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SALUS POPULI SUPREMA LEX ESTO

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

ROBIN CARNAHAN

SECRETARY OF STATE

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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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 within 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 11—DEPARTMENT OF PUBLIC SAFETY
Division 40—Division of Fire Safety
Chapter 7—Blasting

EMERGENCY RULE

11 CSR 40-7.010 Blasting—Licensing, Registration, Notification, Requirements, and Penalties

PURPOSE: This rule explains the licensing and registration processes for explosive users and blasters and the standards for the use of commercial explosives in regulated activities.

EMERGENCY STATEMENT: During the FY07 legislative session, HB298 became law with the effective date being August 28, 2007. The Division of Fire Safety finds that this emergency rule is necessary to preserve a compelling governmental interest to ensure public safety measures are in place on this date. A proposed rule, which covers the same material, is published in this issue of the ***Missouri Register****. 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****. The Missouri Division of Fire Safety believes this emergency rule is necessary to comply with the requirements of section 319.306, RSMo, which states that such rules become effective no later than July 1, 2008 and any individual loading or firing explosives after that date shall obtain a license within one hundred eighty (180) days of July 1, 2008. The Division of Fire Safety was unable to submit a proposed rule to comply with that date until members of the newly-created State Blasting Safety Board were appointed and approved by the Senate. The board comprises members who represent various areas related to or interested in the blasting industry, including mining, construction, municipalities, manufacturing, monitoring, and regulatory. Section 319.324, RSMo requires that the board approve any proposed rules. The majority of this board was appointed and first met on February 4, 2008 to consider the proposed rule and approved the proposed rule on March 10, 2008. The board meeting was open to the public, and interested individuals were present and contributed to the discussion of the proposed rule. The Missouri Division of Fire Safety believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed April 1, 2008, effective July 1, 2008, expires January 1, 2009.*

(1) The following definitions shall be used in interpreting this rule:

(A) "Blaster," a person qualified to be in charge of and responsible for the loading and firing of an explosive or explosive material;

(B) "Blast," detonation of explosives;

(C) "Blasting," the use of explosives in mining or construction;

(D) "Blast site," the area where explosives are handled during loading of a bore hole, including fifty feet (50') in all directions from the perimeter formed by loaded holes. A minimum of thirty feet (30') may replace the fifty (50)-foot requirement if the perimeter of loaded holes is marked and separated from non-blast site areas by a barrier. The fifty (50)-foot or thirty (30)-foot distance requirements, as applicable, shall apply in all directions along the full depth of the bore hole;

(E) "Board," the State Blasting Safety Board created in section 319.324, RSMo;

(F) "Bore hole," a hole made with a drill, auger, or other tool in which explosives are placed in preparation for detonation;

(G) "Burden," the distance from an explosive charge to the nearest free or open face at the time of detonation;

(H) "Business day," any day of the week except Saturday, Sunday, or a federal or state holiday;

(I) "Deck," charge of explosives separated from other charges by stemming;

(J) "Delay period," the time delay provided by blasting caps which permits firing of bore holes in sequence;

(K) "Detonation," the action of converting the chemicals in an explosive charge to gases at a high pressure by means of a self-propagating shock wave passing through the charge;

(L) "Detonator," any device containing initiating or primary explosive that is used for initiating detonation of another explosive material. A detonator may not contain more than ten (10) grams of total explosives by weight, excluding ignition or delay charges. The term includes, but is not limited to, electric blasting caps of instantaneous and delay types, blasting caps for use with safety fuse, detonating cord delay connectors, and nonelectric instantaneous and delay blasting caps which use detonating cord, nonelectric shock tube, or any other replacement for electric leg wires;

(M) "Division," the Missouri Division of Fire Safety;

(N) "Direct supervision," to mean the supervisor (blaster) is physically present on the same job site as the person loading or firing the explosives;

(O) "Explosives," any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion, including, but not limited to, dynamite, black powder, pellet powder, initiating explosives, detonators, millisecond connectors, safety fuses, squibs, detonating cord, igniter cord, and igniters; includes explosive materials such as any blasting agent, emulsion explosive, water gel, or detonator. Explosive materials determined to be within the coverage of sections 319.300 to 319.345, RSMo shall include all such materials listed in Chapter 40 of Title 18 of the *United States*

Code, as amended, as issued at least annually by the Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives;

(P) "Firing," causing explosives to be detonated by the use of a fuse, electric detonator, or nonelectric shock tube;

(Q) "Fire protection official," an authorized representative of a municipal fire department, fire protection district, or volunteer fire protection association for the area where blasting occurs;

(R) "Fugitive from justice," any person who has fled from the jurisdiction of any court of record to avoid prosecution for any crime or to avoid giving testimony in any criminal proceeding. The term shall also include any person who has been convicted of any crime and has fled to avoid case disposition;

(S) "Initiation system," components of an explosive charge that cause the charge to detonate, such as primers, electric detonators, and detonating charge;

(T) "Loading," placing of explosives in a hole in preparation for detonation;

(U) "Local government," a city, county, fire protection district, volunteer fire protection association, or other political subdivision of the state;

(V) "Person using explosives," any individual, proprietorship, partnership, firm, corporation, company, or joint venture that is required to hold authority to receive or use explosives under statutes or regulations administered by the U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives and who employs licensed blasters;

(W) "Scaled distance," a value determined by dividing the linear distance, in feet, from the blast to a specified location, by the square root of the maximum weight of explosives, in pounds, to be detonated in any eight (8)-millisecond period;

(X) "Seismograph," an instrument that measures ground vibration and acoustic effects;

(Y) "Stemming," inert material that is placed above explosives that have been placed in a blast hole in preparation for detonation or vertically between columnar decks of explosives that have been placed in a hole in preparation for detonation; and

(Z) "Uncontrolled structure," any dwelling, public building, school, church, commercial building, or institutional building that is not owned or leased by the person using explosives, or otherwise under the direct contractual responsibility of the person using explosives.

(2) The following fees shall apply for the licensing of blasters, registration of persons using explosives, explosives use reporting, and testing:

(A) Individual Blaster's License: one hundred dollars ($100) for a three (3)-year license;

(B) Registration fee for a person using explosives (one (1)-time fee): two hundred dollars ($200);

(C) Annual explosive use fee: five hundred dollars ($500) plus two dollars ($2) per ton of explosives or explosive materials used within the state.

1. When the total pounds of explosive materials used results in a portion of a ton, the tonnage reported shall be rounded to the nearest ton.

2. Per ton fees shall not include any items defined by statute as "detonators"; and

(D) Testing/retesting fee: twenty-five dollars ($25) per individual test.

(3) Blaster Licensing.

(A) Any individual, except as exempted by statute, who conducts blasting or is in charge of or responsible for the loading and firing of any explosive material in the state shall be licensed by the division as a blaster.

1. Any individual, proprietorship, partnership, firm, corporation, company, or joint venture defined as a "person using explosives" shall not be required to hold license as a blaster; however, any blasting conducted on behalf of a person using explosives shall be conducted by a licensed blaster.

(B) Exemptions. The requirement for obtaining a blaster's license shall not apply to:

1. Individuals employed by universities, colleges, or trade schools when the use of explosives is confined to instruction or research;

2. Individuals using explosive materials in the forms prescribed by the official *U.S. Pharmacopoeia* or the *National Formulary* and used in medicines and medicinal agents;

3. Individuals conducting training or emergency operations of any federal, state, or local government including all departments, agencies, and divisions thereof, provided they are acting in their official capacity and in the proper performance of their duties or functions;

4. Individuals that are members of the armed forces or any military unit of Missouri or the United States who are using explosives while on official training exercises or who are on active duty;

5. Individuals using pyrotechnics, commonly known as fireworks, including signaling devices such as flares, fuses, and torpedoes;

6. Individuals using small arms ammunition and components thereof which are subject to the Gun Control Act of 1968, 18 U.S.C., Section 44, and regulations promulgated thereunder;

7. Any individual performing duties in underground mines regulated by 30 CFR Part 48, Subpart A, 30 CFR Part 57, or performing duties in coal mining regulated by 30 CFR Part 75, and 30 CFR Part 77 of the *Code of Federal Regulations*, as amended, or using explosives within an industrial furnace;

8. Any individual having a valid blaster's license or certificate issued under the provisions of any requirement of the U.S. government in which the requirements for obtaining the license or certificate meet or exceed the requirements of sections 319.300 to 319.345, RSMo;

9. Individuals using agricultural fertilizers when used for agricultural or horticultural purposes;

10. Individuals handling explosives while in the act of transporting them from one (1) location to another;

11. Individuals assisting or training under the direct supervision of a licensed blaster;

12. Individuals handling explosives while engaged in the process of explosives manufacturing;

13. Employees, agents, or contractors of rural electric cooperatives organized or operating under Chapter 394, RSMo; and

14. Individuals discharging historic firearms and cannon or reproductions of historic firearms and cannon. (319.321 RSMo)

(C) All applicants for a blaster's license shall meet all the following requirements:

1. Be at least twenty-one (21) years of age;

2. Not have willfully violated any provisions of sections 319.300 to 319.345, RSMo;

3. Not have knowingly withheld information or have not made any false or fictitious statement intended or likely to deceive in connection with the application;

4. Have familiarity and understanding of relevant federal and state laws relating to explosive materials;

5. Not have been convicted in any court of, or pleaded guilty to a felony;

6. Not be a fugitive from justice;

7. Not be an unlawful user of any controlled substance in violation of Chapter 195, RSMo;

8. Not have been adjudicated as mentally defective; and

9. Not advocate or knowingly belong to any organization or group that advocates violent action.

(D) An applicant for a blaster's license shall also meet one (1) of the following licensing criteria, to be eligible to apply to the division for a license:

1. Licensing by reciprocity. Within the three (3) years prior to applying for a license, the individual must have held a valid license or certification from a source identified by the division as meeting or exceeding the provisions for licensing within the state of Missouri. (319.306.12, RSMo)

2. Licensing by equivalency. An individual employed as a blaster on or before December 31, 2000, who, within the two (2) years prior to applying for a license, has accumulated one thousand (1,000) hours of training or education and experience employed or contracted by a person using explosives, must produce an affidavit signed by that person using explosives validating the training or education and experience.

A. A license granted pursuant to this provision shall only be valid for blasting conducted for the person using explosives submitting the affidavit.

B. An individual granted a license that then leaves the employment of or no longer contracts with the person submitting the affidavit shall surrender their license and then shall be subject to the licensing requirements as a new blaster.

3. New blaster. An individual must have accumulated one thousand (1,000) hours of documented experience, as approved by the division, directly relating to the use of explosives within the two (2) years immediately prior to applying for a license, completed an approved course of instruction and then successfully passed an approved licensing examination.

(E) All applicants shall submit the following to the division when applying for a license:

1. A completed "Application for Licensed Blaster";

2. A copy of a valid state driver's license or state ID card as proof of applicant's age and identity;

3. An approved criminal background check conducted within the applicant's state of residence;

4. Copy of U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives permit/license verifying compliance with applicable federal laws relating to possession, sales, storage or use of explosives;

5. Two (2) passport-type photographs; and

6. A check, money order, or bank draft in the amount of one hundred dollars ($100) (U.S.) payable to the Missouri Division of Fire Safety.

(F) All applicants applying as a new blaster must also submit all the following to the division when applying for a license:

1. Documentation of having successfully completed a training course approved by the division; and

2. Documentation affirming required approved training and experience related to the use of explosives.

(G) A blaster's license issued by the division shall expire three (3) years from the date of issuance.

1. To be eligible for renewal of a blaster's license, the individual seeking relicensure must submit all of the following to the division no less than thirty (30) days before the date of current license expiration:

A. A completed "Application for Licensed Blaster";

B. A copy of a valid state driver's license or state ID card;

C. Documentation of having successfully completed a total of eight (8) hours of approved continuing education training related to the use of explosives. Four (4) hours of which must have occurred within the twelve (12) months immediately before the date of license expiration;

D. An approved current criminal background check conducted within the applicant's state of residence;

E. Copy of U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives permit/license verifying compliance with applicable federal laws relating to possession, sales, storage, or use of explosives, if applicable;

F. Two (2) passport-type photographs;

G. A check, money order, or bank draft in the amount of one hundred dollars ($100) (U.S.) payable to the Missouri Division of Fire Safety.

2. Any individual whose license has been expired for a period of three (3) years or less shall be required to submit documentation of successfully passing an approved examination and completion of eight (8) hours of approved training prior to being eligible to apply for renewal of a license.

3. Any individual whose license has been expired for a period of more than three (3) years shall be required to submit documentation of successfully passing an approved examination and completion of twenty (20) hours of approved training prior to being eligible to apply for a blaster's license.

(H) Blasters Training Courses.

1. The division shall review and approve training courses that fulfill the training requirement of qualifying for a blaster's license and fulfill the training requirement for renewal of a blaster's license.

2. Any person applying to the division for approval of a course of instruction that meets the blasters' training requirement shall submit the following:

A. A completed "Application for Blaster Training Course Approval";

B. A description and copy of instructional materials to be used in the course;

C. An outline of the subject matter to be taught, including course objectives and the minimum hours of instruction on each topic;

D. A description of the qualifications of the instructor or instructors; and

E. Copies of the tests, quizzes, activities, and/or projects included in the course.

3. To be approved by the division, a blaster's training course shall contain at least twenty (20) hours of instruction to prepare attendees for obtaining a blaster's license the first time, or eight (8) hours of instruction to prepare attendees for obtaining a license renewal.

4. The division shall review the application regarding the knowledge and experience of proposed instructors, the total hours of training, and the adequacy of proposed training in subject matter.

5. If the division determines that training proposed by the applicant is adequate, a letter of approval shall be issued to the applicant.

6. Course approval shall be effective for a period of three (3) years, after which the materials required in paragraph (3)(H)2. above must be submitted again.

7. If at any time the division determines that an approved training course no longer meets the standards of this section, the letter of approval may be revoked with written notice.

8. The division or any person providing a course of instruction may charge an appropriate fee to recover the cost of conducting such instruction.

9. The division shall maintain a current list of persons who provide approved training and shall make this list available by any reasonable means to professional and trade associations, labor organizations, universities, vocational schools, and others upon request.

10. Any person providing training in an approved course shall submit a list of individuals that attended any such course to the division within ten (10) business days after completion of the course.

11. The division or its authorized agent shall offer annually at least two (2) courses of instruction that fulfill the training requirement of qualifying for a blaster's license and two (2) courses that fulfill the training requirement for renewal of a blaster's license.

(I) Testing for Licensure.

1. The division shall approve and administer a standard examination or examinations for the purpose of qualifying an individual to obtain a blaster's license.

A. All examinations shall remain the property of the division and in the possession of the division.

2. Individuals applying to test as a blaster must submit a completed "Application for Licensed Blaster Examination" and the appropriate testing fee.

3. Applications must be received by the division no less than twenty (20) business days prior to the scheduled exam date. Preregistration is required for all examinations.

4. The division will score all exams and applicants will be notified by letter accordingly within thirty (30) days of the exam.

5. Notification will indicate only pass/fail status.

6. A passing score shall be a score of seventy-five percent (75%) or above on the exam.

7. An applicant shall not be eligible to retest until after receiving notification of failure.

8. Should an applicant fail the exam a second time, he or she must retake an approved training course before being allowed to retest for a license.

9. If an applicant has not taken a retest within six (6) months of original test date, he or she must take an approved course again to be eligible to test.

(4) Persons Using Explosives.

(A) Any person using explosives in Missouri shall register with the division prior to first using explosives in Missouri.

(B) Upon initial registration, the person using explosives shall submit to the division:

1. The name of the person, company, or organization;

2. The address of the person, company, or organization;

3. The telephone and facsimile number of the person, company, or organization;

4. The email address;

5. The name of the principal individual having responsibility for supervision of the use of explosives;

6. Copy of U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives permit/license verifying compliance with applicable federal laws relating to possession, sales, storage, or use of explosives, if applicable; and

7. A fee of two hundred dollars ($200) (U.S.).

(C) For persons using explosives at multiple locations under the operational control of one (1) parent company or organization, only one (1) registration fee for the parent company or organization shall be required.

(5) Each registered person using explosives in Missouri shall, by January 31 of each year after registering, file an annual report with the division for the preceding calendar year.

(A) The initial annual report shall only include that portion of the preceding calendar year after the date the person became subject to the requirement to register.

(B) The report shall include:

1. Any change or addition to the information required in this section;

2. The name and address of the distributors from which explosives were purchased;

3. The total number of pounds of explosives purchased for use in Missouri; and

4. The total number of pounds actually used in Missouri during the period covered by the report.

(C) Persons required to report annually shall maintain records sufficient to prove the accuracy of the information reported.

(D) The person using explosives shall submit with the report, an explosive use fee of five hundred dollars ($500) plus two dollars ($2) per ton of explosives or explosive materials used within the state.

1. If the report of total pounds used results in a portion of a ton, the cumulative total of the fee shall be rounded to the nearest ton.

2. In the event that less than one (1) ton of explosives has been used in the reporting period, the five hundred dollar ($500) annual fee shall be submitted with the annual report to the division.

(E) The division may audit the records of any person using explosives required to report annually to determine the accuracy of the number of pounds of explosives reported.

(F) In connection with such audit, the division may also require any distributor of explosives to provide a statement of sales during the year to persons required to report.

(6) Notification of Blasting Operations.

(A) Any person using or intending to use explosives within Missouri shall notify the division in writing or by telephone at least two (2) business days in advance of first using explosives at a site where blasting has not been previously conducted.

(B) If blasting will be conducted at an ongoing project, such as a long-term construction project, or at a permanent site, the person shall only be required to make one (1) notice to the division in advance of the first use of explosives.

(C) The notice required by this section shall state the name, address, and telephone number of the person using explosives, the name of the individual responsible for supervision of blasting, the date or approximate period over which blasting will be conducted, the location of blasting by street address, route, or other description, and the nature of the project or reason for blasting.

(D) This section shall not apply to any blasting required by a contract with any agency of the state of Missouri, any federal agency, or any political subdivision.

(7) Exemptions. Sections (4) through (6) above shall not apply to:

(A) Any individual, proprietorship, partnership, firm, corporation, company, or joint venture defined as a "person using explosives" that does not employ blasters required to be licensed by the division;

(B) Universities, colleges, or trade schools when confined to the purpose of instruction or research;

(C) The use of explosive materials in the forms prescribed by the official *U.S. Pharmacopoeia* or the *National Formulary* and used in medicines and medicinal agents;

(D) The training or emergency operations of any federal, state, or local government including all departments, agencies, and divisions thereof, provided they are acting in their official capacity and in the proper performance of their duties or functions;

(E) The use of explosives by the military or any agency of the United States;

(F) The use of pyrotechnics, commonly known as fireworks, including signaling devices such as flares, fuses, and torpedoes;

(G) The use of small arms ammunition and components thereof which are subject to the Gun Control Act of 1968, 18 U.S.C., Section 44, and regulations promulgated thereunder. Any small arms ammunition and components thereof exempted by the Gun Control Act of 1968 and regulations promulgated thereunder are also exempted from the provisions of sections 319.300 to 319.345, RSMo;

(H) Any person performing duties using explosives within an industrial furnace;

(I) The use of agricultural fertilizers when used for agricultural or horticultural purposes;

(J) The use of explosives for lawful demolition of structures;

(K) The use of explosives by employees, agents, or contractors of rural electric cooperatives organized or operating under Chapter 394, RSMo; and

(L) Individuals discharging historic firearms and cannon or reproductions of historic firearms and cannon.

(8) Local Jurisdictions.

(A) Any person using explosives that will conduct blasting within the jurisdiction of a municipality shall notify the appropriate representative of the municipality in writing or by telephone at least two (2) business days in advance of blasting at that location.

1. An appropriate representative shall be deemed to be the city's public works department, code enforcement official, or an official at the main office maintained by the municipality.

2. In any area where blasting will be conducted, whether in a municipality or in an unincorporated area, the person using explosives also shall notify the appropriate fire protection official for the

jurisdiction where blasting will occur, which may be a city fire department, fire protection district, or volunteer fire protection association.

3. The notice shall state:

A. The name, address, and telephone number of the person using explosives;

B. The name of the individual responsible for supervision of blasting;

C. The date or approximate period over which blasting will be conducted;

D. The location of blasting by street address, route, or other description; and

E. The nature of the project or reason for blasting.

4. If blasting will be conducted at an ongoing project, such as a long-term construction project, or at a permanent site, such as a surface mine, the person shall only be required to make one notice to the municipality or appropriate fire protection official in advance of the first use of explosives.

5. Any such ongoing projects or permanent sites in existence at the time of the effective date of sections 319.300 to 319.345, RSMo shall not be required to provide notice as described in this subsection.

6. Any person using explosives, which will conduct blasting within the jurisdiction of a municipality, shall notify the owner or occupant of any residence or business located within a scaled distance of fifty-five (55) from the site of blasting prior to the start of blasting at any new location.

A. One (1) notification delivered by mail, by telephone, through the printed notification posted prominently on the premises or the property of the owner or occupant of the residence or business, or delivered in person to any such owner or occupant meets the requirements of this subsection.

B. A municipality may provide the name, last known address, and telephone number of the owners or occupants of any residence or business that may be located within the scaled distance of fifty-five (55) from the site of blasting to the person using explosives upon that person's request.

(B) Any municipality or county may by ordinance or order—

1. Require that a permit be obtained in addition to the notice required by this section, with such application for permit being due no more than ten (10) days prior to the first use of explosives;

2. Require that the application for the permit contain specific information about the type of explosives to be used and their storage location at the site where used;

3. Require the applicant to demonstrate an acceptable plan for signage or other means of informing the public of blasting in proximity to public streets or highways and any request for temporary closing of streets or routing of traffic;

4. Specify the times of day blasting may be conducted, which shall not be less than eight (8) consecutive hours on any day of the week except the ordinance or order may prohibit blasting on Sunday unless approved by the municipality or county upon application by the person using explosives;

5. Require that the applicant submit proof that the person using explosives is registered with the division and that blasting will be conducted by a licensed blaster;

6. Require that the applicant submit proof of commercial general liability insurance in an acceptable amount, which shall be no less than one (1) million dollars and no more than five (5) million dollars;

7. Require that the applicant make at least three (3) documented attempts to contact the owner of any uncontrolled structures within a scaled distance of thirty-five (35) from the blast site in order to conduct a preblast survey of such structures. A preblast survey is not required if the owner of any such structure does not give permission for a survey to be conducted;

8. Enact any other provision necessary to carry out the provisions of the ordinance or order, including the conditions under which the permit may be suspended or revoked or appropriate fines may be imposed for failure to obtain a permit or violations of the permit; and

9. A permit for blasting under a municipal or county ordinance or order and complying with this section shall be granted by the municipality or county upon satisfying the requirements of the ordinance or order and upon the applicant's payment of a reasonable fee to cover the administration of the permit system.

(C) Any authorized representative of a municipality, county, or an appropriate fire protection official may—

1. Require any person using explosives to show proof that he or she is registered with the division and blasting is being conducted by an individual that is licensed under the provisions of section 319.306, RSMo;

2. Request and be allowed access to the site of blasting by the person using explosives and shall be allowed to observe blasting from a safe location as designated by the blaster;

3. Examine records of blasting required to be maintained by sections 319.309 and 319.315, RSMo;

4. However, no municipality, county, or fire protection official shall require a person using explosives or a blaster to surrender such records, or a copy of such records, to the municipality or fire protection official except as necessary under an investigation of the blaster's violation of a municipal or county permit; and

5. Report suspected violations of sections 319.300 to 319.345, RSMo to the division.

(D) Except in any county included in section 319.342, RSMo or quarries operating within a county meeting the requirements of section 319.343, RSMo, no existing or future ordinance or order shall—

1. Preempt, exceed, amend, or conflict with the provisions of sections 319.309 to 319.342, RSMo or any rule promulgated pursuant to section 319.327, RSMo; or

2. Preempt, amend, exceed, or conflict with the provisions of any statute, regulation, or policy established by:

A. The United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives;

B. Chapter 40 of Title 18 of the *United States Code*, as amended;

C. The United States Department of Transportation;

D. The federal Mine Safety and Health Administration; or

E. The federal Occupational Safety and Health Administration.

(E) The requirements for notification and provisions of local ordinances shall not apply to any blasting required by a construction contract with any agency of the state of Missouri, any federal agency, or any political subdivision.

(F) Nothing in these rules shall preempt the rights and remedies afforded by the general assembly or common law to persons damaged by blasting.

(G) Nothing in this section shall be construed to exempt any person using explosives from the requirements of registering with and reporting explosives used to the division and paying the associated fees.

(9) It shall be the duty of each licensed blaster and each person using explosives to assure that the requirements of this section are met.

