Volume 28, Number 18
Pages 1549–1608
September 15, 2003

Matt Blunt

Secretary of State

MISSOURI REGISTER

The *Missouri Register* is published semi-monthly by

SECRETARY OF STATE

MATT BLUNT

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

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
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MISSOURI REGISTER

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

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HOW TO CITE RULES AND RSMo

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

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

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

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

Each department of state government is assigned a title. Each agency or division 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—The most recent version of the statute containing the section number and the date.

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

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

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

Title 2—DEPARTMENT OF AGRICULTURE
Division 70—Plant Industries
Chapter 13—Boll Weevil Eradication

EMERGENCY AMENDMENT

2 CSR 70-13.030 Program Participation, Fee Payment and Penalties. The division is amending section (1), deleting section (2) and amending and renumbering sections (3)–(5).

PURPOSE: This amendment eliminates the requirements of filing intended cotton acreage for the program and associated penalties, allows the Certified Cotton Growers Organization to designate due date for assessments on an annual basis, adds an option of filing an assignment form with Farm Service Agency (FSA) when requesting a waiver for assessment payment, requires filing a location registration form for noncommercial cotton, and eliminates the process of filing stalk destruction forms at local FSA offices.

*EMERGENCY STATEMENT: This emergency amendment is necessary to protect the welfare of cotton growers in the state who must participate in this mandatory program. This emergency amendment allows adjustment of the assessment due date and provides a procedure for any cotton grower to delay assessment payment without penalties or interest. Weather conditions have delayed harvest, which necessitates an adjustment in the assessment payment date and process. This amendment will further impact cotton growers by providing a procedure to delay assessment payments and not incur penalties or interest. As a result, the Plant Industries Division finds a compelling governmental interest, which requires this emergency amendment. A proposed amendment, which covers the same material, is published in this issue of the **Missouri Register**. The scope of this emergency amendment is limited to the circumstances creating the emergency amendment and complies with the protections extended in the **Missouri** and **United States Constitutions**. The Plant Industries Division believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed August 21, 2003, effective August 31, 2003 and expires February 16, 2004.*

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.

(1) Upon passage of the grower referendum conducted under the provisions of section 263.527, RSMo 2000, all cotton growers in the affected regions as set out in 2 CSR 70-13.015, as defined by the Certified Cotton Growers Organization, shall be required to participate in the boll weevil eradication program as follows:

(A) Upon implementation of a boll weevil eradication program, all cotton growers in an eradication area shall certify their actual cotton acreage with their local Farm Service Agency (FSA) office in accordance with the FSA final certification date*[.]***;** *[All cotton growers shall also file a cotton acreage reporting form with their local FSA office by May 15, indicating intended cotton acreage to be planted during the current growing season. Intended cotton acreage filing will be required starting with the second year of the eradication program;]*

(B) Each year the boll weevil eradication program is in operation, the Certified Cotton Growers Organization shall set an assessment fee *[by January 1 of]* each year, which shall not exceed fifteen dollars ($15) per acre **of cotton as certified with FSA including any non-certified cotton acreage that is trapped and/or treated**; *[and]*

(C) *[All fees paid by cotton growers shall be made payable and submitted to the Missouri Department of Agriculture by October 15 d]***D**uring each year that the eradication program is in operation*[.]***, all cotton growers shall pay all fees to the Missouri Department of Agriculture by the date set by the Certified Cotton Growers Organization, but in no event shall each year's payment date be set after December 1; and**

(D) Upon notification from the department, the grower of any noncommercial or ornamental cotton grown in the state shall file a location registration form with the department.

[(2) Any cotton grower underreporting by more than ten percent (10%) of the actual planted cotton acreage, as determined by FSA certified or measured acreage, will be assessed a penalty of five dollars ($5) per acre on that

acreage, in addition to the annual assessment fee. Any cotton grower underreporting cotton acreage by more than ten percent (10%) may apply for a waiver. Any cotton grower applying for a waiver shall make application in writing, to the director stating the conditions under which they request the waiver. The decision whether or not to waive all or part of these requirements shall be made by the director and notification given to the cotton grower within two (2) weeks after receipt of such application.]

[(3)] **(2)** Failure to pay all assessments due on or before *[October 15 of the current growing season]* **such date as designated by the Certified Cotton Growers Organization** will result in a penalty fee of **up to** five dollars ($5) per acre. A cotton grower who fails to pay all assessments, including penalties, is subject to all provisions of section 263.534, RSMo 2000.

[(4)] **(3)** Any cotton grower may apply for a waiver requesting delayed payment**.** *[under conditions of financial hardship or bankruptcy.]* Any cotton grower applying for a waiver shall make application in writing to the director on a form prescribed by the director. This request must be accompanied by **an assignment of payment form (FSA form CCC-36, which is incorporated by reference) designating the Missouri Department of Agriculture as first assignee. Should a grower not be eligible to use FSA form CCC-36 as required,** a financial statement from a bank or lending agency *[supporting such request]* **will be required to be submitted with the waiver application**. *[No waiver for financial hardship shall be granted to any cotton grower whose taxable net income for the previous year exceeds fifteen thousand dollars ($15,000).]* Any cotton grower granted a waiver request *[for financial hardship or bankruptcy]* **and submitting FSA form CCC-36 will not be charged additional penalties or interest for delayed payment. Growers who do not have an FSA CCC-36 form on file with the waiver application** will be charged interest payable at a rate equal to one percent (1%) above prime per annum as listed in the *Wall Street Journal* on the date of the waiver application. The decision whether or not to waive all or part of these requirements shall be made by the director with the approval of the Board of Directors of the Certified Cotton Growers Organization and notification given to the cotton grower by the director within thirty (30) days after receipt of such application. Failure to file a completed waiver request for delayed payment on or before *[October 15 of the current growing season]* **the designated assessment payment deadline** will result in a penalty fee of **up to** five dollars ($5) per acre.

