shall be refilled only at installations complying with the provisions of section (4) of this rule.

3. This section shall not be construed to prohibit safety valves or other devices required by governmental regulations.

AUTHORITY: section 643.050, RSMo 2000. Original rule filed Jan. 15, 1979, effective June 11, 1979. For intervening history, please consult the Code of State Regulations. Amended: Filed April 1, 2002.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed amendment will begin at 9:00 a.m., June 28, 2002. The public hearing will be held at the Holiday Inn KCI, Heartland Ballroom II & III, 11832 Plaza Circle, Kansas City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Roger D. Randolph, Director, Missouri Department of Natural Resources' Air Pollution Control Program, 205 Jefferson Street, PO Box 176, Jefferson City, MO 65102-0176, (573) 751-4817. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., July 5, 2002. Written comments shall be sent to Chief, Planning Section, Missouri Department of Natural Resources' Air Pollution Control Program, 205 Jefferson Street, PO Box 176, Jefferson City, MO 65102-0176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 10—Air Conservation Commission
Chapter 3—Air Pollution Control Rules Specific to the
Outstate Missouri Area

PROPOSED AMENDMENT

10 CSR 10-3.060 Maximum Allowable Emissions of Particulate Matter From Fuel Burning Equipment Used for Indirect Heating. The commission proposes to amend subsections (3)(A), (3)(C) and (3)(E); sections (4), (5) and (6); and delete section (7). If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency for inclusion in the Missouri State Implementation Plan.

PURPOSE: This proposed amendment will make this rule consistent with the other indirect heating regulations and eliminate conflicting requirements. A review of affected sources concluded that deleting this exemption will not cause any affected sources to change work practices or add additional control devices. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is the U.S. Environmental Protection Agency letter dated September 2, 1998 requesting removal of contradictory language and associated rule comment forms. This evidence is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address and

phone number listed in the Notice of Public Hearing at the end of this rule.

(3) General Provisions.

(A) This rule applies to installations in which fuel is burned for the primary purpose of producing steam, hot water or hot air or other indirect heating of liquids, gases or solids and in the course of doing so, the products of combustion do not come into direct contact with process materials. Fuels may include [those such as] for example coal, coke, lignite, coke breeze, gas, fuel oil and wood, but do not include refuse. When any products or by-products of a manufacturing process are burned for the same purpose or in conjunction with any fuel, the same maximum emission limitations shall apply.

(C) For purposes of this rule, the heat input shall be the aggregate heat content of all fuels whose products of combustion pass through a stack(s). The heat input value used shall be the equipment manufacturer's or designer's guaranteed maximum input, whichever is greater, except in the case of boilers of ten (10) million British [T]hermal [U]nits [(BTU)] (Btu) or less the heat input [shall] can also be determined by the higher heating value (HHV) of the fuel used at maximum operating conditions. The total heat input of all fuel burning units at a plant or on a premises shall be used for determining the maximum allowable amount of particulate matter which may be emitted.

(E) This rule shall not apply to indirect heating sources subject to the provisions of 10 CSR 10-6.070. However, indirect heat input values from sources that are subject to New Source Performance Standards shall be used in the calculation of Q (the installation's total heat input).

(4) Emission Limitations for Existing [Installations] Indirect Heating Sources.

(A) No person may cause, allow or permit the emission of particulate matter from existing [installations] indirect heating sources in excess of that specified in the following schedule:

1. If the total equipment heat input has a capacity rating of ten (10) million [BTU] Btu or less, 0.60 pounds for each million [BTU] Btu per hour input; or

2. If the total equipment heat input has a capacity rating of ten thousand (10,000) million [BTU] Btu or more, 0.18 pounds for each million [BTU] Btu per hour input.

(B) The amount of particulate matter which may be emitted from fuel burning equipment having an intermediate capacity rating between ten (10) million and ten thousand (10,000) million [BTU] Btu shall be determined by use of the following equation:

$$E = 0.90(Q)^{-0.174}$$

where

E = the maximum allowable particulate emission rate in pounds per million [BTU] Btu of heat input, rounded off to two (2) decimal places; and

Q = the installation heat input in millions of [BTU] Btu per hour.

(5) Emission Limitations for New [Installations] Indirect Heating Sources.

(A) [After April 3, 1971 no] No person may cause, allow or permit the emission of particulate matter in excess of that specified in the following schedule:

1. If the total equipment heat input has a capacity rating of ten (10) million [BTU] Btu or less, 0.60 pounds for each million [BTU] Btu per hour input; or

2. If the total equipment heat input has a capacity rating of two thousand (2,000) million [BTU] Btu or more, 0.10 pounds for each million [BTU] Btu per hour input.

(B) The amount of particulate matter which may be emitted from fuel burning equipment having an intermediate capacity rating between ten (10) million and two thousand (2,000) million [BTU] Btu shall be determined by use of the following equation:

$$E = 1.31(Q)^{-0.338}$$

where

E = the maximum allowable particulate emission rate in pounds per million [BTU] Btu of heat input, rounded off to two (2) decimal places; and

Q = the installation heat input in millions of [BTU] Btu per hour.

(6) Compliance Schedule for Existing Sources. Existing burning equipment used for indirect heating shall be modified or rebuilt in compliance with section (4) in accordance with the following schedule: rated capacity—ten thousand (10,000) million or greater [BTU] Btu heat input per hour; latest date for compliance; January 1, 1972; and rated capacity—ten (10) million to nine thousand nine hundred ninety-nine (9,999) million [BTU] Btu heat input per hour; latest date for compliance, January 1, 1973.

[(7) Exemptions. This rule shall not apply to existing boilers with a capacity of ten (10) million BTU per hour or less heat input.]

AUTHORITY: section 643.050, RSMo [1986] 2000. Original rule filed March 24, 1971, effective April 3, 1971. For intervening history, please consult the Code of State Regulations. Amended: Filed April 1, 2002.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed amendment will begin at 9:00 a.m., June 28, 2002. The public hearing will be held at the Holiday Inn KCI, Heartland Ballroom II & III, 11832 Plaza Circle, Kansas City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Roger D. Randolph, Director, Missouri Department of Natural Resources' Air Pollution Control Program, 205 Jefferson Street, PO Box 176, Jefferson City, MO 65102-0176, (573) 751-4817. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., July 5, 2002. Written comments shall be sent to Chief, Planning Section, Missouri Department of Natural Resources' Air Pollution Control Program, 205 Jefferson Street, PO Box 176, Jefferson City, MO 65102-0176.

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 10—Air Conservation Commission
Chapter 4—Air Quality Standards and Air Pollution
Control Regulations for the Springfield-Greene County
Area**

PROPOSED AMENDMENT

10 CSR 10-4.040 Maximum Allowable Emission of Particulate Matter From Fuel Burning Equipment Used for Indirect Heating. The commission proposes to amend subsections (1)(A) and (1)(E); and delete original section (2) and replace it with new sections (2) and (3). If the commission adopts this rule action, it

will be submitted to the U.S. Environmental Protection Agency for inclusion in the Missouri State Implementation Plan.

PURPOSE: This proposed amendment deletes the existing single emission limit for indirect heating sources and replaces it with one limit for existing sources and another limit for new sources to make it consistent with the outstate regulation. The limit for new indirect heating sources is more stringent than the limit it replaces. However, all affected sources meet the more stringent limit with existing control devices and work practices. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is the U.S. Environmental Protection Agency letter dated September 2, 1998 requesting that the rule language be amended for consistency with other rules and associated rule comment forms. This evidence is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address and phone number listed in the Notice of Public Hearing at the end of this rule.