(A) Any person using explosives in the state of Missouri shall calculate the scaled distance to the nearest uncontrolled structure. If more than one (1) uncontrolled structure is the same approximate distance from the blast site, then the person using explosives may select one (1) representative structure for calculation of scaled distance.

(B) In any instance when the calculated scaled distance value is fifty-five (55) or less, any person using explosives shall use at least one (1) seismograph calibrated to the manufacturer's standard for use to record the ground vibration and acoustic levels that occur from the use of such explosives or explosive materials.

(C) When measuring ground vibration and acoustic levels, the seismograph shall be placed in the proximity of the nearest uncontrolled

structure or, at the option of the person using explosives, closer to the blast site. If more than one (1) uncontrolled structure is the same approximate distance from the blast site, then the person using explosives may select one (1) representative structure for placement of the seismograph.

(D) Any person using explosives who is voluntarily using a seismograph calibrated to the manufacturer's standard for use for all blasting is exempt from the requirements of this section.

(E) Seismograph recordings of the ground vibration and acoustic levels created by the use of explosives, when required as above, shall be retained for at least three (3) years. Such recordings shall be made available to the division within twenty-four (24) hours of a request by any representative of the division.

(F) Each seismograph recording and the accompanying records shall include the—

1. Maximum ground vibration and acoustics levels recorded;

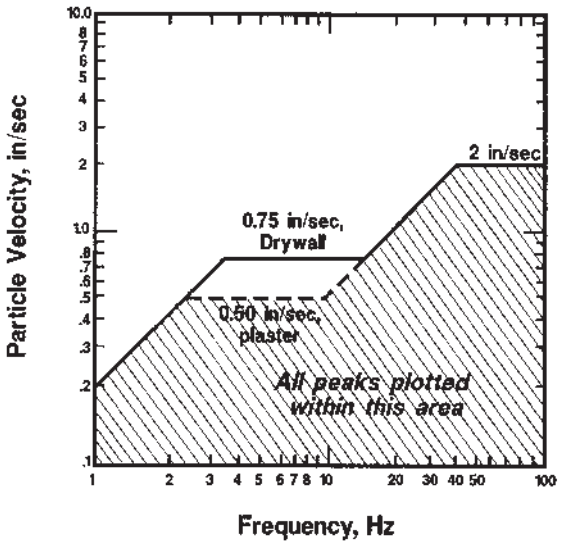
2. Specific location of the seismograph equipment, its distance from the detonation of the explosives, the date of the recording, and the time of the recording;

3. Name of the individual responsible for operation of the seismograph equipment and performing an analysis of each recording; and

4. Type of seismograph instrument, its sensitivity and calibration signal, or certification date of the last calibration.

(G) Any person using explosives in the state of Missouri in which monitoring with a seismograph is required shall limit acoustic values from blasting to one hundred thirty-three decibels (133 dB) using a two hertz (2 Hz) flat response measuring system based on the Office of Surface Mining regulation 30 CFR 816.67(b)(1)(i).

(H) Any person using explosives in the state of Missouri in which monitoring with a seismograph is required shall comply with ground vibration limits based on the U.S. Bureau of Mines Report of Investigations 8507, Appendix B:



(I) In lieu of the ground vibration limit established above, the person using explosives may submit a written request to the division to use an alternate compliance method. Such written request shall be supported by sufficient technical information, which may include, but not be limited to, documented approval of such method by other federal, state, or local political subdivisions which regulate the use of explosives. Upon submittal by the person using explosives of a request to use an alternate compliance method, the State Blasting Safety Board shall issue a written determination as to whether the technical information submitted provides sufficient justification for the alternate method to be used as a method of demonstrating compliance with the provisions of this section.

(J) A record of use of explosives shall be made and retained for at least three (3) years.

1. Licensed blasters shall create the record required in this section and provide such record to the person using explosives, who shall be responsible for maintaining records required in this section.

2. The record shall be completed on a form provided or approved by the division and completed by the end of the business day following the day in which the explosives were detonated.

3. Such records shall be made available to the division, upon request, within twenty-four (24) hours of the request.

4. Each record shall include the—

A. Name of the person using the explosives;

B. Location, date, and time of the detonation;

C. Name of the licensed blaster responsible for use of the explosives;

D. Type of material blasted;

E. Number of bore holes, burden, and spacing;

F. Diameter and depth of bore holes;

G. Type of explosives used;

H. Weight of explosives used per bore hole and total weight of explosives used;

I. Maximum weight of explosives detonated within any eight (8)-millisecond period;

J. Maximum number of bore holes or decks detonated within any eight (8)-millisecond period;

K. Initiation system, including number of circuits and the timer interval, if a sequential timer is used;

L. Type and length of stemming;

M. Type of detonator and delay periods used, in milliseconds;

N. Sketch of delay pattern, including decking;

O. Distance and scaled distance to the nearest uncontrolled structure; and

P. Location of the nearest uncontrolled structure, using the best available information.

5. If the type of blasting being recorded by a seismograph does not involve bore holes, then the record required in paragraph (9)(J)4. shall contain the:

A. Name of the person using the explosives;

B. Location, date, and time of the detonation;

C. Name of the licensed blaster responsible for use of the explosives;

D. Type of material blasted;

E. Type of explosives used;

F. Weight of explosives used per shot and total weight of explosives used;

G. Maximum weight of explosives detonated within any eight (8)-millisecond period;

H. Initiation system, including number of circuits and the timer interval, if a sequential timer is used;

I. Type of detonator and delay periods used, in milliseconds;

J. Sketch of delay pattern;

K. Distance and scaled distance, if required under the provisions of section 319.309, RSMo, to the nearest uncontrolled structure; and

L. Location of the nearest uncontrolled structure, using the best available information.

(10) Violations and Penalties.

(A) The division shall follow the procedure outlined below for violations of any of the provisions of section (9):

1. A written notification of violation will be issued to a licensed blaster and the explosive user for which the blaster is employed for a violation of a provision of section (9).

A. Any notice of violation of any provision of sections 319.300 to 319.345, RSMo shall be in writing and shall state the section or sections violated and the circumstance of the violation, including date, place, person involved, and the act or omission constituting

the violation.

B. The notice shall also inform the person receiving the notice of the right to request a hearing before the State Blasting Safety Board for any violation, except for the violation of failure to hold a blasting license as required by section 319.306, RSMo for which no appeal may be made.

2. The state fire marshal shall consider the seriousness of each violation and implement the action considered appropriate.

(B) A blaster's license issued under the provisions of this section may be suspended or revoked by the division upon substantial proof that the individual holding the license has—

1. Knowingly failed to monitor the use of explosives as provided in section 319.309, RSMo;

2. Negligently or habitually exceeded the limits established under section 319.312, RSMo;

3. Knowingly or habitually failed to create a record of blasts as required by section 319.315, RSMo;

4. Had a change in material fact relating to their qualifications for holding a blaster's license as required by these rules;

5. Failed to advise the division of any change of material fact relating to his or her qualifications for holding a blaster's license; or

6. Knowingly made a material misrepresentation of any information by any means of false pretense, deception, fraud, misrepresentation, or cheating for the purpose of obtaining training or otherwise meeting the qualifications of obtaining a license.

(C) The division shall provide any notice of suspension or revocation in writing, sent by certified mail to the last known address of the holder of the license.

1. The notice may also be verbal, but this does not eliminate the requirement for written notice.

2. Upon receipt of a verbal or written notice of suspension or revocation from the division, the individual holding the license shall immediately surrender all copies of the license to a representative of the division and shall immediately cease all blasting activity.

(D) The individual holding the license may appeal any suspension or revocation to the State Blasting Safety Board established under section 319.324, RSMo within forty-five (45) days of the date written notice was received.

1. The division shall immediately notify the chairman of the board that an appeal has been received and a hearing before the board shall be held.

2. The board shall consider and make a decision on any appeal received by the division within thirty (30) days of the date the appeal is received by the division.

3. The board shall make a decision on the appeal by majority vote of the board and shall immediately notify the licensee of its decision in writing.

4. The written statement of the board's decision shall be prepared by the division or its designee and shall be approved by the chairman of the board.

5. The approved statement of the board's decision shall be sent by certified mail to the last known address of the holder of the license.

AUTHORITY: section 319.306, RSMo Supp. 2007. Emergency rule filed April 1, 2008, effective July 1, 2008, expires January 1, 2009. A proposed rule, which covers the same material, is published in this issue of the ***Missouri Register****.*

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

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

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

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

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

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

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

Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 80—Teacher Quality and Urban Education
Chapter 800—Educator Certification

PROPOSED RULE

5 CSR 80-800.285 Application for Certificates of License to Teach on the Basis of Certification by the American Board for Certification of Teacher Excellence (ABCTE)

PURPOSE: The state board of education is authorized to grant certificates of license to teach in any of the public schools of the state and establish requirements and qualifications for those certificates. This rule outlines the procedures for applicants to acquire certification through the American Board for Certification of Teacher Excellence (ABCTE).

(1) In addition to all the criteria for application provided under 5 CSR 80-800.200, an initial four (4)-year certificate shall be issued to an applicant who has successfully obtained certification through the American Board for Certification of Teacher Excellence (ABCTE) and upon verification by the school principal of sixty (60) contact hours in any one (1) of the following areas:

(A) Sixty (60) contact hours in a public school or accredited nonpublic school classroom, of which at least forty-five (45) must be teaching;

(B) Sixty (60) contact hours as a substitute teacher in a public school or accredited nonpublic school, with at least thirty (30) consecutive hours in the same classroom; or

(C) Sixty (60) contact hours of teaching as a paraprofessional.

(2) Upon completion of the requirements listed in section (1) of this rule and completion of the requirements listed herein, an applicant shall be eligible to apply for a career continuous professional certificate:

(A) Completion of thirty (30) contact hours of professional development within four (4) years, which may include hours spent in class in an appropriate college curriculum;

(B) Completion of four (4) years of department-approved teaching experience;

(C) Development and implementation of a professional development plan;

(D) Completion of two (2) years in a district mentoring program approved by the state board of education or the ABCTE;

(E) Attainment of a successful performance-based teacher evaluation; and

(F) Participation in a beginning teacher assistance program.

(3) Certification authorized under this rule shall not be granted for the areas of early childhood education, elementary education, or special education.

AUTHORITY: section 161.092, RSMo Supp. 2007. Original rule filed April 9, 2008.

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 cost private entities approximately twenty thousand four hundred dollars annually.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Elementary and Secondary Education, Attn: Dr. Charles Brown, Assistant Commissioner, Division of Teacher Quality and Urban Education, PO Box 480, Jefferson City, MO 65102-0480, or by email to: Tammy.Allee@dese.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

FISCAL NOTE
PRIVATE COST

I.

Department Title: 5 – Department of Elementary and Secondary Education
Division Title: 80 - Teacher Quality and Urban Education
Chapter Title: 800 - Educator Certification

Rule Number and Title:	5 CSR 80-800.285 Application for Certificate of License to Teach on the Basis of Certification by the American Board for Certification of Teacher Excellence
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	**Classification by types of the business entities which would likely be affected:**	**Estimate annually as to the cost of compliance with the rule be the affected entities:**
Estimated 24 Annually	None	$20,400

III. WORKSHEET

IV. ASSUMPTIONS

The Department of Elementary and Secondary Education assumes that an average of twenty-four (24) teachers per year will participate in the ABCTE. This individual cost of the examination is eight hundred fifty dollars ($850). Total private cost is estimated to be twenty thousand four hundred dollars ($20,400) annually.

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 40—Division of Fire Safety
Chapter 7—Blasting

PROPOSED RULE

11 CSR 40-7.010 Blasting—Licensing, Registration, Notification, Requirements, and Penalties

PURPOSE: This rule explains the licensing and registration processes for explosive users and blasters and the standards for the use of commercial explosives in regulated activities.

(1) The following definitions shall be used in interpreting this rule:

(A) "Blaster," a person qualified to be in charge of and responsible for the loading and firing of an explosive or explosive material;

(B) "Blast," detonation of explosives;

(C) "Blasting," the use of explosives in mining or construction;

(D) "Blast site," the area where explosives are handled during loading of a bore hole, including fifty feet (50') in all directions from the perimeter formed by loaded holes. A minimum of thirty feet (30') may replace the fifty (50)-foot requirement if the perimeter of loaded holes is marked and separated from non-blast site areas by a barrier. The fifty (50)-foot or thirty (30)-foot distance requirements, as applicable, shall apply in all directions along the full depth of the bore hole;

(E) "Board," the State Blasting Safety Board created in section 319.324, RSMo;

(F) "Bore hole," a hole made with a drill, auger, or other tool in which explosives are placed in preparation for detonation;

(G) "Burden," the distance from an explosive charge to the nearest free or open face at the time of detonation;

(H) "Business day," any day of the week except Saturday, Sunday, or a federal or state holiday;

(I) "Deck," charge of explosives separated from other charges by stemming;

(J) "Delay period," the time delay provided by blasting caps which permits firing of bore holes in sequence;

(K) "Detonation," the action of converting the chemicals in an explosive charge to gases at a high pressure by means of a self-propagating shock wave passing through the charge;

(L) "Detonator," any device containing initiating or primary explosive that is used for initiating detonation of another explosive material. A detonator may not contain more than ten (10) grams of total explosives by weight, excluding ignition or delay charges. The term includes, but is not limited to, electric blasting caps of instantaneous and delay types, blasting caps for use with safety fuse, detonating cord delay connectors, and nonelectric instantaneous and delay blasting caps which use detonating cord, nonelectric shock tube, or any other replacement for electric leg wires;

(M) "Division," the Missouri Division of Fire Safety;

(N) "Direct supervision," to mean the supervisor (blaster) is physically present on the same job site as the person loading or firing the explosives;

(O) "Explosives," any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion, including, but not limited to, dynamite, black powder, pellet powder, initiating explosives, detonators, millisecond connectors, safety fuses, squibs, detonating cord, igniter cord, and igniters; includes explosive materials such as any blasting agent, emulsion explosive, water gel, or detonator. Explosive materials determined to be within the coverage of sections 319.300 to 319.345, RSMo shall include all such materials listed in Chapter 40 of Title 18 of the *United States Code*, as amended, as issued at least annually by the Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives;

(P) "Firing," causing explosives to be detonated by the use of a fuse, electric detonator, or nonelectric shock tube;

(Q) "Fire protection official," an authorized representative of a municipal fire department, fire protection district, or volunteer fire protection association for the area where blasting occurs;

(R) "Fugitive from justice," any person who has fled from the jurisdiction of any court of record to avoid prosecution for any crime or to avoid giving testimony in any criminal proceeding. The term shall also include any person who has been convicted of any crime and has fled to avoid case disposition;

(S) "Initiation system," components of an explosive charge that cause the charge to detonate, such as primers, electric detonators, and detonating charge;

(T) "Loading," placing of explosives in a hole in preparation for detonation;

(U) "Local government," a city, county, fire protection district, volunteer fire protection association, or other political subdivision of the state;

(V) "Person using explosives," any individual, proprietorship, partnership, firm, corporation, company, or joint venture that is required to hold authority to receive or use explosives under statutes or regulations administered by the U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives and who employs licensed blasters;

(W) "Scaled distance," a value determined by dividing the linear distance, in feet, from the blast to a specified location, by the square root of the maximum weight of explosives, in pounds, to be detonated in any eight (8)-millisecond period;

(X) "Seismograph," an instrument that measures ground vibration and acoustic effects;

(Y) "Stemming," inert material that is placed above explosives that have been placed in a blast hole in preparation for detonation or vertically between columnar decks of explosives that have been placed in a hole in preparation for detonation; and

(Z) "Uncontrolled structure," any dwelling, public building, school, church, commercial building, or institutional building that is not owned or leased by the person using explosives, or otherwise under the direct contractual responsibility of the person using explosives.

(2) The following fees shall apply for the licensing of blasters, registration of persons using explosives, explosives use reporting, and testing:

(A) Individual Blaster's License: one hundred dollars ($100) for a three (3)-year license;

(B) Registration fee for a person using explosives (one (1)-time fee): two hundred dollars ($200);

(C) Annual explosive use fee: five hundred dollars ($500) plus two dollars ($2) per ton of explosives or explosive materials used within the state.

1. When the total pounds of explosive materials used results in a portion of a ton, the tonnage reported shall be rounded to the nearest ton.

2. Per ton fees shall not include any items defined by statute as "detonators"; and

(D) Testing/retesting fee: twenty-five dollars ($25) per individual test.

(3) Blaster Licensing.

(A) Any individual, except as exempted by statute, who conducts blasting or is in charge of or responsible for the loading and firing of any explosive material in the state shall be licensed by the division as a blaster.

1. Any individual, proprietorship, partnership, firm, corporation, company, or joint venture defined as a "person using explosives" shall not be required to hold license as a blaster; however, any blasting conducted on behalf of a person using explosives shall be conducted by a licensed blaster.

(B) Exemptions. The requirement for obtaining a blaster's license shall not apply to:

1. Individuals employed by universities, colleges, or trade schools when the use of explosives is confined to instruction or research;

2. Individuals using explosive materials in the forms prescribed by the official *U.S. Pharmacopoeia* or the *National Formulary* and used in medicines and medicinal agents;

3. Individuals conducting training or emergency operations of any federal, state, or local government including all departments, agencies, and divisions thereof, provided they are acting in their official capacity and in the proper performance of their duties or functions;

4. Individuals that are members of the armed forces or any military unit of Missouri or the United States who are using explosives while on official training exercises or who are on active duty;

5. Individuals using pyrotechnics, commonly known as fireworks, including signaling devices such as flares, fuses, and torpedoes;

6. Individuals using small arms ammunition and components thereof which are subject to the Gun Control Act of 1968, 18 U.S.C., Section 44, and regulations promulgated thereunder;

7. Any individual performing duties in underground mines regulated by 30 CFR Part 48, Subpart A, 30 CFR Part 57, or performing duties in coal mining regulated by 30 CFR Part 75, and 30 CFR Part 77 of the *Code of Federal Regulations*, as amended, or using explosives within an industrial furnace;

8. Any individual having a valid blaster's license or certificate issued under the provisions of any requirement of the U.S. government in which the requirements for obtaining the license or certificate meet or exceed the requirements of sections 319.300 to 319.345, RSMo;

9. Individuals using agricultural fertilizers when used for agricultural or horticultural purposes;

10. Individuals handling explosives while in the act of transporting them from one (1) location to another;

11. Individuals assisting or training under the direct supervision of a licensed blaster;

12. Individuals handling explosives while engaged in the process of explosives manufacturing;

13. Employees, agents, or contractors of rural electric cooperatives organized or operating under Chapter 394, RSMo; and

14. Individuals discharging historic firearms and cannon or reproductions of historic firearms and cannon. (319.321, RSMo)

(C) All applicants for a blaster's license shall meet all the following requirements:

1. Be at least twenty-one (21) years of age;

2. Not have willfully violated any provisions of sections 319.300 to 319.345, RSMo;

3. Not have knowingly withheld information or have not made any false or fictitious statement intended or likely to deceive in connection with the application;

4. Have familiarity and understanding of relevant federal and state laws relating to explosive materials;

5. Not have been convicted in any court of, or pleaded guilty to a felony;

6. Not be a fugitive from justice;

7. Not be an unlawful user of any controlled substance in violation of Chapter 195, RSMo;

8. Not have been adjudicated as mentally defective; and

9. Not advocate or knowingly belong to any organization or group that advocates violent action.

(D) An applicant for a blaster's license shall also meet one (1) of the following licensing criteria, to be eligible to apply to the division for a license:

1. Licensing by reciprocity. Within the three (3) years prior to applying for a license, the individual must have held a valid license or certification from a source identified by the division as meeting or exceeding the provisions for licensing within the state of Missouri. (319.306.12, RSMo)

2. Licensing by equivalency. An individual employed as a blaster on or before December 31, 2000, who, within the two (2) years prior to applying for a license, has accumulated one thousand (1,000) hours of training or education and experience employed or contracted by a person using explosives, must produce an affidavit signed by that person using explosives validating the training or education and experience.

A. A license granted pursuant to this provision shall only be valid for blasting conducted for the person using explosives submitting the affidavit.

B. An individual granted a license that then leaves the employment of or no longer contracts with the person submitting the affidavit shall surrender their license and then shall be subject to the licensing requirements as a new blaster.

3. New blaster. An individual must have accumulated one thousand (1,000) hours of documented experience, as approved by the division, directly relating to the use of explosives within the two (2) years immediately prior to applying for a license, completed an approved course of instruction and then successfully passed an approved licensing examination.

(E) All applicants shall submit the following to the division when applying for a license:

1. A completed "Application for Licensed Blaster";

2. A copy of a valid state driver's license or state ID card as proof of applicant's age and identity;

3. An approved criminal background check conducted within the applicant's state of residence;

4. Copy of U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives permit/license verifying compliance with applicable federal laws relating to possession, sales, storage or use of explosives;

5. Two (2) passport-type photographs; and

6. A check, money order, or bank draft in the amount of one hundred dollars ($100) (U.S.) payable to the Missouri Division of Fire Safety.

(F) All applicants applying as a new blaster must also submit all the following to the division when applying for a license:

1. Documentation of having successfully completed a training course approved by the division; and

2. Documentation affirming required approved training and experience related to the use of explosives.

(G) A blaster's license issued by the division shall expire three (3) years from the date of issuance.

1. To be eligible for renewal of a blaster's license, the individual seeking relicensure must submit all of the following to the division no less than thirty (30) days before the date of current license expiration:

A. A completed "Application for Licensed Blaster";

B. A copy of a valid state driver's license or state ID card;

C. Documentation of having successfully completed a total of eight (8) hours of approved continuing education training related to the use of explosives. Four (4) hours of which must have occurred within the twelve (12) months immediately before the date of license expiration;

D. An approved current criminal background check conducted within the applicant's state of residence;

E. Copy of U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives permit/license verifying compliance with applicable federal laws relating to possession, sales, storage, or use of explosives, if applicable;

F. Two (2) passport-type photographs;

G. A check, money order, or bank draft in the amount of one hundred dollars ($100) (U.S.) payable to the Missouri Division of Fire Safety.

2. Any individual whose license has been expired for a period of three (3) years or less shall be required to submit documentation of successfully passing an approved examination and completion of eight (8) hours of approved training prior to being eligible to apply for renewal of a license.

3. Any individual whose license has been expired for a period of more than three (3) years shall be required to submit documentation of successfully passing an approved examination and completion of twenty (20) hours of approved training prior to being eligible to apply for a blaster's license.

(H) Blasters Training Courses.

1. The division shall review and approve training courses that fulfill the training requirement of qualifying for a blaster's license and fulfill the training requirement for renewal of a blaster's license.

2. Any person applying to the division for approval of a course of instruction that meets the blasters' training requirement shall submit the following:

A. A completed "Application for Blaster Training Course Approval";

B. A description and copy of instructional materials to be used in the course;

C. An outline of the subject matter to be taught, including course objectives and the minimum hours of instruction on each topic;

D. A description of the qualifications of the instructor or instructors; and

E. Copies of the tests, quizzes, activities, and/or projects included in the course.

3. To be approved by the division, a blaster's training course shall contain at least twenty (20) hours of instruction to prepare attendees for obtaining a blaster's license the first time, or eight (8) hours of instruction to prepare attendees for obtaining a license renewal.

4. The division shall review the application regarding the knowledge and experience of proposed instructors, the total hours of training, and the adequacy of proposed training in subject matter.

5. If the division determines that training proposed by the applicant is adequate, a letter of approval shall be issued to the applicant.

6. Course approval shall be effective for a period of three (3) years, after which the materials required in paragraph (3)(H)2. above must be submitted again.

7. If at any time the division determines that an approved training course no longer meets the standards of this section, the letter of approval may be revoked with written notice.

8. The division or any person providing a course of instruction may charge an appropriate fee to recover the cost of conducting such instruction.

9. The division shall maintain a current list of persons who provide approved training and shall make this list available by any reasonable means to professional and trade associations, labor organizations, universities, vocational schools, and others upon request.

10. Any person providing training in an approved course shall submit a list of individuals that attended any such course to the division within ten (10) business days after completion of the course.

11. The division or its authorized agent shall offer annually at least two (2) courses of instruction that fulfill the training requirement of qualifying for a blaster's license and two (2) courses that fulfill the training requirement for renewal of a blaster's license.

(I) Testing for Licensure.

1. The division shall approve and administer a standard examination or examinations for the purpose of qualifying an individual to obtain a blaster's license.

A. All examinations shall remain the property of the division and in the possession of the division.

2. Individuals applying to test as a blaster must submit a completed "Application for Licensed Blaster Examination" and the appropriate testing fee.

3. Applications must be received by the division no less than twenty (20) business days prior to the scheduled exam date. Preregistration is required for all examinations.

4. The division will score all exams and applicants will be notified by letter accordingly within thirty (30) days of the exam.

