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SALUS POPULI SUPREMA LEX ESTO

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



MATT BLUNT

SECRETARY OF STATE

MISSOURI
REGISTER

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IN THIS ISSUE:

EXECUTIVE ORDERS	1045	IN ADDITIONS	
		Department of Economic Development	
		Division of Credit Unions	1061
PROPOSED RULES		CONTRACTOR DEBARMENT LIST	1063
Office of Administration			
Administrative Hearing Commission	1048	DISSOLUTIONS	1064
Department of Elementary and Secondary Education			
Vocational Rehabilitation	1051	SOURCE GUIDES	
Department of Mental Health		RULE CHANGES SINCE UPDATE	1065
Director, Department of Mental Health	1054	EMERGENCY RULES IN EFFECT	1072
Elected Officials		EXECUTIVE ORDERS	1073
Secretary of State	1054	REGISTER INDEX	1075
ORDERS OF RULEMAKING			
Department of Conservation			
Conservation Commission	1058		
Department of Labor and Industrial Relations			
Missouri Assistive Technology Advisory Council	1058		
Department of Public Safety			
Missouri Gaming Commission	1058		
Department of Social Services			
Division of Medical Services	1059		
Missouri Consolidated Health Care Plan			
Health Care Plan	1060		

Register Filing Deadlines	Register Publication Date	Code Publication Date	Code Effective Date
March 1, 2004 March 15, 2004	April 1, 2004 April 15, 2004	April 30, 2004 April 30, 2004	May 30, 2004 May 30, 2004
April 1, 2004 April 15, 2004	May 3, 2004 May 17, 2004	May 31, 2004 May 31, 2004	June 30, 2004 June 30, 2004
May 3, 2004 May 17, 2004	June 1, 2004 June 15, 2004	June 30, 2004 June 30, 2004	July 30, 2004 July 30, 2004
June 1, 2004 June 15, 2004	July 1, 2004 July 15, 2004	July 31, 2004 July 31, 2004	August 30, 2004 August 30, 2004
July 1, 2004 July 15, 2004	Aug. 2, 2004 Aug. 16, 2004	Aug. 31, 2004 Aug. 31, 2004	Sept. 30, 2004 Sept. 30, 2004
August 2, 2004 August 16, 2004	September 1, 2004 September 15, 2004	September 30, 2004 September 30, 2004	October 30, 2004 October 30, 2004
September 1, 2004 September 15, 2004	October 1, 2004 October 15, 2004	October 31, 2004 October 31, 2004	November 30, 2004 November 30, 2004
October 1, 2004 October 15, 2004	November 1, 2004 November 15, 2004	November 30, 2004 November 30, 2004	December 30, 2004 December 30, 2004
November 1, 2004 November 15, 2004	December 1, 2004 December 15, 2004	December 31, 2004 December 31, 2004	January 30, 2005 January 30, 2005
December 1, 2004 December 15, 2004	January 3, 2005 January 18, 2005	January 29, 2005 January 29, 2005	February 28, 2005 February 28, 2005

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>

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:

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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.

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

EXECUTIVE ORDER 04-14

WHEREAS, on May 15, 2003, the General Assembly passed House Bill 640, and on July 10, 2003, I signed said bill into law; and

WHEREAS, House Bill 640 designated June nineteenth, known as Juneteenth, of each year as "Emancipation Day" to provide an opportunity for the people of Missouri to reflect upon the United States of America's passion for freedom as exemplified in the Constitution of the United States, the Bill of Rights, and the Emancipation Proclamation, and to reflect upon the significance and particularity of the Emancipation Proclamation and its role in ending slavery in the United States; and

WHEREAS, the General Assembly passed House Bill 640 which established the "Missouri Juneteenth Heritage and Cultural Festival and Memorial" and provided that any funds appropriated by the general assembly for this event shall be used to establish a state-wide festival and monument to commemorate the struggles and hardships endured by those who had been enslaved; and

WHEREAS, Juneteenth commemorates the spirit and quest of African-American freedom emphasizing education, art, and intellectual achievement, through reflection and rejoicing.

NOW, THEREFORE, I, BOB HOLDEN, GOVERNOR OF THE STATE OF MISSOURI, by virtue of the authority vested in me by the Constitution and Statutes of the State of Missouri, do hereby declare and establish a Missouri Emancipation Day Commission, whose purpose shall be: to promote, consider, recommend and be responsible for, in consultation with the departments of economic development, natural resources and elementary and secondary education, all activities for the recognition and celebration of Emancipation Day, as established in section 9.161, RSMo.

The Commission shall be composed of not more than nine members as follows:

- 1) one member of the senate, to be appointed by the president pro tempore of the senate;
- 2) one member of the house of representatives, to be appointed by the speaker of the house of representatives;
- 3) the director of the department of economic development;
- 4) the director of the department of natural resources;
- 5) the commissioner of the department of elementary and secondary education;

- 6) four members appointed by the governor, who demonstrate experience in matters relating to economic development, who have knowledge of African American culture, history, and heritage, and who are influential within their communities;
and that the governor shall designate one member to serve as the chair. All members of the Commission shall be legal residents of the United States and registered voters in the State of Missouri.

All members of the Commission shall serve at the pleasure of the Governor and shall serve without compensation, except that the members may be reimbursed for reasonable and necessary expenses arising from commission activities or business. Such expenses shall be paid by the department of economic development, to which the Commission is assigned for administrative purposes.

Of the members first appointed to the Commission by the governor, two shall serve a term of three years and two shall serve a term of two years and thereafter members appointed by the governor shall serve for a term of three years. Other members, except legislative members, shall serve for as long as they hold the position which made them eligible for appointment. Legislative members shall serve during their current term of office but may be reappointed.

The Commission shall conduct not less than two meetings and not more than four meetings per calendar year. The chairperson of the Commission may establish subcommittees as necessary to further the objectives and responsibilities of the Commission, and those subcommittees may meet as often as necessary.

The Commission shall convene no earlier than July 1, 2004, and no later than August 1, 2004. This Order shall be effective immediately and shall supersede all previous Executive Orders pertaining to the same subject.