(1) General Provisions.

(A) This regulation applies to installations in which fuel is burned for the primary purpose of producing steam, hot water or hot air or other indirect heating of liquids, gases or solids and, in the course of doing so, the products of combustion do not come into direct contact with process materials. Fuels may include [those such as] for example coal, coke, lignite, coke breeze, gas, fuel oil and wood but do not include refuse. When any products or byproducts of a manufacturing process are burned for the same purpose or in conjunction with any fuel, the same maximum emission limitations shall apply.

(E) This rule shall not apply to indirect heating sources subject to the provisions of 10 CSR 10-6.070. However, indirect heat input values from sources that are subject to New Source Performance Standards shall be used in the calculation of Q (the installation's total heat input).

(2) Emission Limitations.

(A) No person may cause, allow or permit the emission of particulate matter in excess of that specified in the following schedule:

1. If the equipment has a capacity rating of ten (10) million British Thermal Units (BTUs) or less, 0.60 pounds for each million BTUs per hour input; or

2. If the equipment has a capacity rating of ten thousand (10,000) million BTUs or more, 0.12 pounds for each million BTUs per hour input.

(B) The amount of particulate matter which may be emitted from fuel burning equipment having an intermediate capacity rating between ten (10) million and ten thousand (10,000) million BTUs shall be determined by use of the following equation:

$$E = 1.02(Q)^{0.233}$$

where

E = the maximum allowable particulate emission rate in pounds per million BTUs of heat input; rounded off to two (2) decimal places; and

Q = the installation heat input in millions of BTUs per hour.]

(2) Emission Limitations for Existing Indirect Heating Sources.

(A) No person may cause, allow or permit the emission of particulate matter from existing indirect heating sources in excess of that specified in the following schedule:

1. If the total equipment heat input has a capacity rating of ten (10) million British thermal units (Btu) or less, 0.60 pounds for each million Btu per hour input; or

2. If the total equipment heat input has a capacity rating of ten thousand (10,000) million Btu or more, 0.18 pounds for each million Btu per hour input.

(B) The amount of particulate matter which may be emitted from fuel burning equipment having an intermediate capacity rating between ten (10) million and ten thousand (10,000) million Btu shall be determined by use of the following equation:

$$E = 0.90(Q)^{-0.174}$$

where

E = the maximum allowable particulate emission rate in pounds per million Btu of heat input, rounded off to two (2) decimal places; and

Q = the installation heat input in millions of Btu per hour.

(3) Emission Limitations for New Indirect Heating Sources.

(A) No person may cause, allow or permit the emission of particulate matter in excess of that specified in the following schedule:

1. If the total equipment heat input has a capacity rating of ten (10) million Btu or less, 0.60 pounds for each million Btu per hour input; or

2. If the total equipment heat input has a capacity rating of two thousand (2,000) million Btu or more, 0.10 pounds for each million Btu per hour input.

(B) The amount of particulate matter which may be emitted from fuel burning equipment having an intermediate capacity rating between ten (10) million and two thousand (2,000) million Btu shall be determined by use of the following equation:

$$E = 1.31(Q)^{-0.338}$$

where

E = the maximum allowable particulate emission rate in pounds per million Btu of heat input, rounded off to two (2) decimal places; and

Q = the installation heat input in millions of Btu per hour.

AUTHORITY: section [203.050] 643.050, RSMo [1986] 2000. Original rule filed Dec. 5, 1969, effective Dec. 15, 1969. Amended: Filed March 15, 1979, effective Nov. 11, 1979. Amended: Filed Oct. 13, 1983, effective March 12, 1984. Amended: Filed March 14, 1984, effective Sept. 14, 1984. Amended: Filed April 1, 2002.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed amendment will begin at 9:00 a.m., June 28, 2002. The public hearing will be held at the Holiday Inn KCI, Heartland Ballroom II & III, 11832 Plaza Circle, Kansas City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Roger D. Randolph, Director, Missouri Department of Natural Resources' Air Pollution Control Program, 205 Jefferson Street, PO Box 176, Jefferson City, MO 65102-0176, (573) 751-4817. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., July 5, 2002. Written comments shall be sent to Chief, Planning Section, Missouri Department of Natural Resources' Air Pollution Control Program, 205 Jefferson Street, PO Box 176, Jefferson City, MO 65102-0176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management
Commission
Chapter 12—Hazardous Waste Fees and Taxes

PROPOSED AMENDMENT

10 CSR 25-12.010 Fees and Taxes. The commission is amending sections (1), (3) and (4).

PURPOSE: Section 260.479, RSMo establishes the category tax paid by generators of hazardous waste, including minimum annual amounts, individual site caps, and a company cap. Currently the minimum annual amount is \$50, the individual site caps are \$40,000 or \$80,000 annually depending on the waste disposal method used, and the company cap is \$80,000 annually. The Missouri Hazardous Waste Management Commission is authorized to increase these amounts annually, via the rulemaking process, by as much as 2.55% and has proposed this amendment to effect the rate increase for the December 2002 billings which are calculated on waste generated and/or shipped off-site from July 1, 2001 through June 30, 2002.

Additionally, various sections in Chapter 260, RSMo authorize the commission to determine the department's reasonable costs incurred in review of any plans, documents, or reports submitted by hazardous waste facilities. Section 260.375(30), RSMo authorizes the commission to determine the department's reasonable costs incurred in review of any plans, documents, or reports submitted by facilities undergoing corrective action to investigate, monitor, or clean up any releases of hazardous wastes or hazardous constituents to the environment at hazardous waste facilities. Section 260.375(7), RSMo authorizes the commission to determine the department's reasonable costs incurred in the review of any engineering data submitted by applicants for hazardous waste facility permits. Section 260.395(14), RSMo establishes that owners or operators of hazardous waste facilities shall pay to the department all reasonable costs, as determined by the commission, incurred pursuant to review of resource recovery certification applications. The department's reasonable costs are determined by use of a multiplier, as described in 10 CSR 25-12.010(3) and (4). Hourly rates for departmental staff performing oversight or engineering review are multiplied by a fixed factor to account for the department's administrative costs. The multiplier has not been increased in several years and, at its current rate, does not enable the department to fully recover its costs because of increases in fringe benefits and other indirect costs. An analysis of these costs, as well as other fixed factor costs, has determined that costs are actually a factor of three and one-half (3 1/2). This analysis is available for reviewing at the Department of Natural Resources' Hazardous Waste Program at the address and phone number listed in the Notice of Public Hearing at the end of this rule.

The commission proposes to amend 10 CSR 25-12.010(1)(D) by increasing the hazardous waste generator category tax rates, minimum and maximums by 2.55% each and to amend sections (3) and (4) to increase the fixed factor multiplier used to bill for the department's indirect costs from two and one-half (2 1/2) to three and one-half (3 1/2). Sections (2) and (5) are not proposed for amendment.

(1) Hazardous Waste Fees and Taxes Applicable to Generators of Hazardous Waste.