[(5)] **(4)** At such times as are beneficial to the boll weevil eradication program, the Certified Cotton Growers Organization may authorize credits for early cotton stalk destruction. Such credits shall be applied to the subsequent year's assessment as determined by the Certified Cotton Growers Organization. In order to claim such credits—

(A) The cotton grower must **have a** complete**d** *[a]* stalk destruction verification form*[. Such forms must be completed at the local FSA office]*;

(B) The stalk destruction must be verified by an authorized representative of the Certified Cotton Growers Organization; and

(C) The stalk destruction verification form must be received at the department no later than December 1 of the current growing season.

AUTHORITY: sections 263.505, 263.512, 263.517, 263.527 and 263.534, RSMo 2000. Original rule filed June 29, 1999, effective Dec. 30, 1999. Amended: Filed March 29, 2001, effective Oct. 30, 2001. Emergency amendment filed Aug. 21, 2003, effective Aug. 31, 2003, expires Feb. 16, 2004. A proposed amendment covering this same material is published in the issue of the ***Missouri Register****.*

Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 100—Missouri Commission for the Deaf *and Hard of Hearing*
Chapter 200—Board for Certification of Interpreters

EMERGENCY RULE

5 CSR 100-200.045 Provisional Restricted Certification in Education

PURPOSE: This rule outlines how an individual may be granted a Provisional Restricted Certification in Education for interpreting in only elementary and secondary school settings.

EMERGENCY STATEMENT: This rule specifies the procedures that must be followed in order for an individual interpreter to be granted a Provisional Restricted Certification in Education. This rule is necessary in order to ensure that public schools in Missouri can secure the services of an adequate number of sign language interpreters during the 2003–2004 school year in order to meet the needs of deaf and hard of hearing students who require interpreters.

In 1997, when the rules for implementing the Missouri Interpreters Certification System were first adopted, rule 5 CSR 100-200.170 was approved by the Missouri Commission for the Deaf and Hard of Hearing. 5 CSR 100-200.170 specified that in order for interpreters to provide services in Missouri public schools they needed to be certified at an Intermediate level or higher, or hold a Restricted Permit in Education (since renamed a Restricted Certification in Education). At that time it was decided to delay the effective date of the rule in order to give educational interpreters an opportunity to improve their skills in order to meet the required certification level. Thus, 5 CSR 100-200.170 did not become effective until July 1, 2003. All during those six (6) years interpreters certified at any level could legally provide services in Missouri schools.

During the spring of 2003, the State Committee of Interpreters, within the Division of Professional Registration, adopted a rule (4 CSR 232-3.010(3)) that specified that "An interpreter shall not interpret in a setting beyond his or her certification level, as provided for in 5 CSR 100-200.170." Were an interpreter to do so, it would be a violation of the Ethical Rules of Conduct for Interpreters, and would constitute a sufficient reason for disciplinary action being taken against the interpreter's license. So, as of July 1, 2003, interpreters who were certified at only the Apprentice or Novice level could no longer legally provide interpreting services in Missouri schools.

This situation presents public school districts in Missouri with a very difficult situation. Federal law, namely the Individuals with Disabilities Education Act (IDEA), requires that school districts provide special education services for students with disabilities, and for many deaf and hard of hearing students that normally takes the form of sign language interpreters. But Missouri law now says that school districts can't hire many of the interpreters who formerly provided services in the schools. Data from the Department of Elementary and Secondary Education shows that for the 2001–2002 school year, 83 out of 186 educational interpreters in Missouri schools were either not certified at all (19 interpreters), or certified at only the Apprentice or Novice level.

Thus, if this emergency rule is not implemented, then public school districts in Missouri would have to either 1) replace around forty-five percent (45%) of the educational interpreters in Missouri schools between July 1, 2003 and the start of the 2003–2004 school year, 2) be in noncompliance with federal law and not provide interpreting services for some deaf and hard of hearing students, or 3) violate Missouri law and retain interpreters who are certified below the Intermediate level. The first option is probably impossible due to the

overall shortage of interpreters. The second option would present an immediate danger to the welfare of some deaf and hard of hearing students, depriving them of legally required special education services and communications access to their educational curricula. The second and third options would result in schools violating either federal or state law, and there is certainly a compelling governmental interest to see that this does not happen, as well as to see that deaf and hard of hearing students around the state receive appropriate special education services.

This emergency rule would allow public school districts that are unable to secure the services of interpreters with an Intermediate or higher certification to hire Apprentice and Novice interpreters for a period of one (1) year. And that period would be extended for another year if the interpreter in question took the Missouri Interpreters Certification System performance test during the first year and achieved a higher certification level than they held when they tested. This will give school districts the needed flexibility to satisfy their interpreting needs for the immediate future.

In developing this emergency rule, representatives of the interpreting community, the deaf and hard of hearing community, and local public school administrators were consulted. In addition, the rule was discussed and approved by the members of the Board for Certification of Interpreters and the members of the Missouri Commission for the Deaf and Hard of Hearing. The commission believes that this rule is fair to all interested persons and parties under the circumstances.

*The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the **Missouri** and **United States Constitutions**. A proposed rule, which covers the same material, is published in this issue of the **Missouri Register**. This emergency rule was filed August 8, 2003, effective August 18, 2003, and expires February 14, 2004.*

(1) The board may grant a Provisional Restricted Certification in Education (PRCED) in emergency situations as determined on a case-by-case basis. The board shall grant a PRCED to an individual when all of the following conditions are met:

(A) The person applying for a PRCED must be nominated by a local public school district;

(B) The local public school district must attest that it has been unable to locate an interpreter certified in the Missouri Interpreters Certification System (MICS) at an appropriate level as specified in 5 CSR 100-200.170, and otherwise acceptable to the local public school for employment, to fill the vacant interpreting position;

(C) The individual nominated must possess a current valid certification in the MICS at either the Novice or Apprentice level, and must hold a current valid license to provide interpreting services issued by the Missouri State Committee of Interpreters; and

(D) The local public school district must attest that failure to employ the nominated individual would, to the best of their knowledge, result in noncompliance of the school district with applicable state or federal statutes or regulations concerning the provision of special education services.