5. Notification will indicate only pass/fail status.

6. A passing score shall be a score of seventy-five percent (75%) or above on the exam.

7. An applicant shall not be eligible to retest until after receiving notification of failure.

8. Should an applicant fail the exam a second time, he or she must retake an approved training course before being allowed to retest for a license.

9. If an applicant has not taken a retest within six (6) months of original test date, he or she must take an approved course again to be eligible to test.

(4) Persons Using Explosives.

(A) Any person using explosives in Missouri shall register with the division prior to first using explosives in Missouri.

(B) Upon initial registration, the person using explosives shall submit to the division:

1. The name of the person, company, or organization;

2. The address of the person, company, or organization;

3. The telephone and facsimile number of the person, company, or organization;

4. The email address;

5. The name of the principal individual having responsibility for supervision of the use of explosives;

6. Copy of U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives permit/license verifying compliance with applicable federal laws relating to possession, sales, storage, or use of explosives, if applicable; and

7. A fee of two hundred dollars ($200) (U.S.).

(C) For persons using explosives at multiple locations under the operational control of one (1) parent company or organization, only one (1) registration fee for the parent company or organization shall be required.

(5) Each registered person using explosives in Missouri shall, by January 31 of each year after registering, file an annual report with the division for the preceding calendar year.

(A) The initial annual report shall only include that portion of the preceding calendar year after the date the person became subject to the requirement to register.

(B) The report shall include:

1. Any change or addition to the information required in this section;

2. The name and address of the distributors from which explosives were purchased;

3. The total number of pounds of explosives purchased for use in Missouri; and

4. The total number of pounds actually used in Missouri during the period covered by the report.

(C) Persons required to report annually shall maintain records sufficient to prove the accuracy of the information reported.

(D) The person using explosives shall submit with the report, an explosive use fee of five hundred dollars ($500) plus two dollars ($2) per ton of explosives or explosive materials used within the state.

1. If the report of total pounds used results in a portion of a ton, the cumulative total of the fee shall be rounded to the nearest ton.

2. In the event that less than one (1) ton of explosives has been used in the reporting period, the five hundred dollar ($500) annual fee shall be submitted with the annual report to the division.

(E) The division may audit the records of any person using explosives required to report annually to determine the accuracy of the number of pounds of explosives reported.

(F) In connection with such audit, the division may also require any distributor of explosives to provide a statement of sales during the year to persons required to report.

(6) Notification of Blasting Operations.

(A) Any person using or intending to use explosives within Missouri shall notify the division in writing or by telephone at least

two (2) business days in advance of first using explosives at a site where blasting has not been previously conducted.

(B) If blasting will be conducted at an ongoing project, such as a long-term construction project, or at a permanent site, the person shall only be required to make one (1) notice to the division in advance of the first use of explosives.

(C) The notice required by this section shall state the name, address, and telephone number of the person using explosives, the name of the individual responsible for supervision of blasting, the date or approximate period over which blasting will be conducted, the location of blasting by street address, route, or other description, and the nature of the project or reason for blasting.

(D) This section shall not apply to any blasting required by a contract with any agency of the state of Missouri, any federal agency, or any political subdivision.

(7) Exemptions. Sections (4) through (6) above shall not apply to:

(A) Any individual, proprietorship, partnership, firm, corporation, company, or joint venture defined as a "person using explosives" that does not employ blasters required to be licensed by the division;

(B) Universities, colleges, or trade schools when confined to the purpose of instruction or research;

(C) The use of explosive materials in the forms prescribed by the official *U.S. Pharmacopoeia* or the *National Formulary* and used in medicines and medicinal agents;

(D) The training or emergency operations of any federal, state, or local government including all departments, agencies, and divisions thereof, provided they are acting in their official capacity and in the proper performance of their duties or functions;

(E) The use of explosives by the military or any agency of the United States;

(F) The use of pyrotechnics, commonly known as fireworks, including signaling devices such as flares, fuses, and torpedoes;

(G) The use of small arms ammunition and components thereof which are subject to the Gun Control Act of 1968, 18 U.S.C., Section 44, and regulations promulgated thereunder. Any small arms ammunition and components thereof exempted by the Gun Control Act of 1968 and regulations promulgated thereunder are also exempted from the provisions of sections 319.300 to 319.345, RSMo;

(H) Any person performing duties using explosives within an industrial furnace;

(I) The use of agricultural fertilizers when used for agricultural or horticultural purposes;

(J) The use of explosives for lawful demolition of structures;

(K) The use of explosives by employees, agents, or contractors of rural electric cooperatives organized or operating under Chapter 394, RSMo; and

(L) Individuals discharging historic firearms and cannon or reproductions of historic firearms and cannon.

(8) Local Jurisdictions.

(A) Any person using explosives that will conduct blasting within the jurisdiction of a municipality shall notify the appropriate representative of the municipality in writing or by telephone at least two (2) business days in advance of blasting at that location.

1. An appropriate representative shall be deemed to be the city's public works department, code enforcement official, or an official at the main office maintained by the municipality.

2. In any area where blasting will be conducted, whether in a municipality or in an unincorporated area, the person using explosives also shall notify the appropriate fire protection official for the jurisdiction where blasting will occur, which may be a city fire department, fire protection district, or volunteer fire protection association.

3. The notice shall state:

A. The name, address, and telephone number of the person using explosives;

B. The name of the individual responsible for supervision of blasting;

C. The date or approximate period over which blasting will be conducted;

D. The location of blasting by street address, route, or other description; and

E. The nature of the project or reason for blasting.

4. If blasting will be conducted at an ongoing project, such as a long-term construction project, or at a permanent site, such as a surface mine, the person shall only be required to make one (1) notice to the municipality or appropriate fire protection official in advance of the first use of explosives.

5. Any such ongoing projects or permanent sites in existence at the time of the effective date of sections 319.300 to 319.345, RSMo shall not be required to provide notice as described in this subsection.

6. Any person using explosives, which will conduct blasting within the jurisdiction of a municipality, shall notify the owner or occupant of any residence or business located within a scaled distance of fifty-five (55) from the site of blasting prior to the start of blasting at any new location.

A. One (1) notification delivered by mail, by telephone, through the printed notification posted prominently on the premises or the property of the owner or occupant of the residence or business, or delivered in person to any such owner or occupant meets the requirements of this subsection.

B. A municipality may provide the name, last known address, and telephone number of the owners or occupants of any residence or business that may be located within the scaled distance of fifty-five (55) from the site of blasting to the person using explosives upon that person's request.

(B) Any municipality or county may by ordinance or order—

1. Require that a permit be obtained in addition to the notice required by this section, with such application for permit being due no more than ten (10) days prior to the first use of explosives;

2. Require that the application for the permit contain specific information about the type of explosives to be used and their storage location at the site where used;

3. Require the applicant to demonstrate an acceptable plan for signage or other means of informing the public of blasting in proximity to public streets or highways and any request for temporary closing of streets or routing of traffic;

4. Specify the times of day blasting may be conducted, which shall not be less than eight (8) consecutive hours on any day of the week except the ordinance or order may prohibit blasting on Sunday unless approved by the municipality or county upon application by the person using explosives;

5. Require that the applicant submit proof that the person using explosives is registered with the division and that blasting will be conducted by a licensed blaster;

6. Require that the applicant submit proof of commercial general liability insurance in an acceptable amount, which shall be no less than one (1) million dollars and no more than five (5) million dollars;

7. Require that the applicant make at least three (3) documented attempts to contact the owner of any uncontrolled structures within a scaled distance of thirty-five (35) from the blast site in order to conduct a preblast survey of such structures. A preblast survey is not required if the owner of any such structure does not give permission for a survey to be conducted;

8. Enact any other provision necessary to carry out the provisions of the ordinance or order, including the conditions under which the permit may be suspended or revoked or appropriate fines may be imposed for failure to obtain a permit or violations of the permit; and

9. A permit for blasting under a municipal or county ordinance or order and complying with this section shall be granted by the municipality or county upon satisfying the requirements of the

ordinance or order and upon the applicant's payment of a reasonable fee to cover the administration of the permit system.

(C) Any authorized representative of a municipality, county, or an appropriate fire protection official may—

1. Require any person using explosives to show proof that he or she is registered with the division and blasting is being conducted by an individual that is licensed under the provisions of section 319.306, RSMo;

2. Request and be allowed access to the site of blasting by the person using explosives and shall be allowed to observe blasting from a safe location as designated by the blaster;

3. Examine records of blasting required to be maintained by sections 319.309 and 319.315, RSMo;

4. However, no municipality, county, or fire protection official shall require a person using explosives or a blaster to surrender such records, or a copy of such records, to the municipality or fire protection official except as necessary under an investigation of the blaster's violation of a municipal or county permit; and

5. Report suspected violations of sections 319.300 to 319.345, RSMo to the division.

(D) Except in any county included in section 319.342, RSMo or quarries operating within a county meeting the requirements of section 319.343, RSMo, no existing or future ordinance or order shall—

1. Preempt, exceed, amend, or conflict with the provisions of sections 319.309 to 319.342, RSMo or any rule promulgated pursuant to section 319.327, RSMo; or

2. Preempt, amend, exceed, or conflict with the provisions of any statute, regulation, or policy established by—

A. The United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives;

B. Chapter 40 of Title 18 of the *United States Code*, as amended;

C. The United States Department of Transportation;

D. The federal Mine Safety and Health Administration; or

E. The federal Occupational Safety and Health Administration.

(E) The requirements for notification and provisions of local ordinances shall not apply to any blasting required by a construction contract with any agency of the state of Missouri, any federal agency, or any political subdivision.

(F) Nothing in these rules shall preempt the rights and remedies afforded by the general assembly or common law to persons damaged by blasting.

(G) Nothing in this section shall be construed to exempt any person using explosives from the requirements of registering with and reporting explosives used to the division and paying the associated fees.

(9) It shall be the duty of each licensed blaster and each person using explosives to assure that the requirements of this section are met.

(A) Any person using explosives in the state of Missouri shall calculate the scaled distance to the nearest uncontrolled structure. If more than one (1) uncontrolled structure is the same approximate distance from the blast site, then the person using explosives may select one (1) representative structure for calculation of scaled distance.

(B) In any instance when the calculated scaled distance value is fifty-five (55) or less, any person using explosives shall use at least one (1) seismograph calibrated to the manufacturer's standard for use to record the ground vibration and acoustic levels that occur from the use of such explosives or explosive materials.

(C) When measuring ground vibration and acoustic levels, the seismograph shall be placed in the proximity of the nearest uncontrolled structure or, at the option of the person using explosives, closer to the blast site. If more than one (1) uncontrolled structure is the same approximate distance from the blast site, then the person using explosives may select one (1) representative structure for placement of the seismograph.

(D) Any person using explosives who is voluntarily using a seismograph calibrated to the manufacturer's standard for use for all blasting is exempt from the requirements of this section.

(E) Seismograph recordings of the ground vibration and acoustic levels created by the use of explosives, when required as above, shall be retained for at least three (3) years. Such recordings shall be made available to the division within twenty-four (24) hours of a request by any representative of the division.

(F) Each seismograph recording and the accompanying records shall include the—

1. Maximum ground vibration and acoustics levels recorded;

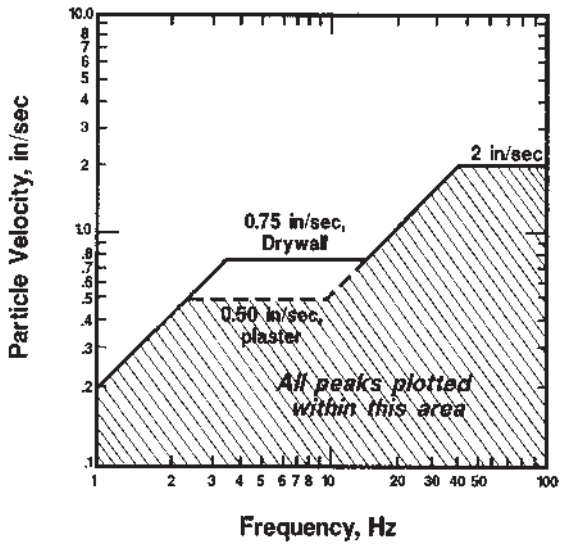
2. Specific location of the seismograph equipment, its distance from the detonation of the explosives, the date of the recording, and the time of the recording;

3. Name of the individual responsible for operation of the seismograph equipment and performing an analysis of each recording; and

4. Type of seismograph instrument, its sensitivity and calibration signal, or certification date of the last calibration.

(G) Any person using explosives in the state of Missouri in which monitoring with a seismograph is required shall limit acoustic values from blasting to one hundred thirty-three decibels (133 dB) using a two hertz (2 Hz) flat response measuring system based on the Office of Surface Mining regulation 30 CFR 816.67(b)(1)(i).

(H) Any person using explosives in the state of Missouri in which monitoring with a seismograph is required shall comply with ground vibration limits based on the U.S. Bureau of Mines Report of Investigations 8507, Appendix B:



(I) In lieu of the ground vibration limit established above, the person using explosives may submit a written request to the division to use an alternate compliance method. Such written request shall be supported by sufficient technical information, which may include, but not be limited to, documented approval of such method by other federal, state, or local political subdivisions which regulate the use of explosives. Upon submittal by the person using explosives of a request to use an alternate compliance method, the State Blasting Safety Board shall issue a written determination as to whether the technical information submitted provides sufficient justification for the alternate method to be used as a method of demonstrating compliance with the provisions of this section.

(J) A record of use of explosives shall be made and retained for at least three (3) years.

1. Licensed blasters shall create the record required in this section and provide such record to the person using explosives, who shall be responsible for maintaining records required in this section.

2. The record shall be completed on a form provided or approved by the division and completed by the end of the business day following the day in which the explosives were detonated.

3. Such records shall be made available to the division, upon request, within twenty-four (24) hours of the request.

4. Each record shall include the—

A. Name of the person using the explosives;

B. Location, date, and time of the detonation;

C. Name of the licensed blaster responsible for use of the explosives;

D. Type of material blasted;

E. Number of bore holes, burden, and spacing;

F. Diameter and depth of bore holes;

G. Type of explosives used;

H. Weight of explosives used per bore hole and total weight of explosives used;

I. Maximum weight of explosives detonated within any eight (8)-millisecond period;

J. Maximum number of bore holes or decks detonated within any eight (8)-millisecond period;

K. Initiation system, including number of circuits and the timer interval, if a sequential timer is used;

L. Type and length of stemming;

M. Type of detonator and delay periods used, in milliseconds;

N. Sketch of delay pattern, including decking;

O. Distance and scaled distance to the nearest uncontrolled structure; and

P. Location of the nearest uncontrolled structure, using the best available information.

5. If the type of blasting being recorded by a seismograph does not involve bore holes, then the record required in paragraph (9)(J)4. shall contain the:

A. Name of the person using the explosives;

B. Location, date, and time of the detonation;

C. Name of the licensed blaster responsible for use of the explosives;

D. Type of material blasted;

E. Type of explosives used;

F. Weight of explosives used per shot and total weight of explosives used;

G. Maximum weight of explosives detonated within any eight (8)-millisecond period;

H. Initiation system, including number of circuits and the timer interval, if a sequential timer is used;

I. Type of detonator and delay periods used, in milliseconds;

J. Sketch of delay pattern;

K. Distance and scaled distance, if required under the provisions of section 319.309, RSMo, to the nearest uncontrolled structure; and

L. Location of the nearest uncontrolled structure, using the best available information.

(10) Violations and Penalties.

(A) The division shall follow the procedure outlined below for violations of any of the provisions of section (9):

1. A written notification of violation will be issued to a licensed blaster and the explosive user for which the blaster is employed for a violation of a provision of section (9).

A. Any notice of violation of any provision of sections 319.300 to 319.345, RSMo shall be in writing and shall state the section or sections violated and the circumstance of the violation, including date, place, person involved, and the act or omission constituting the violation.

B. The notice shall also inform the person receiving the notice of the right to request a hearing before the State Blasting Safety Board for any violation, except for the violation of failure to hold a blasting license as required by section 319.306, RSMo for which no appeal may be made.

2. The state fire marshal shall consider the seriousness of each violation and implement the action considered appropriate.

(B) A blaster's license issued under the provisions of this section may be suspended or revoked by the division upon substantial proof that the individual holding the license has—

1. Knowingly failed to monitor the use of explosives as provided in section 319.309, RSMo;

2. Negligently or habitually exceeded the limits established under section 319.312, RSMo;

3. Knowingly or habitually failed to create a record of blasts as required by section 319.315, RSMo;

4. Had a change in material fact relating to their qualifications for holding a blaster's license as required by these rules;

5. Failed to advise the division of any change of material fact relating to his or her qualifications for holding a blaster's license; or

6. Knowingly made a material misrepresentation of any information by any means of false pretense, deception, fraud, misrepresentation, or cheating for the purpose of obtaining training or otherwise meeting the qualifications of obtaining a license.

(C) The division shall provide any notice of suspension or revocation in writing, sent by certified mail to the last known address of the holder of the license.

1. The notice may also be verbal, but this does not eliminate the requirement for written notice.

2. Upon receipt of a verbal or written notice of suspension or revocation from the division, the individual holding the license shall immediately surrender all copies of the license to a representative of the division and shall immediately cease all blasting activity.

(D) The individual holding the license may appeal any suspension or revocation to the State Blasting Safety Board established under section 319.324, RSMo within forty-five (45) days of the date written notice was received.

1. The division shall immediately notify the chairman of the board that an appeal has been received and a hearing before the board shall be held.

2. The board shall consider and make a decision on any appeal received by the division within thirty (30) days of the date the appeal is received by the division.

3. The board shall make a decision on the appeal by majority vote of the board and shall immediately notify the licensee of its decision in writing.

4. The written statement of the board's decision shall be prepared by the division or its designee and shall be approved by the chairman of the board.

5. The approved statement of the board's decision shall be sent by certified mail to the last known address of the holder of the license.

AUTHORITY: section 319.306, RSMo Supp. 2007. Emergency rule filed April 1, 2008, effective July 1, 2008, expires Jan. 1, 2009. Original rule filed April 2, 2008.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions two hundred nineteen thousand two hundred fifty-six dollars ($219,256) in the aggregate.

PRIVATE COST: This proposed rule will cost private entities one hundred seventy-one thousand four hundred sixty dollars ($171,460) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support or in opposition to this proposed rule with the Missouri Division of Fire Safety, 2401 East McCarty, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

FISCAL NOTE
PUBLIC COST

I. Department Title: Missouri Department of Public Safety
Division Title: Missouri Division of Fire Safety
Chapter Title: Chapter 7-Blasting

Rule Number and Name:	**11 CSR 40-7.010 Blasting - Licensing, Registration, Notification, Requirements, and Penalties**
Type of Rulemaking:	**Proposed Rule**

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Missouri Division of Fire Safety	**$219,256**

III. WORKSHEET

One-time expenses to begin enforcement of this new program are estimated at $48,209 to include computer equipment, communications equipment, office equipment, and motorized equipment.
On-going expenses are estimated at $18,400 to include travel, motor fuel, supplies, professional development, communications, and maintenance and repair.
Personal services expenses are estimated at $152,647 to include two Blast Safety/Fire Investigator positions and one Accountant I position.

IV. ASSUMPTIONS

The Division of Fire Safety is charged by the statutes with licensing commercial explosive blasters in the state including testing, training, approval of training, and license renewals. There are an estimated 300 blasters in the state which must comply with this law. In addition, an estimated 100 to 150 users of explosives must register with the Division and submit annual reports including fees for the tons of explosives used during the preceding year. The Division of Fire Safety is also mandated by law to conduct investigations into public complaints surrounding blasting operations and to conduct audits of registered explosive users to determine the accuracy of the annual reports submitted.

FISCAL NOTE
PRIVATE COST

I. Department Title: Missouri Department of Public Safety
Division Title: Missouri Division of Fire Safety
Chapter Title: Chapter 7-Blasting

Rule Number and Title:	**11 CSR 40-7.010 Blasting - Licensing, Registration, Notification, Requirements, and Penalties**
Type of Rulemaking:	**Proposed Rule**

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
Commercial Explosives Blasters	**300**	**$30,000**
Commercial Explosives Users	**115**	**$141,460**

III. WORKSHEET

Estimates based on the explosives users registered in 2007:
Registration fees (one-time fee): 115 x $200 = $23,000
Annual fees: $500 x 115 = $57,500
Estimated tonnage annual fees: 30,480 x $2.00 = $60,960
Based on an estimated 300 blasters required to be licensed
License fees (3 year license): 300 x $100 = $30,000

IV. ASSUMPTIONS

The Division of Fire Safety of Fire Safety is required by the statutes to license an estimated 300 commercial explosive blasters in the state including testing, training, approval of training, and license renewals. Licenses will be issued for a three-year period after which they must be renewed. Included in this process are the training and approval of training for blasters and the administration of testing for license qualification. In addition, statutes require the Division to register an estimated 100 to 150 users of explosives, who then are required to submit annual reports including fees for the tons of explosives used during the preceding year.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2267—Office of Tattooing, Body Piercing and Branding
Chapter 2—Licensing Requirements

PROPOSED AMENDMENT

20 CSR 2267-2.010 Licenses. The board is proposing to amend section (2), add subsections (2)(A) through (2)(D), and add section (6).

PURPOSE: This amendment defines the licensing requirements and makes a grammatical correction.

(2) No person shall tattoo, body pierce**,** and/or brand another person, use or assume the title of tattooist, body piercer**,** and/or brander, designate or represent themselves to be a tattooist, body piercer**,** and/or brander unless he or she has obtained a license from the division **for the profession practiced**. An application for a practitioner license shall be notarized *[and]***,** accompanied by the appropriate fee**, and evidence of having successfully completed the following***[.]***:**

(A) A bloodborne pathogen training program (or equivalent) which includes infectious disease control; waste disposal; handwashing techniques; sterilization equipment operation and methods; and sanitization, disinfection, and sterilization methods and techniques (Example: "Preventing Disease Transmission" (American Red Cross) and "Bloodborne Pathogen Training" (U.S. OSHA)); and

(B) First aid and cardiopulmonary resuscitation (CPR); and

(C) An apprenticeship, which shall include at least six hundred (600) documented hours of practical experience that includes, at a minimum, fifty (50) completed procedures in each area that the applicant has filed an application for licensure. The documented work shall be certified and supervised by a currently licensed Missouri practitioner or by a practitioner who is licensed to practice tattooing, body piercing, and/or branding in another state, territory, or commonwealth whose requirements for licensure are substantially equivalent to the requirements for licensure in Missouri. The supervising practitioner shall be present during the entire procedure and shall be licensed in the same field of practice in which the applicant has filed a license application; or

(D) In lieu of an apprenticeship, an applicant may submit proof that he/she has successfully completed a course of study in tattooing, body piercing, and/or branding in a school licensed or accredited as a school by any state or federal agency. The course of study must have been completed in the same practice area that the applicant has applied for a license.

1. The course of study shall consist of at least three hundred (300) documented hours of instruction and/or training which shall include, at a minimum, instruction in sanitation, equipment handling, disease control, skin treatment and/or skin infections, design and/or artistry, and clinical practice. Applicants shall submit an official transcript demonstrating compliance with the requirements of this section. Official transcripts must be mailed directly to the division by the school.

2. A person applying under this subsection shall also submit proof of practical experience that includes at least twenty-five (25) completed procedures in the same field that the applicant has applied for licensure. For purposes of this subsection, proof of practical experience may be certified to by a school which meets the requirements of this rule or by any person licensed to practice tattooing, branding, or body piercing in another state, territory, or commonwealth.

(6) Reciprocity. A person licensed to practice tattooing, body piercing, and/or branding in another state, territory, or commonwealth may apply for licensure by reciprocity in the same practice area if the other state, territory, or commonwealth has requirements that are substantially equivalent to the requirements of Missouri for the license sought. Applicants for licensure by reciprocity shall submit or cause to be submitted the following:

(A) A completed notarized application and the accompanying application fee;

(B) A copy of a current tattoo, body piercing, and/or branding license from the other state, territory, or commonwealth;

(C) A current copy of the rules and regulations pertaining to tattooing, body piercing, and/or branding from the other state, territory, or commonwealth; and

(D) A letter of license verification mailed by the state, territory, or commonwealth licensing agency to the division which shall include—

1. Verification that the applicant holds a valid and unexpired license;

2. The license issuance date;

3. The license expiration date; and

4. A statement verifying whether the applicant has ever been subject to discipline or if there are any complaints or investigations pending against the licensee.

5. Upon request, a consent that allows the office to examine disciplinary, complaint and/or investigative records of the other licensing authority.

(E) A person applying for licensure by reciprocity from a state, territory, or commonwealth whose licensing requirements are less stringent than those in force in the state of Missouri shall be required to meet the requirements of 20 CSR 2267-2.010(2).