(A) A generator of hazardous waste shall pay the following fee as required by subdivision 260.380.1(10), RSMo. A generator as defined in 10 CSR 25-5.262, unless paragraph (1)(A)1., 2. or 3. of this rule provides otherwise, shall pay a fee of one dollar per ton (\$1/ton) of hazardous waste generated. This fee shall be payable to the state of Missouri. The fee shall be paid in accordance with the following procedures: The fee shall be paid on an

annual basis on or before January 1 of each year. The fee shall equal the product of one dollar per ton (\$1/ton) multiplied by the amount of tons of hazardous waste generated during the twelve (12)-month period ending June 30 of the calendar year immediately preceding January 1 of the calendar year in which payment is due. (For example, a generator would be billed in December 1992 for waste produced during the period July 1, 1991 through June 30, 1992.) The fee is applied to hazardous waste defined by or listed in 10 CSR 25-4.261 which is regulated as hazardous waste at the time of its generation except as paragraph (1)(A)1., 2. or 3. of this rule provides otherwise. The fee shall not exceed ten thousand dollars (\$10,000) per generator per year.

1. Hazardous waste that is discharged by a generator to a municipal wastewater treatment plant, which is regulated by a permit issued by the Missouri Clean Water Commission, shall be assessed a fee of zero cents per ton (0¢/ton) of hazardous waste so managed.

2. The fee shall not be imposed upon any generator who has registered with the department, in accordance with 10 CSR 25-5.262, less than ten (10) tons of hazardous waste per year.

[3. The fee shall not be imposed upon any hazardous waste fuel produced from processing, blending or other treatment.

A. Beginning with the December 1995 billing for hazardous waste generated July 1, 1994 through June 30, 1995, this exemption applies only to the hazardous waste fuel processed, blended or treated by a fuel blender receiving hazardous waste from the original generator who has already paid the tax in this section on the hazardous waste.

B. This exemption does not apply to hazardous waste used directly as a fuel.]

(D) An individual generator required to register in accordance with 10 CSR 25-5.262 shall pay a tax based on the volume by weight and management method in accordance with subsection (1)(E) of this rule and as required by section 260.479, RSMo. Sixty percent (60%) of revenues collected from this tax shall be transmitted by the department to the Missouri Department of Revenue for deposit in the hazardous waste remedial fund and forty percent (40%) of revenues collected from this tax shall be deposited in the hazardous waste fund. The tax will be based on the volume of hazardous waste generated and the management method utilized beginning on July 1 of the year preceding the billing year and through June 30 of the billing year. A company shall not annually pay more than [eighty] **eighty-two thousand forty dollars [(\$80,000)] (\$82,040)** collectively for all combined plant sites under the provisions of this subsection **unless the company also has a facility utilizing blended hazardous waste fuel**, nor shall a generator who is required to register in accordance with 10 CSR 25-5.262 pay less than [fifty] **fifty-one dollars twenty-eight cents [\$50] (\$51.28)** annually. However, as outlined in subdivision 260.479.2(2), RSMo these minimum and maximum amounts may be adjusted annually by the commission.

1. The following hazardous wastes are exempted from this tax:

A. Any hazardous wastes generated by the state and any political subdivision of the state;

B. Waste oil;

C. Any hazardous waste generated by a person who qualifies as a conditionally exempt generator due to the quantity of waste generated in one (1) month or accumulated at one (1) time as specified under 10 CSR 25-3.260(1)(A)25.; and

D. Hazardous wastes legitimately discharged into a publicly-owned treatment works and exempted in 10 CSR 25-4.261. (Comment: This exclusion does not exclude sludges that are hazardous waste and are generated by industrial wastewater treatment.)

2. This tax shall not be imposed upon the following hazardous waste: hazardous waste fuel produced from hazardous waste by processing, blending or other treatment; hazardous waste which must be disposed of as provided by a remedial plan for an abandoned or uncontrolled hazardous waste site under sections 260.435-260.550, RSMo or as part of a remedial plan required under sections 260.350-260.434, RSMo; or smelter slag waste from the processing of materials into reclaimed metals.

A. Beginning with the billing sent out in December 2001 for hazardous waste generated July 1, 2000 through June 30, 2001, the exemption for hazardous waste fuel produced from hazardous waste by processing, blending or other treatment shall be removed in accordance with subdivisions 260.479.5, RSMo and 260.479.7, RSMo. However, this tax on hazardous waste fuel shall be assessed upon and paid by the facility utilizing such hazardous waste fuel as a substitute for other fuel. The tax shall be assessed and paid based upon the reporting year in which the hazardous waste fuel is received by the facility. **No individual facility utilizing hazardous waste fuel shall pay more than eighty-two thousand forty dollars (\$82,040) annually as a facility utilizing blended hazardous waste fuel; however, this amount is in addition to the potential eighty-two thousand forty dollar (\$82,040) company cap which these facilities may be subject to as a generator of hazardous waste.**

[B. This exemption does not apply to hazardous waste used directly as a fuel.]

(E) A generator who is not otherwise exempted by paragraph (1)(D)1., 2. or 3. of this rule shall pay a tax in each of the applicable subdivisions.

1. SUBDIVISION A—TAX.

A. A generator who manages hazardous waste by on-site storage that requires a permit in accordance with 10 CSR 25-7.264 or interim status in accordance with 10 CSR 25-7.265 or off-site storage that is not in conjunction with incineration, resource recovery, treatment or any other similar management method and a generator utilizing a disposal facility shall use the following formula to calculate his/her tax for hazardous waste generated from each state fiscal year, July 1 of each year through June 30 of the following year. (Note: A disposal facility means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water and, at which, the waste will remain after closure.)

B. Tax in subdivision A = $[(\$21.80 + (\$.07989 \times \text{number of tons generated})) \times (.90785 \times \text{number of tons generated})] (\$22.36 + (\$.081926 \times \text{number of tons generated})) \times (.90785 \times \text{number of tons generated})$. **No individual site shall pay more than eighty-two thousand and forty dollars (\$82,040) annually for subdivision A waste.**

2. SUBDIVISION B—TAX.

A. A generator who utilizes a management technique not included in subdivision A shall use the following formula to calculate his/her tax for hazardous waste generated during the state fiscal year.

B. Tax in subdivision B = $[(\$10.90 + (\$.039945 \times \text{number of tons generated})) \times (.90785 \times \text{number of tons generated})] (\$11.18 + (\$.040963 \times \text{number of tons generated})) \times (.90785 \times \text{number of tons generated})$. **No individual site shall pay more than forty-one thousand twenty dollars (\$41,020) annually for subdivision B waste.**

3. TOTAL TAX.

A. The total tax for a generator is the applicable tax in subdivision A plus the applicable tax in subdivision B. No company shall pay **annually** more than *[eighty]* **eighty-two thousand forty dollars** *[\$80,000]* **(\$82,040)** or less than *[fifty]* **fifty-one dollars and twenty-eight cents** *[\$50]* **(\$51.28)** under subsection (1)(E) unless they are also a facility utilizing blended hazardous waste fuel.

B. The billing of each year will be based on information submitted by generators and facilities on the quarterly manifest summary reports required at 10 CSR 25-5.262(2)(D)1., 10 CSR 25-7.264(2)(E)3. and 10 CSR 25-7.265(2)(E). The billing will be based on waste generated during the previous state fiscal year.

(3) Fees and Taxes Applicable to Applicants for Permits or Certifications and to Owners/Operators of Treatment, Storage, Disposal or Resource Recovery Facilities.