(2) A PRCED shall be issued within ten (10) business days from the date the application is received in the office of the Missouri Commission for the Deaf and Hard of Hearing.

(3) A PRCED is good for only one (1) school year. It can be extended for one (1) more school year only if the holder is reevaluated during the first year of issuance and achieves the next higher level of MICS certification.

(4) A PRCED can be granted to a given individual only once during their lifetime.

(5) A holder of a PRCED is limited to providing interpreting services only in elementary and secondary school(s) in the local public school district that nominated them, or as allowed by any other valid Missouri certification or license held by the individual.

(6) A PRCED shall be revoked when the holder ends their employment with the nominating school district or if the person commits any of the actions listed in 209.317.1(1)–(5), RSMo, or 209.334.2(1)–(14), RSMo. It shall also be revoked if the holder breaks any of the Ethical Rules of Conduct for Interpreters defined in 4 CSR 232-3.010, or fails to obtain the necessary Continuing Education Units required for certification maintenance as detailed in 5 CSR 100-200.130.

*AUTHORITY: sections 209.292(1) RSMo Supp. 2002 and 209.295(1), (3) and (8), and 209.309, RSMo 2000. Emergency rule filed Aug. 8, 2003, effective Aug. 18, 2003, expires Feb. 14, 2004. A proposed rule covering this same material is published in this issue of the **Missouri Register**.*

The Secretary of State shall publish all executive orders beginning January 1, 2003, pursuant to section 536.035.2, RSMo Supp. 2002.

Executive Order
03-08

WHEREAS, section 105.454(5), RSMo, of the Missouri Ethics Law requires the Governor to designate those members of his staff who have supervisory authority over each department, division, or agency of state government.

NOW, THEREFORE, I, BOB HOLDEN, GOVERNOR OF THE STATE OF MISSOURI, by virtue of the authority vested in me by the Constitution and Laws of the State of Missouri, do hereby designate the following members of my staff as having supervisory authority over the following departments, divisions, or agencies:

Office of Administration	Jake Zimmerman
Transportation	Patrick Lynn
Agriculture	Daniel Hall
Conservation	Daniel Hall
Elementary and Secondary Education	Kerry Crist
Higher Education	Kerry Crist
Public Service Commission	Patrick Lynn
Revenue	Jake Zimmerman
Social Services	Patrick Lynn
Labor	David Cosgrove
Public Safety	David Cosgrove
Corrections	David Cosgrove
Natural Resources	Daniel Hall
Health and Senior Services	Tina Shannon
Insurance	Patrick Lynn
Economic Development	Daniel Hall
Mental Health	Tina Shannon
MHDC	Jennifer Deaver

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 4th day of September, 2003.

ATTES

Bob Holden
Governor

Matt Blunt
Secretary of State

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

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

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

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

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

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

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

Title 1—OFFICE OF ADMINISTRATION
Division 10—Commissioner of Administration
Chapter 4—Vendor Payroll Deduction Regulations

PROPOSED AMENDMENT

1 CSR 10-4.010 State of Missouri Vendor Payroll Deductions. The Office of Administration is amending subsections (1)(C) and (D), adding subsection (1)(E) and amending subsection (2)(H).

PURPOSE: This amendment is necessary for clarification regarding the ability of the division of accounting to collect employee payments deriving from labor agreements. The amendment defines the types of payments that may be authorized by employees, deducted by the Office of Administration and collected by vendors.

(1) Definitions: For the purposes of this rule, terms and their meanings are—

(C) Employee association—an organized group of state employees that has a written document, such as bylaws, which govern its activity; *[and]*

(D) Credit union—a financial institution located in Missouri which has a state charter and is insured by an agency of the United States government or credit union share guarantee corporation approved by the director of the Missouri Division of Credit Unions*[.]***; and**

(E) Dues—a fee or payment owed by an employee to a labor organization as a result of and relating to employment in a bargaining unit covered by an existing labor agreement or a payment owed by an employee for membership in an employee association.

(2) The following requirements apply to payroll deductions:

(H) Labor unions are not required to comply with subsections (2)(D)–(F) **to become a vendor and collect dues,** but must be recognized as an exclusive bargaining representative by separate resolution agreement with the commissioner of administration in accordance with sections 36.510 and 105.500–105.525, RSMo.

*AUTHORITY: section 33.103, [RSMo Supp. 1989 and] 370.395, [RSMo 1986] **536.010 and 536.023, RSMo 2000**. Original rule filed May 15, 1990, effective Sept. 28, 1990. Amended: Filed Aug. 15, 2003.*

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 Director of Personnel, Office of Administration, PO Box 388, 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.*

OFFICE OF THE SECRETARY OF STATE
STATE OF MISSOURI
JEFFERSON CITY
65101

MATT BLUNT
SECRETARY OF STATE

STATE INFORMATION CENTER
(573) 751 4936

September 9, 2003

BY HAND DELIVERY

Jacquelyn D. White
Commissioner
Office of Administration
State Capitol, Room 125
Jefferson City, MO 65101

Re: 1 CSR 10-4.010 State of Missouri
Vendor Payroll Deductions

Dear Commissioner White:

I am in receipt of the Rule Transmittal, Certification of Administrative Rule, Affidavit of Public Cost, and Proposed Amendment regarding the rule referenced above. They were received by the Administrative Rules Division on August 15, 2003. I am writing to express my concern that the Proposed Amendment does not appear to fully comply with sections 536.021 and 536.205, RSMo 2000.

Section 536.021.2 (2) requires that an amendment to a rule contain "the legal authority upon which the proposed rule is based". Likewise, a final order of rulemaking shall contain "the legal authority upon which the order of rulemaking is based". § 536.021.6 (5). The sections in the revised statutes cited in the "Authority" portion of the Proposed Amendment do not appear to provide authority for the Proposed Amendment. Section 536.010 is merely definitional and section 536.023 establishes the process for rulemaking. Section 370.395 relates to employee deductions for credit unions. Section 33.103 permits deductions for "collective bargaining dues" if the employee consents and is a "member of an employee collective bargaining organization", but has no grant of rulemaking authority. The Proposed Amendment's definition of "dues" appears to go beyond section 33.103 because it is not limited to members of a collective bargaining organization.

