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SALUS POPULI SUPREMA LEX ESTO

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



ROBIN CARNAHAN
SECRETARY OF STATE

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IN THIS ISSUE:

EMERGENCY RULES

Department of Social Services
 MO HealthNet Division2583

EXECUTIVE ORDERS2587

PROPOSED RULES

Department of Economic Development
 Public Service Commission2590

Department of Higher Education
 University of Missouri2592

Department of Natural Resources
 Air Conservation Commission2594

Retirement Systems
 Missouri Local Government Employees' Retirement System (LAGERS)2595

ORDERS OF RULEMAKING

Department of Agriculture
 Animal Health2597

Department of Conservation
 Conservation Commission2601

Department of Transportation
 Missouri Highways and Transportation Commission2601

Department of Natural Resources
 Safe Drinking Water Commission2602

Department of Public Safety
 Missouri Gaming Commission2602

Department of Social Services
 MO HealthNet Division2602

Department of Insurance, Financial Institutions and Professional Registration
 Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects . .2603
 Board of Cosmetology and Barber Examiners2604
 State Board of Embalmers and Funeral Directors2604
 State Board of Registration for the Healing Arts2605
 Board of Private Investigator Examiners2605
 Office of Tattooing, Body Piercing, and Branding2613
 Missouri Veterinary Medical Board2614

IN ADDITIONS

Department of Transportation
 Missouri Highways and Transportation Commission2615

DISSOLUTIONS2617

SOURCE GUIDES

RULE CHANGES SINCE UPDATE2621

EMERGENCY RULES IN EFFECT2629

EXECUTIVE ORDERS2631

REGISTER INDEX2634

Register Filing Deadlines	Register Publication Date	Code Publication Date	Code Effective Date
August 3, 2009 August 17, 2009	September 1, 2009 September 15, 2009	September 30, 2009 September 30, 2009	October 30, 2009 October 30, 2009
September 1, 2009 September 15, 2009	October 1, 2009 October 15, 2009	October 31, 2009 October 31, 2009	November 30, 2009 November 30, 2009
October 1, 2009 October 15, 2009	November 2, 2009 November 16, 2009	November 30, 2009 November 30, 2009	December 30, 2009 December 30, 2009
November 2, 2009 November 16, 2009	December 1, 2009 December 15, 2009	December 31, 2009 December 31, 2009	January 30, 2010 January 30, 2010
December 1, 2009 December 15, 2009	January 4, 2010 January 15, 2010	January 29, 2010 January 29, 2010	February 28, 2010 February 28, 2010
January 4, 2010 January 15, 2010	February 1, 2010 February 16, 2010	February 28, 2010 February 28, 2010	March 30, 2010 March 30, 2010
February 1, 2010 February 16, 2010	March 1, 2010 March 15, 2010	March 31, 2010 March 31, 2010	April 30, 2010 April 30, 2010
March 1, 2010 March 15, 2010	April 1, 2010 April 15, 2010	April 30, 2010 April 30, 2010	May 30, 2010 May 30, 2010
April 1, 2010 April 15, 2010	May 3, 2010 May 17, 2010	May 31, 2010 May 31, 2010	June 30, 2010 June 30, 2010

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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 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 10—Nursing Home Program**

EMERGENCY AMENDMENT

13 CSR 70-10.016 Global Per Diem Adjustments to Nursing Facility and HIV Nursing Facility Reimbursement Rates. The division is adding paragraph (3)(A)14.

PURPOSE: This amendment provides for a per diem increase to nursing facility and HIV nursing facility reimbursement rates by granting a trend adjustment resulting in an increase of five dollars and fifty cents (\$5.50) effective for dates of service beginning July 1, 2009.

EMERGENCY STATEMENT: The Department of Social Services, MO HealthNet Division by rule and regulation must define the reasonable costs, manner, extent, quantity, quality, charges, and fees of medical assistance. Effective for dates of service beginning July 1, 2009, the appropriation by the General Assembly included additional funds to increase nursing facilities' and HIV nursing facilities' reimbursements to account for a trend adjustment for SFY 2010. The MO HealthNet Division is carrying out the General Assembly's intent by providing for a per diem increase to nursing facility and HIV nursing facility reimbursement rates through the implementation of a trend adjustment effective for dates of service beginning July 1, 2009, of an additional five dollars and fifty cents (\$5.50). The trend adjustment

is necessary to ensure that payments for nursing facility and HIV nursing facility per diem rates are in line with the funds appropriated for that purpose. There is a total of five hundred four (504) nursing facilities and HIV nursing facilities currently enrolled in MO HealthNet, which will receive a per diem increase to its reimbursement rate of five dollars and fifty cents (\$5.50) effective for dates of service beginning July 1, 2009. This emergency amendment will ensure payment for nursing facility and HIV nursing facility services to approximately twenty-four thousand (24,000) senior Missourians in accordance with the appropriation authority. The Centers for Medicare and Medicaid Services approved the per diem rate increase of five dollars and fifty cents (\$5.50) for nursing facility and HIV nursing facility services on November 3, 2009. This emergency amendment must be implemented on a timely basis to ensure that quality nursing facility and HIV nursing facility services continue to be provided to MO HealthNet participants in nursing facilities and HIV nursing facilities during state fiscal year 2010 in accordance with the appropriation authority. As a result, the MO HealthNet Division finds an immediate danger to public health, safety, and/or welfare and a compelling governmental interest, which requires emergency action. The MO HealthNet Division has a compelling governmental interest in providing continued cash flow for nursing facility and HIV nursing facility services. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended by the *Missouri* and *United States Constitutions*. The MO HealthNet Division believes this emergency amendment is fair to all interested persons and parties under the circumstances. A proposed amendment covering the five dollars and fifty cents (\$5.50) increase was published in the *Missouri Register* on August 3, 2009 (34 MoReg 1582-1585). The final order of rulemaking relating to that proposed amendment was filed with the Joint Committee on Administrative Rules on September 14, 2009, and was filed with the Office of the Secretary of State on November 4, 2009. Therefore, the division believes this emergency to be fair to all interested persons and parties under the circumstances. This emergency amendment was filed November 9, 2009, becomes effective November 19, 2009, and expires January 30, 2010.

(3) Adjustments to the Reimbursement Rates. Subject to the limitations prescribed in 13 CSR 70-10.015, a nursing facility's reimbursement rate may be adjusted as described in this section. Subject to the limitations prescribed in 13 CSR 70-10.080, an HIV nursing facility's reimbursement rate may be adjusted as described in this section.

(A) Global Per Diem Rate Adjustments. A facility with either an interim rate or a prospective rate may qualify for the global per diem rate adjustments. Global per diem rate adjustments shall be added to the specified cost component ceiling.

1. FY-96 negotiated trend factor—

A. Facilities with either an interim rate or prospective rate in effect on October 1, 1995, shall be granted an increase to their per diem effective October 1, 1995, of four and six-tenths percent (4.6%) of the cost determined in paragraphs (11)(A)1., (11)(B)1., (11)(C)1., and the property insurance and property taxes detailed in [paragraph] subsection (11)(D) of 13 CSR 70-10.015; or

B. Facilities that were granted a prospective rate based on paragraph (12)(A)2. of 13 CSR 70-10.015 that is in effect on October 1, 1995, shall have their increase determined by subsection (3)(S) of 13 CSR 70-10.015.