(D) An applicant for a hazardous waste treatment, storage or disposal facility permit or resource recovery certification shall pay all applicable costs in accordance with 10 CSR 25-7.270(2)(B)9., 10 CSR 25-9.020(5), and as required by subdivisions 260.395.7(7) and 260.395.14(2), RSMo for engineering and geological review. Those costs for engineering and geological review will be billed in the following categories:

1. The project engineer's and geologist's time expended in the following areas:

A. Supervision of field work undertaken to collect geologic and engineering data for submission with the permit application or resource recovery certification application;

B. Review of geologic and engineering plans submitted in relation to the permit application or resource recovery certification application;

C. Assessment and attesting to the accuracy and adequacy of the geologic and engineering plans submitted in relation to the permit application or resource recovery certification application; and

D. The project engineer's and geologist's time billed at the engineer's and geologist's hourly rates multiplied by a fixed factor of *[two] three* and one-half *[(2 1/2)] (3 1/2)*. This fixed factor is comprised of direct labor; fringe benefits including, but not limited to, insurance, medical coverage, Social Security, Workers' Compensation and retirement; direct overhead, including, but not limited to, clerical support and supervisory engineering review and Hazardous Waste Program administrative and management support; general overhead, including, but not limited to, utilities, janitorial services, building expenses, supplies, expenses and equipment, and department indirect costs; and engineering support, including, but not limited to, training, peer review, tracking and coordination;

2. The direct costs associated with travel to the facility site to supervise any field work undertaken to collect geologic and engineering data or to ascertain the accuracy and adequacy of geologic and engineering plans, or both, including, but not limited to, expenses actually incurred for lodging, meals and mileage based on the rate established by the state of Missouri. These costs are in addition to the costs in paragraph (3)(D)1. of this rule; and

3. Costs directly associated with public notification and departmental public hearings, including legal notice costs, media broadcast costs, mailing costs, hearing officer costs, court reporter costs, hearing room costs and security costs, will be billed to the applicant. In a contested case as defined in section 536.070(4), RSMo, costs related to preparing and supplying one (1) copy of the transcript(s) of the case shall not be charged to the applicant.

(4) Corrective Action Oversight Cost Recovery.

(B) Corrective action cost recovery billing shall be based on the hourly rate(s) of departmental staff performing corrective action oversight multiplied by a fixed factor of *[two] three* and one-half *[(2 1/2)](3 1/2)*. This fixed factor is comprised of direct labor; fringe benefits including, but not limited to, insurance, medical coverage, Social Security, Workers' Compensation and retirement; direct overhead, including, but not limited to, clerical support and supervisory review and Hazardous Waste Program administrative and management support; general overhead, including, but not limited to, utilities, janitorial services, building expenses, supplies, expenses and equipment, and department indirect costs; and other

support activities, including, but not limited to, training, peer review, tracking and coordination.

AUTHORITY: sections 260.370, 260.380, 260.395, 260.437 and 260.479, RSMo 2000. Original rule filed Dec. 16, 1985, effective Oct. 1, 1985. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Dec. 17, 2001. Amended: Filed April 2, 2002.

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 is estimated to cost private entities one hundred thirty-seven thousand, two hundred sixty-two dollars and eighty-eight cents (\$137,262.88) in the next fiscal year and annually thereafter. A detailed fiscal note with the relevant cost information has been filed with the secretary of state.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 9:00 a.m. on June 4, 2002 at the Elm Street Conference Center, 1738 East Elm Street, Jefferson City, Missouri. Any person wishing to speak at the hearing shall send a written request to the Secretary of the Hazardous Waste Management Commission at PO Box 176, Jefferson City, MO, 65102-0176. To be accepted, written requests to speak must be postmarked by midnight on May 24, 2002. Faxed or e-mailed correspondence will not be accepted.

Any person may submit written comments on this rule action. Written comments shall be sent to the Director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO, 65102-0176. To be accepted, written comments must be postmarked by midnight on June 14, 2002. Faxed or e-mailed correspondence will not be accepted.

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

FISCAL NOTE
PRIVATE ENTITY COST

I. RULE NUMBER

Title: Hazardous Waste Fees & Taxes

Division: 25-Hazardous Waste Management Commission

Chapter: 12-Hazardous Waste Fees & Taxes

Type of Rulemaking: Proposed Amendment

Rule Number and Name: 10 CSR 25-12.010 - Fees & Taxes

II. SUMMARY OF FISCAL IMPACT

| Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule: | Classification by types of the business entities which would likely be affected: | Estimate in the aggregate as to the cost of compliance with the rule by the affected entities ⁴ : |
|--|--|--|
| 472 | Large Quantity Generators ¹ | \$27,155 |
| 2,721 | Small Quantity Generators ² | \$6,662 |
| 61 | Facilities billed by the Department for various engineering review activities ³ | \$103,445.88 |

¹The number of entities shown is the total number of current, active registrations classified as Large Quantity Generators.

²The number of entities shown is the total number of current, active registrations classified as Small Quantity Generators.

³The Department sends out quarterly bills for engineering review work performed at hazardous waste facilities. The number of facilities billed within a given quarter varies, but for the purposes of this fiscal note the Department assumes that 61 facilities will be billed per quarter. These facilities include facilities permitted by the department for treatment, storage, or disposal of hazardous waste, facilities undergoing corrective action under the oversight of the department, and facilities applying for a resource recovery certification from the department.

⁴Because the duration of this rule is unknown, an annual aggregate cost of compliance is provided

III. WORKSHEET

- Total Category Tax collected for FY2000 to date is \$2,192,000.
- The proposed increase to the category tax rates, individual site caps, and company caps will result in an aggregate increase of about \$55,896.
- Missouri generators paid about 60.5% of total collected, or about \$1,326,160.
- The proposed increase will result in Missouri generators paying an additional \$33,817.
- Because of the progressive nature of the Category Tax formula, Large Quantity Generators will pay about 80.3% of the increase or \$27,155 and Small Quantity Generators will be about \$6,662 or 19.7% of the increase.
- For each facility billed by the Department for corrective action, engineering or resource recovery review work, increasing the multiplier from 2.5 to 3.5 is estimated to result in an average increase of approximately \$1703.56 for the first year following the effective date of the amendment.
- The estimated additional amount was calculated based upon Department records of bills issued in the most recent 4 quarters for which billing information was available. The highest 5% of bills and the lowest 5% of bills were eliminated in order to provide a more accurate estimate. An average bill was then calculated using the current multiplier of 2.5 and also calculated using the proposed multiplier of 3.5. The estimated additional amount is the difference between the average bill based on the current multiplier and the average bill based on the proposed

multiplier. This additional amount was projected over the first four quarters following the effective date of the proposed amendment.

8. For the 61 facilities projected to be billed by the Department in the first four quarters following the effective date of this amendment, the estimated additional annual cost is \$103,445.88. It is assumed that this amount will remain constant throughout the duration of the rule.

IV. ASSUMPTIONS

1. It is assumed that an average of 61 hazardous waste facilities will be billed for each of the first four quarters following the projected effective date of this amendment. This figure is projected based upon department records for number of facilities billed over the last five quarters which indicate a slight increase in the number of facilities billed each quarter.
2. Based upon the average number of facilities billed per quarter, it is assumed that a total of 243 bills will be issued in the first 4 quarters following the projected effective date of this amendment
3. It is assumed that the additional revenue projected to be generated by the increase in the multiplier in the first four quarters following the effective date of this amendment will remain constant for the duration of the rule.

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

PROPOSED AMENDMENT

12 CSR 10-2.015 Employers' Withholding of Tax. The department proposes to amend sections (4) and (12).

PURPOSE: This amendment clarifies the employer reporting responsibilities of employers. It also changes the supplemental wage withholding tax rate and deletes the method for determining filing frequency of a complex employer.