I further declare that the people of the state, offices of government, and all educational, commercial, political, civic, religious, and fraternal organizations in the state are requested to devote some part of June nineteenth to remember the proclamation that began the full realization for all people in the United States of the self-evident truth, as stated in the Declaration of Independence of the United States, that all men are created equal, by:

- 1) celebrating the abolishment of slavery, accomplished by ratification of the thirteenth amendment to the Constitution of the United States, as the former slaves celebrated on June 19, 1865, upon learning the message of freedom from Major General Gordon Granger of the Union Army in Galveston, Texas, which celebration, known as "Juneteenth", is the oldest known celebration of the ending of slavery; and
- 2) reaffirming their commitment to achieving equal justice and opportunity for all citizens.



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 17TH day of June, 2004.

Bob Holden
Governor

ATTEST:

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 symbolology 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.

have at least as much notice before hearing on an amended complaint as they do before hearing on an original complaint.

(1) In General. **The commission shall construe the provisions of this rule liberally if petitioner has prepared the complaint without legal counsel.**

(2) Specific Cases. In addition to the other requirements of this rule—

(A) An agency's complaint shall set forth—

1. The full name, address and telephone number of any person whom petitioner names as a respondent;

2. Any licenses the licensee holds from the agency and their status;

3. Any **fact supporting the relief that the agency seeks, including any conduct that [the] a licensee has committed that is cause for discipline, with sufficient specificity to enable the licensee to address the charge at hearing; and**

4. Any provision of law that allows discipline for *[that conduct] such facts.*

(D) In a case arising pursuant to Chapter 407, RSMo, including cases relating to the protest of an action taken by a motor vehicle, motorcycle or all-terrain vehicle manufacturer, distributor or representative pursuant to a franchise agreement, the petition shall include a filing fee equal to the filing fee of the circuit court of Cole County. The provisions of this subsection (2)(D) of this regulation shall expire on November 30, [2004] 2005.

(4) Petitioner may amend the complaint without the commission's leave any time before the respondent serves a responsive pleading. After the respondent serves a responsive pleading, petitioner shall amend the complaint only with the commission's leave. **The motion shall include the amended complaint proposed to be filed. Petitioner shall not amend the complaint less than twenty (20) days before the hearing without respondent's consent.**

[(5) The commission shall construe the provisions of this rule liberally if petitioner has prepared the complaint without legal counsel.]

[(6)](5) The provisions of this rule, except section (3), apply to amended complaints.

AUTHORITY: sections 621.053 and 621.198, RSMo Supp. [2002] 2003. Original rule filed Aug. 5, 1991, effective Feb. 6, 1992. Amended: Filed Oct. 31, 1994, effective May 28, 1995. Amended: Filed Jan. 11, 2001, effective July 30, 2001. Amended: Filed June 3, 2002, effective Nov. 30, 2002. Amended: Filed June 16, 2003, effective Nov. 30, 2003. Amended: Filed June 1, 2004.

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 is scheduled for 8:30 a.m. on August 4, 2004, at the Administrative Hearing Commission's official residence—Room 640, Truman State Office Building, Jefferson City, Missouri. Anyone may file a statement in support of or in opposition to this proposed amendment with the Administrative Hearing Commission, June Streigel Doughty, Presiding Commissioner, PO Box 1557, Jefferson City, MO 65102. To be considered, comments must be received no later than 5:00 p.m. on August 3, 2004.

Proposed Amendment Text Reminder:

Boldface text indicates new matter.

[Bracketed text indicates matter being deleted.]

**Title 1—OFFICE OF ADMINISTRATION
Division 15—Administrative Hearing Commission
Chapter 3—Procedure For All Contested
Cases Under Statutory Jurisdiction**

PROPOSED AMENDMENT

1 CSR 15-3.350 Complaints. The commission is amending section (1), subsections (2)(A) and (D), and sections (4), (5), and (6).

PURPOSE: The commission is amending sections (1), (5) and (6) of this rule to emphasize that it is "designed to simplify the maintenance of actions and to enable review to be sought, where appropriate, without the need to be represented by independent counsel," as required under section 621.198, RSMo Supp. 2003. The commission is amending subsection (2)(D) of this rule to maintain the filing fee authorized under section 621.053, RSMo Supp. 2003. The commission is amending section (4) of this rule to make sure that respondents

**Title 1—OFFICE OF ADMINISTRATION
Division 15—Administrative Hearing Commission
Chapter 3—Procedure For All Contested
Cases Under Statutory Jurisdiction**

PROPOSED AMENDMENT

1 CSR 15-3.380 Answers and Other Responsive Pleadings. The commission is amending section (4) and subsection (4)(D).

PURPOSE: The commission is amending this rule to clarify the time for filing an answer when respondent files another responsive pleading that may require some action by the commission.

(4) The filing of a responsive pleading, other than an answer, that requests the commission to take some action shall increase the time in which the respondent shall file an answer, as set by section (3) of this rule, as follows, unless the commission orders otherwise—]. **In any case, the time allowed for filing an answer shall be no less than the time that remained when the responsive pleading was filed.**

(D) If the commission orders petitioner to amend the complaint, the respondent shall file the answer no later than ten (10) days after service of the amended complaint. *[In any case, the time allowed for filing an answer shall be no less than the time which remained when the responsive pleading was filed.]*

AUTHORITY: section 621.198, RSMo Supp. [2001] 2003. Original rule filed Aug. 5, 1991, effective Feb. 6, 1992. Amended: Filed Oct. 31, 1994, effective May 28, 1995. Amended: Filed Jan. 11, 2001, effective July 30, 2001. Amended: Filed June 3, 2002, effective Nov. 30, 2002. Amended: Filed June 1, 2004.

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 is scheduled for 8:30 a.m. on August 4, 2004, at the Administrative Hearing Commission's official residence—Room 640, Truman State Office Building, Jefferson City, Missouri. Anyone may file a statement in support of or in opposition to this proposed amendment with the Administrative Hearing Commission, June Stiegel Doughty, Presiding Commissioner, PO Box 1557, Jefferson City, MO 65102. To be considered, comments must be received no later than 5:00 p.m. on August 3, 2004.