*AUTHORITY: section 324.522, RSMo Supp. [2001] **2007**. This rule originally filed as 4 CSR 267-2.010. Original rule filed Aug. 15, 2002, effective Feb. 28, 2003. Moved to 20 CSR 2267-2.010, effective Aug. 28, 2006. Amended: Filed April 10, 2008.*

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions approximately five hundred seventy dollars ($570) for FY08.

PRIVATE COST: This proposed amendment will cost private entities approximately twelve thousand four hundred dollars to eight hundred nine thousand two hundred fifty-six dollars ($12,400 to $809,256) annually for the life of the rule. It is anticipated that the costs will recur for the life of the rule, may vary with inflation, and are expected to increase at the rate projected by the Legislative Oversight Committee.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Office of Tattooing, Body Piercing and Branding, PO Box 1335, Jefferson City, MO 65102, by facsimile at (573) 526-3489, or via email at tattoo@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

PUBLIC FISCAL NOTE

I. RULE NUMBER

Title 20 - Department of Insurance, Financial Institutions and Professional Registration

Division 2267 - Office of Tattooing, Branding & Body Piercing

Chapter 2 - Licensing Requirements

Proposed Amendment - 20 CSR 2267-2.010 Licenses

Prepared January 2, 2008 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance
Office of Tattooing, Branding & Body Piercing	$570.00
Total Cost of Compliance for FY08	$570.00

III. WORKSHEET

The division sought input from all licensees regarding the costs associated with the apprenticeship. The costs associated with this are shown below.

Expense and Equipment Dollars for the Mailing

Envelope	$0.16		
Postage	$0.41		
Expense and Equipment Cost Per Mailing	$0.57	Total Expense and Equipment Costs	$570.00

IV. ASSUMPTION

1. The figures used above are based on FY07 actuals.

PRIVATE FISCAL NOTE

I. RULE NUMBER

Title 20 - Department of Insurance, Financial Institutions and Professional Registration
Division 2267 - Office of Tattooing, Branding & Body Piercing
Chapter 2 - Licensing Requirements
Proposed Amendment - 20 CSR 2267-2.010 Licenses
Prepared January 2, 2008 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Estimate the number of entities by class which would likely be affected by the adoption of the proposed rule:	**Classification by type of the business entities which would likely be affected:**	**Estimated cost of compliance with the rule by affected entities:**
310	Bloodborne Pathogen Training Program (Training Costs @ $10-$25)	$3100 - $7750
310	First Aid and Cardiopulmonary Resuscitation (Training Costs @ $30-$51)	$9,300 - $15,810
155	Apprenticeship (Costs @ $5,000)	$775,000
78	Tattooist, Body Piercer, or Brander Reciprocity (Costs @ $37)	$2,886
78	Combined Practitioner Reciprocity (Costs @ $75)	$5,850
155	Verification (Costs @ $10)	$1,550
155	Notary (Costs @ $2)	$310
10	Transcript (Costs @ $10)	$100
	Estimated Annual Cost of Compliance for the Life of the Rule	**$12,400 - $809,256**

III. WORKSHEET

See table above.

IV. ASSUMPTION

1. The costs for the apprenticeship training is based on the responses from a mailing done to all tattoo practitioners licensed in Missouri seeking input regarding the costs for their apprenticeships. The costs varied and averaged approximately $5,000 per apprenticeship.
2. It is anticipated that the total cost will recur for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.
3. The figures reported above are based on FY07 actuals.

This section will contain the final text of the rules proposed by agencies. The order of rulemaking is required to contain a citation to the legal authority upon which the order of rulemaking is based; reference to the date and page or pages where the notice of proposed rulemaking was published in the *Missouri Register*; an explanation of any change between the text of the rule as contained in the notice of proposed rulemaking and the text of the rule as finally adopted, together with the reason for any such change; and the full text of any section or subsection of the rule as adopted which has been changed from that contained in the notice of proposed rulemaking. The effective date of the rule shall be not less than thirty (30) days after the date of publication of the revision to the *Code of State Regulations*.

The agency is also required to make a brief summary of the general nature and extent of comments submitted in support of or opposition to the proposed rule and a concise summary of the testimony presented at the hearing, if any, held in connection with the rulemaking, together with a concise summary of the agency's findings with respect to the merits of any such testimony or comments which are opposed in whole or in part to the proposed rule. The ninety (90)-day period during which an agency shall file its order of rulemaking for publication in the *Missouri Register* begins either: 1) after the hearing on the proposed rulemaking is held; or 2) at the end of the time for submission of comments to the agency. During this period, the agency shall file with the secretary of state the order of rulemaking, either putting the proposed rule into effect, with or without further changes, or withdrawing the proposed rule.

Title 1—OFFICE OF ADMINISTRATION
Division 10—Commissioner of Administration
Chapter 11—Travel Regulations

ORDER OF RULEMAKING

By the authority vested in the Office of Administration under section 33.090, RSMo 2000, the commissioner rescinds a rule as follows:

1 CSR 10-11.010 State of Missouri Travel Regulations
is rescinded.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on January 2, 2008 (33 MoReg 5). No changes have been made in the proposed rescission, so it not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 1—OFFICE OF ADMINISTRATION
Division 10—Commissioner of Administration
Chapter 11—Travel Regulations

ORDER OF RULEMAKING

By the authority vested in the Office of Administration under section 33.090, RSMo 2000, the commissioner adopts a rule as follows:

1 CSR 10-11.010 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on January 2, 2008 (33 MoReg 5–7). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The commissioner of administration received six (6) comments from John Hoskins, Director of the Department of Conservation on the proposed rule, and staff submitted one (1) comment regarding the proposed rule.

COMMENT #1: John Hoskins suggested section (2) request detailed receipts for incidental expenses itemized on the expense report.
RESPONSE AND EXPLANATION OF CHANGE: Section (2) will be changed to add the word "detailed" to explain the type of receipts needed with the itemized expense report for incidental expenses.

COMMENT #2: Also in section (2), Mr. Hoskins requests changing the word "must" to the word "should" in the statement "agencies must follow the policies established …"
RESPONSE AND EXPLANATION OF CHANGE: Section (2) will be changed to reflect this request.

COMMENT #3: In subsection (12)(A) it was suggested to change the word "must" to "should" in the statement "Agencies must use the appropriate rate for each trip …"
RESPONSE AND EXPLANATION OF CHANGE: Subsection (12)(A) will be changed to reflect this request.

COMMENT #4: In subsection (12)(B) it was suggested to change the word "must" to "should" in the statement "For travel by rented vehicle, the rental must be direct billed …"
RESPONSE AND EXPLANATION OF CHANGE: Subsection (12)(B) will be changed to reflect this request.

COMMENT #5: In subparagraph (15)(B)1.B. Mr. Hoskins requests including the supervisor's signature along with the claimant's on requests for reimbursement as being prohibited to submit as rubber stamps or facsimile signatures.
RESPONSE AND EXPLANATION OF CHANGE: Subparagraph (15)(B)1.B. will be changed to include the supervisor's signature as also being prohibited to submit as a rubber stamp or facsimile.

COMMENT #6: Mr. Hoskins requests adding the word "prior" in subsection (16)(A) when referring to approval to travel outside of the state.
RESPONSE AND EXPLANATION OF CHANGE: Subsection (16)(A) will be changed to reflect this request.

COMMENT #7: The staff noted that the rule purpose statement was not included in the proposed rule.
RESPONSE AND EXPLANATION OF CHANGE: Our office is adding the purpose statement.

1 CSR 10-11.010 State of Missouri Travel Regulations

PURPOSE: The Office of Administration has authority to establish regulations concerning the payment of travel and subsistence expenses. This rule establishes guidance for officials and employees of Missouri who travel on official business for the state, except where specific statutes provide otherwise.

(2) Reimbursable travel expenses are limited to those expenses authorized and essential for transacting official business of the state. Expenses incurred for the sole benefit of the state employee or official shall not be allowed as reimbursable travel expenses. Expenses

for laundry service and dry cleaning shall be allowed only for extended travel outside of the United States. Incidental expenses not directly concerned with travel may be allowed when necessary to perform official business while traveling. These necessary incidental expenses shall be itemized on the expense report with detailed receipts attached. In determining reimbursable expenses and required documentation, agencies should follow the policies established by the commissioner of administration.

(12) The following rules shall apply for travel by vehicle:

(A) For travel in privately-owned vehicles, the state mileage allowance shall be at the current rate(s) ordered by the commissioner of administration pursuant to section 33.095, RSMo. The commissioner of administration will periodically issue mileage reimbursement rates comprised of a standard rate and a state fleet rate. Agencies should use the appropriate rate for each trip as determined by policy established by the commissioner of administration. Reimbursement rates should not exceed the rate established by the commissioner of administration. When more than one (1) person travels in the same vehicle, only the owner of the vehicle shall be allowed mileage. The state mileage reimbursement rate(s) represents full compensation for the costs of operating a privately-owned vehicle. Physical damage or loss to a private vehicle and/or its personal property contents is not covered by the state. Coverage should be obtained through personal auto insurance. Liability coverage must be maintained through personal auto insurance as required by state law.

(B) For travel by rented vehicle, the rental should be direct billed to the state or charged to a state credit card according to procedures established by the commissioner of administration. The employee will be reimbursed for fuel expenses for rental vehicles. Weekly or monthly vehicle rental rates will be allowed if the cost is less than the total cost of renting at the daily rate and the employee has a business need for the vehicle rental the majority of the working days during the rental period. Rental vehicles are considered state vehicles and should be used for official business only in accordance with state policy. The State Legal Expense Fund provides liability coverage for the usage of rental vehicles for official state business. For that reason, employees will not be reimbursed for any vehicle rental insurance incurred. Employees must provide at their own expense insurance coverage for personal use of rental vehicles. The Office of Administration Risk Management Section publishes a *Guide for Drivers on State Business* which describes procedures to follow should an accident occur.

(15) The following procedures apply to all payments or reimbursements:

(B) When an individual is requesting reimbursement for lodging, conference registration, airline/air charter, bus, and rail transportation, the following procedures apply:

1. The individual requesting reimbursement must provide:

A. Proof of payment. Proof of payment may be in the form of a vendor receipt or a vendor marking on the invoice document that the charge has been paid. Proof of payment may also be in the form of a credit card receipt, credit card statement copy showing the charge, or a copy of a personal check that has been canceled by the bank; and

B. An original signature on the expense report verifying that the reimbursement claim is correct. Rubber stamps or facsimile signatures for the claimant and/or supervisor are prohibited.

C. For situations where a descriptive invoice or proof of payment is not available, departments should establish alternative procedures with prior approval by the commissioner of administration or designee.

2. Fiscal personnel must:

A. Verify that travel reimbursement claims are correct. Primary responsibility for authenticating travel reimbursement claims rests with the department and agency directors;

B. Ensure that any unusual expenses incurred are itemized on the expense report and accompanied by receipts for payment. The justification for incurring any unusual expenses shall be fully explained by letter or notation on the expense report form;

(16) The following additional rules shall apply to all travel outside the state that is necessary for performing official state business:

(A) All travel outside the state requires prior approval by the director, head of the department or their authorized representative. This rule shall not apply to members of the legislature or other legislative branch employees, judges and other judicial branch employees and elected officials of the executive branch and their employees;

Title 1—OFFICE OF ADMINISTRATION
Division 10—Commissioner of Administration
Chapter 11—Travel Regulations

ORDER OF RULEMAKING

By the authority vested in the Office of Administration under section 33.095, RSMo 2000, the commissioner amends a rule as follows:

1 CSR 10-11.020 County Travel Regulations, Mileage Allowance **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on January 2, 2008 (33 MoReg 7). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 2—Capital Improvement and Maintenance Budget

ORDER OF RULEMAKING

By the authority vested in the Office of Administration, Division of Facilities Management, Design and Construction under section 8.320, RSMo 2000, the Division of Facilities Management, Design and Construction rescinds a rule as follows:

1 CSR 30-2.010 Capital Improvement and Maintenance Budget Rule Objectives **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on December 17, 2007 (32 MoReg 2467). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 2—Capital Improvement and Maintenance Budget

ORDER OF RULEMAKING

By the authority vested in the Office of Administration, Division of Facilities Management, Design and Construction under section 8.320, RSMo 2000, the Division of Facilities Management, Design and Construction rescinds a rule as follows:

1 CSR 30-2.020 Definitions **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on December 17, 2007 (32 MoReg 2467). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 2—Capital Improvement and Maintenance Budget

ORDER OF RULEMAKING

By the authority vested in the Office of Administration, Division of Facilities Management, Design and Construction under section 8.320, RSMo 2000, the Division of Facilities Management, Design and Construction adopts a rule as follows:

1 CSR 30-2.020 Definitions **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on December 17, 2007 (32 MoReg 2467–2468). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 2—Capital Improvement and Maintenance Budget

ORDER OF RULEMAKING

By the authority vested in the Office of Administration, Division of Facilities Management, Design and Construction under section 8.320, RSMo 2000, the Division of Facilities Management, Design and Construction rescinds a rule as follows:

1 CSR 30-2.030 Facility Program Planning **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on December 17, 2007 (32 MoReg 2468). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 2—Capital Improvement and Maintenance Budget

ORDER OF RULEMAKING

By the authority vested in the Office of Administration, Division of Facilities Management, Design and Construction under section 8.320, RSMo 2000, the Division of Facilities Management, Design and Construction adopts a rule as follows:

1 CSR 30-2.030 Assessment Program Planning **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on December 17, 2007 (32 MoReg 2469–2470). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 2—Capital Improvement and Maintenance Budget

ORDER OF RULEMAKING

By the authority vested in the Office of Administration, Division of Facilities Management, Design and Construction under section 8.320, RSMo 2000, the Division of Facilities Management, Design and Construction rescinds a rule as follows:

1 CSR 30-2.040 Budget Preparation **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on December 17, 2007 (32 MoReg 2470). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 2—Capital Improvement and Maintenance Budget

ORDER OF RULEMAKING

By the authority vested in the Office of Administration, Division of Facilities Management, Design and Construction under section 8.320, RSMo 2000, the Division of Facilities Management, Design and Construction adopts a rule as follows:

1 CSR 30-2.040 Budget Preparation **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on December 17, 2007 (32 MoReg 2470–2472). No changes have been made in the text of

the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 2—Capital Improvement and Maintenance Budget

ORDER OF RULEMAKING

By the authority vested in the Office of Administration, Division of Facilities Management, Design and Construction under section 8.320, RSMo 2000, the Division of Facilities Management, Design and Construction rescinds a rule as follows:

1 CSR 30-2.050 Budget Form Completion and Submission **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on December 17, 2007 (32 MoReg 2472–2473). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 2—Capital Improvement and Maintenance Budget

ORDER OF RULEMAKING

By the authority vested in the Office of Administration, Division of Facilities Management, Design and Construction under section 8.320, RSMo 2000, the Division of Facilities Management, Design and Construction adopts a rule as follows:

1 CSR 30-2.050 Budget Form Completion and Submission **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on December 17, 2007 (32 MoReg 2473). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 3—Capital Improvement and Maintenance Program

ORDER OF RULEMAKING

By the authority vested in the Office of Administration, Division of Facilities Management, Design and Construction under section 8.320, RSMo 2000, the Division of Facilities Management, Design and Construction rescinds a rule as follows:

1 CSR 30-3.010 Rule Objectives and Definitions **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on December 17, 2007 (32 MoReg 2473). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 3—Capital Improvement and Maintenance Program

ORDER OF RULEMAKING

By the authority vested in the Office of Administration, Division of Facilities Management, Design and Construction under section 8.320, RSMo 2000, the Division of Facilities Management, Design and Construction adopts a rule as follows:

1 CSR 30-3.010 Rule Objectives and Definitions **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on December 17, 2007 (32 MoReg 2473–2474). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 3—Capital Improvement and Maintenance Program

ORDER OF RULEMAKING

By the authority vested in the Office of Administration, Division of Facilities Management, Design and Construction under section 8.320, RSMo 2000, the Division of Facilities Management, Design and Construction rescinds a rule as follows:

1 CSR 30-3.020 Project Definition and Fund Allocation **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on December 17, 2007 (32 MoReg 2474). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 3—Capital Improvement and Maintenance Program

ORDER OF RULEMAKING

By the authority vested in the Office of Administration, Division of Facilities Management, Design and Construction under section 8.320, RSMo 2000, the Division of Facilities Management, Design and Construction adopts a rule as follows:

1 CSR 30-3.020 Project Definition and Fund Allocation **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on December 17, 2007 (32 MoReg 2474–2476). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 3—Capital Improvement and Maintenance Program

ORDER OF RULEMAKING

By the authority vested in the Office of Administration, Division of Facilities Management, Design and Construction under section 8.320, RSMo 2000, the Division of Facilities Management, Design and Construction adopts a rule as follows:

1 CSR 30-3.025 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on December 17, 2007 (32 MoReg 2476–2480). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Office of Administration, Division of Facilities Management, Design and Construction received five (5) comments on the proposed rule.

COMMENT #1: American Institute of Architects (AIA) commented that architecture/engineering (A/E) firms should not also act as construction manager (CM) as well. They hold the belief that this type of project should be awarded as a design-build contract under section (10).
COMMENT #2: The Builders' Association also commented that for the A/E firm to also act as the CM could create a potential problem and should be revised to state that the division's engineer or architect for a project may not serve, alone or in combination with another, as construction manager-at-risk unless such procurement is awarded as a design/build contract under section (10).
RESPONSE AND EXPLANATION OF CHANGE: We believe the statutes (section 8.685, RSMo 2000) are clear that an A/E firm may not be used as a CM-at-risk unless the contract is competitively bid by the procedure explained therein. In addition, we do not wish to confuse the issue by introducing a reference to design-build in the CM-at-risk portion of these regulations when they are totally different processes. However, for clarification purposes, we will change the third sentence of 1 CSR 30-3.025(9)(B).

COMMENT #3: The Division of Facilities Management, Design and Construction received two (2) comments on the proposed rulemakings which were received after the close of comments. The comments were from Design-Build Institute of America (DBIA), Mid-America Region, and Associated General Contractors of Missouri, Inc. DBIA's comment was received on January 23, 2008, and Associated General Contractors' comment was received on January 25, 2008.
RESPONSE: Because both comments were received after the thirty (30)-day statutory comment period, no response is required. We have read the comments and so noted the concerns expressed. No changes will be made to the proposed rule.

COMMENT #4: The Builders Association expressed concern that stipends should be specified in at least minimum percentage amounts in the body of the rules.
RESPONSE: We have considered the suggested changes and have determined no change will be made to the body of the proposed rule. The complexity of the projects do not allow establishment of minimum stipends and the potential bidder is aware from the point of bidding forward what percentage of stipend will be awarded to the successful bidder. They may elect to participate or not participate in the bid opportunities.

1 CSR 30-3.025 Methods of Management/Construction Procurement

(9) Construction Manager-at-Risk.

(B) Before or concurrently with selecting a construction manager-at-risk, the division shall select or designate an engineer or architect who shall prepare the construction documents for the project and who has full responsibility for complying with all state laws, as applicable. If the engineer or architect is not a full-time employee of the division, the division shall select the engineer or architect on the basis of demonstrated competence and qualifications as provided by sections 8.285 to 8.291, RSMo. The division's engineer or architect for a project may not serve, alone or in combination with another, as the construction manager-at-risk. This subsection does not prohibit a division engineer or architect from providing customary construction phase services under the engineer's or architect's original professional service agreement in accordance with applicable licensing laws.

Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 3—Capital Improvement and Maintenance Program

ORDER OF RULEMAKING

By the authority vested in the Office of Administration, Division of Facilities Management, Design and Construction under section 8.320, RSMo 2000, the Division of Facilities Management, Design and Construction rescinds a rule as follows:

1 CSR 30-3.030 Project Design **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on December 17, 2007 (32 MoReg 2480). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 3—Capital Improvement and Maintenance Program

ORDER OF RULEMAKING

By the authority vested in the Office of Administration, Division of Facilities Management, Design and Construction under section 8.320, RSMo 2000, the Division of Facilities Management, Design and Construction adopts a rule as follows:

1 CSR 30-3.030 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on December 17, 2007 (32 MoReg 2481–2483). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Division of Facilities Management, Design and Construction received four (4) comments on the proposed rule.

COMMENT #1: American Institute of Architects (AIA) commented that they felt the public would be better protected when the state of Missouri hires private architecture/engineering (A/E) firms who carry professional liability insurance and expressed concern about the liability insurance coverage for projects. They state that the state of Missouri has a limit of liability to three hundred thousand dollars ($300,000) by statute to any one (1) person in a single accident or occurrence. They, therefore, recommended a cap of one (1) million dollars on construction projects.
RESPONSE: We have considered this comment and do not agree with this suggestion. The limits are set in sections 537.600–537.610, RSMo Supp. 2007 and apply to the state of Missouri. Individuals are not covered by this limited waiver of sovereign immunity but are protected from personal liability under the Legal Expense Fund, sections 105.711–105.726, RSMo Supp. 2007; therefore, we do not believe this change is necessary, and no change will be made to the proposed rule.

COMMENT #2: AIA comments that the use of the word "primary" in the consideration given to firms to whom work will be awarded should be removed. They maintain that the state of Missouri should hire only qualified consultants. They would suggest changing the word "primary" to "some" in subparagraph (1)(C)2.A.
RESPONSE AND EXPLANATION OF CHANGE: We have considered this comment and will delete the word "primary".

COMMENT #3: AIA commented that the second sentence of section (3) requires the consultant to "fully describe" the work. Their position is that it is very common for design firms to use "performance specifications" in which the equipment, materials, or work are not "fully described." They suggest a revision to the subsection to read: ". . . providing plans and specifications which include performance specifications or which fully describe the equipment . . ."
COMMENT #4: The Builders Association made comments which are identical to those expressed by AIA.
RESPONSE: We have considered these comments and have determined there is no need to change the wording of the section of the rule as originally published; therefore, no change will be made.

1 CSR 30-3.030 Project Design

(1) Selection of Designer. Selection of a consultant firm for design of projects in the Capital Improvement Maintenance Program will be made within seventy-five (75) calendar days after the appropriations are passed and signed. Department/agencies participate in the selection of designers for projects included in their program. Quality based selections are made by the department/agency capital improvement coordinator/service level managers based upon the criteria in the Architect Contractor Engineer (ACE) database.

(C) Design by Consultants. Private consultants will be selected by the director for design of the balance of the projects in the program established by the capital improvement and maintenance appropriations. It is the policy of the division to provide the greatest possible opportunity for qualified and competent consultants to participate in this program. The director shall maintain a file and ACE database of consultant firms who have expressed interest in the program. This file shall include notations of specific areas of interest, experience or expertise as expressed by each consultant firm and ratings of previous projects completed and evaluated by the division.

1. Service level managers/agency capital improvement coordinators may make recommendations for selections of consultants for design of projects not selected for in-house design. The selection of consultants will be based on knowledge of, or experience with, these consultants on current or prior projects and performance ratings or new and/or Minority Business Enterprise/Women's Business Enterprise (MBE/WBE) firms that have a demonstrated competency and interest. Program managers may assist in the selections by making recommendations regarding the need for special expertise or continuity between current and previous or proposed future work.

2. The director, Division of Facilities Management, Design and Construction, will approve the selected consultants after full consideration of professional and technical competence, as well as experience, special expertise and capacity necessary for studies and/or design of proposed projects.

A. Consideration will be given to providing opportunities for as many competent consultants as possible. Consultants who have not been retained for recent state projects will be given priority consideration in selections for new projects.

B. In those projects or programs where continuity is a significant factor, consideration will be given to continued retention of a consultant already engaged for existing projects or programs.

Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 3—Capital Improvement and Maintenance Program

ORDER OF RULEMAKING

By the authority vested in the Office of Administration, Division of Facilities Management, Design and Construction under section 8.320, RSMo 2000, the Division of Facilities Management, Design and Construction adopts a rule as follows:

1 CSR 30-3.035 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on December 17, 2007 (32 MoReg 2483–2484). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Division of Facilities Management, Design and Construction did not receive any formal written comments. Walter Johannpeter, our Deputy Division Director, did receive some verbal comments.

COMMENT #1: A verbal comment was received on 1 CSR 30-3.035(1)(A) relating to the change being made to new rule 1 CSR

30-3.025(7)(C). As 1 CSR 30-3.035(1)(A) and 1 CSR 30-3.025(7)(C) were previously written, they were too restrictive in applicability of cost vs. performance information.
RESPONSE AND EXPLANATION OF CHANGE: Subsection (1)(A) will be modified.

COMMENT #2: A verbal comment was received concerning the title of the rule. It was suggested that the title be changed as this rule relates back to projects within project management and that the most definitive title would be "Project Selection/Bidding Methods."
RESPONSE AND EXPLANATION OF CHANGE: The division will change the title of the rule as suggested.