(4) Employer With More Than One (1) Payroll Unit—Complex Employer. If a consolidated report and remittance of the tax withheld cannot be made by the employer because of the complexity of the organization, branch offices or divisions may be designated as withholding agents. These agents can perform the actual withholding and remitting. However, regardless of any internal arrangements which may be established by the complex employer, the legal responsibility and liability under the law still rests with the home office. If the complex employer has designated withholding agents, and the agents wish to claim the compensation deduction, only one (1) agent will be entitled to the full deduction and the remaining agents will be entitled to one-half percent (1/2%) deduction of income taxes withheld if the returns are filed timely. [The filing frequency for a complex employer is determined by the total amount withheld by all reporting units.]

(12) Supplemental Wage Payments. If supplemental wages are paid, such as bonuses, commissions, overtime pay, back pay, including retroactive wage increases or reimbursements for non-deductible moving expenses in the same payment with regular wages, withhold Missouri income tax as if the total of the supplemental and regular wages were a single wage payment for the regular payroll period. If supplemental wages are paid in a different payment from regular wages, the method of withholding income tax depends in part on whether income tax is withheld from the employee's regular wages.

(A) If income tax has been withheld from the employee's regular wages, choose either one (1) of the following methods for withholding income tax on the supplemental wages:

1. Method One. Withhold at a flat percentage rate of [three] six percent [(3%)] (6%) of the supplemental wages, using zero withholding allowances; or

2. Method Two. Add the supplemental wages to the employee's regular wages paid to the employee within the same calendar year for the payroll period and determine the income tax to be withheld as if the aggregate amount were one (1) payment. Subtract the tax already withheld from the regular wage payment and withhold the remaining tax from the supplemental wage payment.

AUTHORITY: section 143.961, RSMo [1994] 2000. This rule was previously filed as "Missouri Employer's Tax Guide" Feb. 20, 1973, effective March 2, 1973. Original rule filed Jan. 29, 1974, effective Feb. 8, 1974. For intervening history, please consult the Code of State Regulations. Amended: Filed April 1, 2002.

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 the proposed amendment with the

Department of Revenue, Office of Legislation and Regulations, PO Box 629, Jefferson City, MO 65105-0629. 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 3—State Sales Tax**

PROPOSED RESCISSION

12 CSR 10-3.008 Manufacturers and Wholesalers. This rule interpreted the sales tax law as it applied to manufacturers and wholesalers, and interpreted and applied sections 144.010(8) and 144.020, RSMo.

PURPOSE: This rule is being rescinded because it is superseded by other rules.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 27 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-3 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refined March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed April 1, 2002.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Department of Revenue, Office of Legislation and Regulations, PO Box 629, Jefferson City, MO 65105. 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 3—State Sales Tax**

PROPOSED RESCISSION

12 CSR 10-3.031 Dual Operators. This rule indicated when a contractor is considered a dual operator and sets forth the procedures to be used by the dual operator to determine when purchases become subject to sales tax. Examples are given for clarification purposes.

PURPOSE: This rule is being rescinded because it is superseded by other rules.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Oct. 15, 1985, effective March 24, 1986. Rescinded: Filed April 1, 2002.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Department of Revenue, Office of Legislation and Regulations, PO Box 629, Jefferson City, MO 65105. 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 3—State Sales Tax**

PROPOSED RESCISSION

12 CSR 10-3.034 Modular or Sectional Homes. This rule interpreted the sales tax law as it applied to modular or sectional homes and interpreted and applied sections 144.010, 144.020 and 700.110, RSMo.

PURPOSE: This rule is being rescinded because it is superseded by other rules.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 91 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-13 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed April 1, 2002.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Department of Revenue, Office of Legislation and Regulations, PO Box 629, Jefferson City, MO 65105. 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 3—State Sales Tax**

PROPOSED RESCISSION

12 CSR 10-3.042 State or Federal Concessionaires. This rule interpreted the sales tax law as it applied to state or federal concessionaires and interpreted and applied sections 144.010, 144.020 and 144.021, RSMo.

PURPOSE: This rule is being rescinded because it is superseded by other rules.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 010-17 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed April 1, 2002.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Department of Revenue, Office of Legislation and Regulations, PO Box 629, Jefferson City, MO 65105. 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 3—State Sales Tax**

PROPOSED RESCISSION

12 CSR 10-3.044 Labor or Services Rendered. This rule interpreted the sales tax law as it applied to labor services rendered and interpreted and applied sections 144.010 and 144.020, RSMo.

PURPOSE: This rule is being rescinded because it is superseded by other rules.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 17 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-18 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985. Rescinded: Filed April 1, 2002.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Department of Revenue, Office of Legislation and Regulations, PO Box 629, Jefferson City, MO 65105. 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 3—State Sales Tax**

PROPOSED RESCISSION

12 CSR 10-3.116 Service Station Ownership. This rule interpreted the sales tax law as it applied to service station ownership and interpreted and applied sections 144.010 and 144.021, RSMo.

PURPOSE: This rule is being rescinded because it is superseded by other rules.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 90 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-51 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed April 1, 2002.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Department of Revenue, Office of Legislation and Regulations, PO Box 629, Jefferson City, MO 65105. 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 3—State Sales Tax**

PROPOSED RESCISSION

12 CSR 10-3.144 Redemption of Coupons. This rule interpreted the sales tax law as it applied to the redemption of coupons and interpreted and applied sections 144.010 and 144.021, RSMo.

PURPOSE: This rule is being rescinded because it is superseded by other rules.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 95 Jan. 22, 1975, effective Feb. 1, 1975. S.T. regulation 010-65 was last filed Dec. 5, 1975, effective Dec. 15, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985. Amended: Filed Nov. 4, 1992, effective May 6, 1993. Rescinded: Filed April 1, 2002.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Department of Revenue, Office of Legislation and Regulations, PO Box 629, Jefferson City, MO 65105. 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 3—State Sales Tax**

PROPOSED RESCISSION

12 CSR 10-3.158 Sale on Installed Basis. This rule interpreted the sales tax law as it applied to sales made on an installed basis and interpreted and applied sections 144.010 and 144.021, RSMo.

PURPOSE: This rule is being rescinded because it is superseded by other rules.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 17 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-74 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed April 1, 2002.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Department of Revenue, Office of Legislation and Regulations, PO Box 629, Jefferson City, MO 65105. 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 3—State Sales Tax**

PROPOSED RESCISSION

12 CSR 10-3.179 Separate Taxable Transactions Involving the Same Tangible Personal Property and the Same Taxpayer. This rule identified the circumstances when the sale tax would apply to tangible personal property in more than one instance under diverse transactions and interpreted and applied sections 144.010, 144.020 and 144.021, RSMo.

PURPOSE: This rule is being rescinded because it is superseded by other rules.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Sept. 7, 1984, effective Jan. 12, 1985. Rescinded: Filed April 1, 2002.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Department of Revenue, Office of Legislation and Regulations, PO Box 629, Jefferson City, MO 65105. 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 3—State Sales Tax**

PROPOSED RESCISSION

12 CSR 10-3.233 Export Sales. This rule interpreted the sales tax law as it applied to export sales and interpreted and applied sections 144.010 and 144.030, RSMo.

PURPOSE: This rule is being rescinded because it is superseded by other rules.

AUTHORITY: section 144.270, RSMo 1994. Original rule filed Sept. 7, 1984, effective Jan. 12, 1985. Rescinded: Filed April 1, 2002.