**Title 1—OFFICE OF ADMINISTRATION
Division 15—Administrative Hearing Commission
Chapter 3—Procedure For All Contested
Cases Under Statutory Jurisdiction**

PROPOSED AMENDMENT

1 CSR 15-3.420 Discovery. The commission is amending section (2) and subsection (2)(A).

PURPOSE: The commission is amending this rule to clarify the filings necessary when using requests for admissions and other discovery.

(2) *[Written Interrogatories; Production of Documents or Things or Permission to Enter Upon Land or Other Property,*

For Inspection and Other Purposes; and Physical and Mental Examinations.] Service and Responses.

(A) A party serving written interrogatories; or requests for admissions, production of documents or things or permission to enter upon land or other property, for inspection and other purposes; and physical and mental examinations, shall include a certificate of service in substantially the following form:

I served the original and (*number of*) copies of these (*written interrogatories/production of documents or things or permission to enter upon land or other property, for inspection and other purposes/physical and mental examinations/requests for admission*) on (*name of parties*) this ___ day of _____, 20 ___.

(*Signature*) _____

The party shall file a copy of the certificate with the commission. **The party shall serve the original discovery on the party to whom it is directed.**

1. The party shall not file written interrogatories; requests for production of documents or things or permission to enter upon land or other property, for inspection and other purposes; and physical and mental examinations with the commission unless the commission so orders.

2. The party may file requests for admissions with the commission. *[The party shall serve the original discovery on the interrogated party's counsel or on an unrepresented interrogated party, and copies on all other counsel or unrepresented parties.]*

AUTHORITY: section 621.198, RSMo Supp. [2001] 2003. Original rule filed Aug. 5, 1991, effective Feb. 6, 1992. Amended: Filed June 3, 2002, effective Nov. 30, 2002. Amended: Filed June 1, 2004.

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 is scheduled for 8:30 a.m. on August 4, 2004, at the Administrative Hearing Commission's official residence—Room 640, Truman State Office Building, Jefferson City, Missouri. Anyone may file a statement in support of or in opposition to this proposed amendment with the Administrative Hearing Commission, June Stiegel Doughty, Presiding Commissioner, PO Box 1557, Jefferson City, MO 65102. To be considered, comments must be received no later than 5:00 p.m. on August 3, 2004.

**Title 1—OFFICE OF ADMINISTRATION
Division 15—Administrative Hearing Commission
Chapter 3—Procedure For All Contested
Cases Under Statutory Jurisdiction**

PROPOSED AMENDMENT

1 CSR 15-3.440 Disposing of a Case Without a Hearing on the Complaint. The commission is amending section (3).

PURPOSE: The commission is amending this rule to clarify the procedures for deciding the merits of a case without holding a hearing on the complaint.

(3) Summary Determination and Other Decisions Without Hearing.
(A) Generally.

1. A decision without hearing includes *[decisions on stipulated facts,] consent orders, involuntary dismissals, [relief in the nature of judgment on the pleadings, and relief in the nature of summary judgment. It does not include the parties' settlement under section (1) of this rule or petitioner's notice of dismissal under section (2) of this rule. Summary determination includes any motion for a decision without hearing other than a consent order under subsection (C) of this section] and summary determinations.* A party may file a motion for a decision without a hearing on all or any part of the complaint.

[(A)] 2. Timing.

[1.] A. In any case, other than those set forth in subparagraph B. of this paragraph, a motion for decision without hearing shall be filed no less than forty-five (45) days before the hearing.

[2.] B. In any case in which any legal authority other than the commission sets any maximum time for conducting a hearing on the merits of the complaint, no party shall file a motion for decision without hearing without leave of the commission.

3. If a motion for a decision without a hearing relies on matters other than the pleadings and stipulations, the commission may treat it as a motion for summary determination.

[(B) Standard. The commission may grant a motion for decision without hearing if undisputed facts entitle any party, including a party who did not file such motion, to a favorable decision on all or any part of the case. A party may establish such material facts by stipulation, the adverse party's pleadings or discovery responses, affidavits, or other evidence admissible under the law. A party's own pleadings do not, alone, establish any fact or put any fact genuinely in dispute.

(C) Consent Orders.]

(B) Specific Motions.

1. Consent Order.

A. Cases not under section 621.045, RSMo. A consent order is the commission's memorialization that the parties have agreed to dispose of the case without the commission's decision.

B. Cases under section 621.045, RSMo. Parties seeking a consent order shall submit the case on a motion that includes substantially the following language.

The parties stipulate that *(party)* committed the following conduct:

(Conduct).

(Party) admits that such conduct is cause for *(the relief sought)* under the following legal authority:

(Legal Authority).

Therefore, the parties agree to *(the relief sought)*.

The commission may deny any motion for a consent order that does not contain the facts necessary to support the relief sought under the cited legal authority.

[(D)] 2. Involuntary Dismissal. Involuntary dismissal means a disposition of the case that does not reach the merits of the complaint.

A. Grounds for involuntary dismissal of the complaint include without limitation:

[1.] (I) Lack of jurisdiction; and

[2.] (II) The bases for a sanction set forth at regulation 1 CSR 15-3.425.

B. The commission may grant a motion for involuntary dismissal based on a preponderance of the evidence and as set forth at 1 CSR 15-3.480.

3. Summary Determination. Summary determination includes a decision on stipulated facts, relief in the nature of judgment on the pleadings, and relief in the nature of summary judgment. Petitioner shall not file a motion for summary determination until the time for filing a responsive pleading has expired, except on stipulated facts. The commission may grant a motion for summary determination in favor of any party, including a party who did not file the motion.

A. The commission may grant a motion for summary determination if any party establishes facts that entitle any party to a favorable decision on all or any part of the complaint, and no party raises a genuine issue as to such facts.

B. A party may establish a fact, or raise a genuine issue as to any fact, by stipulation, pleading of the adverse party, discovery response of the adverse party, affidavit, or other evidence admissible under the law.

C. Except in response to a motion that relies solely on the pleadings, a party shall not rely solely on its own pleading to establish a fact, or to raise a genuine issue as to any fact.