1 CSR 30-3.035 Project Selection/Bidding Methods

(1) Best Value Performance Based.

(A) A project procurement selection method that allows the division to consider factors, in addition to price, such as past performance, risk assessments, and interviews of key personnel when selecting a designer/contractor. The process uses performance information to select the best value designer through a quality based selection where cost is not a factor. The process uses performance information and price proposals when selecting the best value contractor. Performance information may have a higher weight than price in a contractor selection.

Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 3—Capital Improvement and Maintenance Program

ORDER OF RULEMAKING

By the authority vested in the Office of Administration, Division of Facilities Management, Design and Construction under section 8.320, RSMo 2000, the Division of Facilities Management, Design and Construction rescinds a rule as follows:

1 CSR 30-3.040 Project Contracts and Work Completion **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on December 17, 2007 (32 MoReg 2484). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 3—Capital Improvement and Maintenance Program

ORDER OF RULEMAKING

By the authority vested in the Office of Administration, Division of Facilities Management, Design and Construction under section 8.320, RSMo 2000, the Division of Facilities Management, Design and Construction adopts a rule as follows:

1 CSR 30-3.040 Project Contracts and Work Completion **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on December 17, 2007 (32 MoReg 2484–2487). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 3—Capital Improvement and Maintenance Program

ORDER OF RULEMAKING

By the authority vested in the Office of Administration, Division of Facilities Management, Design and Construction under section 8.320, RSMo 2000, the Division of Facilities Management, Design and Construction rescinds a rule as follows:

1 CSR 30-3.050 Project Payments, Acceptance and Occupancy **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on December 17, 2007 (32 MoReg 2487). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 3—Capital Improvement and Maintenance Program

ORDER OF RULEMAKING

By the authority vested in the Office of Administration, Division of Facilities Management, Design and Construction under section 8.320, RSMo 2000, the Division of Facilities Management, Design and Construction adopts a rule as follows:

1 CSR 30-3.050 Project Payments, Acceptance and Occupancy **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on December 17, 2007 (32 MoReg 2487–2488). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 3—Capital Improvement and Maintenance Program

ORDER OF RULEMAKING

By the authority vested in the Office of Administration, Division of Facilities Management, Design and Construction under section 8.320, RSMo 2000, the Division of Facilities Management, Design and Construction rescinds a rule as follows:

1 CSR 30-3.060 Determination of Contractor Responsibility **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on December 17, 2007 (32 MoReg 2488). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 3—Capital Improvement and Maintenance Program

ORDER OF RULEMAKING

By the authority vested in the Office of Administration, Division of Facilities Management, Design and Construction under section 8.320, RSMo 2000, the Division of Facilities Management, Design and Construction adopts a rule as follows:

1 CSR 30-3.060 Determination of Contractor Responsibility **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on December 17, 2007 (32 MoReg 2488–2489). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 4—Facility Maintenance and Operation

ORDER OF RULEMAKING

By the authority vested in the Office of Administration, Division of Facilities Management, Design and Construction under section 8.320, RSMo 2000, the Division of Facilities Management, Design and Construction rescinds a rule as follows:

1 CSR 30-4.010 Objectives and Definitions **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on December 17, 2007 (32 MoReg 2489–2490). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 4—Facility Maintenance and Operation

ORDER OF RULEMAKING

By the authority vested in the Office of Administration, Division of Facilities Management, Design and Construction under section 8.320, RSMo 2000, the Division of Facilities Management, Design and Construction adopts a rule as follows:

1 CSR 30-4.010 Objectives and Definitions **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on December 17, 2007 (32 MoReg 2490). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 4—Facility Maintenance and Operation

ORDER OF RULEMAKING

By the authority vested in the Office of Administration, Division of Facilities Management, Design and Construction under section 8.320, RSMo 2000, the Division of Facilities Management, Design and Construction rescinds a rule as follows:

1 CSR 30-4.020 Facility Management **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on December 17, 2007 (32 MoReg 2490). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 4—Facility Maintenance and Operation

ORDER OF RULEMAKING

By the authority vested in the Office of Administration, Division of Facilities Management, Design and Construction under section 8.320, RSMo 2000, the Division of Facilities Management, Design and Construction adopts a rule as follows:

1 CSR 30-4.020 Facility Management **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on December 17, 2007 (32 MoReg 2490–2491). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 4—Facility Maintenance and Operation

ORDER OF RULEMAKING

By the authority vested in the Office of Administration, Division of Facilities Management, Design and Construction under section 8.320, RSMo 2000, the Division of Facilities Management, Design and Construction rescinds a rule as follows:

1 CSR 30-4.030 Maintenance Program Standards and Procedures **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on December 17, 2007 (32 MoReg 2491–2492). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 4—Facility Maintenance and Operation

ORDER OF RULEMAKING

By the authority vested in the Office of Administration, Division of Facilities Management, Design and Construction under section 8.320, RSMo 2000, the Division of Facilities Management, Design and Construction adopts a rule as follows:

1 CSR 30-4.030 Maintenance Program Standards and Procedures **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on December 17, 2007 (32 MoReg 2492–2493). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 4—Facility Maintenance and Operation

ORDER OF RULEMAKING

By the authority vested in the Office of Administration, Division of Facilities Management, Design and Construction under section 8.320, RSMo 2000, the Division of Facilities Management, Design and Construction rescinds a rule as follows:

1 CSR 30-4.040 Facility Safety and Security **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on December 17, 2007 (32 MoReg 2493). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 4—Facility Maintenance and Operation

ORDER OF RULEMAKING

By the authority vested in the Office of Administration, Division of Facilities Management, Design and Construction under section 8.320, RSMo 2000, the Division of Facilities Management, Design and Construction adopts a rule as follows:

1 CSR 30-4.040 Facility Safety and Security **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on December 17, 2007 (32 MoReg 2493–2495). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 5—Minority/Women Business Enterprises

ORDER OF RULEMAKING

By the authority vested in the Office of Administration, Division of Facilities Management, Design and Construction under section 8.320, RSMo 2000, the Division of Facilities Management, Design and Construction rescinds a rule as follows:

1 CSR 30-5.010 Minority/Women Business Enterprise Participation in State Contracts **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on December 17, 2007 (32 MoReg 2495). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 5—Minority/Women Business Enterprises

ORDER OF RULEMAKING

By the authority vested in the Office of Administration, Division of Facilities Management, Design and Construction under section

8.320, RSMo 2000, the Division of Facilities Management, Design and Construction adopts a rule as follows:

1 CSR 30-5.010 Minority/Women Business Enterprise Participation in State Construction Contracts **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on December 17, 2007 (32 MoReg 2495–2497). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 3—Filing and Reporting Requirements

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.250 and 393.140, RSMo 2000 and section 386.266, RSMo Supp. 2007, the commission adopts a rule as follows:

4 CSR 240-3.162 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on December 3, 2007 (32 MoReg 2340–2353). Relevant portions of those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended January 2, 2008 and a public hearing on the proposed rule was held January 17, 2008. Timely written comments were received from Union Electric Company d/b/a AmerenUE, Kansas City Power & Light, Aquila, and the Missouri Energy Development Association (of which all four (4) investor-owned electric companies are members), the Missouri Industrial Energy Consumers, the Missouri Energy Group, the Public Counsel, AARP, and the staff of the Missouri Public Service Commission. Noranda Aluminum filed written comments one (1) day late, but reiterated those comments as prepared testimony of its witness, Steve Feeders. In addition, Lena Mantle and Greg Meyer on behalf of the staff, Russell Trippensee and Ryan Kind on behalf of the Office of the Public Counsel (OPC), John Coffman on behalf of AARP, Diana Vuylsteke and Maurice Brubaker on behalf of the Missouri Energy Group, Jesse Todd on behalf of ACORN, and Mark C. Birk on behalf of AmerenUE testified at the hearing. The testimony and comments both opposed and supported the adoption of the rule, and both opponents and supporters of the rule, made specific recommendations for changes in the language and operation of the rule. Consumers and consumer groups opposed the rule, electric companies and the commission staff supported the rule.

COMMENT #1: The language "federal, state, or local environmental law, regulation, or rule" is too general and the rule should more specifically define what could be recovered in the environmental cost recovery mechanism (ECRM). The staff responded that attempts to do so resulted in definitions that appeared at odds with statutory language.
RESPONSE: This language is drawn directly from the statute. No change will be made.

COMMENT #2: The proposed rule does not contain sufficient consumer protections, effectively authorizes an electric utility to achieve excess earnings, and does not adequately assure that utilities will act in a prudent manner with respect to expenditures related to environmental costs as defined by the rule. The rule should be amended to ensure that ratepayers are protected from imprudent expenditures and large rate increases and should provide incentives to make the necessary investments to comply with environmental rules in the most economic manner and to operate facilities reasonably.

Revise the definition of "environmental cost" to clarify that an ECRM cannot be used to recover prudently incurred compliance costs if the utility is overearning without using ECRM. In addition, limit recovery to unanticipated costs that could not have been addressed in a prior general rate case. The proposed rule should be modified to recognize the commission's authority to limit deferrals in its discretion as needed to protect ratepayers. This could be accomplished by specifying that any deferred costs be subject to the test that the utility did not earn in excess of its authorized return on equity during the period when the deferred costs were incurred; and that any costs passing this test be collected over the life of the capital addition which gave rise to the cost deferral.

There is a potential for a company to earn more than it is authorized to earn. Whether the ECRM may cause it or not is unknown, but the potential is there. Anytime you have a mechanism that adjusts rates in between rate cases, the possibility that a utility can overearn is enhanced. Absent the clause, the utility has to manage all of its costs and all of its revenues. If a portion of its operations are segregated and the company can increase its rates between rate cases to cover those expenses, there is no down side risk to that. It enhances the possibility to overearn.

Once you include an asset in the revenue requirement calculations, every day subsequent to that calculation, the investment lessens in value, barring no addition to the investment. After a rate base is established, that rate base is lower the next day, so that the earnings are greater. However, they may not go beyond the authorized return, because not all relevant factors are known. This is studied in the general rate proceeding to determine whether an ECRM is appropriate. If staff finds an overearning, it can file a complaint. In addition, information is submitted to OPC and others as provided in sections (9) through (11). The statute does provide that the commission may take into account any change in business risk to the corporation resulting from the implementation of the adjustment mechanism in setting the corporation's allowed return in any rate proceeding, in addition to other changes in business risk experienced by the corporation, and that is in the rule also. There is also the ability to "share" the ECRM, by assigning a percentage to the utility to not be recovered and a portion to recover through the ECRM.

The proposed rule nets both increases and decreases. It takes into consideration depreciation and property tax, other things that may have decreased versus other parties who have other opinions on what that should be. So that netting of cost could benefit the consumer also.

RESPONSE: The rule contains many ratepayer safeguards, all of which appear to be appropriate, and none of which appear to be unreasonable or overly burdensome to the utilities. No changes will be made.

COMMENT #3: ECRMs shift the burden of increased costs of compliance with environmental rules between rate cases to customers and remove most incentives for utilities to act with restraint and make prudent decisions. In order to maintain a financial incentive to behave prudently, inclusion of the phrase "some or all" in several sections will articulate the commission's discretion to approve an ECRM that permits only a portion of the changes in allowable costs to be included and recovered in the ECRM.

RESPONSE: The commission believes that it is clear already in the rule that the commission has the discretion to allow some, all, or none of the costs associated with environmental compliance into an ECRM.

COMMENT #4: A new section entitled "Incentive Mechanism or Performance-Based Program" is recommended, consistent with 4 CSR 240-20.090(11). Add a "threshold test" that establishes a sufficient need prior to obtaining and using an ECRM, in which the utility must establish that it cannot earn its authorized rate of return without an ECRM. An after-the-fact complaint process is insufficient to protect ratepayers. The proposed rule, as written, allows utilities to manipulate timing of filings to manipulate their earnings to the detriment of the public.
RESPONSE: The commission disagrees; no changes will be made.

COMMENT #5: Section 386.322, RSMo gives the commission discretion to allow utilities to implement an ECRM and to promulgate rules governing such mechanisms. It does not encourage or require the commission to do so. Section 386.322, RSMo should not be viewed as embodying a legislative mandate or endorsement of ECRMs, rather it reflects the legislature's deference to the commission regarding a controversial and technical regulatory issue. If the commission chooses to exercise that authority, it is crucial that essential consumer protections be included in these rules, rather than being left for later decision in individual rate cases. To the extent that particular cost items are singled out for separate recovery outside of general rate proceedings, there is a high likelihood that the utility will overearn. It is imperative that the commission put in place a mechanism to review the utility's earnings and limit the pass-through of costs in the ECRM if the utility is experiencing countervailing decreases in other cost elements. Missouri Industrial Energy Consumers (MIEC) proposes to add the following language to the proposed rule:

> In establishing, continuing, or modifying the ECRM, the Commission shall consider whether the presence of the ECRM is likely to allow the utility to earn in excess of its authorized return on equity. If the Commission finds this to be the case, it may include in the ECRM procedures designed to periodically examine the utility's earnings (on a regulatory basis), and appropriately limit the collection of costs under the ECRM to the extent necessary to prevent the utility from earning in excess of its authorized return on equity as a result of revenues received through the ECRM.

However, another commenter notes that Missouri's electric utilities along with electric utilities across the country are at the beginning of a major infrastructure building period. This infrastructure is necessary to provide the increasing amounts of energy customers are demanding and to meet stricter environmental requirements mandated by state and federal law. The increasing cost of this infrastructure and the increasing expenses of utility operations have already caused electric utility rates to increase and will cause additional rate increases in the short and long term. A combination of steel prices and fuel prices and the federal mandates to reduce air pollution will make this building very costly. The price projections on fossil fuels peaks out at the same time there is the biggest hit from pollution controls. Senate Bill 179 provides a reasonable, but by no means easy, mechanism to address a portion of the environmental compliance expenditure aspect of this situation. The provisions in these rules are extensive and complicated. Many of them are designed to protect customers while providing electric utilities a means to see more timely recovery of prudently incurred environmental compliance costs.

There are potential benefits to consumers with an ECRM rule in place. While the ECRM does provide for increases in surcharge amounts, the statute and the rules are explicit that decreases may be reflected as well (examples were given). However, it is likely that if there were an expectation that the surcharge amount would change, it would more likely be an increase than a decrease.

Fewer rate cases and lower administrative costs to the state would benefit the different parties to rate cases and would smooth rate increases as opposed to bringing blocks of expense and capital changes in a rate case. If there were a multi-year period between rate cases, the ECRM could provide for bringing those in smaller bites (example given).

This removes some disincentives to invest in infrastructure sooner and clean the air sooner. It provides more financial stability to utilities and may help with access to lower cost of capital. It does not provide some sort of an additional revenue lag or some sort of an enhancement to revenues beyond what the general rate case process would provide, but without the ECRM mechanism, a disincentive to spend money well in advance of when you might be doing a general rate case otherwise. A lot of different dominoes must fall at the right time to make you hit a particular time line on a project. This is one (1) you remove, and you're making less of a disincentive to not do it.
RESPONSE: The commission believes this rule, in its final form, strikes an appropriate balance between the challenges facing the utilities and the constraints on consumers. As noted elsewhere in the comments, sufficient safeguards are in place to allow the commission to monitor and guard against rampant overearning. Therefore, no changes will be made as a result of these comments.

COMMENT #6: The ECRM rules are silent on the rate design of the ECRM. Parties to the general rate case setting the ECRM can propose cost allocation methodologies and rate design proposals to the commission. These positions may be a methodology based on energy consumption, coincident peak demand, a combination of energy and demand, or whatever other type of allocation methodology a party may choose to support. The rules as proposed are not prescriptive and leave it to the commission as to the determination of which allocation method should be used including any methods in which voltage levels are taken into account. For this reason, the staff recommends that there be no rate design language included in the ECRM rules.
RESPONSE: No change is necessary as a result of this comment.

COMMENT #7: Depreciation of environmental infrastructure in calculating ECRM adjustments is not adequately treated in rule. This rule should be modeled on infrastructure system replacement surcharge (ISRS) treatment, and similarly recognize that utilities can only operate for a few years without a general rate case and any party can file a complaint if overearnings are suspected.

Adjustments to the ECRM will be largely based on large capital investments, which will be depreciated over time. The proposed rules require that the ECRM reflect the net increases and decreases in an electric utility's environmental costs (4 CSR 240-3.162(1)(D)). Net increases and decreases will take into account the depreciation of these large capital investments that accumulates as a reduction to rate base over time. Net increases and decreases will also capture changes in environmental expenses from those allowed in the general rate case that are replaced with another type of environmental expense.
RESPONSE: No change is necessary as a result of this comment.

COMMENT #8: It is problematic to divide rate base into "environmental" and "non-environmental" categories, in that most facilities have at least some relation to environmental concerns. Staff disagrees. It is not the intention of the rule to require a utility to identify a pump or a fan as a compliance investment. The staff suggests a materiality limit in dollars or specific investment types could be included in the rate base. Whatever agreed-to conditions are imposed on the environmental rate base should also apply to the utility when it seeks an ECRM periodic adjustment.
RESPONSE AND EXPLANATION OF CHANGE: The language of paragraph (7)(A)1. has been changed to attempt to clarify the true intent of the provision.

COMMENT #9: Concerning the definition of "environmental cost," the staff is confident that the parties to the general rate proceeding will present to the commission their positions on which cost items in the electric utilities' books and records should be collected in a rate

adjustment mechanism and which should be collected in an ECRM. The commission will have the opportunity to ensure that environmental costs are not improperly classified as fuel and purchased power costs to circumvent the two and one-half percent (2.5%) cap.
RESPONSE AND EXPLANATION OF CHANGE: The commission added a new definition "environmental revenue requirement," now at subsection (1)(F), that should help to clarify.

COMMENT #10: The initial filing requirements should be amended to add information to enable analysis of the necessity of the utility's use of an ECRM to earn a fair return on equity.
RESPONSE: As noted above, the commission declines to modify the rule to utterly preclude the possibility of overearning, believing necessary safeguards are in place. No change will be made as a result of this comment.

COMMENT #11: Accounting for net changes is not unduly burdensome, but manageable. For example, the utility could identify specific environmental cost and revenue items on its books and records that would be considered in adjusting its ECRM. This would allow the utility to define the scope of the accounts and records necessary to track the environmental costs included in its ECRM.
RESPONSE: No change is necessary as a result of this comment.

COMMENT #12: Missouri Energy Development Association (MEDA) proposes removing the monthly submission requirement in subsection (5)(C), based on its belief that it duplicates subsection (5)(E). Subsection (5)(C) requires the utility to provide the electric utility's actual environmental compliance costs and revenues allocated by rate class and voltage level as applicable consistent with the most recent commission-approved allocation methods and rate design. Subsection (5)(E) requires the utility to provide the difference by rate class and voltage level as applicable between the total environmental revenues collected through base rates and the ECRM and the environmental compliance revenues received and costs incurred. Subsection (5)(C) requests information on environmental costs and environmental cost revenues and how those costs are allocated to the rate classes for that month. Subsection (5)(E) requests information on the difference between the revenues billed and the revenues projected for each month. Changing subsection (5)(E) may reduce the confusion.
RESPONSE AND EXPLANATION OF CHANGE: The wording of this subsection will be changed as more fully set forth below.

COMMENT #13: ACORN adamantly opposed adoption of rules that would allow AmerenUE to request an environmental cost surcharge and thereby allow it to raise rates. The rule allows them to recover environmental costs, but those costs may increase while their other costs may decrease. The end effect will be to allow companies to charge customers more and increase their profits because of this surcharge. This is an outrage. This is greed and places unnecessary financial hardship on customers.

With very low usage customers and certain low-income customers, the demand is inelastic. Using electricity particularly to heat your home and do some very basic things is a very basic human need, but there are some signals that could be sent through rate design that are positive and would encourage energy efficiency.
RESPONSE: The commission is aware of the hardships increased rates place on low-income and fixed-income customers. As noted elsewhere, the commission believes sufficient safeguards are in place to protect consumers from unreasonable and unwarranted increases.

COMMENT #14: The utilities argue that the investment currently associated with environmental compliance should be treated identically to the procedures outlined in the infrastructure system replacement surcharge or ISRS rules. The staff and OPC do not agree with this argument. Senate Bill 179 and section 386.266.2, RSMo clearly authorizes periodic rate adjustments outside of general rate proceedings to reflect increases and decreases in its prudently incurred costs, whether capital or expense, to comply with any federal, state, or local environmental law, regulation, or rule. Section 393.1012.1, RSMo which establishes the ISRS, makes no mention of increases or decreases in expense. In fact, the language in that section states, "a gas corporation providing gas service may file a petition and proposed rate schedules with the commission to establish or change ISRS rate schedules that allow for the adjustment of the gas corporation's rates and charges to provide for the recovery of costs for eligible infrastructure system replacement," as well as other significant differences in the operation of the processes.
RESPONSE: The commission agrees that the two (2) processes have different goals and procedures. Wholesale adoption of the ISRS procedure in this rule would be inappropriate and unworkable. No change will be made based on this comment.

COMMENT #15: The commission failed to correctly state all of its rulemaking authority in proceeding with these rules. Although it cited its general rulemaking authority, section 386.250, RSMo 2000, it should also have cited 386.266, RSMo Supp. 2007.
RESPONSE: The rules as published cited as authority sections 386.250 and 393.140, RSMo 2000 and section 386.266, RSMo Supp. 2007. No change is necessary as a result of this comment.

COMMENT #16: The commission should carefully weigh the impact of this surcharge and should limit the amounts to be recovered under it to those costs that could not have been anticipated during the last rate case. If the commission can foresee an environmental cost coming, it should do all in its power to address that in base rates during the rate case, by adjusting factors within its discretion to a higher level, to promote stability in rates.
RESPONSE: No change is required by this comment.

COMMENT #17: There is a dispute among some of the parties about the number of filings that should be made each year. The rule as it stands today allows two (2) filings each year, one (1) which is essentially a true-up and one (1) that the utility can file at its discretion. Staff believes that is a sufficient number given the fact that the major driver of periodic adjustments will be capital investments and that two (2) filings within the year should be sufficient to capture those additional capital investments to meet the compliance rules.
RESPONSE: The commission believes the presently required filings are appropriate and reasonable. No change will be made as a result of this comment.

COMMENT #18: The Chapter 3 rule does not have a waiver provision, but the Chapter 20 rule does. Consistency would be appropriate.
RESPONSE: Both rules, as published, did contain waiver provisions. No change is required by this comment.

COMMENT #19: Prudence reviews suffer myriad problems in rate cases, one (1) of which is the "too early, too late" problem. In the mechanism itself, we are often told that it is too early to look at these issues. Maybe when you get to the rate case, we can look at them. But once you get to the rate case, well, those expenditures, those investments have already been approved in the mechanism.

Another issue that could come up relating to prudence could be something like environmental cleanup costs. It is difficult to pinpoint the particular instance of prudent inquiry. Cleaning up the results of a disaster would be prudent, everyone would agree, but was the disaster the result of imprudent practices? What if a utility buys a piece of property that has an environmental liability attached to it, is it prudent to buy that?

One (1) other prudence issue has to do with resource planning; is this utility relying too much on one (1) type of fuel, are they relying too much on natural gas plants causing their — their rates to be too volatile, or is this utility relying too much on coal and is going to get

hit too hard when all the global issues begin to hit? We look for the lowest cost generation, but is that necessarily always the most prudent course? The question of whether the course of action is prudent involves a much longer term resource-planning decision-making, and when you are looking at expenditures over the course of a year, you are not seeing the facts broadly enough.
RESPONSE: The commission understands that prudence reviews suffer some inherent limitations, but believes that the prudence reviews anticipated in these rules are appropriate and reasonable. No change will be made as a result of this comment.

COMMENT #20: As to whether it is unreasonably costly to have frequent rate cases, if we had rate cases with these electric utilities every other year or even every year, that would not necessarily concern me from a policy perspective because there would not be as much concern that there were unfair charges or double charges and all this unfair gaming of the system that we are fretting about.
RESPONSE: No change will be made as a result of this comment.

COMMENT #21: Looking at SB 179, it does require that the commission only approve a surcharge if it is reasonably designed to provide the utility with sufficient opportunity to earn a fair return on equity. And a return on equity that is in excess of the return that the commission has authorized is not a fair return, and so in our view, the rules should reflect the statutory language. That is key protection the rules really should include. In addition, the commission should reject the utility proposal that consumers be denied the benefit of capital decreases for environmental investments in rate base at the time that the environmental surcharge is established.
RESPONSE: As noted above, the commission declines to modify the rule to utterly preclude the possibility of overearning, believing necessary safeguards are in place. No change will be made as a result of this comment.