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

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

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

Department of Revenue, Office of Legislation and Regulations, PO Box 629, Jefferson City, MO 65105. 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 8—Inheritance and Estate Tax**

PROPOSED RESCISSION

12 CSR 10-8.040 Homestead Allowance. This rule served as an interpretive guideline under sections 145.090(3) and 145.090(5), RSMo 1969 in determining the homestead allowance for the surviving spouse and unmarried minor children of a decedent.

PURPOSE: This rule is being rescinded because the granting statutes are no longer in effect.

AUTHORITY: sections 136.030 and 136.120, RSMo 1969. Inheritance tax rule 61-090 was last filed on Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed April 1, 2002.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Department of Revenue, Office of Legislation and Regulations, PO Box 629, Jefferson City, MO 65105. 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 8—Inheritance and Estate Tax**

PROPOSED RESCISSION

12 CSR 10-8.050 Interest. This rule was intended as an interpretive guideline in determining taxes and interest, when due, under section 145.110, RSMo 1986.

PURPOSE: This rule is being rescinded because the granting statutes are no longer in effect.

AUTHORITY: sections 136.030 and 136.120, RSMo 1969. Inheritance tax rule 61-110 was last filed on Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed April 1, 2002.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Department of Revenue, Office of Legislation and Regulations, PO Box 629, Jefferson City, MO 65105. 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 8—Inheritance and Estate Tax**

PROPOSED RESCISSION

12 CSR 10-8.060 Payment of Tax—Receipt—Refund. This rule was intended as an interpretive guideline in determining when money is to be paid to the director of revenue—issuance of a receipt therefore, and taxes paid erroneously to be refunded, under sections 145.140 and 145.250, RSMo 1986.

PURPOSE: This rule is being rescinded because the granting statutes are no longer in effect.

AUTHORITY: sections 136.030 and 136.120, RSMo 1969. Inheritance tax rule 61-140 was last filed on Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed April 1, 2002.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Department of Revenue, Office of Legislation and Regulations, PO Box 629, Jefferson City, MO 65105. 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 8—Inheritance and Estate Tax**

PROPOSED RESCISSION

12 CSR 10-8.070 Probate Court to Determine Tax—Procedure. This rule was intended as a guideline as to the matter of allowable claims and deductions against the estate under section 473.360, RSMo 1969 and exception thereto under sections 473.367 and 473.370, RSMo 1969, and included certain procedural methods of tax computations.

PURPOSE: This rule is being rescinded because the granting statutes are no longer in effect.

AUTHORITY: sections 136.030 and 136.120, RSMo 1969. Inheritance tax rule 61-150 was last filed on Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed April 1, 2002.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Department of Revenue, Office of Legislation and Regulations, PO Box 629, Jefferson City, MO 65105. 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 8—Inheritance and Estate Tax**

PROPOSED RESCISSION

12 CSR 10-8.080 Appraisers Duties and Report of Appraisal. This rule served as an interpretive guideline as to those matters concerning the assessment of inheritance and estate tax and preparation of the report of appraiser under section 145.160, RSMo 1969.

PURPOSE: This rule is being rescinded because the granting statutes are no longer in effect.

AUTHORITY: sections 136.030 and 136.120, RSMo 1969. Inheritance tax rule 61-160 was last filed on Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed April 1, 2002.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Department of Revenue, Office of Legislation and Regulations, PO Box 629, Jefferson City, MO 65105. 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 8—Inheritance and Estate Tax**

PROPOSED RESCISSION

12 CSR 10-8.090 Errors in Appraiser's Reports—Exceptions to Appraiser's Report. This rule was intended as a guideline for the filing of exceptions, when an interested party felt any part of the appraiser's report to be in error under section 145.170, RSMo 1969.

PURPOSE: This rule is being rescinded because the granting statutes are no longer in effect.

AUTHORITY: sections 136.030 and 136.120, RSMo 1969. Inheritance tax rule 61-170 was last filed on Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed April 1, 2002.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Department of Revenue, Office of Legislation and Regulations, PO Box 629, Jefferson City, MO 65105. 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 8—Inheritance and Estate Tax**

PROPOSED RESCISSION

12 CSR 10-8.100 Report of Appraiser. This rule served as an interpretive guideline in the matter of the statutory time limit in which the probate court must have submitted a certified copy of the report to the director of revenue and documents that accompanied the report as attachments under section 145.180, RSMo 1969.

PURPOSE: This rule is being rescinded because the granting statutes are no longer in effect.

AUTHORITY: sections 136.030 and 136.120, RSMo 1969. Inheritance tax rule 61-180 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed April 1, 2002.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Department of Revenue, Office of Legislation and Regulations, PO Box 629, Jefferson City, MO 65105. 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 8—Inheritance and Estate Tax**

PROPOSED RESCISSION

12 CSR 10-8.110 Valuation of Life Estates and Remainder—Methods of Computation—Mortality Table. This rule was intended as a general guideline as to those matters considered by the director of revenue in determining the value of a life estate and remainders and mortality table used by the insurance department for the purpose of computing the tax on the basis of five percent, under section 145.200, RSMo 1969.

PURPOSE: This rule is being rescinded because the granting statutes are no longer in effect.

AUTHORITY: sections 136.030 and 136.120, RSMo 1969. Inheritance tax rule 61-200 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed April 1, 2002.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Department of Revenue, Office of Legislation and Regulations, PO Box 629, Jefferson City, MO 65105. 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 8—Inheritance and Estate Tax

PROPOSED RESCISSION

12 CSR 10-8.130 Exercise of Power of Appointment—Unlimited Power of Encroachment. This rule served as a guideline as to those matters considered by the director of revenue in determining the taxable interest derived from any disposition of property upon exercising a power of appointment or an unlimited power to encroach upon the corpus of a testamentary trust.

PURPOSE: This rule is being rescinded because the granting statutes are no longer in effect.

AUTHORITY: sections 136.030 and 136.120, RSMo 1969. Inheritance tax rule 61-230 was last filed [on] Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed April 1, 2002.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Department of Revenue, Office of Legislation and Regulations, PO Box 629, Jefferson City, MO 65105. 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 8—Inheritance and Estate Tax

PROPOSED RESCISSION

12 CSR 10-8.140 Refund. This rule was intended as a guideline in the determination of the requirements of satisfactory proof of overpayment by an order of probate court, and presentation of the court order to the director of revenue within two (2) years from the date order was certified by the probate court.

PURPOSE: This rule is being rescinded because the granting statutes are no longer in effect.

AUTHORITY: sections 136.030 and 136.120, RSMo 1986. Inheritance tax rule 61-250 was last filed [on] Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed April 1, 2002.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Department of Revenue, Office of Legislation and Regulations, PO Box 629, Jefferson City, MO 65105. 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 8—Inheritance and Estate Tax

PROPOSED RESCISSION

12 CSR 10-8.150 Mortality Table. The mortality table used by the director of revenue, under section 145.220, RSMo 1986 was assigned a rule number in order to comply with the uniform procedures adopted by the secretary of state under section 536.023, RSMo 1986. It was used in determining the value of life estates.

PURPOSE: This rule is being rescinded because the granting statutes are no longer in effect.