(C) On any motion under section (3) of this rule, the commission may allow such written argument as it deems helpful and oral argument as provided at 1 CSR 15-3.480.

[(E)](D) Argument. On any motion under section (3) of this rule, the commission may allow such written argument as it deems helpful and oral argument as provided in rule 1 CSR 15-3.480.

AUTHORITY: sections 621.198, RSMo Supp. [2001] 2003, and 536.073.3, RSMo 2000. Original rule filed June 3, 2002, effective Nov. 30, 2002. Amended: Filed June 1, 2004.

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 is scheduled for 8:30 a.m. on August 4, 2004, at the Administrative Hearing Commission's official residence—Room 640, Truman State Office Building, Jefferson City, Missouri. Anyone may file a statement in support of or in opposition to this proposed amendment with the Administrative Hearing Commission, June Striegel Doughty, Presiding Commissioner, PO Box 1557, Jefferson City, MO 65102. To be considered, comments must be received no later than 5:00 p.m. on August 3, 2004.

**Title 1—OFFICE OF ADMINISTRATION
Division 15—Administrative Hearing Commission
Chapter 3—Procedure For All Contested
Cases Under Statutory Jurisdiction**

PROPOSED AMENDMENT

1 CSR 15-3.480 [Hearings on] Motions. The commission is amending provisions of this rule.

PURPOSE: The commission is amending this rule to require that motions be clearly designated as such.

The commission may rule upon any motion *[for summary determination]* filed with it, including a motion under 1 CSR 15-3.440, on the basis of the record before it and without oral argument. The commission shall hear oral argument or evidence only upon a party's written motion and for good cause shown or upon the commission's own motion. The commission need not rule on a motion that does not clearly request action by the commission.

AUTHORITY: section 621.198, RSMo [1986] Supp. 2003. Original rule filed Aug. 5, 1991, effective Feb. 6, 1992. Amended: Filed June 1, 2004.

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 is scheduled for 8:30 a.m. on August 4, 2004, at the Administrative Hearing Commission's official residence—Room 640, Truman State Office Building, Jefferson City, Missouri. Anyone may file a statement in support of or in opposition to this proposed amendment with the Administrative Hearing Commission, June Streigel Doughty, Presiding Commissioner, PO Box 1557, Jefferson City, MO 65102. To be considered, comments must be received no later than 5:00 p.m. on August 3, 2004.

**Title 5—DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 90—Vocational Rehabilitation
Chapter 7—Personal Care Assistance Program**

PROPOSED AMENDMENT

5 CSR 90-7.010 Definitions. The State Board of Education is amending subsection (1)(L).

PURPOSE: This amendment clarifies the definition of unmet need.

(1) Definitions. As used in this rule, except as otherwise required for the context, the following terms shall have the meanings ascribed:

(L) Unmet need. Unmet needs are those routine tasks and activities of daily living as allowable by Medicaid [but not adequately met by current support systems] that do not replace or duplicate (supplant) existing formal or informal support systems without causing undue hardships to the client/consumer and/or caregiver;

AUTHORITY: sections 161.092, RSMo Supp. 2003[,] and 178.661 and 178.673, RSMo 2000. Original rule filed Jan. 10, 1985, effective May 13, 1985. For intervening history, please consult the Code of State Regulations. Amended: Filed May 27, 2004.

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 Dr. Jeanne Loyd, Assistant Commissioner, Division of Vocational Rehabilitation, 3024 Dupont Circle, Jefferson City, MO 65109. 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 90—Vocational Rehabilitation
Chapter 7—Personal Care Assistance Program**

PROPOSED AMENDMENT

5 CSR 90-7.100 Eligibility. The State Board of Education is amending subsections (4)(A), (4)(C) and (8)(D) and section (5).

PURPOSE: This amendment clarifies the definition of unmet need and Fair Hearings.

(4) The PCA services plan (plan of care) is based on the assessment/evaluation performed by the assessment team or Division of Senior Services and determines the appropriateness and adequacy of services, ensures the services furnished are consistent with the nature and severity of the individual's disability. If a client/consumer transfers from or is shared with the Division of Senior Services, a new evaluation and PCA services plan (POC) is required but must maintain cost neutrality through the next regularly scheduled assessment date, unless undue hardship is documented. The plan of care will be available for review upon proper release by the client's/consumer's physician:

(A) The evaluation and re-evaluation shall be conducted in the client's/consumer's home or place of residence and include, but not be limited to, the following:

1. The functions of daily living;
2. The frequency and duration of the routine task or activity required to live independently; and
3. A description of met need including informal care services and/or unmet need;

(C) The Medicaid PCA services plan of care, subject to DVR's approval, shall include, but not be limited to, the following:

1. The maximum number of hours of PCA to be provided based on a client's/consumer's unmet need that does not supplant existing supports;
2. The description and frequency of services provided as documented on the assessment and evaluation;
3. The type of provider who will furnish each service;
4. The starting date for PCA services;
5. The date for re-evaluation of PCA services;
6. Consent signatures by the client/consumer and assessment team members and the approval signature by DVR; and
7. If a client/consumer is receiving services or transferring from another service provider or agency, the provider is responsible for collaborating and coordinating services through the plan of care.

(5) The individual shall be notified by the provider of DVR's decision within thirty (30) days of the date of application for eligibility for PCA services.

(8) A client's/consumer's PCA services may be discontinued by a provider in certain circumstances:

(D) The client/consumer may request under the rules promulgated by the State Board of Education (board), informal review and/or a Fair Hearing (hearing). The provider shall not suspend, reduce or terminate services provided to a client/consumer during this time period, unless the client/consumer or their representative requests in writing that services be suspended, reduced or terminated.

AUTHORITY: sections 161.092, RSMo Supp. 2003 [,] and 178.662, 178.664, 178.666 and 178.673, RSMo 2000. Original rule filed June 28, 2001, effective Jan. 30, 2002. Amended: Filed Sept. 12, 2003, effective April 30, 2004. Amended: Filed May 27, 2004.