2. FY-97 negotiated trend factor—

A. Facilities with either an interim rate or prospective rate in effect on October 1, 1996, shall be granted an increase to their per diem effective October 1, 1996, of three and seven-tenths percent (3.7%) of the cost determined in paragraphs (11)(A)1., (11)(B)1., (11)(C)1., and the property insurance and property taxes detailed in [paragraph] subsection (11)(D) of 13 CSR 70-10.015; or

B. Facilities that were granted a prospective rate based on paragraph (12)(A)2. of 13 CSR 70-10.015 that is in effect on October 1, 1995, shall have their increase determined by subsection (3)(S) of 13 CSR 70-10.015.

3. Nursing Facility Reimbursement Allowance (NFRA). Effective October 1, 1996, all facilities with either an interim rate or a prospective rate shall have its per diem adjusted to include the current NFRA as an allowable cost in its reimbursement rate calculation.

4. Minimum wage adjustment. All facilities with either an interim rate or a prospective rate in effect on November 1, 1996, shall be granted an increase to their per diem effective November 1, 1996, of two dollars and forty-five cents (\$2.45) to allow for the change in minimum wage. Utilizing Fiscal Year 1995 cost report data, the total industry hours reported for each payroll category was multiplied by the fifty-cent (50¢) increase, divided by the patient days for the facilities reporting hours for that payroll category and factored up by eight and sixty-seven hundredths percent (8.67%) to account for the related increase to payroll taxes. This calculation excludes the director of nursing, the administrator, and assistant administrator.

5. Minimum wage adjustment. All facilities with either an interim rate or a prospective rate in effect on September 1, 1997, shall be granted an increase to their per diem effective September 1, 1997, of one dollar and ninety-eight cents (\$1.98) to allow for the change in minimum wage. Utilizing Fiscal Year 1995 cost report data, the total industry hours reported for each payroll category was multiplied by the forty-cent (40¢) increase, divided by the patient days for the facilities reporting hours for that payroll category and factored up by eight and sixty-seven hundredths percent (8.67%) to account for the related increase to payroll taxes. This calculation excludes the director of nursing, the administrator, and assistant administrator.

6. FY-98 negotiated trend factor—

A. Facilities with either an interim rate or prospective rate in effect on October 1, 1997, shall be granted an increase to their per diem effective October 1, 1997, of three and four-tenths percent (3.4%) of the cost determined in paragraphs (11)(A)1., (11)(B)1., (11)(C)1., and the property insurance and property taxes detailed in *[paragraph] subsection* (11)(D) of 13 CSR 70-10.015 for nursing facilities and 13 CSR 70-10.080 for HIV nursing facilities; or

B. Facilities that were granted a prospective rate based on paragraph (12)(A)2. of 13 CSR 70-10.015 that is in effect on October 1, 1995, shall have their increase determined by subsection (3)(S) of 13 CSR 70-10.015.

7. FY-99 negotiated trend factor—

A. Facilities with either an interim rate or prospective rate in effect on October 1, 1998, shall be granted an increase to their per diem effective October 1, 1998, of two and one-tenth percent (2.1%) of the cost determined in paragraphs (11)(A)1., (11)(B)1., (11)(C)1., the property insurance and property taxes detailed in *[paragraph] subsection* (11)(D) of 13 CSR 70-10.015 for nursing facilities and 13 CSR 70-10.080 for HIV nursing facilities and the minimum wage adjustments detailed in paragraphs (3)(A)4. and (3)(A)5. of this regulation; or

B. Facilities that were granted a prospective rate based on paragraph (12)(A)2. of 13 CSR 70-10.015 that is in effect on October 1, 1998, shall have their increase determined by subsection (3)(S) of 13 CSR 70-10.015.

8. FY-2000 negotiated trend factor—

A. Facilities with either an interim rate or prospective rate in effect on July 1, 1999, shall be granted an increase to their per diem effective July 1, 1999, of one and ninety-four hundredths percent (1.94%) of the cost determined in subsections (11)(A), (11)(B), (11)(C), the property insurance and property taxes detailed in *[paragraph] subsection* (11)(D) of 13 CSR 70-10.015 for nursing facilities and 13 CSR 70-10.080 for HIV nursing facilities and the minimum wage adjustments detailed in paragraphs (3)(A)4. and (3)(A)5. of this regulation; or

B. Facilities that were granted a prospective rate based on paragraph (12)(A)2. of 13 CSR 70-10.015 that is in effect on July 1, 1999, shall have their increase determined by subsection (3)(S) of 13 CSR 70-10.015.

9. FY-2004 nursing facility operations adjustment—

A. Facilities with either an interim rate or prospective rate in effect on July 1, 2003, shall be granted an increase to their per diem effective for dates of service beginning July 1, 2003, through June 30, 2004, of four dollars and thirty-two cents (\$4.32) for the cost of nursing facility operations. Effective for dates of service beginning July 1, 2004, the per diem adjustment shall be reduced to three dollars and seventy-eight cents (\$3.78).

B. The operations adjustment shall be added to the facility's current rate as of June 30, 2003, and is effective for payment dates after August 1, 2003.

10. FY-2007 quality improvement adjustment—

A. Facilities with either an interim rate or prospective rate in effect on July 1, 2006, shall be granted an increase to their per diem effective for dates of service beginning July 1, 2006, of three dollars and seventeen cents (\$3.17) to improve the quality of life for nursing facility residents.

B. The quality improvement adjustment shall be added to the facility's current rate as of June 30, 2006, and is effective for dates of service beginning July 1, 2006, and after.

11. FY-2007 trend adjustment.

A. Facilities with either an interim rate or a prospective rate in effect on February 1, 2007, shall be granted an increase to their per diem rate effective for dates of service beginning February 1, 2007, of three dollars and zero cents (\$3.00) to allow for a trend adjustment to ensure quality nursing facility services.

B. The trend adjustment shall be added to the facility's reimbursement rate as of January 31, 2007, and is effective for dates of service beginning February 1, 2007, for payment dates after March 1, 2007.

12. FY-2008 trend adjustment.

A. Facilities with either an interim rate or a prospective rate in effect on July 1, 2007, shall be granted an increase to their per diem rate effective for dates of service beginning July 1, 2007, of six dollars and zero cents (\$6.00) to allow for a trend adjustment to ensure quality nursing facility services.

B. The trend adjustment shall be added to the facility's current rate as of June 30, 2007, and is effective for dates of service beginning July 1, 2007.

13. FY-2009 trend adjustment.

A. Facilities with either an interim rate or a prospective rate in effect on July 1, 2008, shall be granted an increase to their per diem rate effective for dates of service beginning July 1, 2008, of six dollars and zero cents (\$6.00) to allow for a trend adjustment to ensure quality nursing facility services.

B. The trend adjustment shall be added to the facility's current rate as of June 30, 2008, and is effective for dates of service beginning July 1, 2008.

14. FY-2010 trend adjustment.

A. Facilities with either an interim rate or a prospective rate in effect on July 1, 2009, shall be granted an increase to their per diem rate effective for dates of service beginning July 1, 2009, of five dollars and fifty cents (\$5.50) to allow for a trend adjustment to ensure quality nursing facility services.

B. The trend adjustment shall be added to the facility's current rate as of June 30, 2009, and is effective for dates of service beginning July 1, 2009.

AUTHORITY: section 208.159, RSMo 2000 and sections 208.153 and 208.201, RSMo Supp. [2007] 2008. Original rule filed July 1, 2008, effective Jan. 30, 2009. Emergency rule filed October 3, 2008, effective October 13, 2008, expired April 10, 2009. Amended: Filed July 1, 2009. Emergency amendment filed Nov. 9, 2009, effective Nov. 19, 2009, expires Jan. 30, 2010.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 10—Nursing Home Program**

EMERGENCY AMENDMENT

13 CSR 70-10.110 Nursing Facility Reimbursement Allowance.
The division is amending section (1) and adding subsection (2)(L).