AUTHORITY: sections 136.030 and 136.120, RSMo 1969. Mortality table was last filed [on] Dec. 31, 1975, effective Jan. 10, 1976. Rescinded: Filed April 1, 2002.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Department of Revenue, Office of Legislation and Regulations, PO Box 629, Jefferson City, MO 65105. 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 102—Sales/Use Tax—Taxpayers Rights

PROPOSED AMENDMENT

12 CSR 10-102.016 Refunds and Credits. The director proposes to amend subsections (2)(A) and (3)(A).

PURPOSE: This amendment is to remove language requiring a notary on refund applications due to a statutory change to section 144.190, RSMo, in which notaries are no longer a statutory requirement for filing a sales/use tax refund claim.

(2) Basic Application of Tax.

(A) A taxpayer may file a claim for a refund within three (3) years after the date of an overpayment. The date of the overpayment is the due date of the original return or the date paid whichever is later. The department will not consider a claim unless it is filed within the three (3)-year period. Every claim must be in writing [under oath], signed by the applicant, and must state the specific grounds upon which the claim is founded. If the overpayment is due to an error or omission in a previously filed return, the claim must be accompanied by an amended return for each period in which the tax was originally reported. If the error or omission is corrected in the return immediately following the filing period in which the error or omission occurred, no amended return or claim for refund is required.

(3) Examples.

(A) A vendor collects tax on a sale to a customer that takes place in August and reports it on its August sales tax return. In October, that customer presents a valid exemption certificate for the August sale. To claim a refund, the vendor must complete a [notarized] claim for refund and submit it with a copy of the

invoice, the customer's exemption certificate and an amended August return.

AUTHORITY: section 144.270, RSMo [1994] 2000. This rule originally filed as 12 CSR 10-110.016. Original rule filed Sept. 29, 1999, effective March 30, 2000. Changed to 12 CSR 10-102.016 Dec. 31, 2000. Amended: Filed April 1, 2002.

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 Revenue, Office of Legislation and Regulations, PO Box 629, Jefferson City, MO 65105-0629. 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 103—Sales/Use Tax—Imposition of Tax**

PROPOSED RULE

12 CSR 10-103.395 Physicians, Dentists and Optometrists

PURPOSE: Sections 144.010.1(10) and 144.020.1(1), RSMo, tax the retail sale of tangible personal property. This rule interprets the tax laws as they apply to physicians, dentists and optometrists.

(1) In general, physicians, dentists and optometrists are rendering services not subject to tax. Tangible personal property purchased by physicians, dentists and optometrists and used or consumed in the practice of their professions is subject to tax when purchased. Tangible personal property purchased by physicians, dentists and optometrists and not used or consumed in the practice of their professions is subject to tax when resold by them.

(2) Definition of Terms.

(A) Dentist—a person licensed to practice dentistry.

(B) Optometrist—a person licensed to practice optometry.

(C) Physician—a person licensed to practice medicine, which includes an ophthalmologist.

(D) Used in the practice of the profession—employed in providing, directly or indirectly, professional care.

(3) Basic Application of Tax.

(A) Physicians, dentists and optometrists must pay tax on the purchase of items used or consumed in the practice of their profession. Such items include, but are not limited to, medical instruments, bandages, splints, x-ray film, medical equipment, eyeglasses, frames and lenses.

(B) Physicians, dentists and optometrists that sell items that are not used in the practice of their profession are responsible for collecting and remitting the tax on the gross receipts derived from these sales.

(C) Sales by persons other than physicians or optometrists of eyeglasses, frames and lenses are subject to tax.

(D) See also 12 CSR 10-110.013 Drugs and Medical Equipment.

(4) Examples.

(A) A physician purchases diagnostic equipment, surgical tools and supplies for use in providing care to her patients. These purchases are subject to tax.

(B) An optometrist purchases eyeglasses, frames and lenses and uses these items in the diagnosis, treatment and correction of conditions of the human eye. The optometrist charges the patient a separate amount for the frame and lenses. The optometrist should pay tax on these items because they are consumed in the practice of his profession. The amount charged the patient for the frame and lenses is not a sale at retail and is not subject to tax.

(C) A retailer of prescription eyeglasses, lenses and frames advertises that an optometrist is available to examine customers. The optometrist performs eye examinations for customers of the retailer but the retailer owns the inventory held for sale. Sales of the eyeglasses, lenses and frames are subject to tax because they are not sales by the optometrist.

(D) An optician makes and sells eyeglasses to fill a patient's prescription. These sales are subject to tax.

(E) A dentist sells accessories such as travel kits, mirrors and other items not related to the practice of the profession. These sales are subject to tax.

AUTHORITY: sections 144.010 and 144.020, RSMo Supp. 2001. Original rule filed April 1, 2002.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Revenue, Office of Legislation and Regulations, PO Box 629, Jefferson City, MO 65105. 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 108—Sales/Use Tax—Taxable Services**

PROPOSED RULE

12 CSR 10-108.700 Lease or Rental of Tangible Personal Property

PURPOSE: This rule explains the application of tax to leases or rentals of tangible personal property (other than motor vehicles, trailers, boats or outboard motors) under section 144.020.1(8), RSMo.

(1) In general, payments for the lease of tangible personal property are subject to tax unless the lessor paid tax on the purchase of the property. Payments for the lease of tangible personal property are exempt from tax if the sale of the tangible personal property would be exempt.

(2) Definition of Terms.

(A) Lease—any transfer of the right to possess or use tangible personal property for a term in exchange for consideration. This includes a rental. However, if tangible personal property is used to provide a service to a customer and the use of the property is a necessary or mandatory part of the service transaction, then any temporary transfer of the property to the customer as part of the service transaction is not a lease or rental of the property.

(B) Lessor—a person who transfers the right to possess or use tangible personal property under a lease.

(C) Lessee—a person who receives the right to possess or use tangible personal property under a lease.

(D) Sublease—a lease of tangible personal property by a person who acquired the right to possess or use the property through a lease.

(E) Sublessor—a person who acquires the right to possess or use tangible personal property under a lease and subsequently transfers the right to possess or use the tangible personal property to another person under a sublease.

(3) Basic Application of the Tax.

(A) When a lessor purchases tangible personal property for the purpose of leasing, the lessor may pay tax on the purchase price or claim a resale exemption based on the intended lease of the tangible personal property.

1. If the lessor pays tax on the purchase price, the subsequent lease of the tangible personal property is not subject to tax.

2. If the lessor claims a resale exemption on its purchase, the amount charged for lease of the tangible personal property is subject to tax.

3. The election to pay tax on the purchase price must be made at the time the tangible personal property is purchased by the lessor. If tax is not paid on the tangible personal property at the time of the purchase, the lease is subject to tax.

4. If the lessor acquires the property in some way other than a taxable purchase (e.g., through a repossession or foreclosure, or by self-manufacturing), the amount charged for lease of the tangible personal property is subject to tax.

(B) Subleases—When property is leased for the purpose of subleasing and the original lessor did not pay tax on its purchase, the sublessor has the option of either paying tax on its lease payments, or claiming a resale exemption and collecting tax on its subsequent sublease of the property.

1. If the sublessor pays tax on its lease or rental, the sublease of the property is not subject to tax.

2. If the sublessor makes a claim of exemption from tax based on resale, the amount charged for sublease of the tangible personal property is subject to tax.

3. The election to pay tax on the rental must be made at the time the property is first rented to the sublessor. If tax is not paid on the property at that time, the sublease payments are subject to tax.

(C) Exemptions—Tangible personal property that is exempt from tax for any reason upon a sale of such property is also exempt from tax upon the lease of such property.