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 Dr. Jeanne Loyd, Assistant Commissioner, Division of Vocational Rehabilitation, 3024 Dupont Circle, Jefferson City, MO 65109. 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 90—Vocational Rehabilitation

Chapter 7—Personal Care Assistance Program

PROPOSED AMENDMENT

5 CSR 90-7.200 Providers. The State Board of Education is amending subsections (1)(A) and (3)(M).

PURPOSE: This amendment clarifies the definition of hearings and quality assurance programs.

(1) Providers of personal care assistance (PCA) must be certified by the Division of Vocational Rehabilitation (DVR). To be certified, the provider shall meet the following criteria:

(A) Be a community-based, not-for-profit corporation pursuant to state laws and regulations, in existence for twenty-four (24) consecutive months, with the following:

1. At least fifty-one percent (51%) of the board membership must be persons with disabilities;
2. At least fifty-one percent (51%) of the staff of the corporation must be persons with disabilities;
3. Must manifest and promote an independent living philosophy in accordance with state laws and regulations;
4. Demonstrate sound fiscal management through the submission of quarterly financial reports and annual audit to DVR;
5. Have available for clients/consumers, at a minimum, the following independent living services:
 - A. Advocacy;
 - B. Independent living skills training;
 - C. Peer counseling; and
 - D. Information and referral;
6. Meet or exceed program standards for approval by the Commission on Accreditation of Rehabilitation Facilities (CARF) or a certification process accepted by DVR; *[and]*

7. Demonstrate effective internal controls through a quality assurance program; and

[7.]8. Demonstrate a positive impact on consumer outcomes regarding the provision of these services through the submission of quarterly service reports and an annual service report to DVR;

(3) Certified PCA providers shall be responsible for the following:

(M) Ensure that the client's/consumer's case file contains at a minimum, the following:

1. Written plan of care that documents the type of services and quantity of units to be provided;
2. The client's/consumer's service **original** time sheets contain the following information:
 - A. Attendant's name;
 - B. Client's/consumer's name;
 - C. Dates of service delivery;
 - D. Time spent;
 - E. Types of activities performed on each date;
 - F. Attendant's signature each day; and
 - G. Client's/consumer's verifying signature;

3. Copies of all correspondence with DVR, the client's/consumer's physician or other service providers, including but not limited to other administrative agencies;

4. Signed documentation that indicates the client/consumer has been informed of their rights concerning background checks, advanced directives, **Fair Hearings** (hearings) and participant responsibilities;

A. Hearing rights and participant choice and responsibilities forms must comply with Medicaid and/or DVR requirements;

5. Documentation of training provided to client/consumer in the skills needed to understand and perform the essential functions of an employer;

6. For clients/consumers eligible for services under Title XIX of the Social Security Act, the assessment shall be available for review by a physician possessing a valid license pursuant to state laws and regulations;

7. Evaluations and/or assessments;

8. Annual financial documentation for the non-Medicaid eligible (NME) program to include the financial application or documentation of Medicaid eligibility for the Medicaid state plan program; and

9. Any pertinent documentation regarding the client/consumer;

AUTHORITY: sections 161.092, RSMo Supp. 2003 and 178.662, 178.664, 178.666, 178.669 and 178.673, RSMo 2000. Original rule filed June 28, 2001, effective Jan. 30, 2002. Amended: Filed Sept. 12, 2003, effective April 30, 2004. Amended: Filed May 27, 2004.

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 Dr. Jeanne Loyd, Assistant Commissioner, Division of Vocational Rehabilitation, 3024 Dupont Circle, Jefferson City, MO 65109. 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 90—Vocational Rehabilitation

Chapter 7—Personal Care Assistance Program

PROPOSED AMENDMENT

5 CSR 90-7.300 Appeals. The State Board of Education is amending sections (1) and (2).

PURPOSE: This amendment clarifies the definition of Fair Hearings.

(1) When an applicant or client/consumer is determined ineligible for services or when a dispute arises concerning the provision of services, after preparation of the personal care assistance program services plan (plan of care), the applicant or client/consumer may request **in writing** under the rules promulgated by the State Board of Education (**board**), informal review and/or a **Fair Hearing** (hearing).

(2) When a non-Medicaid eligible (NME) applicant or client/consumer is denied financial assistance or financial assistance is set below what the client/consumer believes is necessary, the NME

applicant or client/consumer may request **in writing** under the rules promulgated by the [State Board of Education] board, informal review and/or a hearing.

AUTHORITY: sections 161.092, RSMo Supp. 2003 and 178.671 and 178.673, RSMo 2000. Original rule filed June 28, 2001, effective Jan. 30, 2002. Amended: Filed May 27, 2004.

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 Dr. Jeanne Loyd, Assistant Commissioner, Division of Vocational Rehabilitation, 3024 Dupont Circle, Jefferson City, MO 65109. 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 90—Vocational Rehabilitation
Chapter 7—Personal Care Assistance Program**

PROPOSED AMENDMENT

5 CSR 90-7.310 Informal Review. The State Board of Education is amending sections (1), (2), (3) and deleting sections (4) and (5).

PURPOSE: This amendment clarifies the procedures for informal reviews.

(1) The applicant or client/consumer may request informal review in writing to the assistant director of personal care assistance program (PCA)[.] **within ten (10) days of denial of eligibility, denial of financial assistance, the determination of financial assistance, discontinuation, suspension or reduction of services.**

(2) The [assistant] director of PCA or his/her designee will conduct an informal review **and render a decision in writing** within twenty (20) working days from receipt of the applicant's or client's/consumer's request.

(3) An applicant or client/consumer [client] may request a **Fair Hearing** (hearing) without informal review.

[(4) If the informal review is not successful, a hearing will be conducted within forty-five (45) days from the applicant or client's/consumer's written request for informal review unless both parties agree to a specified time extension.

(5) The applicant or client/consumer will be informed of the results of their informal review in writing and the right to a hearing.]

AUTHORITY: sections 161.092, RSMo Supp. 2003 and 178.671 and 178.673, RSMo 2000. Original rule filed June 28, 2001, effective Jan. 30, 2002. Amended: Filed May 27, 2004.