A second concern is the "Private Cost" statement which asserts that the proposed amendment will not cost private entities more than $500 in the aggregate. Section 536.205 requires a private fiscal note if the amendment would require an expenditure by any person

Jacquelyn D. White
September 9, 2003
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"which is estimated to cost more than $500 in the aggregate". If the intent of the Proposed Amendment is as stated in the August 15, 2003, letter from Paul Buckley of your staff to the Department of Mental Health, Department of Corrections, and Missouri Veterans Commission, it appears clear that the aggregate private costs would be over $500.

I do not believe that the Proposed Amendment, as is, could be published as a final order of rulemaking. Despite these concerns, I will publish the Proposed Amendment in the Missouri Register (along with a copy of this letter) to permit public notice and comment. A rule that is not made in accordance with the provisions of chapter 536 is null, void and unenforceable. See § 536.021.7. I have no intention of publishing a final rule that is invalid. Because of the concerns set out in this letter, I have grave doubts that this Proposed Amendment can be revised to comply with Missouri law.

Sincerely,

Matt Blunt

MB/sjf

cc: Joint Committee on Administrative Rules

Title 1—OFFICE OF ADMINISTRATION
Division 20—Personnel Advisory Board and Division of Personnel
Chapter 2—Classification and Pay Plans

PROPOSED AMENDMENT

1 CSR 20-2.015 Broad Classification Bands for Managers. The Personnel Advisory Board is amending paragraph (6)(B)2.

PURPOSE: This amendment is necessary for clarification regarding the application of rules governing layoffs. A layoff is conducted by classification and band within a division of service. For purposes of layoff, divisions of service within an agency are identified by the agency and define the scope of the layoff and the reinstatement rights of employees actually laid off. To be able to voluntarily demote in lieu of layoff to a different class, the rule currently indicates the employee had to attain regular status in the class and in the division of service involved. To more closely agree with established practices, the amendment provides that, when voluntarily demoting in lieu of layoff to a different class, the employee had to previously attain regular status in that class in any merit system agency. The class must exist in the division of service conducting the layoff. The way the rule reads now provides considerable complexity in applying the rule and, in some cases, could undermine the total length of state service an employee has attained. This amendment will allow the rule governing voluntary demotions in lieu of layoff to be applied consistently and fairly for managers. It also provides the same transfer opportunities for managers as for staff employees when transfers are considered in layoff situations.

(6) Separation, Suspension and Demotion. The provisions of 1 CSR 20-3.070 are applicable in the administration of broad classification bands for managers in agencies covered by the merit system provisions of the State Personnel Law, except as specifically outlined in this section, or necessary for implementation.

(B) Demotions *[and Transfers]*. An appointing authority may demote an employee in accordance with the following:

1. No demotions for cause shall be made unless the employee to be demoted meets the minimum qualifications for the lower position demoted to, and shall not be made if any regular employee in the affected class and band or range would be laid off by reason of the action; and

2. *[An appointing authority, upon written request of the regular employee affected, shall demote such employee in lieu of layoff to a position in a lower band in the same class; or shall demote or transfer such employee to an appropriate class and pay range in the same occupational job series; or to a position in which the employee previously has served and has obtained regular status in the division of service involved; even though these actions may result in additional layoffs. An appointing authority may also, upon written request of the regular employee affected, demote or transfer such employee in lieu of layoff to another class for which the employee meets the qualifications, even if these actions may result in additional layoffs. In the event of a demotion to a lower band, or a demotion or transfer to a class and pay range in lieu of layoff, an employee shall have his/her name placed on the appropriate register.]* **A regular employee shall be demoted in lieu of layoff within the employee's division of service to a position in a lower band in the same class; or shall be demoted in lieu of layoff within the employee's division of service to a position in a class in which the employee previously has obtained regular status within any merit system agency. Such action shall be taken upon written request by the affected employee to the appointing authority and shall occur even though this action may result in a layoff in the class to which the employee is demoted. The appointing authority may also, upon written request of the regular employee affected, demote such employee in lieu of layoff to a position in the employee's division of service for which the employee meets the qualifications, even if these actions may result in additional layoffs. In the event of a demotion in lieu of layoff, an employee shall have his/her name placed on the appropriate register. Transfers in lieu of layoff will be governed by 1 CSR 20-3.070(1)(H).**

AUTHORITY: section 36.070, RSMo 2000. Original rule filed March 11, 1999, effective Sept. 30, 1999. Emergency amendment filed Jan. 2, 2003, effective Jan. 12, 2003, expires July 10, 2003. Amended: Filed Jan. 15, 2003, effective June 30, 2003. Amended: Filed Aug. 15, 2003.

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 Director of Personnel, Office of Administration, PO Box 388, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. A public hearing on this proposed amendment is scheduled for 1:00 p.m., November 12, 2003 in Room 500 of the Harry S Truman State Office Building, 301 West High Street, Jefferson City, Missouri.*

Title 1—OFFICE OF ADMINISTRATION
Division 20—Personnel Advisory Board and Division of Personnel
Chapter 3—Personnel Selection, Appointment, Evaluation and Separation

PROPOSED AMENDMENT

1 CSR 20-3.070 Separation, Suspension and Demotion. The Personnel Advisory Board is amending subsection (4)(C).

PURPOSE: This amendment is necessary for clarification regarding the application of rules governing layoffs. A layoff is conducted by classification within a division of service. For purposes of layoff, divisions of service within an agency are identified by the agency and define the scope of the layoff and the reinstatement rights of employees actually laid off. To be able to voluntarily demote in lieu of layoff to a different class, the rule currently indicates the employee had to attain regular status in the class and in the division of service involved. To more closely agree with established practices, the amendment provides that, when voluntarily demoting in lieu of layoff to a different class, the employee had to previously attain regular status in that class in any merit system agency. The class must exist in the division of service conducting the layoff. The way the rule reads now provides considerable complexity in applying the rule and, in some cases, could undermine the total length of state service an employee has attained.