(D) Sale and leaseback transactions—Transactions structured as sales and leasebacks will be treated as nontaxable financing transactions if: (i) the seller-lessee previously purchased the tangible personal property and paid tax on the purchase price; (ii) the “lease” transaction creates a security interest (see below) in the property; and (iii) the purchaser-lessor holds no ownership interest in the property, other than the security interest, and does not claim any deduction, credit or exemption with respect to the property for federal or state income tax purposes. All three (3) of these elements must be present, or the transaction will be treated as a sale and subsequent lease, and taxed as any other sale and lease.

1. Whether the transaction creates a security interest in the property depends on the intent of the parties. If the lessee becomes the owner of the property for no additional consideration or for nominal consideration after all of the agreed lease payments are made, then there is a presumption that the transaction creates a security interest. If the lessee must pay more than nominal consideration to acquire title and ownership to the property after all the agreed lease payments are made, then the agreement will be considered to create a security interest in the property only if four (4) or more of following factors are present:

A. The lessee is required to insure the property in favor of the lessor;

B. The lessee bears the risk of loss or damage;

C. The lessee is required to pay for taxes, repairs and maintenance;

D. The agreement establishes default provisions governing acceleration and resale;

E. The warranties that usually apply to true leases of such property are expressly disclaimed and excluded;

F. The lease term is equal to or exceeds the economic life of the property; or

G. The lease payments equal or exceed the purchase price of the property plus interest.

(E) Leases with an option to purchase—leases that include an option to purchase the property are taxed like all other leases. If the lessee exercises the option to purchase the property, the additional amount paid for the purchase of the property is also subject to tax.

(F) Leases of property in places of amusement, entertainment and recreation are taxed as provided in 12 CSR 10-108.100.

(G) Interstate transactions—Leases of property in Missouri and taken outside the state by the lessee are subject to Missouri sales tax. If the lessor or a common carrier delivers the property to a location outside Missouri and the property remains outside Missouri, the lease or rental is not subject to Missouri tax. Property leased from a lessor outside Missouri and used in Missouri is subject to Missouri use tax.

(H) Local tax—the local taxes applicable to a lease of tangible personal property are determined in the same manner as if the lease or rental were a sale of the property. See 12 CSR 10-117.100.

(I) Repair parts for leased equipment—A lessor may not claim a resale exemption on repair or replacement parts used on leased tangible personal property unless:

1. The parts are provided to the lessee at no additional charge and the lessor collects tax on the lease payments; or

2. The lessor charges the lessee for the part and collects tax on the charge.

(4) Examples.

(A) A taxpayer purchases seven lawnmowers and pays tax on the purchase price. The subsequent rental of the lawnmowers is not subject to tax.

(B) A taxpayer purchases seven lawnmowers and provides the seller with a resale exemption certificate. The subsequent rental of the lawnmowers is subject to tax, however, the purchase is not subject to tax. The taxpayer must collect and remit tax on the rental payments for the lawnmowers. After renting the lawnmowers for three years, the taxpayer sells them. The taxpayer must collect and remit tax on the sale of the used lawnmowers.

(C) A taxpayer purchases three airplanes and provides the seller with a resale exemption certificate. Taxpayer then offers the airplanes for rental. Taxpayer must collect and remit tax on the rental payments for the airplanes. Subsequently, taxpayer begins offering private charter services in addition to airplane rental. Taxpayer uses the rental airplanes to perform the private charter services. Taxpayer owes tax on the original purchase price of any airplanes used in the private charter service and should continue to pay tax on any future rental payments for such airplanes. Taxpayer should also continue to collect tax on the rental payments paid for any airplanes that are not used for private charters.

(D) A financial services company provides stock prices and other financial data to subscribers for a fee. The information is transmitted to the subscribers electronically. To receive the information, subscribers are required to use equipment provided by the financial services company. The subscription fee includes the price charged for the use of the equipment. Title to the equipment remains with the financial services company. The charges for the

equipment do not constitute rental payments. The financial services company should pay tax on its purchase of the equipment.

(E) Same facts as subsection (4)(D) except the use of the equipment provided by the financial service company is not required or necessary to receive the data. The charges paid by the customers for the use of the equipment are rent, and are subject to tax, unless the company paid tax on its purchase of the equipment.

(F) A taxpayer leases twelve computers and provides the lessor with a resale exemption certificate. The taxpayer then subleases the computers to its customers. The sublease of the computers by the taxpayer is subject to tax, however, the original lease of the computers is not subject to tax.

(G) A charitable organization that has received a letter of exemption from the Department of Revenue leases a photocopier for use in its office. The lease payments are exempt from tax, provided the organization uses the copier in its charitable functions.

(H) A doctor purchases a medical device from a medical supply company and pays tax on the purchase price. Subsequently, the doctor enters into a sale and leaseback agreement with a leasing company. Pursuant to the agreement, the doctor transfers title to the medical device to the leasing company, and in return, the company pays the doctor the purchase price of the device. The agreement states that the leasing company will hold title to the medical device and lease it to the doctor. The lease payments will cover the full purchase price of the device plus interest. Title to the device will transfer back to the doctor for no additional consideration after all of the lease payments are paid. The agreement also states that the leasing company has no right to control or possess the medical device, as long as the doctor complies with the agreement. The leasing company holds no ownership interest in the property and does not claim any deduction with respect to the property on its federal income tax returns. Based on these facts, the leasing company only has a security interest in the medical device. The sale and leaseback agreement will be treated as a financing transaction, and neither the sale price paid by the leasing company nor the lease payments are subject to tax.

(I) Same facts as subsection (4)(H) except the sale and leaseback agreement expressly provides that the leasing company is entitled to all deductions, credits, and other tax benefits provided under federal tax law to the owner of the property. The leasing company claims a depreciation deduction with respect to the medical device. The sale and leaseback agreement will be treated as a sale and a subsequent lease, and taxed as any other sale and lease.

(J) An appliance store purchases a washing machine from a manufacturer, and presents a resale exemption certificate to the manufacturer. The store subsequently leases the washing machine to a customer pursuant to a "lease-purchase" agreement. Under the agreement, the customer may purchase the washing machine at any time, by paying the agreed purchase price. Any lease payments paid by the customer will reduce the purchase price. The lease payments and the purchase option price are both subject to tax.

(K) A construction company leases a bulldozer from an equipment company that has its business office in Jefferson City, Cole County, Missouri. The construction company picks up the bulldozer from the leasing company's warehouse in Cape Girardeau, Missouri. The construction company then transports the bulldozer to its jobsite in Illinois. The construction company owes sales tax on the lease payments at the rate applicable to Jefferson City, Cole County, Missouri.

(L) Same facts as subsection (4)(K) except the leasing company delivers the bulldozer to the Illinois jobsite. The lease payments are not subject to Missouri tax.

(M) A Missouri construction company leases a crane from an Iowa equipment company. The crane is delivered to the construction company at its office in Kirkwood, St. Louis County, Missouri and used on construction jobs in Rolla and Springfield, Missouri. The construction company should pay Missouri use tax

and any local use tax at the rate applicable to Kirkwood, St. Louis County, Missouri.

(N) Same facts as (4)(M) except the construction company picks up the crane in Iowa and brings it to St. Louis County. The construction company should pay Missouri use tax and any local use tax at the rate applicable to Kirkwood, St. Louis County, Missouri.

AUTHORITY: section 144.020, RSMo Supp. 2001. Original rule filed April 1, 2002.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Revenue, Office of Legislation and Regulations, PO Box 629, Jefferson City, MO 65105. 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.