PURPOSE: This amendment provides for a change in the Nursing Facility Reimbursement Allowance rate to nine dollars and seven cents (\$9.07) effective for dates of service beginning July 1, 2009.

EMERGENCY STATEMENT: The Department of Social Services, MO HealthNet Division finds that this emergency amendment is necessary to preserve a compelling governmental interest of collecting state revenue in order to provide nursing facility services to individuals eligible for the MO HealthNet nursing facility program. This emergency amendment changes the Nursing Facility Reimbursement Allowance (NFRA) rate from eight dollars and forty-two cents (\$8.42) to nine dollars and seven cents (\$9.07) effective for dates of service beginning July 1, 2009. This emergency amendment is necessary to generate additional state matching funds to pay nursing facilities an increased reimbursement rate also effective for dates of service beginning July 1, 2009. An early effective date is required because the emergency amendment is necessary to establish the NFRA assessment rate for State Fiscal Year (SFY) 2010 in regulation in order to collect the state revenue to ensure funds are available to pay for nursing facility services for MO HealthNet participants in participating MO HealthNet nursing facilities with the funds appropriated for that purpose. This emergency amendment results in an additional NFRA assessment of \$9,718,930, which yields additional payments of \$26,997,028 to nursing facilities. The NFRA will raise approximately \$135,616,566 annually. The MO HealthNet Division also finds an immediate danger to public health, safety, and/or welfare which require emergency actions. If this emergency amendment is not enacted, there would be significant cash flow shortages causing a financial strain on Missouri nursing facilities which serve approximately twenty-four thousand (24,000) individuals eligible for the MO HealthNet nursing facility program. This financial strain, in turn, will result in an adverse impact on the health and welfare of MO HealthNet participants in need of nursing facility services. A proposed amendment covering the nine dollars and seven cents (\$9.07) NFRA rate effective July 1, 2009, was published in the Missouri Register on August 3, 2009 (34 MoReg 1586-1587). The final order of rulemaking relating to that proposed amendment was filed with the Joint Committee on Administrative Rules on September 14, 2009, and was filed with the Office of the Secretary of State on November 4, 2009. This emergency amendment limits its scope to the circumstances creating the emergency and complies with the protections extended by the Missouri and United States Constitutions. The MO HealthNet Division believes this emergency amendment to be fair to all interested parties under the circumstances. This emergency amendment was filed November 9, 2009, becomes effective November 19, 2009, and expires December 31, 2009.

(1) Nursing Facility Reimbursement Allowance (NFRA). NFRA shall be assessed as described in this section.

(A) Definitions.

1. Nursing facility. An institution or a distinct part of an institution which—

A. Is primarily engaged in providing to residents—

(I) Skilled nursing care and related services for residents who require medical or nursing care; or

(II) Rehabilitation services for the rehabilitation of injured, disabled, or sick persons; or

(III) On a regular basis, health-care and services to individuals who because of their mental or physical condition require

care and services (above the level of room and board) which can be made available to them only through institutional facilities[,] and is not primarily for the care and treatment of mental diseases; and

B. Has in effect a transfer agreement with one (1) or more hospitals as required by federal law; and

C. Meets the requirements for a nursing facility described in section 1919(b)–(d) of the Social Security Act; or

D. Is licensed in accordance with Chapter 198, RSMo, as a skilled nursing facility.

2. Fiscal period. A facility's twelve (12)-month fiscal reporting period covering the same twelve (12)-month period as its federal tax year.

3. Department. Department of Social Services.

4. Director. Director of the Department of Social Services.

5. Division. [Division of Medical Services] MO HealthNet Division, Department of Social Services.

6. Department of Health and Senior Services (DHSS). The Missouri state agency responsible for licensing and inspecting all long-term care facilities operating in Missouri and certifying annually those facilities participating in the Medicare or Medicaid program.

7. Engaging in the business of providing nursing facility services. Accepting payment for nursing facility services rendered.

8. Quarterly survey. The survey filled out each quarter by a nursing facility providing data on its licensed and certified beds and the related resident occupancy days (ROD) that is submitted to the DHSS. The survey form, "Missouri Department of Health and Senior Services, Division of Senior Services and Regulation, ICF/SNF Certificate of Need Quarterly Survey" (form MO 886-9001 (6-95)), incorporated by reference in this rule, is published by the Department of Health and Senior Services, Division of Senior Services and Regulation, PO Box 570, Jefferson City, MO 65102. This rule does not incorporate any subsequent amendments or additions.

9. Applicable quarterly survey. The quarterly survey used by the division from which the patient occupancy days are taken to determine the NFRA assessment for a given period as set forth in section (2).

10. Patient occupancy days. The number of days that residents occupied the licensed beds in a nursing facility as shown on the quarterly survey, line D. "Number of occupied RODs (days patients in beds or beds held)."

11. Annualized level of patient occupancy days. The annual level of patient occupancy days used to determine the annual NFRA assessment.

A. For existing nursing facilities whose NFRA assessment is set in accordance with (1)(B)1. of this regulation, the annualized level of patient occupancy days is calculated by taking the number of patient occupancy days shown on line D. of the quarterly survey multiplied by four (4).

B. For nursing facilities whose NFRA assessment is not set by the general rule set forth in (1)(B)1. (i.e., it is an exception set under (1)(B)1.A., is a new facility set under (1)(B)2., qualifies for a NFRA Adjustment in accordance with section (3), etc.), the annualized level of patient occupancy days may be calculated differently and is set forth in those sections.

12. Licensed beds. Any skilled nursing facility or intermediate care facility bed meeting the licensing requirement of the Missouri Department of Health and Senior Services.

13. Licensed bed days. The total number of patient days available for use during a given period for all licensed beds. For purposes of this regulation, licensed bed days are calculated for an annual period and is the number of licensed beds times three hundred sixty-five (365) days.

14. Change of ownership. A change in the ownership, control, operator, or leasehold interest.

(2) NFRA Rates. The NFRA rates determined by the division, as set forth in (1)(B) above, are as follows:

(L) Effective July 1, 2009, the NFRA will be nine dollars and seven cents (\$9.07) per patient occupancy day. The applicable quarterly survey shall be as defined in subsection (2)(K).

AUTHORITY: sections 198.401, 198.403, 198.406, 198.409, 198.412, 198.416, 198.418, 198.421, 198.424, 198.427, 198.431, 198.433, 198.436, and [208.201] 208.159, RSMo 2000 and sections 198.439, [RSMo Supp. 2004] 208.153, and 208.201, RSMo Supp. 2008. Emergency rule filed Dec. 21, 1994, effective Jan. 1, 1995, expired April 30, 1995. Emergency rule filed April 21, 1995, effective May 1, 1995, expired Aug. 28, 1995. Original rule filed Dec. 15, 1994, effective July 30, 1995. For intervening history, please consult the Code of State Regulations. Amended: Filed July 1, 2009. Emergency amendment filed Nov. 9, 2009, effective Nov. 19, 2009, expires Dec. 31, 2009.

The Secretary of State shall publish all executive orders beginning January 1, 2003, pursuant to section 536.035.2, RSMo Supp. 2008.