(4) Demotions. An appointing authority may demote an employee in accordance with the following:

(C) *[An appointing authority, upon written request of the regular employee affected, shall demote such employee in*

lieu of layoff to a position in a lower class in the same occupational job series or in a lower class of position in which the employee previously has served and has obtained regular status in the division of service involved, even though this action may result in a layoff in the lower class. The appointing authority may also, upon written request of the regular employee affected, demote such employee in lieu of layoff to a position in a class for which the employee meets the minimum qualifications even if this action may require layoff in the lower class. In the event of demotion in lieu of layoff, an employee shall have his/her name placed on the appropriate register in accordance with the procedure outlined in subsection (1)(D) for employees actually laid off.] **A regular employee shall be demoted in lieu of layoff within the employee's division of service to a position in a lower class in the same occupational job series or to a position in a lower class in which the employee previously has obtained regular status within any merit system agency. Such action shall be taken upon written request by the affected employee to the appointing authority and shall occur even though this action may result in a layoff in the lower class. The appointing authority may also, upon written request of the regular employee affected, demote such employee in lieu of layoff to a position in the employee's division of service for which the employee meets the minimum qualifications even if this action may require layoff in the lower class. In the event of demotion in lieu of layoff, an employee shall have his/her name placed on the appropriate register in accordance with the procedure outlined in subsection (1)(D) for employees actually laid off.**

*AUTHORITY: section 36.070, RSMo [Supp. 1997] **2000**. Original rule filed July 9, 1947, effective July 19, 1947. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Aug. 15, 2003.*

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 Director of Personnel, Office of Administration, PO Box 388, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. A public hearing on this proposed amendment is scheduled for 1:00 p.m., November 12, 2003 in Room 500 of the Harry S Truman State Office Building, 301 West High Street, Jefferson City, Missouri.*

Title 1—OFFICE OF ADMINISTRATION
Division 20—Personnel Advisory Board and Division of Personnel
Chapter 5—Working Hours, Holidays and Leaves of Absence

PROPOSED AMENDMENT

1 CSR 20-5.020 Leaves of Absence. The Personnel Advisory Board is amending subsections (5)(B) and (5)(E).

PURPOSE: This amendment acknowledges statutory authorization for one hundred twenty (120) work hours in a fiscal year for employees to participate in specialized disaster relief services for the American Red Cross.

(5) Leave for disaster relief shall be governed by the following provisions:

(B) Employees who are certified by the American Red Cross as disaster service specialists may, with appointing authority approval, be granted leave of absence from their respective duties, without loss of pay or leave, impairment of performance appraisal, or loss of any rights or benefits to which otherwise entitled. This will cover all periods of Red Cross disaster service during which they are engaged in the performance of duty under a Red Cross letter of agreement for a period not to exceed a total of *[fifteen (15) calendar days]* **one hundred twenty (120) work hours** in any state fiscal year. Other absences for service for the Red Cross, not elsewhere provided for in these rules, may be charged to accrued annual leave, compensatory time or leave of absence without pay;

(E) No more than twenty-five (25) full-time state employees may be absent in any state fiscal year. Each employee is subject to a cap of *[fifteen (15) calendar days]* **one hundred twenty (120) work hours** per fiscal year of disaster relief leave; and

*AUTHORITY: section 36.070, RSMo 2000. Original rule filed Aug. 20, 1947, effective Aug. 30, 1947. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Aug. 15, 2003.*

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 Director of Personnel, Office of Administration, PO Box 388, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. A public hearing on this proposed amendment is scheduled for 1:00 p.m., November 12, 2003 in Room 500 of the Harry S Truman State Office Building, 301 West High Street, Jefferson City, Missouri.*

Title 2—DEPARTMENT OF AGRICULTURE
Division 70—Plant Industries
Chapter 13—Boll Weevil Eradication

PROPOSED AMENDMENT

2 CSR 70-13.030 Program Participation, Fee Payment and Penalties. The division is amending section (1), deleting section (2) and amending and renumbering sections (3)–(5).

PURPOSE: This proposed amendment eliminates the requirements of filing intended cotton acreage for the program and associated penalties, allows the Certified Cotton Growers Organization to designate due date for assessments on an annual basis, adds an option of filing an assignment form with Farm Service Agency (FSA) when requesting a waiver for assessment payment, requires filing a location registration form for noncommercial cotton, and eliminates the process of filing stalk destruction forms at local FSA offices.

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.

(1) Upon passage of the grower referendum conducted under the provisions of section 263.527, RSMo 2000, all cotton growers in the affected regions as set out in 2 CSR 70-13.015, as defined by the Certified Cotton Growers Organization, shall be required to participate in the boll weevil eradication program as follows:

(A) Upon implementation of a boll weevil eradication program, all cotton growers in an eradication area shall certify their actual cotton acreage with their local Farm Service Agency (FSA) office in accordance with the FSA final certification date*[.]***;** *[All cotton growers shall also file a cotton acreage reporting form with their local FSA office by May 15, indicating intended cotton acreage to be planted during the current growing season. Intended cotton acreage filing will be required starting with the second year of the eradication program;]*

(B) Each year the boll weevil eradication program is in operation, the Certified Cotton Growers Organization shall set an assessment fee *[by January 1 of]* each year, which shall not exceed fifteen dollars ($15) per acre **of cotton as certified with FSA including any non-certified cotton acreage that is trapped and/or treated**; *[and]*

(C) *[All fees paid by cotton growers shall be made payable and submitted to the Missouri Department of Agriculture by October 15 d]***D**uring each year that the eradication program is in operation*[.]***, all cotton growers shall pay all fees to the Missouri Department of Agriculture by the date set by the Certified Cotton Growers Organization, but in no event shall each year's payment date be set after December 1; and**

(D) Upon notification from the department, the grower of any noncommercial or ornamental cotton grown in the state shall file a location registration form with the department.