COMMENT #22: The staff notes that a Purpose for the rule was inadvertently omitted and should be included.
RESPONSE AND EXPLANATION OF CHANGE: A Purpose will be added to the rule.

4 CSR 240-3.162 Electric Utility Environmental Cost Recovery Mechanisms Filing and Submission Requirements

PURPOSE: This rule implements the provisions of Senate Bill 179, codified at section 386.266, RSMo Supp. 2007, which permits the commission to authorize the inclusion of an environmental cost recovery mechanism in utility rates.

(1) As used in this rule, the following terms mean:

(D) Environmental Cost Recovery Mechanism (ECRM) means a mechanism established in a general rate proceeding that allows periodic rate adjustments, outside a general rate proceeding, to reflect the net increases or decreases in an electric utility's environmental revenue requirement, plus additional environmental costs incurred since the prior general rate proceeding;

(F) The environmental revenue requirement shall be comprised of the following:

1. All expensed environmental costs that are included in the electric utility's revenue requirement in the general rate proceeding in which the ECRM is established; and

2. The required return on costs of any major capital projects whose primary purpose is to permit the electric utility to comply with any federal, state, or local environmental law, regulation, or rule. Representative examples of such capital projects to be included (as of the date of adoption of this rule) are electrostatic precipitators, fabric filters, nitrous oxide emissions control equipment, and flue gas desulfurization equipment. The costs of such capital projects shall be those identified on the electric utility's books and records as of the last day of the test year, as updated, utilized in the general rate proceeding in which the ECRM is established;

(G) General rate proceeding means a general rate increase proceeding or complaint proceeding before the commission in which all relevant factors that may affect the costs, or rates and charges of the electric utility are considered by the commission; and

(H) Rate class is a customer class defined in an electric utility's tariff. Generally, rate classes include Residential, Small General Service, Large General Service, and Large Power Service, but may include additional rate classes. Each rate class includes all customers served under all variations of the rate schedules available to that class.

(2) When an electric utility files to establish an ECRM as described in 4 CSR 240-20.091(2), the electric utility shall file the following supporting information as part of, or in addition to, its direct testimony:

(L) For each of the major categories of costs that the electric utility seeks to recover through its proposed ECRM, a complete explanation of the specific rate class cost allocations and rate design used to calculate the proposed environmental revenue requirement and any subsequent ECRM rate adjustments during the term of the proposed ECRM;

(3) When an electric utility files a general rate proceeding following the general rate proceeding that established its ECRM as described by 4 CSR 240-20.091(2) in which it requests that its ECRM be continued or modified, the electric utility shall file with the commission and serve parties, as provided in sections (9) through (11) in this rule, the following supporting information as part of, or in addition to, its direct testimony:

(L) For each of the major categories of costs that the electric utility seeks to recover through its proposed ECRM, a complete explanation of the specific rate class cost allocations and rate design used to calculate the proposed environmental revenue requirement and any subsequent ECRM rate adjustments during the term of the proposed ECRM;

(4) When an electric utility files a general rate proceeding following the general rate proceeding that established its ECRM as described in 4 CSR 240-20.091(3) in which it requests that its ECRM be discontinued, the electric utility shall file with the commission and serve parties, as provided in sections (9) through (11) in this rule, the following supporting information as part of, or in addition to, its direct testimony:

(B) The periodic adjustment shall reflect a comprehensive measurement of both increases and decreases to the environmental revenue requirement established in the prior general rate proceeding plus the additional environmental costs incurred since the prior general rate proceeding;

(5) Each electric utility with an ECRM shall submit, with an affidavit attesting to the veracity of the information, the following information on a monthly basis to the manager of the auditing department of the commission, the Office of the Public Counsel (OPC) and others, as provided in sections (9) through (11) in this rule. The information may be submitted to the manager of the auditing department through EFIS. The following information shall be aggregated by month and supplied no later than sixty (60) days after the end of each month when the ECRM is in effect. The first submission shall be made within sixty (60) days after the end of the first complete month after the ECRM goes into effect. It shall contain, at a minimum:

(C) All significant factors that have affected the level of ECRM revenues along with workpapers documenting these significant factors;

(D) The difference, by rate class and voltage level, as applicable, between the total billed ECRM revenues and the projected ECRM revenues;

(E) Any additional information ordered by the commission to be provided; and

(F) To the extent any of the requested information outlined above is provided in response to another section, the information only needs to be provided once.

(7) When an electric utility files tariff schedules to adjust an ECRM rate as described in 4 CSR 240-20.091(4) with the commission, and serves upon parties as provided in sections (9) through (11) in this rule, the tariff schedules must be accompanied by supporting testimony, and at least the following supporting information:

(A) The following information shall be included with the filing:

1. For the period from which historical costs are used to adjust the ECRM rate:

A. Emission allowance costs differentiated by purchases, swaps, and loans;

B. Net revenues from emission allowance sales, swaps, and loans;

C. Extraordinary costs not to be passed through, if any, due to such costs being an insured loss, or subject to reduction due to litigation, or for any other reason;

D. Base rate component of environmental compliance costs and revenues;

E. Identification of capital projects placed in service that were not anticipated in the previous general rate proceeding; and

F. Any additional requirements ordered by the commission in the prior general rate proceeding;

2. The levels of environmental capital costs and expenses in the base rate revenue requirement from the prior general rate proceeding;

3. The levels of environmental capital cost in the base rate revenue requirement from the prior general rate proceeding as adjusted for the proposed date of the periodic adjustment;

4. The capital structure as determined in the prior general rate proceeding;

5. The cost rates for the electric utility's debt and preferred stock as determined in the prior general rate proceeding;

6. The electric utility's cost of common equity as determined in the prior general rate proceeding;

7. Calculation of the proposed ECRM collection rates; and

8. Calculations underlying any seasonal variation in the ECRM collection rates; and

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of Proposed Rules 4 CSR 240-3.162 and 4 CSR 240-20.091, Environmental Cost Recovery Mechanisms.	)))))	**Case No. EX-2008-0105**

DISSENTING OPINION OF COMISSIONER ROBERT M. CLAYTON III

This Commissioner dissents from the Final Order of Rulemaking for the rule known as the Environmental Cost Recovery Mechanism (ECRM) or surcharge. This is the second surcharge authorized by SB179 to impact Missouri customers and it has, by far, the greatest potential for significant rate increases. The first surcharge stemming from SB179 was the Fuel Adjustment Mechanism rule promulgated in 2007. In the present rulemaking, the majority rejected all of this Commissioner's amendments that were designed to protect customers from rate increases over and above the utility's authorized rate of return. The public should be prepared for new rate cases in which electric utilities will be permitted to seek not one, but two new surcharges on consumer bills.

First and foremost, surcharges, riders or modifiable trackers are rate designs that permit rate adjustments outside of a general rate case where normally "all relevant factors" are taken into consideration in establishing rates that are "just and reasonable." To determine how much revenue the company should receive to provide service, all expenses, revenues, capital plans and expenditures, labor decisions, fuel estimates and

infrastructure retirements are fully evaluated. Base rates are designed from the comprehensive audit and review by staff in identifying the revenue requirement. The surcharges, however, can be adjusted upward without a full evaluation of "all relevant factors." Over or under collections for non-environmental costs are not evaluated or considered in the appropriateness of the surcharge. If the utility is over-collecting or over-earning after a review of "all relevant factors," it would still be able to collect additional funds through the surcharge enabling it to earn over and above its authorized rate of return or profit. If the utility is under-collecting or under-earning, then the surcharge can elevate the utility to its authorized return level. In either case, the utility receives a benefit while the customer pays more than he or she would have without the surcharge.

Missouri's first surcharge authorizing rate increases without reviewing "all relevant factors" was created in HB208 in 2003 for gas and water utilities known as the Infrastructure System Replacement Surcharge (ISRS). In 2005, SB179 authorized the creation of a Fuel Adjustment Mechanism or clause (FAC), which has since been codified in 4 CSR 240-20.090 and implemented in one electric utility's latest rate case. The ECRM, like the FAC, is applicable to electric utilities. Each surcharge has the potential to enable inappropriate utility returns.

Electric utilities now have two separate mechanisms that may be authorized by the Commission and can easily lead to examples of utility over-earning. During the rulemaking hearing, staff witnesses affirmatively stated that for the utility, "there's no down side risk. . . The possibility for them to overearn, you've enhanced that possibility.

That's just a given."[1] This Commissioner recommended that language proposed by the Public Counsel be included in the rule to protect customers from paying rates over and above the utility's authorized rate of return. This amended language was offered in 4 CSR 240-3.162 for subsections 2(E), 3(E) and 4(C), and in 4 CSR 240.20.091 for subsections 2(A), 4(C)(4-8). The language simply allows the utility to use the surcharge to reach its Commission approved rate of return as authorized by statute, but not to exceed it. Some have argued that this language is unnecessary because such analysis is implicit in what the Commission does. However, including the proposed language only restates current statute and makes the Commission's purpose clear. Clarity only improves this rule.

Over-earning can also be affected by deferrals of cost increases. The proponents of the rule argue that consumers are protected because of a two and one-half per cent (2½ %) cap on annual adjustments to the surcharge. While on the surface, customers do receive some comfort of a limitation on the increase, one should be concerned with the amounts that exceed the cap and are deferred for collection in future rate cases. There is no limit to the amount of such a deferral. Capital investments would most likely be added to rate base anyway, but expenses incurred outside the test year would not be added. The greatest inequity with the unlimited deferrals is those expenses deferred for collection in the next case during a time when the company may be over-earning. For example, if the utility defers $10 million in investments or expenses that exceed the two and one-half per cent (2½ %) cap during a year in which it is earning 200 basis points above its authorized rate of return, the utility gets to keep the over collections and then would be entitled to collect the additional deferrals in base rates in the next rate case. In

[1] Tr. at 31-32.

the past, without using surcharges, the staff would fully evaluate the occurrences of both over and under-earning to find a revenue requirement that was "just and reasonable."

This Commissioner offered for consideration language suggested by Public Counsel and supported by AARP for evaluating this circumstance. In 4 CSR 240-20.091, subsection 4(C) (4-8) was offered to contemplate an occasion for unlimited deferrals when the company is also over-earning. The majority rejected this language. During examination at the hearing, this Commissioner inquired as to staff's intentions during periodic adjustments to the ECRM in light of company earnings. Staff advised that it currently has the power and authority to investigate and possibly file a complaint to reduce rates at times of over-earning. This is supposedly a consumer protection in the rule, however, one person on staff has the responsibility to review all electric and gas utilities' income statements and revenue calculations outside of a rate case which may require several years in analysis. Staff is entirely dependent on the utility to supply accurate and sufficient data to conduct such an analysis. One year's calculation may not be sufficient to trigger a complaint. There are simply insufficient protections in the rule to address the potential for over-earning with pending deferrals.

Lastly, the testimony highlights the great potential for significant amounts of costs to be processed or collected through this surcharge.[2] It is not clear what may be included in the surcharge calculation which is certainly defined to include capital and expense costs. Staff suggests that many of these details should wait for consideration during general rate increases. With possible Congressional mandates on the horizon, the potential for new taxes or fees on certain types of generation and the pursuit of more costly renewable sources of energy, there is no limit on what can be argued by a party to

[2] Tr. at 120.

be eligible for inclusion in the surcharge. This Commissioner recommended adding language that would require costs to be "directly" associated with environmental compliance, yet this language was also rejected by the majority.

Other concepts were suggested to offer guidance to future Commissions. In 4 CSR 240-20.091(11), this Commissioner offered language proposed by some of the consumer advocates that would authorize incentive mechanisms to balance or align the interests of ratepayers and shareholders to encourage prudent decisions. Language was suggested in 4 CSR 240.3-162, subsection 2(P-Q) and 3(P-Q), to require five years worth of study on pending environmental investments and cost incurring decisions with how the surcharge would effect the utility's rate of return. This Commissioner offered another amendment that would have authorized the Commission the flexibility to include "some or all" of the environmental costs as part of the surcharge in 4 CSR 240.20.091(1) (B) if fairness or reasonableness required it. The majority rejected each of these amendments that would have offered a layer of protection for consumers.

In conclusion, the most striking testimony admitted into the record related to the alleged underlying purpose of the rule. It has been argued that this rule is important for Missouri's compliance with environmental rules and that this rule will enable a cleaner Missouri environment. The testimony by industry representatives reflected that this rule does not encourage environmental investment;[3] there was further testimony that environmental projects would not necessarily be accelerated because of this rule;[4] and, the industry comments reflected that this rule will not cause any new environmental

[3] Tr. at 66.
[4] Tr. at 67.

improvement that would not already be required under the law.[5] One surcharge currently in place, the ISRS, which allows for earlier recovery of infrastructure investment has not led to additional or accelerated utility investment.[6]

There is no question that the utility stands to benefit from the acceleration of cost recovery and the shift in risk to consumers. The General Assembly intended for this Commission to promulgate a rule to implement this surcharge. However, consumers, legislators and the public expect that the Commission will use its expertise to implement the rule in a fair and reasonable manner to make sure all parties have a share of the alleged benefits. The Final Order of Rulemaking fails to balance those interests and may very well lead to inappropriate rate increases.

For the foregoing reasons, this Commissioner dissents.

Respectfully submitted,

Robert M. Clayton III
Commissioner

Dated at Jefferson City, Missouri,
on this 28th day of February 2008.

[5] Tr. at 67-68.
[6] Tr. at 68-69.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 20—Electric Utilities

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under sections 386.250 and 393.140, RSMo 2000 and section 386.266, RSMo Supp. 2007, the commission adopts a rule as follows:

4 CSR 240-20.091 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on December 3, 2007 (32 MoReg 2354–2360). Relevant portions of those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended January 2, 2008 and a public hearing on the proposed rule was held January 17, 2008. Timely written comments were received from Union Electric Company d/b/a AmerenUE, Kansas City Power & Light, and the Missouri Energy Development Association (of which all four (4) investor-owned electric companies are members), the Missouri Industrial Energy Consumers, the Public Counsel, AARP and the Staff of the Missouri Public Service Commission. Noranda Aluminum filed written comments one (1) day late, but reiterated those comments as prepared testimony of its witness, Steve Feeders. In addition, Lena Mantle and Greg Meyer on behalf of the staff, Russell Trippensee and Ryan Kind on behalf of the Office of the Public Counsel (OPC), John Coffman on behalf of AARP, Diana Vuylsteke and Maurice Brubaker on behalf of the Missouri Energy Group, Jesse Todd on behalf of ACORN, and Mark C. Birk on behalf of AmerenUE testified at the hearing. The testimony and comments both opposed and supported the adoption of the rule, and both opponents and supporters of the rule made specific recommendations for changes in the language and operation of the rule. Consumers and consumer groups opposed the rule, electric companies and the commission staff supported the rule.

COMMENT #1: The language "federal, state, or local environmental law, regulation, or rule" is too general and the rule should more specifically define what could be recovered in the environmental cost recovery mechanism (ECRM). The staff responded that attempts to do so resulted in definitions that appeared at odds with statutory language.
RESPONSE: This language is drawn directly from the statute. No change will be made.

COMMENT #2: The proposed rule does not contain sufficient consumer protections, effectively authorizes an electric utility to achieve excess earnings, and does not adequately assure that utilities will act in a prudent manner with respect to expenditures related to environmental costs as defined by the rule. The rule should be amended to ensure that ratepayers are protected from imprudent expenditures and large rate increases and should provide incentives to make the necessary investments to comply with environmental rules in the most economic manner and to operate facilities reasonably.

Revise the definition of "environmental cost" to clarify that an ECRM cannot be used to recover prudently incurred compliance costs if the utility is overearning without using ECRM. In addition, limit recovery to unanticipated costs that could not have been addressed in a prior general rate case. The proposed rule should be modified to recognize the commission's authority to limit deferrals in its discretion as needed to protect ratepayers. This could be accomplished by specifying that any deferred costs be subject to the test that the utility did not earn in excess of its authorized return on equity during the period when the deferred costs were incurred; and that any costs passing this test be collected over the life of the capital addition which gave rise to the cost deferral.

There is a potential for a company to earn more than it is authorized to earn. Whether the ECRM may cause it or not is unknown, but the potential is there. Anytime you have a mechanism that adjusts rates in between rate cases, the possibility that a utility can overearn is enhanced. Absent the clause, the utility has to manage all of its costs and all of its revenues. If a portion of its operations are segregated and the company can increase its rates between rate cases to cover those expenses, there is no down side risk to that. It enhances the possibility to overearn.

Once you include an asset in the revenue requirement calculations, every day subsequent to that calculation, the investment lessens in value, barring no addition to the investment. After a rate base is established, that rate base is lower the next day, so that the earnings are greater. However, they may not go beyond the authorized return, because not all relevant factors are known. This is studied in the general rate proceeding to determine whether an ECRM is appropriate. If staff finds an overearning, it can file a complaint. In addition, information is submitted to OPC and others as provided in sections (9) through (11). The statute does provide that the commission may take into account any change in business risk to the corporation resulting from the implementation of the adjustment mechanism in setting the corporation's allowed return in any rate proceeding, in addition to other changes in business risk experienced by the corporation, and that is in the rule also. There is also the ability to "share" the ECRM, by assigning a percentage to the utility to not be recovered and a portion to recover through the ECRM.

The proposed rule nets both increases and decreases. It takes into consideration depreciation and property tax, other things that may have decreased versus other parties who have other opinions on what that should be. So that netting of cost could benefit the consumer also.
RESPONSE: The rule contains many ratepayer safeguards, all of which appear to be appropriate, and none of which appear to be unreasonable or overly burdensome to the utilities. No changes will be made.

COMMENT #3: ECRMs shift the burden of increased costs of compliance with environmental rules between rate cases to customers and remove most incentives for utilities to act with restraint and make prudent decisions. In order to maintain a financial incentive to behave prudently, inclusion of the phrase "some or all" in several sections will articulate the commission's discretion to approve an ECRM that permits only a portion of the changes in allowable costs to be included and recovered in the ECRM.
RESPONSE: The commission believes that it is clear already in the rule that the commission has the discretion to allow some, all, or none of the costs associated with environmental compliance into an ECRM.

COMMENT #4: A new section entitled "Incentive Mechanism or Performance-Based Program" is recommended, consistent with 4 CSR 240-20.090(11). Add a "threshold test" that establishes a sufficient need prior to obtaining and using an ECRM, in which the utility must establish that it cannot earn its authorized rate of return without an ECRM. An after-the-fact complaint process is insufficient to protect ratepayers. The proposed rule, as written, allows utilities to manipulate timing of filings to manipulate their earnings to the detriment of the public.
RESPONSE: The commission disagrees; no changes will be made.

COMMENT #5: Section 386.322, RSMo gives the commission discretion to allow utilities to implement an ECRM and to promulgate rules governing such mechanisms. It does not encourage or require the commission to do so. Section 386.322, RSMo should not be

viewed as embodying a legislative mandate or endorsement of ECRMs, rather it reflects the legislature's deference to the commission regarding a controversial and technical regulatory issue. If the commission chooses to exercise that authority, it is crucial that essential consumer protections be included in these rules, rather than being left for later decision in individual rate cases. To the extent that particular cost items are singled out for separate recovery outside of general rate proceedings, there is a high likelihood that the utility will overearn. It is imperative that the commission put in place a mechanism to review the utility's earnings and limit the pass-through of costs in the ECRM if the utility is experiencing countervailing decreases in other cost elements. Missouri Industrial Energy Consumers (MIEC) proposes to add the following language to the proposed rule:

> In establishing, continuing, or modifying the ECRM, the Commission shall consider whether the presence of the ECRM is likely to allow the utility to earn in excess of its authorized return on equity. If the Commission finds this to be the case, it may include in the ECRM procedures designed to periodically examine the utility's earnings (on a regulatory basis), and appropriately limit the collection of costs under the ECRM to the extent necessary to prevent the utility from earning in excess of its authorized return on equity as a result of revenues received through the ECRM.

However, another commenter notes that Missouri's electric utilities along with electric utilities across the country are at the beginning of a major infrastructure building period. This infrastructure is necessary to provide the increasing amounts of energy customers are demanding and to meet stricter environmental requirements mandated by state and federal law. The increasing cost of this infrastructure and the increasing expenses of utility operations have already caused electric utility rates to increase and will cause additional rate increases in the short and long term. A combination of steel prices and fuel prices and the federal mandates to reduce air pollution will make this building very costly. The price projections on fossil fuels peaks out at the same time there is the biggest hit from pollution controls. Senate Bill 179 provides a reasonable, but by no means easy, mechanism to address a portion of the environmental compliance expenditure aspect of this situation. The provisions in these rules are extensive and complicated. Many of them are designed to protect customers while providing electric utilities a means to see more timely recovery of prudently incurred environmental compliance costs.

There are potential benefits to consumers with an ECRM rule in place. While the ECRM does provide for increases in surcharge amounts, the statute and the rules are explicit that decreases may be reflected as well (examples were given). However, it is likely that if there were an expectation that the surcharge amount would change, it would more likely be an increase than a decrease.

Fewer rate cases and lower administrative costs to the state would benefit the different parties to rate cases and would smooth rate increases as opposed to bringing blocks of expense and capital changes in a rate case. If there were a multi-year period between rate cases, the ECRM could provide for bringing those in smaller bites (example given).

This removes some disincentives to invest in infrastructure sooner and clean the air sooner. It provides more financial stability to utilities and may help with access to lower cost of capital. It does not provide some sort of an additional revenue lag or some sort of an enhancement to revenues beyond what the general rate case process would provide, but without the ECRM mechanism, a disincentive to spend money well in advance of when you might be doing a general rate case otherwise. A lot of different dominoes must fall at the right time to make you hit a particular time line on a project. This is one (1) you remove, and you're making less of a disincentive to not do it.
RESPONSE: The commission believes this rule, in its final form, strikes an appropriate balance between the challenges facing the utilities and the constraints on consumers. As noted elsewhere in the comments, sufficient safeguards are in place to allow the commission to monitor and guard against rampant overearning. Therefore, no changes will be made as a result of these comments.

COMMENT #6: The ECRM rules are silent on the rate design of the ECRM. Parties to the general rate case setting the ECRM can propose cost allocation methodologies and rate design proposals to the commission. These positions may be a methodology based on energy consumption, coincident peak demand, a combination of energy and demand, or whatever other type of allocation methodology a party may choose to support. The rules as proposed are not prescriptive and leave it to the commission as to the determination of which allocation method should be used including any methods in which voltage levels are taken into account. For this reason, the staff recommends that there be no rate design language included in the ECRM rules.
RESPONSE: No change is necessary as a result of this comment.

COMMENT #7: Depreciation of environmental infrastructure in calculating ECRM adjustments is not adequately treated in rule. This rule should be modeled on infrastructure system replacement surcharge (ISRS) treatment, and similarly recognize that utilities can only operate for a few years without a general rate case and any party can file a complaint if overearnings are suspected.

Adjustments to the ECRM will be largely based on large capital investments, which will be depreciated over time. The proposed rules require that the ECRM reflect the net increases and decreases in an electric utility's environmental costs (4 CSR 240-3.162(1)(D)). Net increases and decreases will take into account the depreciation of these large capital investments that accumulates as a reduction to rate base over time. Net increases and decreases will also capture changes in environmental expenses from those allowed in the general rate case that are replaced with another type of environmental expense.
RESPONSE: No change is necessary as a result of this comment.

COMMENT #8: Concerning the definition of "environmental cost," the staff is confident that the parties to the general rate proceeding will present to the commission their positions on which cost items in the electric utilities' books and records should be collected in a rate adjustment mechanism and which should be collected in an ECRM. The commission will have the opportunity to ensure that environmental costs are not improperly classified as fuel and purchased power costs to circumvent the two and one-half percent (2.5%) cap.
RESPONSE AND EXPLANATION OF CHANGE: The commission added a new definition "environmental revenue requirement," now at subsection (1)(D), that should help to clarify.

COMMENT #9: The initial filing requirements should be amended to add information to enable analysis of the necessity of the utility's use of an ECRM to earn a fair return on equity.
RESPONSE: As noted above, the commission declines to modify the rule to utterly preclude the possibility of overearning, believing necessary safeguards are in place. No change will be made as a result of this comment.

COMMENT #10: Accounting for net changes is not unduly burdensome, but manageable. For example, the utility could identify specific environmental cost and revenue items on its books and records that would be considered in adjusting its ECRM. This would allow the utility to define the scope of the accounts and records necessary to track the environmental costs included in its ECRM.
RESPONSE: No change is necessary as a result of this comment.

COMMENT #11: ACORN adamantly opposed adoption of rules that would allow AmerenUE to request an environmental cost surcharge and thereby allow it to raise rates. The rule allows them to recover environmental costs, but those costs may increase while their other costs may decrease. The end effect will be to allow companies to

charge customers more and increase their profits because of this surcharge. This is an outrage. This is greed and places unnecessary financial hardship on customers.