EXECUTIVE ORDER 09-27

WHEREAS, health information technology (HIT) and a statewide health information exchange (HIE) would improve the quality and reduce the cost of health care and promote the public health in Missouri by:

- Reducing preventable medical errors and avoiding duplication of treatments and procedures;
- Improving the coordination of care and promoting informed decision-making among health care providers over time and regardless of geography;
- Giving Missourians more complete, accurate information with which to make decisions about their own health care;
- Making health information available at the point of care for all patients;
- Promoting the use of standardized electronic health records and interoperable systems with strict safeguards in place to protect patient privacy;
- Lowering administrative costs and reducing clerical errors;
- Enhancing research by reducing the time it takes to evaluate promising medical techniques, devices and drugs;
- Reducing the time it takes to bring safe, effective products and practices to health care consumers; and

WHEREAS, on February 17, the President signed the American Recovery and Reinvestment Act of 2009 which included the Health Information Technology for Economic and Clinical Health (HITECH) Act to harness and direct the power of technology to enhance health care delivery; and

WHEREAS, the HITECH Act sets forth a plan for advancing the effective implementation of electronic health records and the necessary infrastructure for secure exchange of health information to improve quality of care and establish a foundation for health care reform; and

WHEREAS, on August 20, 2009, the Office of the National Coordinator (ONC) for Health Information Technology within the U. S. Department of Health and Human Services released a funding opportunity announcement for state grants to promote health information exchange, which required states to submit an application for funding for planning and implementation of a statewide health information exchange, by October 16, 2009, for which the State of Missouri submitted a timely grant application; and

WHEREAS, a statewide health information exchange must be designed and implemented with clear policies and standards in compliance with state and federal law; and developed in consultation with privacy experts, physicians and consumer advocates for safeguarding the privacy and security of patients' health information and ensuring its appropriate use; and

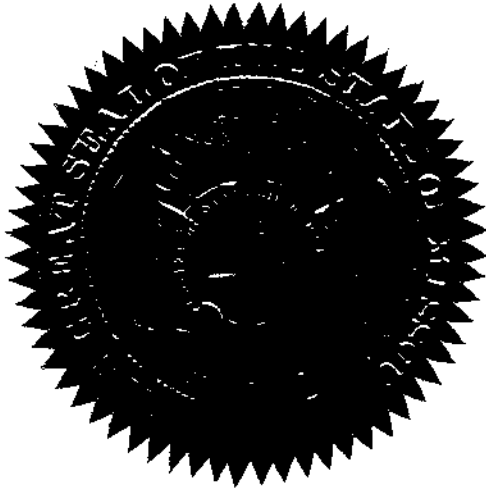
WHEREAS, the federal government is making substantial investments in HIT and HIE through state grants and payments to physicians, hospitals, federally qualified health centers and other qualified health care providers who adopt and meaningfully use electronic health records; regional HIT extension centers to support physician adoption of electronic health records; health informatics programs at colleges and universities; and providers of broadband and telehealth technologies; and

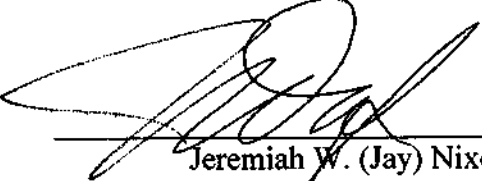
WHEREAS, the development of health information technology and the creation of a statewide health information exchange will have a positive economic impact in Missouri and will promote job creation and a skilled workforce.

NOW THEREFORE, I, JEREMIAH W. (JAY) NIXON, GOVERNOR OF THE STATE OF MISSOURI, by virtue of the authority vested in me by the Constitution and laws of the State of Missouri do hereby order:


1. The creation of the Missouri Office of Health Information Technology, hereafter referred to as MO-HITECH. MO-HITECH shall be assigned to the Department of Social Services. MO-HITECH shall promote the development and application of an effective HIT/HIE infrastructure for the State of Missouri.
2. MO-HITECH will be led by the Director of the Department of Social Services, Ronald J. Levy, who shall serve as the HIT/HIE Coordinator for the state of Missouri. The Coordinator shall ensure the coordination, integration and alignment of efforts with Medicaid and public health programs and the statewide health information exchange. The Coordinator shall oversee and manage on behalf of the state of Missouri the ONC grant funding made available to support the state's HIT/HIE planning and implementation activities.
3. The MO-HITECH Advisory Board is hereby created. The Advisory Board will be responsible for advising the state on the development of Missouri's HIT/HIE strategic and operational plan, including a clear statement of health care improvement goals, and a long-term plan for sustainability of Missouri's HIE infrastructure in compliance with the directives of the Office of the National Coordinator for Health Information Technology by April 2010. MO-HITECH will be responsible for communicating these plans to the Governor and to the General Assembly. Upon approval of the state's operating plan by the Office of the National Coordinator, the Advisory Board will terminate unless extended by Executive Order.
4. The MO-HITECH Advisory Board shall be co-chaired by the HIT/HIE Coordinator and a private member of the Board to be appointed by the Governor. The Advisory Board shall consist of no more than 20 members appointed by the Governor, including key private sector stakeholders representing health care consumers, health care providers, the mental health community, privacy advocates, the health insurance industry, and representatives of state government as deemed appropriate by the Governor.
5. MO-HITECH shall manage and is hereby authorized to seek funds which may be available for HIT/HIE initiatives from any source, including private funds, federal grants and matching funds. The Office shall provide for the professional and administrative support of the Advisory Board, and the ongoing operations of the office. Managerial and support personnel and expenses necessary to fulfill the mission of MO-HITECH shall be paid from existing resources including, but not limited to, the ONC funding and from appropriations which may be made specifically for it.
6. Executive Order 06-03 is rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 4th day of November, 2009.




Jeremiah W. (Jay) Nixon
Governor

ATTEST:


Robin Carnahan
Secretary of State

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

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

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

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

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

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

agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed rescission with the Missouri Public Service Commission, Steven C. Reed, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices on or before January 21, 2010, and should include a reference to Commission Case No. AX-2010-0128. Comments may also be submitted via a filing using the commission's electronic filing and information system (EFIS). A public hearing regarding this proposed rescission is scheduled for January 22, 2010, at 9:00 a.m. in Room 305 of the commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rescission, and may be asked to respond to commission questions.

SPECIAL NEEDS: Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 (voice) or Relay Missouri at 711.

**Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 4—Standards of Conduct**

PROPOSED RULE

4 CSR 240-4.020 Ex Parte and Extra-Record Communications

PURPOSE: To set forth the standards for ensuring the public trust in the commission with regard to pending filings and cases. This rule regulates communication between the commission, technical advisory staff, and presiding officers, and anticipated parties, parties, agents of parties, and interested persons regarding substantive issues that are not part of the evidentiary record.

(1) Definitions.

(A) Anticipated contested case—Any case that a person anticipates, knows, or should know will be filed before the commission within thirty (30) days and that such person anticipates or should anticipate will be or become a contested case.

(B) Anticipated party—A person who anticipates, knows, or should know that such person will be a party to an anticipated contested case.

(C) Contested case—Shall have the same meaning as in section 536.010(4), RSMo.

(D) Commission—Means the Missouri Public Service Commission as created by Chapter 386, RSMo.

(E) Commissioner—Means one (1) of the members of the commission.

(F) Discussed case—Each contested case or anticipated contested case whose substantive issues are the subject of an extra-record communication regulated under this rule.

(G) Ex parte communication—Any communication outside of the contested case hearing process between the commission, a commissioner, a member of the technical advisory staff, or the presiding officer assigned to the proceeding and any party or anticipated party,

Proposed Amendment Text Reminder:

Boldface text indicates new matter.

[Bracketed text indicates matter being deleted.]

**Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 4—Standards of Conduct**

PROPOSED RESCISSION

4 CSR 240-4.020 Conduct During Proceedings. This rule prohibited activities that would tend to exercise influence on the commission and which were not a part of the record.

PURPOSE: This rule is being rescinded and readopted in a revised form.

AUTHORITY: section 386.410, RSMo 1986. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed April 26, 1976, effective Sept. 11, 1976. Rescinded: Filed Nov. 4, 2009.