[(2) Any cotton grower underreporting by more than ten percent (10%) of the actual planted cotton acreage, as determined by FSA certified or measured acreage, will be assessed a penalty of five dollars ($5) per acre on that acreage, in addition to the annual assessment fee. Any cotton grower underreporting cotton acreage by more than ten percent (10%) may apply for a waiver. Any cotton grower applying for a waiver shall make application in writing, to the director stating the conditions under which they request the waiver. The decision whether or not to waive all or part of these requirements shall be made by the director and notification given to the cotton grower within two (2) weeks after receipt of such application.]

[(3)] **(2)** Failure to pay all assessments due on or before *[October 15 of the current growing season]* **such date as designated by the Certified Cotton Growers Organization** will result in a penalty fee of **up to** five dollars ($5) per acre. A cotton grower who fails to pay all assessments, including penalties, is subject to all provisions of section 263.534, RSMo 2000.

[(4)] **(3)** Any cotton grower may apply for a waiver requesting delayed payment**.** *[under conditions of financial hardship or bankruptcy.]* Any cotton grower applying for a waiver shall make application in writing to the director on a form prescribed by the director. This request must be accompanied by **an assignment of payment form (FSA form CCC-36, which is incorporated by reference) designating the Missouri Department of Agriculture as first assignee. Should a grower not be eligible to use FSA form CCC-36 as required,** a financial statement from a bank or lending agency *[supporting such request]* **will be required to be submitted with the waiver application**. *[No waiver for financial hardship shall be granted to any cotton grower whose taxable net income for the previous year exceeds fifteen thousand dollars ($15,000).]* Any cotton grower granted a waiver requesting *[for financial hardship or bankruptcy]* **and submitting FSA form CCC-36 will not be charged additional penalties or interest for delayed payment. Growers who do not have an FSA CCC-36 form on file with the waiver application** will be charged interest payable at a rate equal to one percent (1%) above prime per annum as listed in the *Wall Street Journal* on the date of the waiver application. The decision whether or not to waive all or part of these requirements shall be made by the director with the approval of the Board of Directors of the Certified Cotton Growers Organization and notification given to the cotton grower by the director within thirty (30) days after receipt of such application. Failure to file a completed waiver request for delayed payment on or before *[October 15 of the current growing season]* **the designated assessment payment deadline** will result in a penalty fee of **up to** five dollars ($5) per acre.

[(5)] **(4)** At such times as are beneficial to the boll weevil eradication program, the Certified Cotton Growers Organization may authorize credits for early cotton stalk destruction. Such credits shall be applied to the subsequent year's assessment as determined by the Certified Cotton Growers Organization. In order to claim such credits—

(A) The cotton grower must **have a** complete**d** *[a]* stalk destruction verification form*[. Such forms must be completed at the local FSA office]*;

(B) The stalk destruction must be verified by an authorized representative of the Certified Cotton Growers Organization; and

(C) The stalk destruction verification form must be received at the department no later than December 1 of the current growing season.

AUTHORITY: sections 263.505, 263.512, 263.517, 263.527, and 263.534, RSMo 2000. Original rule filed June 29, 1999, effective Dec. 30, 1999. Amended: Filed March 29, 2001, effective Oct. 30, 2001. Emergency amendment filed Aug. 21, 2003, effective Aug. 31, 2003, expires Feb. 16, 2003. Amended: Filed Aug. 21, 2003.*

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 or in opposition to this proposed amendment with the Missouri Department of Agriculture, Division of Plant Industries, Judy Grundler, IPM Administrator, PO Box 260, Jefferson City, MO 65102. To be considered comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 100—Missouri Commission for the Deaf *and Hard of Hearing*
Chapter 200—Board for Certification of Interpreters

PROPOSED RULE

5 CSR 100-200.045 Provisional Restricted Certification in Education

PURPOSE: This rule outlines how an individual may be granted a Provisional Restricted Certification in Education for interpreting in only elementary and secondary school settings.

(1) The board may grant a Provisional Restricted Certification in Education (PRCED) in emergency situations as determined on a case-by-case basis. The board shall grant a PRCED to an individual when all of the following conditions are met:

(A) The person applying for a PRCED must be nominated by a local public school district;

(B) The local public school district must attest that it has been unable to locate an interpreter certified in the Missouri Interpreters Certification System (MICS) at an appropriate level as specified in 5 CSR 100-200.170, and otherwise acceptable to the local public school for employment, to fill the vacant interpreting position;

(C) The individual nominated must possess a current valid certification in the MICS at either the Novice or Apprentice level, and must hold a current valid license to provide interpreting services issued by the Missouri State Committee of Interpreters; and

(D) The local public school district must attest that failure to employ the nominated individual would, to the best of their knowledge, result in noncompliance of the school district with applicable state or federal statutes or regulations concerning the provision of special education services.

(2) A PRCED shall be issued within ten (10) business days from the date the application is received in the office of the Missouri Commission for the Deaf and Hard of Hearing.

(3) A PRCED is good for only one (1) school year. It can be extended for one (1) more school year only if the holder is reevaluated during the first year of issuance and achieves the next higher level of MICS certification.

(4) A PRCED can be granted to a given individual only once during their lifetime.

(5) A holder of a PRCED is limited to providing interpreting services only in elementary and secondary school(s) in the local public school district that nominated them, or as allowed by any other valid Missouri certification or license held by the individual.

(6) A PRCED shall be revoked when the holder ends their employment with the nominating school district or if the person commits any of the actions listed in 209.317.1(1)–(5), RSMo, or 209.334.2(1)–(14), RSMo. It shall also be revoked if the holder breaks any of the Ethical Rules of Conduct for Interpreters defined in 4 CSR 232-3.010, or fails to obtain the necessary Continuing Education Units required for certification maintenance as detailed in 5 CSR 100-200.130.

AUTHORITY: sections 209.292(1), RSMo Supp. 2002 and 209.295(1), (3) and (8), and 209.309, RSMo 2000. Emergency rule filed Aug. 8, 2003, effective Aug. 18, 2003, expires Feb. 14, 2004. Original rule filed Aug. 11, 2003.