With very low usage customers and certain low-income customers, the demand is inelastic. Using electricity particularly to heat your home and do some very basic things is a very basic human need, but there are some signals that could be sent through rate design that are positive and would encourage energy efficiency.

RESPONSE: The commission is aware of the hardships increased rates places on low-income and fixed-income customers. As noted elsewhere, the commission believes sufficient safeguards are in place to protect consumers from unreasonable and unwarranted increases.

COMMENT #12: The utilities argue that the investment currently associated with environmental compliance should be treated identically to the procedures outlined in the infrastructure system replacement surcharge or ISRS rules. The staff and OPC do not agree with this argument. Senate Bill 179 and section 386.266.2, RSMo clearly authorizes periodic rate adjustments outside of general rate proceedings to reflect increases and decreases in its prudently incurred costs, whether capital or expense, to comply with any federal, state, or local environmental law, regulation, or rule. Section 393.1012.1, RSMo which establishes the ISRS, makes no mention of increases or decreases in expense. In fact, the language in that section states, "a gas corporation providing gas service may file a petition and proposed rate schedules with the commission to establish or change ISRS rate schedules that will allow for the adjustment of the gas corporation's rates and charges to provide for the recovery of costs for eligible infrastructure system replacement," as well as other significant differences in the operation of the processes.

RESPONSE: The commission agrees that the two (2) processes have different goals and procedures. Wholesale adoption of the ISRS procedure in this rule would be inappropriate and unworkable. No change will be made based on this comment.

COMMENT #13: The commission failed to correctly state all of its rulemaking authority in proceeding with these rules. Although it cited its general rulemaking authority, section 386.250, RSMo 2000, it should also have cited 386.266, RSMo Supp. 2007.

RESPONSE: The rules as published cited as authority sections 386.250 and 393.140, RSMo 2000 and section 386.266, RSMo Supp. 2007. No change is necessary as a result of this comment.

COMMENT #14: The commission should carefully weigh the impact of this surcharge and should limit the amounts to be recovered under it to those costs that could not have been anticipated during the last rate case. If the commission can foresee an environmental cost coming, it should do all in its power to address that in base rates during the rate case, by adjusting factors within its discretion to a higher level, to promote stability in rates.

RESPONSE: No change is required by this comment.

COMMENT #15: There is a dispute among some of the parties about the number of filings that should be made each year. The rule as it stands today allows two (2) filings each year, one (1) which is essentially a true-up and one (1) that the utility can file at its discretion. Staff believes that is a sufficient number given the fact that the major driver of periodic adjustments will be capital investments and that two (2) filings within the year should be sufficient to capture those additional capital investments to meet the compliance rules.

RESPONSE: The commission believes the presently required filings are appropriate and reasonable. No change will be made as a result of this comment.

COMMENT #16: The Chapter 3 rule does not have a waiver provision, but the Chapter 20 rule does. Consistency would be appropriate.

RESPONSE: Both rules, as published, did contain waiver provisions. No change is required by this comment.

COMMENT #17: Prudence reviews suffer myriad problems in rate cases, one (1) of which is the "too early, too late" problem. In the mechanism itself, we are often told that it is too early to look at these issues. Maybe when you get to the rate case, we can look at them. But once you get to the rate case, well, those expenditures, those investments have already been approved in the mechanism.

Another issue that could come up relating to prudence could be something like environmental cleanup costs. It is difficult to pinpoint the particular instance of prudent inquiry. Cleaning up the results of a disaster would be prudent, everyone would agree, but was the disaster the result of imprudent practices? What if a utility buys a piece of property that has an environmental liability attached to it, is it prudent to buy that?

One (1) other prudence issue has to do with resource planning; is this utility relying too much on one (1) type of fuel, are they relying too much on natural gas plants causing their — their rates to be too volatile, or is this utility relying too much on coal and is going to get hit too hard when all the global issues begin to hit? We look for the lowest cost generation, but is that necessarily always the most prudent course? The question of whether the course of action is prudent involves a much longer term resource-planning decision-making, and when you are looking at expenditures over the course of a year, you are not seeing the facts broadly enough.

RESPONSE: The commission understands that prudence reviews suffer some inherent limitations, but believes that the prudence reviews anticipated in these rules are appropriate and reasonable. No change will be made as a result of this comment.

COMMENT #18: As to whether it is unreasonably costly to have frequent rate cases, if we had rate cases with these electric utilities every other year or even every year, that would not necessarily concern me from a policy perspective because there would not be as much concern that there were unfair charges or double charges and all this unfair gaming of the system that we are fretting about.

RESPONSE: No change will be made as a result of this comment.

COMMENT #19: Looking at SB 179, it does require that the commission only approve a surcharge if it is reasonably designed to provide the utility with sufficient opportunity to earn a fair return on equity. And a return on equity that is in excess of the return that the commission has authorized is not a fair return, and so in our view, the rules should reflect the statutory language. That is key protection the rules really should include. In addition, the commission should reject the utility proposal that consumers be denied the benefit of capital decreases for environmental investments in rate base at the time that the environmental surcharge is established.

RESPONSE: As noted above, the commission declines to modify the rule to utterly preclude the possibility of overearning, believing necessary safeguards are in place. No change will be made as a result of this comment.

COMMENT #20: Subsection (4)(B) should read: The periodic adjustment shall consist of a comprehensive measurement of both increases and decreases to the environmental revenue requirement established in the prior general rate proceedings plus the additional environmental cost. This next sentence is what we propose adding— The return applied to all capital environmental costs shall be the weighted cost of capital including the return on common equity established in the electric utility's general rate proceeding in which the ECRM mechanism was established.

RESPONSE AND EXPLANATION OF CHANGE: Although a minor grammatical change was made to that section, the new language requested is inappropriate and will not be added.

COMMENT #21: ECRM rates are set to collect revenues to cover the environmental costs incurred since the prior general rate proceeding.

The true-up process only looks at whether the rates over-or under-collected the intended revenues. Environmental costs are not considered in the true-ups. The rule already restricts the periodic adjustments to be based on environmental costs, and the commission determines which cost components are included in the ECRM. Inserting environmental costs in section (5) may create confusion.
RESPONSE: No language was changed in section (5). No change is necessary as a result of this comment.

COMMENT #22: Change the date of the rule review date in 4 CSR 240-20.091 section (12), from June 30, 2011 to December 31, 2011, to be consistent with 4 CSR 240-3.162(17).
RESPONSE AND EXPLANATION OF CHANGE: This has been changed; see new language below.

COMMENT #23: The protections set forth in subsection (2)(D), which allows the commission to determine which portion of the costs will be included in the ECRM (if any) and which will be in base rates are essential to maintaining alignment of interests of utilities and ratepayers.
RESPONSE: No change is necessary as a result of this comment.

COMMENT #24: In subsection (2)(H), at the end of (H), it refers to cost identified as an environment's cost be recovered. I believe that should probably be environmental.
RESPONSE AND EXPLANATION OF CHANGE: This change will be made; see new language below.

4 CSR 240-20.091 Electric Utility Environmental Cost Recovery Mechanisms

(1) Definitions. As used in this rule, the following terms mean as follows:

(D) The environmental revenue requirement shall be comprised of the following:

1. All expensed environmental costs that are included in the electric utility's revenue requirement in the general rate proceeding in which the ECRM is established; and

2. The required return on costs of any major capital projects whose primary purpose is to permit the electric utility to comply with any federal, state, or local environmental law, regulation, or rule. Representative examples of such capital projects to be included (as of the date of adoption of this rule) are electrostatic precipitators, fabric filters, nitrous oxide emissions control equipment, and flue gas desulfurization equipment. The costs of such capital projects shall be those identified on the electric utility's books and records as of the last day of the test year, as updated, utilized in the general rate proceeding in which the ECRM is established;

(2) Applications to Establish, Continue, or Modify an ECRM. Pursuant to the provisions of this rule, 4 CSR 240-2.060, and section 386.266, RSMo, only an electric utility in a general rate proceeding may file an application with the commission to establish, continue, or modify an ECRM by filing tariff schedules. Any party in a general rate proceeding in which an ECRM is in effect or proposed may seek to continue, modify, or oppose the ECRM. The commission shall approve, modify, or reject such applications to establish an ECRM only after providing the opportunity for a full hearing in a general rate proceeding. The commission shall consider all relevant factors that may affect the costs or overall rates and charges of the petitioning electric utility.

(F) The ECRM shall be based on known and measurable environmental costs that have been incurred by the electric utility.

(G) If an ECRM is approved, the commission shall determine the base environmental revenue requirement.

(H) If costs are requested to be recovered through the ECRM and the revenue to be collected in the ECRM rate schedules exceeds two and one-half percent (2.5%) of the electric utility's Missouri annual gross jurisdictional revenues, the electric utility cannot subsequently request that any cost identified as an environmental cost be recovered through a fuel rate adjustment mechanism.

(4) Periodic Adjustments of ECRMs. If an electric utility files proposed rate schedules to adjust its ECRM rates between general rate proceedings, the staff shall examine and analyze the information filed by the electric utility in accordance with 4 CSR 240-3.162 and additional information obtained through discovery, if any, to determine if the proposed adjustment to the ECRM is in accordance with the provisions of this rule, section 386.266, RSMo, and the ECRM established in the most recent general rate proceeding. The staff shall submit a recommendation regarding its examination and analysis to the commission not later than thirty (30) days after the electric utility files its tariff schedules to adjust its ECRM rates. If the ECRM rate adjustment is in accordance with the provisions of this rule, section 386.266, RSMo, and the ECRM established in the most recent general rate proceeding, the commission shall either issue an interim rate adjustment order approving the tariff schedules and the ECRM rate adjustments within sixty (60) days of the electric utility's filing or, if no such order is issued, the tariff schedules and the ECRM rate adjustments shall take effect sixty (60) days after the tariff schedules were filed. If the ECRM rate adjustment is not in accordance with the provisions of this rule, section 386.266, RSMo, or the ECRM established in the most recent rate proceeding, the commission shall reject the proposed rate schedules within sixty (60) days of the electric utility's filing and may instead order implementation of an appropriate interim rate schedule(s).

(A) The periodic adjustments shall be limited to the expense items and the capital projects that are used to determine the environmental revenue requirement in the previous general rate proceeding and those investments or expenses necessary to comply with the electric utility's Environmental Compliance Plan for the period the ECRM is in effect.

1. The costs for capital projects will be eligible for recovery via a periodic adjustment so long as the capital cost of the item when it is placed into service is greater than or equal to the original cost (as of the time that such least costly capital item was placed into service) of the least costly capital item that was included in the environmental revenue requirement (to be determined as provided in 4 CSR 240-20.091(1)(D)); and

2. Waivers from the limitations in this subsection (4)(A) may be sought for capital projects placed into service that could not have been anticipated in the previous general rate proceeding or that do not meet the threshold provided for in the immediately preceding sentence.

(B) The periodic adjustment shall reflect a comprehensive measurement of both increases and decreases to the environmental revenue requirement established in the prior general rate proceeding plus the additional environmental costs incurred since the prior rate proceeding.

(12) Rule Review. The commission shall review the effectiveness of this rule by no later than December 31, 2011, and may, if it deems necessary, initiate rulemaking proceedings to revise this rule.

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of Proposed Rules 4 CSR 240-3.162 and 4 CSR 240-20.091, Environmental Cost Recovery Mechanisms.	)))))	**Case No. EX-2008-0105**

DISSENTING OPINION OF COMISSIONER ROBERT M. CLAYTON III

This Commissioner dissents from the Final Order of Rulemaking for the rule known as the Environmental Cost Recovery Mechanism (ECRM) or surcharge. This is the second surcharge authorized by SB179 to impact Missouri customers and it has, by far, the greatest potential for significant rate increases. The first surcharge stemming from SB179 was the Fuel Adjustment Mechanism rule promulgated in 2007. In the present rulemaking, the majority rejected all of this Commissioner's amendments that were designed to protect customers from rate increases over and above the utility's authorized rate of return. The public should be prepared for new rate cases in which electric utilities will be permitted to seek not one, but two new surcharges on consumer bills.

First and foremost, surcharges, riders or modifiable trackers are rate designs that permit rate adjustments outside of a general rate case where normally "all relevant factors" are taken into consideration in establishing rates that are "just and reasonable." To determine how much revenue the company should receive to provide service, all expenses, revenues, capital plans and expenditures, labor decisions, fuel estimates and

infrastructure retirements are fully evaluated. Base rates are designed from the comprehensive audit and review by staff in identifying the revenue requirement. The surcharges, however, can be adjusted upward without a full evaluation of "all relevant factors." Over or under collections for non-environmental costs are not evaluated or considered in the appropriateness of the surcharge. If the utility is over-collecting or over-earning after a review of "all relevant factors," it would still be able to collect additional funds through the surcharge enabling it to earn over and above its authorized rate of return or profit. If the utility is under-collecting or under-earning, then the surcharge can elevate the utility to its authorized return level. In either case, the utility receives a benefit while the customer pays more than he or she would have without the surcharge.

Missouri's first surcharge authorizing rate increases without reviewing "all relevant factors" was created in HB208 in 2003 for gas and water utilities known as the Infrastructure System Replacement Surcharge (ISRS). In 2005, SB179 authorized the creation of a Fuel Adjustment Mechanism or clause (FAC), which has since been codified in 4 CSR 240-20.090 and implemented in one electric utility's latest rate case. The ECRM, like the FAC, is applicable to electric utilities. Each surcharge has the potential to enable inappropriate utility returns.

Electric utilities now have two separate mechanisms that may be authorized by the Commission and can easily lead to examples of utility over-earning. During the rulemaking hearing, staff witnesses affirmatively stated that for the utility, "there's no down side risk. . . The possibility for them to overearn, you've enhanced that possibility.

That's just a given."[1] This Commissioner recommended that language proposed by the Public Counsel be included in the rule to protect customers from paying rates over and above the utility's authorized rate of return. This amended language was offered in 4 CSR 240-3.162 for subsections 2(E), 3(E) and 4(C), and in 4 CSR 240.20.091 for subsections 2(A), 4(C)(4-8). The language simply allows the utility to use the surcharge to reach its Commission approved rate of return as authorized by statute, but not to exceed it. Some have argued that this language is unnecessary because such analysis is implicit in what the Commission does. However, including the proposed language only restates current statute and makes the Commission's purpose clear. Clarity only improves this rule.

Over-earning can also be affected by deferrals of cost increases. The proponents of the rule argue that consumers are protected because of a two and one-half per cent (2½ %) cap on annual adjustments to the surcharge. While on the surface, customers do receive some comfort of a limitation on the increase, one should be concerned with the amounts that exceed the cap and are deferred for collection in future rate cases. There is no limit to the amount of such a deferral. Capital investments would most likely be added to rate base anyway, but expenses incurred outside the test year would not be added. The greatest inequity with the unlimited deferrals is those expenses deferred for collection in the next case during a time when the company may be over-earning. For example, if the utility defers $10 million in investments or expenses that exceed the two and one-half per cent (2½ %) cap during a year in which it is earning 200 basis points above its authorized rate of return, the utility gets to keep the over collections and then would be entitled to collect the additional deferrals in base rates in the next rate case. In

[1] Tr. at 31-32.

the past, without using surcharges, the staff would fully evaluate the occurrences of both over and under-earning to find a revenue requirement that was "just and reasonable."

This Commissioner offered for consideration language suggested by Public Counsel and supported by AARP for evaluating this circumstance. In 4 CSR 240-20.091, subsection 4(C) (4-8) was offered to contemplate an occasion for unlimited deferrals when the company is also over-earning. The majority rejected this language. During examination at the hearing, this Commissioner inquired as to staff's intentions during periodic adjustments to the ECRM in light of company earnings. Staff advised that it currently has the power and authority to investigate and possibly file a complaint to reduce rates at times of over-earning. This is supposedly a consumer protection in the rule, however, one person on staff has the responsibility to review all electric and gas utilities' income statements and revenue calculations outside of a rate case which may require several years in analysis. Staff is entirely dependent on the utility to supply accurate and sufficient data to conduct such an analysis. One year's calculation may not be sufficient to trigger a complaint. There are simply insufficient protections in the rule to address the potential for over-earning with pending deferrals.

Lastly, the testimony highlights the great potential for significant amounts of costs to be processed or collected through this surcharge.[2] It is not clear what may be included in the surcharge calculation which is certainly defined to include capital and expense costs. Staff suggests that many of these details should wait for consideration during general rate increases. With possible Congressional mandates on the horizon, the potential for new taxes or fees on certain types of generation and the pursuit of more costly renewable sources of energy, there is no limit on what can be argued by a party to

[2] Tr. at 120.

be eligible for inclusion in the surcharge. This Commissioner recommended adding language that would require costs to be "directly" associated with environmental compliance, yet this language was also rejected by the majority.

Other concepts were suggested to offer guidance to future Commissions. In 4 CSR 240-20.091(11), this Commissioner offered language proposed by some of the consumer advocates that would authorize incentive mechanisms to balance or align the interests of ratepayers and shareholders to encourage prudent decisions. Language was suggested in 4 CSR 240.3-162, subsection 2(P-Q) and 3(P-Q), to require five years worth of study on pending environmental investments and cost incurring decisions with how the surcharge would effect the utility's rate of return. This Commissioner offered another amendment that would have authorized the Commission the flexibility to include "some or all" of the environmental costs as part of the surcharge in 4 CSR 240.20.091(1) (B) if fairness or reasonableness required it. The majority rejected each of these amendments that would have offered a layer of protection for consumers.

In conclusion, the most striking testimony admitted into the record related to the alleged underlying purpose of the rule. It has been argued that this rule is important for Missouri's compliance with environmental rules and that this rule will enable a cleaner Missouri environment. The testimony by industry representatives reflected that this rule does not encourage environmental investment;[3] there was further testimony that environmental projects would not necessarily be accelerated because of this rule;[4] and, the industry comments reflected that this rule will not cause any new environmental

[3] Tr. at 66.
[4] Tr. at 67.

improvement that would not already be required under the law.[5] One surcharge currently in place, the ISRS, which allows for earlier recovery of infrastructure investment has not led to additional or accelerated utility investment.[6]

There is no question that the utility stands to benefit from the acceleration of cost recovery and the shift in risk to consumers. The General Assembly intended for this Commission to promulgate a rule to implement this surcharge. However, consumers, legislators and the public expect that the Commission will use its expertise to implement the rule in a fair and reasonable manner to make sure all parties have a share of the alleged benefits. The Final Order of Rulemaking fails to balance those interests and may very well lead to inappropriate rate increases.

For the foregoing reasons, this Commissioner dissents.

Respectfully submitted,

Robert M. Clayton III
Commissioner

Dated at Jefferson City, Missouri,
on this 28th day of February 2008.

[5] Tr. at 67-68.
[6] Tr. at 68-69.

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

ORDER OF RULEMAKING

By the authority vested in the Missouri Commission for the Deaf and Hard of Hearing under section 209.295, RSMo 2000, the commission amends a rule as follows:

5 CSR 100-200.170 Skill Level Standards **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2008 (33 MoReg 323). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 23—Motor Vehicle

ORDER OF RULEMAKING

By the authority vested in the director of revenue under section 301.560, RSMo Supp. 2007, the director rescinds a rule as follows:

12 CSR 10-23.395 Regulation of Boat Dealer's Certificate of Number and Plates **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on February 1, 2008 (33 MoReg 323–324). No changes have been made to the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 26—Dealer Licensure

ORDER OF RULEMAKING

By the authority vested in the director of revenue under sections 301.553 and 301.559, RSMo 2000 and sections 301.550 and 301.560, RSMo Supp. 2007, the director amends a rule as follows:

12 CSR 10-26.020 License Requirements for Auctions, Dealers and Manufacturers **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2008 (33 MoReg 324). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 26—Dealer Licensure

ORDER OF RULEMAKING

By the authority vested in the director of revenue under sections 301.550, 301.560, and 301.562, RSMo Supp. 2007 and section 301.553, RSMo 2000, the director amends a rule as follows:

12 CSR 10-26.060 Dealer License Plates/Certificate of Number **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2008 (33 MoReg 324–325). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 12—DEPARTMENT OF REVENUE
Division 30—State Tax Commission
Chapter 1—General Organization

ORDER OF RULEMAKING

By the authority vested in the State Tax Commission under section 138.430, RSMo 2000, the commission amends a rule as follows:

12 CSR 30-1.010 General Organization **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2008 (33 MoReg 325). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 12—DEPARTMENT OF REVENUE
Division 30—State Tax Commission
Chapter 1—General Organization

ORDER OF RULEMAKING

By the authority vested in the State Tax Commission under section 138.430, RSMo 2000, the commission amends a rule as follows:

12 CSR 30-1.020 Meetings and Hearings **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2008 (33 MoReg 325–326). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 12—DEPARTMENT OF REVENUE
Division 30—State Tax Commission
Chapter 2—Original Assessment

ORDER OF RULEMAKING

By the authority vested in the State Tax Commission under section 138.430, RSMo 2000, the commission amends a rule as follows:

12 CSR 30-2.021 Original Assessment by State Tax Commission and Appeals **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2008 (33 MoReg 326). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 12—DEPARTMENT OF REVENUE
Division 30—State Tax Commission
Chapter 3—Local Assessment of Property and Appeals From Local Boards of Equalization

ORDER OF RULEMAKING

By the authority vested in the State Tax Commission under section 138.430, RSMo 2000, the commission amends a rule as follows:

12 CSR 30-3.010 Appeals From the Local Boards of Equalization **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2008 (33 MoReg 326). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 12—DEPARTMENT OF REVENUE
Division 30—State Tax Commission
Chapter 4—Agricultural Land Productive Values

ORDER OF RULEMAKING

By the authority vested in the State Tax Commission under section 138.430, RSMo 2000, the commission amends a rule as follows:

12 CSR 30-4.010 Agricultural Land Productive Values **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2008 (33 MoReg 326–328). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 3—Conditions of Provider Participation, Reimbursement and Procedure of General Applicability

ORDER OF RULEMAKING

By the authority vested in the MO HealthNet Division under sections 208.153 and 208.201, RSMo Supp. 2007, the division amends a rule as follows:

13 CSR 70-3.100 Filing of Claims **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2008 (33 MoReg 328–329). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 95—Private Duty Nursing Care Under the Healthy Children and Youth Program

ORDER OF RULEMAKING

By the authority vested in the MO HealthNet Division under sections 208.152, 208.153, and 208.201, RSMo Supp. 2007, the division amends a rule as follows:

13 CSR 70-95.010 Private Duty Nursing **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on January 16, 2008 (33 MoReg 217–219). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 16—RETIREMENT SYSTEMS
Division 50—The County Employees' Retirement Fund
Chapter 2—Membership and Benefits

ORDER OF RULEMAKING

By the authority vested in the County Employees' Retirement Fund Board of Directors under section 50.1032, RSMo 2000, the board amends a rule as follows:

16 CSR 50-2.110 Rehires **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2008 (33 MoReg 333). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 200—Insurance Solvency and Company Regulation
Chapter 19—Discount Medical Plans

ORDER OF RULEMAKING

By the authority vested in the director of the Missouri Department of Insurance, Financial Institutions and Professional Registration under section 374.045, RSMo 2000 and section 376.1528, RSMo Supp. 2007, the director adopts a rule as follows:

20 CSR 200-19.020 Scope and Definitions **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on December 3, 2007 (32 MoReg 2393–2394). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The department received comments from Consumer Health Alliance and the department's Insurance Solvency and Company Regulation Division generally supporting the proposed rule.

COMMENT: The Consumer Health Alliance commended the department for its proposed rules and supported the rules as drafted. The department's Insurance Solvency and Company Regulation Division recommended the proposed rule as drafted.
RESPONSE: The department accepts the comments and no changes have been made to the proposed rule.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 200—Insurance Solvency and Company Regulation
Chapter 19—Discount Medical Plans

ORDER OF RULEMAKING

By the authority vested in the director of the Missouri Department of Insurance, Financial Institutions and Professional Registration under section 374.045, RSMo 2000 and sections 376.1504 and 376.1528, RSMo Supp. 2007, the director adopts a rule as follows:

20 CSR 200-19.050 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on December 3, 2007 (32 MoReg 2394–2395). The section with changes has been reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The department received comments from Consumer Health Alliance and the department's Insurance Solvency and Company Regulation Division generally supporting the proposed rule.

COMMENT #1: The Consumer Health Alliance commended the department for its proposed rules and supported the rules as drafted.
RESPONSE: The department accepts the comment and no changes have been made to the proposed rule.

COMMENT #2: The department's Insurance Solvency and Company Regulation Division supported the rule but noted that section (4) should be renumbered as (3) as there is no section (3) in the proposed rule.
RESPONSE AND EXPLANATION OF CHANGE: The department accepts this comment and has changed section (4) to be designated section (3).