PUBLIC COST: This proposed rescission will not cost affected state

or the agent or representative of a party or anticipated party, regarding any substantive issue. Ex parte communications shall not include a communication regarding general regulatory policy allowed under section 386.210.4., RSMo.

(H) Extra-record communication—Any communication outside of the hearing process between the commission, a commissioner, a member of the technical advisory staff, or the presiding officer assigned to the proceeding and any person interested in a contested case or anticipated contested case regarding any substantive issue. Extra-record communications shall not include a communication regarding general regulatory policy allowed under section 386.210.4., RSMo.

(I) General regulatory policy—Shall have the same meaning as in section 386.210.4., RSMo.

(J) Party—Any applicant, complainant, petitioner, respondent, or intervenor in a contested case before the commission. Commission staff and the public counsel are also parties unless they file a notice of their intention not to participate in the relevant proceeding within the period of time established for interventions by commission rule or order.

(K) Person—Any individual, partnership, company, corporation, cooperative, association, political subdivision, public utility, party, or other entity or body that could become a party to a contested case.

(L) Presiding officer—means a commissioner, or a law judge licensed to practice law in the state of Missouri and appointed by the commission to preside over a case.

(M) Public counsel—Shall have the same meaning as in section 386.700, RSMo.

(N) Rate case—A proceeding before the commission regarding revenue modification and a request to change the schedule of rates on a utility's total cost of providing service. A rate case, for purposes of this rule, shall include a complaint case pursuant to section 386.390, RSMo, provided it is regarding revenue modification and a request to change the schedule of rates on a utility's total cost of providing service.

(O) Substantive issue—The merits, specific facts, evidence, claims, or positions presented or taken in a contested case or anticipated contested case. The term substantive issue does not include procedural issues, unless those procedural issues are contested or likely to materially impact the outcome of a contested case.

(P) Technical advisory staff—Shall have the same meaning as in section 386.135, RSMo.

(2) No party or anticipated party shall initiate, participate in, or undertake, directly or indirectly, an ex parte communication.

(3) A commissioner, technical advisory staff, or the presiding officer assigned to a proceeding shall not initiate, participate in, or undertake, directly or indirectly, an ex parte communication regarding a contested case. However, it shall not constitute participation in or undertaking an ex parte communication if such person:

(A) Does not initiate the communication;

(B) Immediately terminates the communication, or immediately alerts the initiating person that the communication is not proper outside the hearing process and makes a reasonable effort to terminate the communication; and

(C) Files notice in accordance with sections (6) and (7) of this rule, as applicable.

(4) The following communications shall not violate sections (2) or (3) of this rule. However, communications governed by subsections (4)(A) and (4)(B) still must be disclosed as an extra-record communication in accordance with sections (6), (7), and (8) as applicable:

(A) A communication between the commission, a commissioner, a member of the technical advisory staff, or the presiding officer assigned to the proceeding and a member of the general assembly or other governmental official allowed under section 386.210.5, RSMo; or

(B) A communication between the commission, a commissioner, or a member of the technical advisory staff and a public utility or other regulated entity that is a party to a contested case, or an anticipated party to an anticipated contested case, notifying the commission, a commissioner, a member of the technical advisory staff, or the presiding officer assigned to the proceeding of:

1. An anticipated or actual interruption or loss of service;

2. Damage to or an incident or operational problems at a utility's facility;

3. An update regarding efforts to restore service after an interruption, loss of service, damages, or an incident or problems referred in paragraphs (4)(B)1. and 2.;

4. Imminent threats to facility security and responses to such threats; or

5. Issuance of public communications regarding utility operations, such as the status of utility programs, billing issues, security issuances, or publicly available information about a utility's finances. These communications may also include a copy of the public communication, but should not contain any other communications regarding substantive issues; or

(C) A communication between the commission, a commissioner, or a member of the technical advisory staff and a public utility or other regulated entity that is a party to a contested case, or an anticipated party to an anticipated contested case, notifying the commission, a commissioner, a member of the technical advisory staff, or the presiding officer assigned to the proceeding regarding actions taken under the authority granted the commission under Chapter 700, RSMo.

(D) Communications between the commission, a commissioner, or a member of the technical advisory staff and commission staff relating to exercise of the commission's investigative powers as established in Chapters 386, 393, and 700, RSMo. If the communication concerns an anticipated rate case, notice shall be given in accordance with section (7) upon the filing of the rate case.

(E) Communication concerning a case in which no evidentiary hearing has been scheduled made at a public agenda meeting of the commission where such matter has been posted in advance as an item for discussion or decision.

(F) Communication concerning a case in which no evidentiary hearing has been scheduled made at a forum where representatives of the public utility affected thereby, the office of public counsel, and any other party to the case are present.

(5) Unless properly admitted into the record in subsequent proceedings, an extra-record communication shall not be considered as part of the record on which a decision is reached by the commission, a commissioner, or presiding officer in a contested case.

(6) A person who initiates an extra-record communication regarding a pending case shall on the next business day following such communication give notice of that communication as follows:

(A) If the communication is written, the initiating person or party shall file a copy of the written communication in the official case file for each discussed case and serve the copy of the written communication upon all parties of record in those discussed cases; or

(B) If the communication is not written, the initiating person shall file a memorandum disclosing the communication in the official case file for each discussed case and serve such memorandum on all parties of record in those discussed cases. The memorandum must contain a list of all participants in the communication; the date, time, location, and duration of the communication; the means by which the communication took place; and a summary of the substance of the communication and not merely a listing of the subjects covered. Alternatively, a recording or transcription of the communication may be filed, as long as that recording or transcription indicates all participants and the date, time, location, duration, and means of communication.

(7) A person who initiates an extra-record communication regarding

an anticipated contested case that is not a pending case shall within five (5) business days of the later of becoming a party to the contested case or the conversion of the case to a contested case, give notice of the extra record communication. The notice shall be made in the manner set forth in subsections (6)(A) and (B) and shall also include all information regarding the communication that subsections (6)(A) and (B) require.

(8) In addition to sections (6) or (7) of this rule, if an extra-record communication regarding a pending case is initiated by a person not a party to the discussed case, the commissioner, the technical advisory staff, or the presiding officer assigned to the discussed case shall give notice of the extra-record communication in the manner set forth in subsections (6)(A) and (B).

(9) The commission may issue an order to show cause why sanctions should not be ordered against any party or anticipated party, or the agent or representative of a party or anticipated party, engaging in an ex parte communication in violation of section (2) of this rule or a failure to file notice or otherwise comply with sections (6) or (7) of this rule. The commission may also issue an order to show cause why sanctions should not be ordered against any attorney who knowingly violates section (11) of this rule.

(10) The secretary of the commission shall create a repository for any extra-record communication filed in advance of an anticipated contested case. Once such a case has been filed, the secretary shall promptly file any such notices in the official case file for each discussed case.

(11) An attorney appearing before the commission shall:

(A) Make reasonable efforts to ensure that the attorney and any person whom the attorney represents avoid initiating, participating in, or undertaking an ex parte communication prohibited by section (2);

(B) Make reasonable efforts to ensure that the attorney and any person whom the attorney represents gives notice of any extra-record communication as directed in sections (6) and (7);

(C) Prepare a notice in accordance with sections (6) or (7) when requested to do so by the commission, a commissioner, technical advisory staff, or the presiding officer assigned to a contested case;

(D) Make reasonable efforts to notify the secretary when a notice of pre-filing extra-record communication is not transferred to a case file as set forth in section (10); and

(E) Comply with all the Missouri Rules of Professional Conduct.