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 Dr. Jeanne Loyd, Assistant Commissioner, Division of Vocational Rehabilitation, 3024 Dupont Circle, Jefferson City, MO 65109. 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 90—Vocational Rehabilitation
Chapter 7—Personal Care Assistance Program**

PROPOSED AMENDMENT

5 CSR 90-7.320 Fair Hearings. The State Board of Education is amending the Title, sections (1), (2), (3) and (4), deleting section (5) and renumbering section (6).

PURPOSE: This amendment clarifies the procedures for Fair Hearings.

(1) An applicant or client/consumer may request a **Fair Hearing** (hearing) without informal review.

(2) An applicant or client/consumer may request a hearing in writing by contacting the assistant commissioner, Division of Vocational Rehabilitation (DVR) within ninety (90) days of **notice of denial of eligibility, denial of financial assistance, the determination of financial assistance, discontinuation of services, suspension or reduction of services.**

(3) A hearing will be held by the assistant commissioner, or his/her designee (impartial hearing officer), within [forty-five (45)] **sixty (60) days [of the request unless a party requests a specified time extension]. Either party may request a specific time extension.**

(4) The applicant or client/consumer, or if appropriate, the individual's representative will be allowed an opportunity to present additional evidence, information and witnesses during the hearing. **Failure of the applicant or client/consumer or individual's representative to appear may result in dismissal of the hearing.**

[(5) Copies of all correspondence, reports of contact and written decisions rendered by the impartial hearing officer shall be placed in the applicant's or client's/consumer's case file at the center for independent living.]

[(6)] (5) The impartial hearing officer will make a decision based upon the provisions of the approved state plan, the federal act and/or applicable regulations, and appropriate state laws and/or regulations. A written report will be submitted to the applicant or client/consumer, or if appropriate, the individual's representative[, the case file] and to the assistant commissioner within a timely manner.

AUTHORITY: sections 161.092, RSMo Supp. 2003 and 178.671 and 178.673, RSMo 2000. Original rule filed June 28, 2001, effective Jan. 30, 2002. Amended: Filed Sept. 12, 2003, effective April 30, 2004. Amended: Filed May 27, 2004.

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 Dr. Jeanne Loyd, Assistant Commissioner, Division of Vocational Rehabilitation, 3024 Dupont Circle, Jefferson City, MO 65109. 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 9—DEPARTMENT OF MENTAL HEALTH
Division 10—Director, Department of Mental Health
Chapter 5—General Program Procedures

PROPOSED AMENDMENT

9 CSR 10-5.200 Report of Complaints of Abuse, Neglect and Misuse of Funds/Property. The department proposes to amend sections (11) and (12), to add a new section (13), and to renumber sections (13) and (14).

PURPOSE: This amendment eliminates the mandatory dismissal of an employee who has committed two (2) counts of class II neglect and/or verbal abuse and establishes criteria for the discretionary dismissal of such an employee.

(11) If the department substantiates that a person has perpetrated physical abuse, sexual abuse, class I neglect, or misuse of funds/property, the perpetrator shall not be employed by the department, nor be licensed, employed or provide services by contract or agreement at a residential facility, day program or specialized service that is licensed, certified or funded by the department. *[The perpetrator's name shall be placed on the department Disqualification Registry pursuant to section 630.170, RSMo. Persons who have been disqualified from employment may request an exception by using the procedures described in 9 CSR 10-5.210 Exception Committee Procedures.]*

(12) If the department substantiates that a person has perpetrated *[two (2) counts of verbal abuse, or two (2) counts of class II neglect, or one (1) count of verbal abuse and one (1) count of class II neglect, within a twelve (12)-month period, the perpetrator shall not be employed by the department, nor be licensed, employed or provide services by contract or agreement at a residential facility, day program or specialized service that is licensed, certified or funded by the department. The perpetrator's name shall be placed on the department Disqualification Registry pursuant to section 630.170, RSMo.]* multiple incidents of class II neglect or verbal abuse, the perpetrator may be dismissed from employment if the department determines that the multiple incidents, considered collectively, constitute a potentially dangerous pattern of behavior affecting the health and welfare of clients, or demonstrate unpredictable poor judgment, hazardous carelessness, a disregard for mandatory procedures or a resistance to counseling, or for any other reason they put in jeopardy the health and welfare of clients. Multiple incidents may consist of the following:

(A) The perpetrator has at least two (2) counts of class II neglect;

(B) The perpetrator has at least two (2) counts of verbal abuse; or

(C) The perpetrator has at least one (1) count of class II neglect and one (1) count of verbal abuse.

(13) If a person is disqualified from employment under this rule due to substantiated physical abuse, sexual abuse, class I neglect, misuse of funds/property, or due to multiple, substantiated counts of class II neglect and/or verbal abuse, that person—

(A) Shall be listed on the department's Disqualification Registry pursuant to section 630.170, RSMo; and

(B) May request an exception to the disqualification under the procedures established in 9 CSR 10-5.210 Exception Committee Procedures.

[[13]] (14) In accordance with 9 CSR 10-5.190, no person convicted of specified crimes may serve in facilities or programs licensed, certified or funded by the department.

[[14]] (15) No director, supervisor or employee of a residential facility, day program or specialized service shall evict, harass, dismiss or retaliate against a consumer or employee because he or she or any member of his or her family has made a report of any violation or suspected violation of consumer abuse, neglect or misuse of funds/property. Penalties for retaliation may be imposed up to and including cancellation of agency contracts and/or dismissal of such person.

AUTHORITY: sections 630.050, 630.135, 630.168, 630.655 and 630.705, RSMo 2000 and 630.165, 630.167 and 630.170, RSMo Supp. 2003. Original rule filed Oct. 29, 1998, effective May 30, 1999. Emergency amendment filed March 29, 2002, effective May 2, 2002, terminated Oct. 30, 2002. Amended: Filed March 29, 2002, effective Oct. 30, 2002. Amended: Filed May 5, 2003, effective Dec. 30, 2003. Amended: Filed June 1, 2004.

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 by writing to Richard H. Overmann, Regulatory Process Coordinator, Office of Quality Management, Department of Mental Health, PO Box 687, 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 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 50—General

PROPOSED AMENDMENT

15 CSR 30-50.040 Forms. The commissioner is amending subsection (1)(C).

PURPOSE: The purpose of this amendment is to approve and authorize the use of a form for agricultural cooperatives submitting a notice filing under 15 CSR 30-51.195.