20 CSR 200-19.050 Registration

(3) Copies of the Form DM-1 may be obtained from the director at the department's office in Jefferson City, Missouri, on the department's web site, www.insurance.mo.gov or by mailing a written request to the department at Attention: Admissions Specialist, Department of Insurance, Financial Institutions and Professional Registration, PO Box 690, Jefferson City, MO 65102.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 200—Insurance Solvency and Company Regulation
Chapter 19—Discount Medical Plans

ORDER OF RULEMAKING

By the authority vested in the director of the Missouri Department of Insurance, Financial Institutions and Professional Registration under sections 374.045 and 374.202 to 374.207, RSMo 2000 and sections 376.1506 and 376.1528, RSMo Supp. 2007, the director adopts a rule as follows:

20 CSR 200-19.060 Net Worth Requirements **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on December 3, 2007 (32 MoReg 2396–2397). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The department received comments from Consumer Health Alliance and the department's Insurance Solvency and Company Regulation Division generally supporting the proposed rule.

COMMENT: The Consumer Health Alliance commended the department for its proposed rules and supported the rules as drafted. The department's Insurance Solvency and Company Regulation Division recommended the proposed rule as drafted.
RESPONSE: The department accepts the comments and no changes have been made to the proposed rule.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 200—Insurance Solvency and Company Regulation
Chapter 20—Captive Insurance Companies

ORDER OF RULEMAKING

By the authority vested in the director of the Missouri Department of Insurance, Financial Institutions and Professional Registration under section 374.045, RSMo 2000, the director adopts a rule as follows:

20 CSR 200-20.010 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on December 17, 2007 (32 MoReg 2505). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The department received comments from RGA Reinsurance Company (RGA) and the department's Insurance Solvency and Company Regulation Division generally supporting the proposed rule. The department also received one (1) comment from RGA requesting a change to the proposed rule.

COMMENT #1: RGA requested that the parenthesis preceding the word "including" be replaced with a comma in subsection (2)(A).
RESPONSE AND EXPLANATION OF CHANGE: The department accepts this comment and has corrected the typographical error accordingly.

COMMENT #2: The department's Insurance Solvency and Company Regulation Division supports the proposed rule.
RESPONSE: The department accepts the comment and no changes have been made to the proposed rule.

20 CSR 200-20.010 Scope and Definitions

(2) Definitions.

(A) "Company," captive insurance company or companies, including a special purpose life reinsurance captive (SPLRC), unless otherwise specified.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 200—Insurance Solvency and Company Regulation
Chapter 20—Captive Insurance Companies

ORDER OF RULEMAKING

By the authority vested in the director of the Missouri Department of Insurance, Financial Institutions and Professional Registration under section 374.045, RSMo 2000, the director adopts a rule as follows:

20 CSR 200-20.020 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on December 17, 2007 (32 MoReg 2505). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The department received comments from RGA Reinsurance Company (RGA) and the department's Insurance Solvency and Company Regulation Division generally supporting the proposed rule. The department also received one (1) comment from the division requesting a change to the proposed rule.

COMMENT #1: RGA supports the adoption of the proposed rule.
RESPONSE: The department accepts the comment and no changes have been made to the proposed rule.

COMMENT #2: The department's Insurance Solvency and Company Regulation Division supports the proposed rule, but suggested deleting the word "approved" from the title of the rule. The division indicated that the rule states that the forms are suggested, not mandatory, for filing with the department. The division also suggested changing "forms which have been approved for use" in the purpose to read: "forms which may be used."
RESPONSE AND EXPLANATION OF CHANGE: The department accepts this comment and has changed the proposed rule accordingly.

20 CSR 200-20.020 Forms

PURPOSE: This rule sets out the forms which may be used in the regulation of captive insurance companies in this chapter.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 200—Insurance Solvency and Company Regulation
Chapter 20—Captive Insurance Companies

ORDER OF RULEMAKING

By the authority vested in the director of the Missouri Department of Insurance, Financial Institutions and Professional Registration under section 374.045, RSMo 2000, the director adopts a rule as follows:

20 CSR 200-20.030 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on December 17, 2007 (32 MoReg 2505–2507). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The department received comments from RGA Reinsurance Company (RGA) and the department's Insurance Solvency and Company Regulation Division generally supporting the proposed rule. The department also received one (1) comment from RGA requesting a change to the proposed rule.

COMMENT #1: RGA requested that an additional category be added to subsection (1)(A) to address application fees and that the license fee for a special purpose life reinsurance captive be shown as seven thousand five hundred dollars ($7,500) to be consistent with section 379.1364, RSMo.
RESPONSE AND EXPLANATION OF CHANGE: The department accepts this comment and has changed subsection (1)(A) accordingly.

COMMENT #2: The department's Insurance Solvency and Company Regulation Division supports the proposed rule.
RESPONSE: The department accepts the comment and no changes have been made to the proposed rule.

COMMENT #3: The department's Insurance Solvency and Company Regulation Division supports the proposed rule, but noted that the purpose is identical to 20 CSR 200-20.010. The division requested the purpose be revised.
RESPONSE AND EXPLANATION OF CHANGE: The department accepts this comment and has changed the proposed rule accordingly.

20 CSR 200-20.030 Admission

PURPOSE: The purpose of this rule is to set forth the requirements for admitting a captive insurance company to transact business, which the director deems necessary for the regulation of captive insurance companies.

(1) Application and Fees. Application for admission as a captive insurance company shall contain the information outlined in sections 379.1300 to 379.1350 or 379.1353 to 379.1421, RSMo by filing with the director:

(A) Initial Admission:

1. A completed Form CI-1;

2. A license fee of seven thousand five hundred dollars ($7,500) for a company; and

3. An application fee of ten thousand dollars ($10,000) for a special purpose life reinsurance captive.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 200—Insurance Solvency and Company Regulation
Chapter 20—Captive Insurance Companies

ORDER OF RULEMAKING

By the authority vested in the director of the Missouri Department of Insurance, Financial Institutions and Professional Registration under section 374.045, RSMo 2000, the director adopts a rule as follows:

20 CSR 200-20.040 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on December 17, 2007 (32 MoReg 2508–2510). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The department received comments from RGA Reinsurance Company (RGA) and the department's Insurance Solvency and Company Regulation Division generally supporting the proposed rule. The department also received two (2) comments from RGA and one (1) from the division requesting changes to the proposed rule.

COMMENT #1: RGA requested that paragraph (6)(A)1. be changed by adding the words "with respect to the portion of the liability purported to be reinsured" to the end of the sentence.
RESPONSE AND EXPLANATION OF CHANGE: The department accepts this comment and has changed paragraph (6)(A)1. accordingly.

COMMENT #2: RGA requested that subsection (7)(A) be changed to recognize the deduction for the application fee paid by a special purpose life reinsurance captive.
RESPONSE AND EXPLANATION OF CHANGE: The department accepts this comment and has changed subsection (7)(A) accordingly.

COMMENT #3: The division requested that section (2) be changed to allow the director to waive the annual audit requirement, while leaving in place the general requirement of an annual audit.
RESPONSE AND EXPLANATION OF CHANGE: The department accepts this comment and has changed section (2) accordingly.

20 CSR 200-20.040 Financial Requirements

(2) Annual Audit. All companies shall have an annual audit by an independent certified public accountant (CPA), except to the extent waived by the director. The company shall within ninety (90) days of admission apply to the director for approval of the CPA by submitting an application to the director (Form CI-3). Each company shall file an audited financial report with the director on or before June 30 (except for SPLRCs, which shall file on or before May 31) for the year ending December 31 immediately preceding, unless the director has approved a fiscal year ending on a date other than December 31 in which case the audited financial report shall be filed with the director within six (6) months after the end of such approved fiscal year. The annual audit report shall be considered part of the company's annual report of financial condition except with respect to the date by which it must be filed with the director. The annual audit shall consist of the following:

(6) Reinsurance.

(A) Any company authorized to do business in this state may take credit for reserves on risks ceded to a reinsurer subject to the following limitations:

1. No credit shall be allowed for reinsurance where the reinsurance contract does not result in the complete transfer of the risk or liability to the reinsurer with respect to the portion of the liability purported to be reinsured; and

2. No credit shall be allowed, as an asset or a deduction from liability, to any ceding insurer for reinsurance unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer under the contract reinsured without diminution because of the insolvency of the ceding insurer;

(7) Premium Tax.

(A) On or before February 1 of each year, each company shall file a premium tax return (Form CI-5) on a form provided by the director with respect to its direct premiums written and reinsurance assumed premiums written for the year ending the preceding December 31. The tax upon such premiums shall be according to the rates provided by law and shall be subject to the minimum and maximum taxes provided by law. Notwithstanding such minimum and maximum taxes, each company may deduct the application and license and license renewal fees from the taxes payable; provided that such deductions shall be the only deductions from the taxes otherwise payable.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 200—Insurance Solvency and Company Regulation
Chapter 20—Captive Insurance Companies

ORDER OF RULEMAKING

By the authority vested in the director of the Missouri Department of Insurance, Financial Institutions and Professional Registration under section 374.045, RSMo 2000, the director adopts a rule as follows:

20 CSR 200-20.050 Management and Control **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on December 17, 2007 (32 MoReg 2511). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The department received comments from RGA Reinsurance Company (RGA) and the department's Insurance Solvency and Company Regulation Division generally supporting the proposed rule.

COMMENT: RGA and the department's Insurance Solvency and Company Regulation Division support the adoption of the proposed rule.
RESPONSE: The department accepts the comments and no changes have been made to the proposed rule.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 200—Insurance Solvency and Company Regulation
Chapter 20—Captive Insurance Companies

ORDER OF RULEMAKING

By the authority vested in the director of the Missouri Department of Insurance, Financial Institutions and Professional Registration under section 374.045, RSMo 2000, the director adopts a rule as follows:

20 CSR 200-20.060 Revocation, Suspension or Rescission of Company Authority **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on December 17, 2007 (32 MoReg 2511–2512). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The department received comments from RGA Reinsurance Company (RGA) and the department's Insurance Solvency and Company Regulation Division generally supporting the proposed rule.

COMMENT: RGA and the department's Insurance Solvency and Company Regulation Division support the adoption of the proposed rule.
RESPONSE: The department accepts the comments and no changes have been made to the proposed rule.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 400—Life, Annuities and Health
Chapter 5—Advertising and Material Disclosures

ORDER OF RULEMAKING

By the authority vested in the director of the Missouri Department of Insurance, Financial Institutions and Professional Registration under sections 374.045, 375.934, and 375.936, RSMo 2000 and section 375.144, RSMo Supp. 2007, the director adopts a rule as follows:

20 CSR 400-5.305 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on December 17, 2007 (32 MoReg 2537–2538). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The department received three (3) comments. The department received comments from the department's Insurance Market Regulation Division, the American Council of Life Insurers (ACLI), and Metropolitan Life Insurance Company (MetLife) generally supporting the proposed rule. The department also received comments from ACLI and MetLife requesting a change to the proposed rule.

COMMENT #1: ACLI commended the department for proposing the regulation based on the NAIC Military Sales Practices Model Regulation. MetLife expressed its pleasure that Missouri is putting in place rules that will protect members of our military from unscrupulous insurance sales practices. The department's Insurance Market Regulation Division recommended the promulgation of the proposed rule.
RESPONSE: The department acknowledges the comments and has made no changes to the proposed rule.

COMMENT #2: ALCI and MetLife requested that Missouri adopt the provisions regarding the exemption for general advertisements from the NAIC Model.
RESPONSE AND EXPLANATION OF CHANGE: The department agrees in part and has modified the rule accordingly by adding a new subsection (1)(C). The NAIC Model language has been modified to afford the appropriate protections for military members consistent with the purpose of the proposed rule.

20 CSR 400-5.305 Scope and Definitions for Military Sales Practices Regulation

(1) Applicability of Rules. The rules in 20 CSR 400-5.305 to 20 CSR 400-5.310 are based upon the Military Sales Practices Model Regulation adopted by the National Association of Insurance Commissioners (NAIC), published July 2007, fulfilling the intent of the Military Personnel Financial Services Act, Pub. L. No. 109-290, section 3(1)(C) (2006).

(C) The rules in 20 CSR 400-5.305 to 20 CSR 400-5.310 shall not apply to:

1. General advertisements, direct mail and Internet marketing; and

2. Telephone marketing, provided the caller explicitly and conspicuously discloses that the call concerns life insurance and makes no statement that avoids the clear and unequivocal statement that life insurance is the subject matter of the solicitation.

3. Nothing in this subsection shall be construed to exclude an insurer or insurance producer from 20 CSR 400-5.305 to 20 CSR 400-5.310 in any in-person, face-to-face meeting established as a result of the marketing that is exempt under this paragraph.

(D) Nothing herein shall be construed to abrogate the ability of nonprofit organizations (and/or other organizations) to educate members of the United States Armed Forces in accordance with Department of Defense DoD Instruction 1344.07 – PERSONAL COMMERCIAL SOLICITATION ON DOD INSTALLATIONS or successor directive.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 400—Life, Annuities and Health
Chapter 5—Advertising and Material Disclosures

ORDER OF RULEMAKING

By the authority vested in the director of the Missouri Department of Insurance, Financial Institutions and Professional Registration under sections 374.045, 375.934, and 375.936, RSMo 2000 and section 375.144, RSMo Supp. 2007, the director adopts a rule as follows:

20 CSR 400-5.310 Deceptive or Unfair Military Sales Practices **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on December 17, 2007 (32 MoReg 2538–2540). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The department received three (3) comments. The department received comments from the department's Insurance Market Regulation Division, the American Council of Life Insurers (ACLI), and Metropolitan Life Insurance Company (MetLife) generally supporting the proposed rule.

COMMENT: ACLI commended the department for proposing the regulation based on the NAIC Military Sales Practices Model Regulation. MetLife expressed its pleasure that Missouri is putting in place rules that will protect members of our military from unscrupulous insurance sales practices. The department's Insurance Market Regulation Division recommended the promulgation of the proposed rule.
RESPONSE: The department acknowledges the comments and has made no changes to the proposed rule.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2150—State Board of Registration for the Healing Arts
Chapter 1—Organization

ORDER OF RULEMAKING

By the authority vested in the State Board of Registration for the Healing Arts under section 334.125, RSMo 2000 and Chapter 610, RSMo Supp. 2007, the board amends a rule as follows:

20 CSR 2150-1.015 Public Records **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on January 16, 2008 (33 MoReg 219). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2150—State Board of Registration for the Healing Arts
Chapter 2—Licensing of Physicians and Surgeons

ORDER OF RULEMAKING

By the authority vested in the State Board of Registration for the Healing Arts under section 334.125, RSMo 2000, the board amends a rule as follows:

20 CSR 2150-2.010 Applicants for Licensing by Examination **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on January 16, 2008 (33 MoReg 219–220). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2150—State Board of Registration for the Healing Arts
Chapter 2—Licensing of Physicians and Surgeons

ORDER OF RULEMAKING

By the authority vested in the State Board of Registration for the Healing Arts under section 334.125, RSMo 2000, the board amends a rule as follows:

20 CSR 2150-2.030 Licensing by Reciprocity **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on January 16, 2008 (33 MoReg 220). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2150—State Board of Registration for the Healing Arts
Chapter 2—Licensing of Physicians and Surgeons

ORDER OF RULEMAKING

By the authority vested in the State Board of Registration for the Healing Arts under sections 334.075, 334.080, and 334.125, RSMo 2000, the board amends a rule as follows:

20 CSR 2150-2.050 Annual Registration Penalty **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on January 16, 2008 (33 MoReg 220–221). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2150—State Board of Registration for the Healing Arts
Chapter 2—Licensing of Physicians and Surgeons

ORDER OF RULEMAKING

By the authority vested in the State Board of Registration for the Healing Arts under sections 334.046 and 334.125, RSMo 2000, the board amends a rule as follows:

20 CSR 2150-2.063 Provisional Temporary Licensure **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on January 16, 2008 (33 MoReg 221). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2150—State Board of Registration for the Healing Arts
Chapter 2—Licensing of Physicians and Surgeons

ORDER OF RULEMAKING

By the authority vested in the State Board of Registration for the Healing Arts under sections 334.046 and 334.125, RSMo 2000, the board amends a rule as follows:

20 CSR 2150-2.065 Temporary Licenses to Teach or Lecture in Certain Programs **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on January 16, 2008 (33 MoReg 221–222). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2150—State Board of Registration for the Healing Arts
Chapter 2—Licensing of Physicians and Surgeons

ORDER OF RULEMAKING

By the authority vested in the State Board of Registration for the Healing Arts under sections 334.075 and 334.125, RSMo 2000, the board amends a rule as follows:

20 CSR 2150-2.125 Continuing Medical Education **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on January 16, 2008 (33 MoReg 222–223). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2150—State Board of Registration for the Healing Arts
Chapter 2—Licensing of Physicians and Surgeons

ORDER OF RULEMAKING

By the authority vested in the State Board of Registration for the Healing Arts under sections 334.090.2 and 334.125, RSMo 2000, the board amends a rule as follows:

20 CSR 2150-2.153 Reinstatement of an Inactive License **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on January 16, 2008 (33 MoReg 223–224). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2150—State Board of Registration for the Healing Arts
Chapter 3—Licensing of Physical Therapists and Physical Therapist Assistants

ORDER OF RULEMAKING

By the authority vested in the State Board of Registration for the Healing Arts under section 334.125, RSMo 2000 and sections 334.530 and 334.550, RSMo Supp. 2007, the board amends a rule as follows:

20 CSR 2150-3.030 Examination **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on January 16, 2008 (33 MoReg 224). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2150—State Board of Registration for the Healing Arts
Chapter 3—Licensing of Physical Therapists and Physical Therapist Assistants

ORDER OF RULEMAKING

By the authority vested in the State Board of Registration for the Healing Arts under section 334.125, RSMo 2000, the board amends a rule as follows:

20 CSR 2150-3.040 Licensing by Reciprocity **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on January 16, 2008 (33 MoReg 224–225). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2150—State Board of Registration for the Healing Arts
Chapter 3—Licensing of Physical Therapists and Physical Therapist Assistants

ORDER OF RULEMAKING

By the authority vested in the State Board of Registration for the Healing Arts under section 334.125, RSMo 2000 and sections 334.530, 334.540, and 334.550, RSMo Supp. 2007, the board amends a rule as follows:

20 CSR 2150-3.050 Temporary Licenses **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on January 16, 2008 (33 MoReg 225). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2150—State Board of Registration for the Healing Arts
Chapter 3—Licensing of Physical Therapists and Physical Therapist Assistants

ORDER OF RULEMAKING

By the authority vested in the State Board of Registration for the Healing Arts under sections 334.125, 334.650, and 334.670, RSMo 2000 and section 334.665, RSMo Supp. 2007, the board amends a rule as follows:

20 CSR 2150-3.150 Physical Therapist Assistant Temporary Licensure **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on January 16, 2008 (33 MoReg 225). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2150—State Board of Registration for the Healing Arts
Chapter 3—Licensing of Physical Therapists and Physical Therapist Assistants

ORDER OF RULEMAKING

By the authority vested in the State Board of Registration for the Healing Arts under sections 334.125 and 334.675, RSMo 2000 and sections 334.660 and 334.655, RSMo Supp. 2007, the board amends a rule as follows:

20 CSR 2150-3.180 Physical Therapist Assistant Registration—Supervision, Name and Address Changes **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on January 16, 2008 (33 MoReg 225–226). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2150—State Board of Registration for the Healing Arts
Chapter 3—Licensing of Physical Therapists and Physical Therapist Assistants

ORDER OF RULEMAKING

By the authority vested in the State Board of Registration for the Healing Arts under sections 334.125, 334.507, and 334.650, RSMo 2000 and sections 334.100 and 334.610, RSMo Supp. 2007, the board amends a rule as follows:

20 CSR 2150-3.201 Continuing Education Requirements **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on January 16, 2008 (33 MoReg 226). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2150—State Board of Registration for the Healing Arts
Chapter 3—Licensing of Physical Therapists and Physical Therapist Assistants

ORDER OF RULEMAKING

By the authority vested in the State Board of Registration for the Healing Arts under sections 334.125 and 334.507, RSMo 2000 and section 334.100, RSMo Supp. 2007, the board amends a rule as follows:

20 CSR 2150-3.202 Continuing Education Extensions **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on January 16, 2008 (33 MoReg 226–227). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2150—State Board of Registration for the Healing Arts
Chapter 5—General Rules

ORDER OF RULEMAKING

By the authority vested in the State Board of Registration for the Healing Arts under section 334.125, RSMo 2000 and sections

335.036 and 334.104.3, RSMo Supp. 2007, the board amends a rule as follows:

20 CSR 2150-5.100 Collaborative Practice **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on January 16, 2008 (33 MoReg 229–230). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2150—State Board of Registration for the Healing Arts
Chapter 7—Licensing of Physician Assistants

ORDER OF RULEMAKING

By the authority vested in the State Board of Registration for the Healing Arts under sections 334.125, 334.738, and 334.743, RSMo 2000 and section 334.735, RSMo Supp. 2007, the board amends a rule as follows:

20 CSR 2150-7.122 Supervision, Name and Address Change Requirements, Retirement Affidavits **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on January 16, 2008 (33 MoReg 239). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2150—State Board of Registration for the Healing Arts
Chapter 7—Licensing of Physician Assistants

ORDER OF RULEMAKING

By the authority vested in the State Board of Registration for the Healing Arts under sections 334.125, 334.736, 334.738, 334.742, 334.743, and 334.745, RSMo 2000 and sections 334.100, 334.735, and 334.749, RSMo Supp. 2007, the board amends a rule as follows:

20 CSR 2150-7.300 Applicants for Temporary Licensure **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on January 16, 2008 (33 MoReg 239). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2150—State Board of Registration for the Healing Arts
Chapter 7—Licensing of Physician Assistants

ORDER OF RULEMAKING

By the authority vested in the State Board of Registration for the Healing Arts under sections 334.125, 334.736, 334.738, 334.742, 334.743, and 334.745, RSMo 2000 and sections 334.100, 334.735, and 334.749, RSMo Supp. 2007, the board amends a rule as follows:

20 CSR 2150-7.310 Applicants for Temporary Licensure Renewal **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on January 16, 2008 (33 MoReg 239–240). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2150—State Board of Registration for the Healing Arts
Chapter 9—Licensing of Anesthesiologist Assistants

ORDER OF RULEMAKING

By the authority vested in the State Board of Registration for the Healing Arts under section 334.125, RSMo 2000 and sections 334.400, 334.404, 334.406, and 334.414, RSMo Supp. 2007, the board amends a rule as follows:

20 CSR 2150-9.030 Applicants for Licensure **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on January 16, 2008 (33 MoReg 240). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2150—State Board of Registration for the Healing Arts
Chapter 9—Licensing of Anesthesiologist Assistants

ORDER OF RULEMAKING

By the authority vested in the State Board of Registration for the Healing Arts under section 334.125, RSMo 2000 and section 334.414, RSMo Supp. 2007, the board amends a rule as follows:

20 CSR 2150-9.060 Licensure Renewal **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on January 16, 2008 (33 MoReg 240–241). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2150—State Board of Registration for the Healing Arts
Chapter 9—Licensing of Anesthesiologist Assistants

ORDER OF RULEMAKING

By the authority vested in the State Board of Registration for the Healing Arts under section 334.125, RSMo 2000 and section 334.414, RSMo Supp. 2007, the board amends a rule as follows:

20 CSR 2150-9.070 Continuing Education **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on January 16, 2008 (33 MoReg 241). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2150—State Board of Registration for the Healing Arts
Chapter 9—Licensing of Anesthesiologist Assistants

ORDER OF RULEMAKING

By the authority vested in the State Board of Registration for the Healing Arts under section 334.125, RSMo 2000 and section 334.414, RSMo Supp. 2007, the board amends a rule as follows:

20 CSR 2150-9.090 Late Registration **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on January 16, 2008 (33 MoReg 241–242). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

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

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director amends a rule as follows:

22 CSR 10-2.010 Definitions **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2008 (33 MoReg 345–346). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

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

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director amends a rule as follows:

22 CSR 10-2.020 Subscriber Agreement and General Membership Provisions **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2008 (33 MoReg 346). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 3—Public Entity Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director amends a rule as follows:

22 CSR 10-3.010 Definitions **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2008 (33 MoReg 346). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 22—MISSOURI CONSOLIDATED HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 3—Public Entity Membership

ORDER OF RULEMAKING

By the authority vested in the Missouri Consolidated Health Care Plan under section 103.059, RSMo 2000, the director amends a rule as follows:

22 CSR 10-3.020 Subscriber Agreement and General Membership Provisions **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2008 (33 MoReg 346–347). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.