AUTHORITY: section 386.410, RSMo 2000. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. Amended: Filed April 26, 1976, effective Sept. 11, 1976. Rescinded and readopted: Filed Nov. 4, 2009.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Steven C. Reed, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices on or before January 21, 2010, and should include a reference to Commission Case No. AX-2010-0128. Comments may also be submitted via a filing using the commission's electronic filing and information system (EFIS). A public hearing regarding this proposed rule is scheduled for January 22, 2010, at

9:00 a.m. in Room 305 of the commission's offices in the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rule, and may be asked to respond to commission questions.

SPECIAL NEEDS: Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 (voice) or Relay Missouri at 711.

Title 6—DEPARTMENT OF HIGHER EDUCATION
Division 250—University of Missouri
Chapter 11—Administration of Missouri Fertilizer Law

PROPOSED RULE

6 CSR 250-11.041 Inspection Fee on Manipulated Animal or Vegetable Manure Fertilizers

PURPOSE: This rule establishes the inspection fee on manipulated animal or vegetable manure fertilizers sold in the state.

(1) The fee provided to be established by rule under section 266.331, RSMo, for manipulated animal or vegetable manure fertilizers. Manipulated manure fertilizers shall be guaranteed. The fee is established at two cents (2¢) per ton per percent nitrogen for nitrogen levels less than five percent (5%), four cents (4¢) per ton per percent nitrogen for nitrogen levels of five percent (5%) but less than ten percent (10%), or six cents (6¢) per ton per percent nitrogen for nitrogen levels of ten percent (10%) or greater.

AUTHORITY: section 266.331, HB 734, Ninety-fifth General Assembly 2009. Original rule filed Nov. 13, 2009.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate. It is estimated that implementation of this rule will cost nineteen thousand nine hundred ninety-seven dollars and seventy cents (\$19,997.70) in reduced fees based on currently reported fertilizer products.

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Director, Fertilizer/Ag Lime Control Service, University of Missouri, Columbia, MO 65211-8080. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.

**FISCAL NOTE
PUBLIC ENTITY COST**

RULE NUMBER

Title: Title 6—DEPARTMENT OF HIGHER EDUCATION

Division: Division 250—University of Missouri

Chapter: Chapter 11—Administration of Mo. Fertilizer Law

Type of Rulemaking: Proposed Rule

Rule Number and Name: 6 CSR 250-11.041 Inspection fee on manipulated animal or vegetable manures fertilizers

SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Missouri Agricultural Experiment Station	-\$19,997.70 reduced tonnage inspection fees
4 cities	Net saving over current inspection fee

WORKSHEET

There are currently no state agencies and 4 political subdivisions with a valid permit to sell commercial fertilizer. The new fee structure reduces the tonnage inspection fee; however, estimating savings is not easily calculated without prior knowledge of how many tons of fertilizer products will be distributed during the reporting period.

IV . ASSUMPTIONS

Based on currently registered Fertilizer Distributors reporting sales of manipulated manure fertilizers and the guaranteed analysis and tonnages reported, this rule will reduce fertilizer tonnage inspection fee collections by \$19,997.70 which could have been used for research for farmers of this state.

Based on currently reported tonnages and guaranteed analysis political subdivisions should realize a decrease from 42% to 99.9% inspection fee decreases.

**Title 6—DEPARTMENT OF HIGHER EDUCATION
Division 250—University of Missouri
Chapter 11—Administration of Missouri Fertilizer Law**

PROPOSED RULE

6 CSR 250-11.042 Guaranteed Analysis When Tonnage Inspection Fee is Based on Product Constituent

PURPOSE: This rule establishes tolerance for under guaranteeing a nutrient when inspection fee is based on specific nutrient content of a fertilizer product.

(1) When the tonnage inspection fee authorized in section 266.331, RSMo, is based on nutrient constituent component(s) contained in the fertilizer, the guaranteed analysis will accurately represent the nutrient content of the product within one hundred fifty percent (150%) value. Value will be determined by chemical analysis and calculated by dividing the found nutrient level by the guaranteed level. Product analysis that is found to exceed one hundred fifty percent (150%) of the guarantee shall be subject to the prescribed inspection fee multiplied by the factor which the product was under guaranteed.

AUTHORITY: sections 266.291–266.351, RSMo 2000 and HB 734, Ninety-fifth General Assembly 2009. Original rule filed Nov. 13, 2009.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Director, Fertilizer/Ag Lime Control Service, University of Missouri, Columbia, MO 65211-8080. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 10—Air Conservation Commission
Chapter 6—Air Quality Standards, Definitions, Sampling
and Reference Methods and Air Pollution Control
Regulations for the Entire State of Missouri**

PROPOSED AMENDMENT

10 CSR 10-6.050 Start-up, Shutdown, and Malfunction Conditions. The commission proposes to amend subsections (3)(B), (3)(C), (4)(A), and (4)(B). If the commission adopts this rule action, it will be the department's intention to submit this rule amendment to the U.S. Environmental Protection Agency to replace the current rule that is in the Missouri State Implementation Plan. The evidence supporting the need for this proposed rulemaking is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address and phone number listed in the Notice of Public Hearing at the end of this rule. More information concerning this rulemaking can be found at the Missouri Department of Natural Resources' Environmental Regulatory Agenda website, www.dnr.mo.gov/reg/index.html.

PURPOSE: This rule, applicable to all installations in Missouri, provides the owner or operator of an installation the opportunity to submit data regarding conditions which result in excess emissions. These

submittals will be used by the director to determine whether the excess emissions were due to a start-up, shutdown, or malfunction condition. These determinations will be used in deciding whether or not enforcement action is appropriate. This proposed amendment will clarify the contents of the written notification required during start-up or shutdown conditions, clarify the reporting requirements, and correct references for clear interpretation and enforcement. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is the public hearing testimony on this rulemaking.

(3) General Provisions.

(B) The owner or operator shall notify the Missouri Department of Natural Resources' Air Pollution Control Program at least ten (10) days prior to any maintenance, start-up, or shutdown activity, which is expected to cause an excess release of emissions that exceeds one (1) hour. *If notice cannot be given ten (10) days prior to any maintenance, start-up or shutdown, which is expected to cause an excess release of emissions, notice shall be given as soon as practicable prior to the maintenance, start-up or shutdown or orally as soon as practical during normal working hours after the release and no later than close of business of the following working day with written notice to follow within ten (10) working days of the release. The owner or operator of such facility shall notify the Missouri Department of Natural Resources' Air Pollution Control Program in the following ways: a written report including:] If notification cannot be given ten (10) days prior to any maintenance, start-up, or shutdown activity, which is expected to cause an excess release of emissions that exceeds one (1) hour, notification shall be given as soon as practicable prior to the maintenance, start-up, or shutdown activity. If prior notification is not given for any maintenance, start-up, or shutdown activity which resulted in an excess release of emissions that exceeded one (1) hour, notification shall be given within ten (10) working days of the release. In all cases, the notification shall be a written report and shall include, at a minimum, the following:*

1. Name and location of installation;
2. Name and telephone number of person responsible for the installation;
3. Name of the person who first discovered the malfunction and precise time and date that the malfunction was discovered;
4. Identity of the equipment [causing the excess emissions] involved in the maintenance, start-up, or shutdown activity;
5. Time and duration of the period of excess emissions;
6. Type of activity and the reason for the maintenance, start-up, or shutdown;
7. Type of air contaminant involved;
8. Estimate of the magnitude of the excess emissions expressed in the units of the applicable emission control regulation and the operating data and calculations used in estimating the magnitude;
9. Measures taken to mitigate the extent and duration of the excess emissions; and
10. Measures taken to remedy the situation which caused the excess emissions and the measures taken or planned to prevent the recurrence of these situations.