(1) The following forms have been adopted and approved for filing with the Securities Division:

(C) Exemptions from Registration, Exceptions from Definition, Federal Covered Securities—

1. Form SE-1—Missouri Statement of Claim for the Exemption of Securities of a New Generation Processing Entity revised August 2003;

2. Form SE-2—Missouri Statement of Claim for the Exemption of a Missouri Agricultural Cooperative revised June 2004;

[2.]3. Form NF—Uniform Investment Company Notice Filing adopted by NASAA April 1997, or any form which substantially comports with the specified form; and

[3.]4. Form D—Notice of Sale of Securities Pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption approved in June 2002, OMB Approval Number 3235-0076, or any form which substantially comports with the specified form.

AUTHORITY: section 409.6-605, RSMo Supp. 2003. Original rule filed June 25, 1968, effective Aug. 1, 1968. For intervening history, please consult the *Code of State Regulations*. Amended: Filed May 26, 2004.

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 Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. 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 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 51—Broker-Dealers, Agents, Investment
Advisers, and Investment Adviser Representatives**

PROPOSED AMENDMENT

15 CSR 30-51.180 Exemptions from Registration for Broker-Dealers, Agents, Investment Advisers, and Investment Adviser Representatives. The commissioner is adding section (2) and renumbering sections (2)-(4).

PURPOSE: The purpose of this amendment is to create a companion exemption for agents of the agricultural cooperatives selling securities in reliance on the new agricultural cooperative exemption in 15 CSR 30-51.195.

(2) Exemption from Agent Registration for Agricultural Cooperative Agents. An individual who represents an agricultural cooperative and who effects or attempts to effect transactions in the cooperative's securities exempted under 15 CSR 30-54.195 is exempt from registering as an issuer agent under section 409.4-402, RSMo provided the following conditions are met:

(A) The individual is currently employed in the capacity of store or plant manager by the issuer agricultural cooperative or an agricultural cooperative that is a member of the issuer agricultural cooperative;

(B) The individual's name and address has been properly submitted by the agricultural cooperative in the most recent notice filing under 15 CSR 30-54.195(2)(A); and

(C) General solicitation is not made in connection with the offer to sell or sale of the securities.

[(2)](3) Exemption from Investment Adviser Registration for Broker-Dealers with Investment Adviser Capacity.

(A) A broker-dealer registered under section 409.4-401, that transacts business in this state as an investment adviser is exempt from registering as an investment adviser under section 409.4-403, RSMo provided that the broker-dealer complies with the following conditions:

1. The broker-dealer must control and supervise all investment advisory activities of the investment adviser representatives; and

2. The broker-dealer must comply with the notice filing requirement set forth in 15 CSR 30-51.020(1)(C).

[(3)](4) Exemption from Investment Adviser Representative Registration for Broker-Dealer Agents. A broker-dealer agent registered under section 409.4-402, RSMo that transacts business in this state as an investment adviser representative is exempt from registering as an investment adviser representative under section 409.4-404, RSMo provided that the investment adviser representative is under the control and supervision of the registered broker-dealer.

[(4)](5) Exemption from Investment Adviser Representative Registration for Solicitors. A person who is paid a solicitor fee pursuant to 15 CSR 30-51.145(1) is exempt from registering as an investment adviser representative.

AUTHORITY: sections 409.4-401(d), 409.4-402(b)(9), 409.4-403(b)(3), 409.4-404(b)(2) and 409.6-605, RSMo Supp. 2003. Original rule filed Dec. 28, 2001, effective July 30, 2002. For intervening history, please consult the *Code of State Regulations*. Amended: Filed May 26, 2004.

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 Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. 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 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 54—Exemptions and Federal Covered Securities**

PROPOSED RULE

15 CSR 30-54.195 Missouri Agricultural Cooperatives

PURPOSE: This rule complies with the Missouri Securities Act of 2003 and prescribes the qualifications for the exemption under the Missouri Securities Act of 2003 for securities issued by and representing an interest in a Missouri agricultural cooperative.

(1) Definition. An "agricultural cooperative" shall be defined as a cooperative corporation organized under the Missouri Nonprofit Cooperative Marketing Law, in which farmers act together—

(A) In processing, preparing for market, handling, and/or marketing the farm products of person so engaged; or

(B) In purchasing, testing, grading, processing, distributing and/or furnishing farm supplies and/or farm business services; provided, however, that such cooperative corporations are operated for the mutual benefit of the members thereof as such producers or purchasers and conform to one (1) or both of the following requirements:

1. No member of the cooperative corporation is allowed more than one (1) vote because of the amount of stock or membership capital s/he may own therein;

2. The cooperative corporation does not pay dividends on stock or membership capital in excess of eight percent (8%) per year; and

3. The cooperative corporation does not deal in farm products, farm supplies, and farm business services with or for nonmembers in an amount greater in value than the total amount of such business transacted by it with or for members; further, all business transacted by any such cooperative corporation for or on behalf of the United States or any agency or instrumentality thereof shall be disregarded in determining the volume of member and nonmember business transacted by such agricultural cooperative corporation.

(2) Securities Exemption. The commissioner, pursuant to the provisions of section 409.2-203, RSMo, exempts from the registration requirements of section 409.3-301, RSMo securities issued by and representing an interest in an agricultural cooperative if:

(A) A notice filing by the agricultural cooperative is made with the commissioner that consists of the following:

1. A completed Form SE-2, Statement of Claim for the Exemption of Securities of an Agricultural Cooperative;

2. A completed Form U-2, Consent to Service of Process;

3. A completed Form U-2A, Uniform Form of Corporate Resolution;

4. A copy of the prospectus or offering document that shall have a disclosure of material facts consisting of the following:

A. The name and address of the issuer;

B. The type of security being issued;

C. The total amount of securities being issued;

D. Summary information, which provides a brief overview of key aspects of the offering;

E. A risk factors section, which discloses general risk factors related to suitability and the failure to diversify, and any factors that make the offering speculative or risky, including, but not limited to: lack of recent profits from operations, poor financial position, lack of market for cooperative's securities, inexperience of management, factors related to the cooperative's business, and/or the dependency of the cooperative on retaining a particular customer or group of customers;