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Commission for the Deaf and Hard of Hearing, Dr. Roy E. Miller, Executive Director, 1103 Rear Southwest Boulevard, Jefferson City, MO 65109. To be considered, comments must be received within thirty (30) days after the publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation Commission
Chapter 17—Traffic Generators

PROPOSED AMENDMENT

7 CSR 10-17.010 Signs for Traffic Generators. The commission proposes to amend paragraphs (1)(F)1.–3., subsection (3)(A), add a new subsection (6)(A) and amend renumbered subsections (6)(B), (6)(E) and paragraphs (6)(E)1. and 2., add new subsections (4)(C), (5)(D), (6)(C) and (6)(D), and delete previous paragraphs (6)(B)1.–3., and renumber rule accordingly.

PURPOSE: This amendment provides additional criteria for major traffic generators and super traffic generators and revises the standards for the selection and erection of signs for colleges and universities.

(1) Definitions. The following definitions relate to signs for traffic generators:

(F) Major traffic generator means a traffic generator which *[attracts]* **meets** the following:

1. At least three hundred thousand (300,000) visitors per year in the St. Louis or Kansas City metropolitan areas (metro area) **and a minimum of six thousand (6,000) seats**; or

2. At least two hundred fifty thousand (250,000) visitors per year in an area with a population of at least five thousand (5,000) persons (urban area) **and a minimum of five thousand (5,000) seats**; or

3. At least two hundred thousand (200,000) visitors per year in an area in which the population is less than five thousand (5,000) persons (rural area) **and a minimum of four thousand (4,000) seats**;

(3) Specific Criteria for Minor Traffic Generators.

(A) *[A minimum of twenty-five thousand (25,000) annual attendance is required]* **Meets the annual attendance requirements as provided in the definitions section of this rule**.

(4) Specific Criteria for Major Traffic Generators.

(C) Supplemental guide signs will not be installed at freeway-to-freeway interchanges.

(5) Specific Criteria for Super Traffic Generators.

(D) Supplemental guide signs will not be installed at freeway-to-freeway interchanges.

(6) Signs for Colleges or Universities.

(A) Only first order signing will be provided for colleges and universities.

*[(A)]***(B)**Traffic generator signs may be provided for colleges and universities, at no cost to the institution*[, having an approved curriculum offering at least a two (2)-year program of college level studies leading to either an associate or baccalaureate degree approved]* **designated as a Missouri public institution,**

which receives part of its operating budget from state appropriations, as determined by the Missouri Department of Higher Education *[and having a full-time resident enrollment of at least five hundred (500) students]*.

(C) Traffic generator signs may be provided for colleges and universities, at no cost to the commission, designated as a Missouri independent or accredited Missouri proprietary institution as determined by the Missouri Department of Higher Education.

(D) Institutions exempt from certification or not listed on the website by the Department of Higher Education will be considered on a case-by-case basis using such criteria as accreditation, certification and type of institution. Applicant must submit its request for signing to the State Traffic Engineer, P.O. Box 270, Jefferson City, MO 65102. The Department of Higher Education will be consulted by the commission to determine accreditation, type of institution, status and verification of information.

*[(B)]***(E)** The commission may install special emblem signs for eligible *[traffic generators]* **institutions**. **In addition to the legend,** *[T]***t**hese special signs shall contain the college or university's emblem *[and shall direct motorists to units within a campus complex]*. Colleges or universities eligible for this emblem signing must meet the following criteria:

[1. Colleges and universities within the St. Louis or Kansas City metropolitan areas with an annual visitor attendance of at least three hundred thousand (300,000) persons; or

2. Colleges and universities within urban areas (population of at least five thousand (5,000) persons) with an annual visitor attendance of at least two hundred fifty thousand (250,000) persons; or

3. Colleges and universities within rural areas (population of less than five thousand (5,000) persons) with an annual visitor attendance of at least two hundred thousand (200,000) persons; and]

*[4.]***1.** The college or university will pay **for the cost of producing and installing the signs plus** a ten (10)-year maintenance *[and installation]* fee for this special emblem signing, similar to the fee charged for other traffic generator signs*[, determined by the cost of producing and installing the signs plus an amount for maintenance]*; and

*[5.]***2.** The emblem used on each eligible college/university traffic generator sign will be *[patterned after the pattern used by the Department of Revenue for vehicle license plates]* **the same used by the facility**.

*AUTHORITY: section 226.525, RSMo [1994] **2000** and 23 U.S.C. section 131. Original rule filed May 14, 1996, effective Nov. 30, 1996. Amended: Filed Aug. 12, 2003.*

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 Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 10—Air Conservation Commission
Chapter 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 Liquid Storage, Loading and Transfer. The commission proposes to add new section (1) the same as original section (2); amend original subsection (1)(F); renumber original section (1); renumber and amend original sections (3), (4), (5), (6), (7) and (8); and add new section (4). If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency to replace the current rule in the Missouri State Implementation Plan. The evidence supporting the need for this proposed rulemaking is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address and phone number listed in the Notice of Public Hearing at the end of this rule. More information concerning this rulemaking can be found at the Missouri Department of Natural Resources' Environmental Regulatory Agenda website, www.dnr.state.mo.us/regs/regagenda.htm.

PURPOSE: This rule restricts volatile organic compound emissions from the handling of petroleum liquids in the Kansas City metropolitan area that contribute to the formation of ozone. The intent of the original section (5) of this rule is to perform Stage I vapor recovery, recovering no less than ninety percent (90%) of the gasoline vapors generated during a Stage I delivery. The vapor line requirements were inadvertently omitted when this original rule section was promulgated. This amendment adds vapor line requirements similar to the St. Louis rule 10 CSR 10-5.220 to allow enforcement of the regulations, restructures the rule for consistency with rule organization format and clarifies rule language to assist in enforcement of the rule. The evidence supporting the need for this rulemaking per section 536.016, RSMo, is a Rule Comment Form and Attachment dated December 17, 2001.

(1) Applicability. This rule shall apply throughout Clay, Jackson and Platte Counties.