(C) Upon receipt of a notice of excess emissions issued by the Missouri Department of Natural Resources or an agency holding a certificate of authority under section 643.140, RSMo, the source to which the notice is issued may provide information showing that the excess emissions were the consequence of a malfunction, start-up, or shutdown. Based upon any information submitted by the source operator and any other pertinent information available, the director or the commission shall make a determination whether the excess emissions constitute a malfunction, start-up, or shutdown and whether the nature, extent, and duration of the excess emissions warrant enforcement action under section 643.080 or 643.151, RSMo.

1. In determining whether enforcement action is warranted, the director or commission shall consider the following factors:

A. Whether the excess emissions during start-up, shutdown, or malfunction occurred as a result of safety, technological, or operating constraints of the control equipment, process equipment, or process;

B. Whether the air pollution control equipment, process equipment, or processes were, at all times, maintained and operated to the maximum extent practical, in a manner consistent with good practice for minimizing emissions;

C. Whether repairs were made as expeditiously as practicable when the operator knew or should have known when excess emissions were occurring;

D. Whether the amount and duration of the excess emissions were limited to the maximum extent practical during periods of this emission;

E. Whether all practical steps were taken to limit the impact of the excess emissions on the ambient air quality;

F. Whether all emission monitoring systems were kept in operation if at all possible;

G. Whether the owner or operator's actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence;

H. Whether the excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and

I. Whether the owner or operator properly and promptly notified the appropriate regulatory authority.

2. The information provided by the source operator under [paragraph (3)(C)1.] subsection (3)(C) of this rule shall include, at a minimum, the following:

A. [Name and location of installation;] Written notification per subsection (3)(A) of this rule for malfunctions which resulted in excess emissions that exceeded one (1) hour; or

B. [Name and telephone number of person responsible for the installation;] Written notification per subsection (3)(B) of this rule for maintenance, start-up, or shutdown activities which resulted in excess emissions that exceeded one (1) hour.

[C. Name of the person who first discovered the malfunction and precise time and date that the malfunction was discovered;]

[D. The identity of the equipment causing the excess emissions;]

[E. The time and duration of the period of excess emissions;]

[F. The cause of the excess emissions;]

[G. The type of air contaminant involved;]

[H. A best estimate of the magnitude of the excess emissions expressed in the units of the applicable emission control regulation and the operating data and calculations used in estimating the magnitude;]

[I. The measures taken to mitigate the extent and duration of the excess emissions; and]

[J. The measures taken to remedy the situation which caused the excess emissions and the measures taken or planned to prevent the recurrence of these situations.]

(4) Reporting and Record Keeping.

(A) The information specified in paragraph (3)(C)2. of this rule shall be submitted to the director not later than fifteen (15) days after receipt of the notice of excess emissions. Information regarding the type and amount of emissions and time of the episode shall be recorded and kept on file. This data shall be included in emissions reported on any required Emissions Inventory Questionnaire.

(B) The information submitted according to [paragraphs (3)(A)2., (3)(B)2.,] subsections (3)(A) and (3)(B) of this rule and paragraph (3)(C)2. of this rule[,] shall be kept on file at the installation for a period of five (5) years. This data shall be included in

emissions reported on any required Emissions Inventory Questionnaire. The information shall be available to the director upon request.

AUTHORITY: section 643.050, RSMo 2000. Original rule filed March 15, 1979, effective Nov. 11, 1979. Amended: Filed April 2, 1987, effective Aug. 27, 1987. Amended: Filed June 15, 2001, effective Feb. 28, 2002. Amended: Filed Nov. 13, 2009.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed amendment will begin at 9:00 a.m., January 28, 2010. The public hearing will be held at Elm Street Conference Center, 1730 East Elm Street, Lower Level, Bennett Springs Conference Room, Jefferson City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Interested persons, whether or not heard, may submit a written or email statement of their views until 5:00 p.m., February 4, 2010. Written comments shall be sent to Chief, Air Quality Planning Section, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to apcprulespn@dnr.mo.gov.

Title 16—RETIREMENT SYSTEMS
Division 20—Missouri Local Government Employees'
Retirement System (LAGERS)
Chapter 2—Administrative Rules

PROPOSED RULE

16 CSR 20-2.105 Determination of Amount Otherwise Payable During Deflation

PURPOSE: The purpose of this rule is to provide Missouri Local Government Employees' Retirement System's (LAGERS') interpretation of section 70.655.7-.10 et. seq, RSMo, regarding deflation.

(1) For purposes of calculating the redetermined amount of the allowance as set forth under section 70.655.7-.10 et. seq. RSMo, the Missouri Local Government Employees' Retirement System's (LAGERS') Board of Trustees interprets sections 70.655.7-.10 et. seq., RSMo, to not require an actual reduction in the redetermined amount of the retiree's allowance during periods of deflation. If the annual Consumer Price Index (CPI) is negative, there shall be no actual reduction in the redetermined amount of the retiree's allowance.

AUTHORITY: section 70.605.21, RSMo 2000. Original rule filed Nov. 12, 2009.

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

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

NOTICE TO SUBMIT COMMENTS: Any interested person or entity may submit written comments in support of or in opposition to the proposed rule. Comments should be directed to the Missouri Local Government Employees Retirement System (LAGERS), ATTN: Robert

*Franson, Chief Counsel, PO Box 1665, Jefferson City, MO 65102-1665. To be considered, comments must be received within thirty (30) days of publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

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

ORDER OF RULEMAKING

By the authority vested in the Director of Agriculture under section 267.645, RSMo 2000, the director amends a rule as follows:

2 CSR 30-2.010 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 15, 2009 (34 MoReg 1461-1468). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The department staff members made one (1) comment.

COMMENT: After a thorough review of the proposed amendment, the Division of Animal Health recommends seven (7) changes. Change #1: In paragraph (4)(C)5. change the age of rodeo stock to eighteen (18) months of age and older. Animals eighteen months of age and over present the most concern to livestock industry. Change #2: In subsection (7)(A) include gender to be consistent with other regulations, and in subsection (7)(B) require a Certificate of Veterinary Inspection for sheep to enter Missouri. Change #3: In subsection (7)(C) remove the word "eartag" and replace it with "identification." This change will allow for other acceptable forms of identification as defined by Title 9, *Code of Federal Regulations*, Part

79. Change #4: In subsection (8)(A) include gender to be consistent with other regulations. Change #5: In subsection (8)(B) require a Certificate of Veterinary Inspection on goats entering Missouri. Change #6: In subsection (8)(C) change the wording to "individually identified by official scrapie identification" to be consistent with other wording for identification. Change #7: In subsection (10)(A) clarify that captive cervids entering Missouri must be accompanied by a Certificate of Veterinary Inspection.

RESPONSE AND EXPLANATION OF CHANGE: The department has considered the changes and has agreed to accept them.

2 CSR 30-2.010 Health Requirements Governing the Admission of Livestock, Poultry and Exotic Animals Entering Missouri

(4) Cattle (beef and dairy), Bison, and Exotic Bovids. All cattle, bison, or exotic bovids exchanged, bartered, gifted, leased, or sold entering Missouri must meet the following requirements:

(C) Tuberculosis.

1. All test-eligible animals (those animals over two (2) months of age) must be officially individually identified and listed on a Certificate of Veterinary Inspection.

2. Beef cattle.

A. All classes of beef cattle (including exotic bovids and bison) two (2) months of age and older, both breeding and feeding, entering Missouri from a state having a tuberculosis-free status may enter without additional testing requirements or entry permit.