F. A description of the business or proposed business;

G. An itemized use of proceeds;

H. A description of directors, officers and other principal management, including a summary of compensation;

I. A plan of distribution section;

J. A summary of capitalization;

K. A description of any material pending legal proceedings other than ordinary routine litigation incidental to its business; and

L. Historical financial statements of the issuer for the past three (3) fiscal years or since the issuer's inception, whichever is shorter, that are in conformity with generally accepted accounting principles (GAAP) and have been audited by a certified public accountant. If the balance sheet in the above financial statements is more than one hundred twenty (120) days old on the date of making the notice filing, or if the issuer has not completed its first fiscal year, reviewed financial statements not more than one hundred twenty (120) days old shall be included and in conformity with GAAP;

5. A copy of the bylaws, operating agreement or similar document;

6. A copy of any advertising materials or any summaries of the offering document to be used in the offer or sale of the securities in Missouri;

7. A copy of any underwriting or selling agreements;

8. The names, business addresses, and a brief description of employment responsibilities for each of the agents who will represent the agricultural cooperative in the offer or sale of the securities in Missouri;

9. A copy of the subscription agreement; and

10. A filing fee of one hundred dollars (\$100).

(3) The securities of the agricultural cooperative qualifying for the exemption under this regulation are exempt when ordered by the commissioner.

(4) Effective Period. The exemption under this regulation for the securities issued by or representing an interest in an agricultural cooperative is effective for one (1) year from the date that the securities were ordered to be exempt by the commissioner.

(5) Amendments. The agricultural cooperative shall file all amendments with the division in which there has been a material change to documents previously filed with the division. The agricultural cooperative shall file with the division all advertising materials to be used in the offer or sale of the securities exempt under this regulation.

(6) Renewal. If the securities offering is not completed during the effective period, an issuer can renew the exemption by submitting to the commissioner a written request for renewal that includes any amendments to any documents filed with the notice filing and a fee of one hundred dollars (\$100). The renewal needs to be received by the commissioner within thirty (30) days before the end of the one (1) year effective date.

(7) Agent Exemption. Agents of the agricultural cooperative may be exempt from agent registration under 15 CSR 30-51.180.

(8) Any agricultural cooperative that meets the qualifications of the exemption under section 409.2-201(8), RSMo can rely on the exemption of section 409.2-201(8), RSMo and need not qualify for the exemption under this regulation.

AUTHORITY: sections 409.2-203 and 409.6-605, RSMo Supp. 2003. Original rule filed May 26, 2004.

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 Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. 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 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 55—Hearings Under Securities Act**

PROPOSED AMENDMENT

15 CSR 30-55.010 Who May Request. The commissioner is amending sections (1) and (2).

PURPOSE: The purpose of this amendment is to establish administrative procedures for additional enforcement relief authorized by the Missouri Securities Act of 2003.

(1) Hearings Before Commissioner.

(A) In all contested cases under Chapter 409, RSMo, including matters involving discipline or disqualification of broker-dealers, agents, investment advisers, or investment adviser rep-

representatives under section 409.4-412, RSMo, or administrative enforcement under section 409.6-604, RSMo, the Enforcement Section of the Securities Division may initiate the matter by submitting to the commissioner a petition for administrative relief. The commissioner may act summarily if authorized by law, or may give notice and set the matter for hearing. Any hearing shall be governed by Chapter 536, RSMo. No order of revocation or suspension under section 409.4-412(b), RSMo, may be issued by the commissioner, unless the matter has been referred to the Administrative Hearing Commission as provided in subsection (2)(B).

[(A)](B) Any person aggrieved by a suspension or denial of an application summarily for a broker-dealer, agent, investment adviser, or investment adviser representative registration pursuant to section 409.4-412(f), RSMo may request a hearing before the commissioner. The hearing shall be governed by Chapter 536, RSMo.

[(B)](C) Any person aggrieved by the denial, suspension, postponement or revocation of a securities registration summarily, or the denial or revocation of exemptions from registration may request a hearing before the commissioner. Pursuant to section 409.3-306(d), RSMo the hearing shall be governed by Chapter 536, RSMo.

[(C)](D) Any person aggrieved by the denial, revocation, suspension, summary postponement or summary suspension of a commodity broker-dealer or sales representative registration under the Missouri Commodities Code, sections 409.800-409.863, RSMo may request a hearing before the commissioner. The hearing shall be governed by Chapter 536, RSMo.

[(D)](E) Any person aggrieved by an order issued by the commissioner pursuant to Chapter 409, RSMo, *[except those provided for below,]* and not afforded an opportunity for hearing prior to the issuance of the order may request a hearing before the commissioner, except those provided for in subsection (2)(A). The hearing shall be governed by Chapter 536, RSMo.

(2) Hearings Before the Administrative Hearing Commission.

(B) In matters involving the revocation or suspension of the registration of broker-dealers, agents, investment advisers, or investment adviser representatives under section 409.4-412(b), RSMo, the Enforcement Section of the Securities Division shall initiate the matter by submitting to the commissioner *[a petition for suspension or revocation and]* in addition to the petition for administrative relief provided in subsection (1)(A), a proposed complaint for filing before the Administrative Hearing Commission. The commissioner may then refer the matter to the Administrative Hearing Commission in accordance with section 409.4-412(k), RSMo. *[The Securities Division or counsel]* Attorneys for the commissioner may petition the Administrative Hearing Commission for findings of fact and conclusions of law to support grounds for disqualification under section 409.4-412(b) and/or (d), RSMo. The Administrative Hearing Commission shall, after opportunity for hearing, issue findings of fact and conclusions of law. The matter shall then be referred back to the commissioner for consideration of sanctions and final order.

AUTHORITY: sections 409.3-306(d), 409.4-412 and 409.6-605, RSMo Supp. 2003 and 409.836, RSMo 2000. Original rule filed June 25, 1968, effective Aug. 1, 1968. For intervening history, please consult the Code of State Regulations. Amended: Filed May 26, 2004.

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 Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. 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.