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

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

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

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

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

(E) Staff director—Director of the Air Pollution Control Program of the Department of Natural Resources, or a designated representative.

(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]* **is transferred from a loading installation to a delivery vessel or from a delivery vessel to a storage tank**.

(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.

[(2) Applicability. This rule shall apply throughout Clay, Jackson and Platte Counties.]

(3) General Provisions.

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

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

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

*[A.]***(I)** The storage tank shall be fitted with either—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*[(C)]***3.** Owners and operators of petroleum storage tanks subject to this **sub**section shall maintain written records of maintenance (both routine and unscheduled) performed on the tanks, all repairs made, the results of all tests performed and the type and quantity of petroleum liquid stored in them. *[The records shall be maintained for two (2) years and made available to the staff director upon request.]*

*[(D)]***4.** This **sub**section shall not apply to petroleum storage tanks which—

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

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

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

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

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

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

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

*[1.]***A.** An adsorber system, condensation system, incinerator or equivalent vapor disposal system that processes the vapors and gases from the equipment being controlled and limits the discharge of VOC into the atmosphere to ten (10) milligrams of VOC vapor per liter of gasoline loaded;

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

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

*[(C)]***3.** Owners and operators of loading installations subject to this **sub**section shall maintain complete records documenting the number of delivery vessels loaded and their owners. *[The records shall be maintained for two (2) years and made available to the staff director upon request.]*

*[(D)]***4.** This **sub**section shall not apply to loading installations whose average monthly throughput of gasoline is less than or equal to one hundred twenty thousand (120,000) gallons when averaged over the most recent calendar year, provided that the installation loads gasoline by submerged loading.

*[1.]***A.** To maintain the exemption, these installations shall submit to the staff director on a form supplied by the department by February 1 of each year, a report stating gasoline throughput for each

month of the previous calendar year. After the effective date of this rule, any revision to the department supplied forms will be presented to the regulated community for a forty-five (45) day comment period.

*[2.]***B.** Delivery vessels purchased after the effective date of this rule shall be Stage I equipped.

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

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

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

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

*[(A)]***1.** No owner or operator of a gasoline storage tank or delivery vessel shall cause or permit the transfer of gasoline from a delivery vessel into a gasoline storage tank with a capacity greater than two hundred fifty (250) gallons unless—

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

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

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

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

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

*[C.]***(III)** Equipped with a pressure/vacuum valve that is CARB certified and MO/PETP approved at three inches water column pressure/eight inches water column vacuum (3" wcp/8" wcv). 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)]***2.** Stationary storage tanks with a capacity greater than two thousand (2,000) gallons shall also be equipped with a Stage I vapor recovery system in addition to the requirements of *[subsection (5)(A)]* **paragraph (3)(C)1. of this rule** and the delivery vessels to these tanks shall be in compliance with *[section (6)]***subsection (3)(D)** of this rule.

*[1.]***A.** The vapor recovery system shall collect no less than ninety 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.]***B.** A delivery vessel shall be refilled only at installations complying with the provisions of *[section (4)]***subsection(3)(B)** of this rule.

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

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

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

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

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

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

*[(D)]***5.** The provisions of *[subsection (5)(B)]* **paragraph (3)(C)2.** of this rule shall not apply to transfers made to storage tanks equipped with floating roofs or their equivalent.

*[(E)]***6.** The provisions of *[subsections (5)(A)–(D)]* **paragraphs (3)(C)1.–4.** of this rule shall not apply to stationary storage tanks having a capacity less than or equal to two thousand (2,000) gallons used exclusively for the fueling of implements of agriculture or were installed prior to June 12, 1986.

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

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

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

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

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

*[4.]***D.** The delivery vessel is repaired by the owner or operator and retested within fifteen (15) days of testing if it does not meet the leak test criteria of *[subsection (6)(A)]* **paragraph (3)(D)1.** of this rule; and

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

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

[(C)] **3.** Owners and operators of gasoline delivery vessels shall maintain written records of all tests and maintenance performed on the vessels. *[The records shall be maintained for two (2) years and made available to the staff director upon request.]*

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

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

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

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

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

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

*[(B)]***2.** Repair and retest within fifteen (15) days, a vapor recovery system that exceeds the limits in *[section (7)]* **subsection (3)(E)** of this rule; and

*[(C)]***3.** Maintain written records of inspection reports, enforcement documents, gasoline deliveries, routine and unscheduled maintenance and repairs and all results of tests conducted. *[The records shall be maintained for two (2) years and made available to the staff director upon request.]*

(4) Reporting and Record Keeping. The reporting and record keeping requirements are located in paragraphs (3)(A)3., (3)(B)3., (3)(C)4., (3)(D)3. and (3)(E)3. of this rule. In addition, all records shall be maintained for a minimum of two (2) years, and shall be made immediately available to inspectors upon request.

*[(8)]***(5)** *[Testing and Monitoring Procedures and Reporting.]* **Test Methods.**

(A) Testing and monitoring procedures to determine compliance with *[section (6)]* **subsection (3)(D)** of this rule and confirm the continuing existence of leak-tight conditions shall be conducted using the method referenced in 10 CSR 10-6.030(14)(B) **or by any method determined by the staff director**.

(B) Testing procedures to determine compliance with *[paragraph (4)(B)1.]* **subparagraph (3)(B)2.A.** of this rule shall be conducted using the method referenced in 10 CSR 10-6.030(14)(A) **or by any method determined by the staff director**.

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

(D) A static leak decay test of the Stage I vapor recovery system shall be required once every five (5) years to demonstrate system vapor tightness. In addition, a bench test of each pressure/vacuum valve shall be required once every two (2) years to demonstrate component vapor tightness.

(E) Additional testing may also be required by the staff director in order to determine proper functioning of vapor recovery equipment.

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 Aug. 15, 2003.*

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., October 30, 2003. The public hearing will be held at the Holiday Inn North, Rainier Room, 2720 N. Glenstone, Springfield, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Air Pollution Control Program, 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., November 6, 2003. 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.