B. All classes of beef cattle (including exotic bovids and bison) two (2) months of age and older, both breeding and feeding, entering Missouri from a state having a tuberculosis status less than free must meet the following requirements:

(I) Must obtain an entry permit;

(II) Must have a negative tuberculosis test within sixty (60) days of shipment, test date must be listed on the Certificate of Veterinary Inspection; or

(III) Move from an accredited tuberculosis-free herd (herd number and current herd test date must be listed on the Certificate of Veterinary Inspection); or

(IV) Move directly from a herd of origin that has had one (1) complete negative herd test within one (1) year (date of test must be listed on the Certificate of Veterinary Inspection).

3. Dairy cattle.

A. All classes of dairy cattle two (2) months of age and older, both breeding and feeding, entering Missouri must meet the following requirements:

(I) Must obtain an entry permit;

(II) Must have a negative tuberculosis test within sixty (60) days of shipment, test date must be listed on the Certificate of Veterinary Inspection; or

(III) Move from an accredited tuberculosis-free herd (herd number and current herd test date must be listed on the Certificate of Veterinary Inspection); or

(IV) Move directly from a herd of origin that has had one (1) complete negative herd test within one (1) year (date of test must be listed on the Certificate of Veterinary Inspection).

4. Importation of steers and spayed heifers from Mexico.

A. Steers and spayed heifers from Mexican states that have been determined by the state veterinarian of Missouri, based on the recommendation of the Bi-National Committee, to have fully implemented the Control/Preparatory Phase of the Mexican Tuberculosis Eradication Program may enter Missouri provided they have been tested negative for tuberculosis in accordance with the Norma Oficial Mexicana (NOM) within sixty (60) days prior to entry into the United States and obtain an entry permit prior to entering Missouri.

B. Steers and spayed heifers from Mexican states that have been determined by the state veterinarian of Missouri, based on the

recommendation of the Bi-National Committee to have fully implemented the Eradication Phase of the Mexican Tuberculosis Eradication Program, may enter Missouri provided they have been tested negative for tuberculosis in accordance with the Norma Oficial Mexicana (NOM) within sixty (60) days prior to entry into the United States. Steers and spayed heifers from these same Mexican states that originate from herds equal to U.S. Accredited TB-Free herds may enter Missouri without testing provided they are moved directly from the herd of origin across the border as a single group and not commingled with other cattle prior to arriving at the border and obtain an entry permit prior to entering Missouri.

C. Steers and spayed heifers from Mexican states that have been determined by the state veterinarian of Missouri, based on the recommendation of the Bi-National Committee, to have achieved accredited-free status may enter Missouri without testing provided they are moved as a single group and not commingled with cattle of a different status prior to arriving to the border and obtain an entry permit prior to entering Missouri.

D. Holstein and Holstein-cross steers and spayed heifers from Mexico are prohibited from entering Missouri regardless of test history.

5. All rodeo stock, over eighteen (18) months of age, must be tested negative for tuberculosis within sixty (60) days and obtain an entry permit prior to entering Missouri. No sexually intact rodeo stock from Mexico will be permitted into Missouri without a current tuberculosis test.

6. The state veterinarian may designate high incidence areas within certain states that must meet additional import restrictions and retest requirements.

(7) Sheep (including exotic sheep and antelope).

(A) All sheep, including exotic sheep and antelope, regardless of age or gender, bartered, exchanged, gifted, leased, or sold entering Missouri must be free of symptoms of infectious or contagious diseases.

(B) All sheep (including exotic sheep and antelope), regardless of age or gender, must be individually identified by official scrapie identification as defined in Title 9, *Code of Federal Regulations*, Part 79, published annually in January, herein incorporated by reference and made a part of this rule, as published by the United States Superintendent of Documents, 732 N Capital Street NW, Washington, DC 20402-0001, phone: toll free (866) 512-1800, DC area (202) 512-1800, website: <http://bookstore.gpo.gov> or any other means of identification approved by the state veterinarian identifying them to the flock-of-origin and listed on a Certificate of Veterinary Inspection. This rule does not incorporate any subsequent amendments or additions.

(C) Flock-of-origin sheep (including exotic sheep and antelope) consigned directly to a licensed Missouri market/sale or a slaughter establishment must have individual official scrapie identification identifying them to the flock-of-origin but will not be required to have a Certificate of Veterinary Inspection.

(8) Goats (including exotic goats).

(A) All goats (including exotic goats), regardless of age or gender, bartered, exchanged, gifted, leased, or sold entering Missouri must be free of symptoms of infectious or contagious diseases.

(B) All goats (including exotic goats), regardless of age or gender, must be individually identified by official scrapie identification as defined in Title 9, *Code of Federal Regulations*, Part 79, published annually in January, herein incorporated by reference and made a part of this rule, as published by the United States Superintendent of Documents, 732 N Capital Street NW, Washington, DC 20402-0001, phone: toll free (866) 512-1800, DC area (202) 512-1800, website: <http://bookstore.gpo.gov> or any other means of identification approved by the state veterinarian identifying them to the herd-of-origin and listed on a Certificate of Veterinary Inspection. This rule does not incorporate any subsequent amendments or additions.

(C) Herd-of-origin goats (including exotic goats) consigned directly to a licensed Missouri market/sale or slaughter establishment must be individually identified by official scrapie identification identifying them to the herd-of-origin but will not be required to have a Certificate of Veterinary Inspection.

(10) Captive Cervids.

(A) Captive cervids including but not limited to elk, elk-hybrids, red deer, roe deer, white-tail deer, mule deer, sika deer, moose, reindeer, mutjac, and fallow deer that are bartered, exchanged, gifted, leased, or sold entering Missouri, regardless of age, must be veterinary inspected, individually identified by official eartag as defined in Title 9, *Code of Federal Regulations*, Part 71, published annually in January, herein incorporated by reference and made a part of this rule as published by the United States Superintendent of Documents, 732 N Capital Street NW, Washington, DC 20402-0001, phone: toll free (866) 512-1800, DC area (202) 512-1800, website: <http://bookstore.gpo.gov>, or other means of permanent identification approved by the state veterinarian and listed on a Certificate of Veterinary Inspection. This rule does not incorporate any subsequent amendments or additions.

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

ORDER OF RULEMAKING

By the authority vested in the Director of Agriculture under section 267.645, RSMo 2000, the director amends a rule as follows:

2 CSR 30-2.020 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 15, 2009 (34 MoReg 1468-1474). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The state veterinarian received two (2) comments and the department staff made one (1) comment on the proposed rule.

COMMENT #1: USDA, APHIS-Veterinary Services noted that in section (3) the correct terminology should be Veterinary Services and not Veterinarian Services.

RESPONSE AND EXPLANATION OF CHANGE: Correction noted and changes made.

COMMENT #2: USDA, APHIS-Veterinary Services noted that in subsections (4)(E) and (5)(E) our quarantine requirements for sheep and goats needed to include official identification requirements.

RESPONSE AND EXPLANATION OF CHANGE: Subsections (4)(E) and (5)(E) will be changed to include official identification requirements.

COMMENT #3: After a thorough review of the proposed amendment, the Division of Animal Health recommends three (3) changes to the proposed amendment. Change #1: In subsection (4)(A) include gender to be consistent with other regulations. Change #2: In subsection (5)(A) include gender to be consistent with other regulations. Change #3: In subsection (6)(A) remove the requirement that captive cervids need to be veterinary inspected or listed on a Certificate of Veterinary Inspection. This change would make the captive cervids consistent with other classes of livestock moving within Missouri.

RESPONSE AND EXPLANATION OF CHANGE: The Department

of Agriculture considered the changes and has agreed to accept them.

2 CSR 30-2.020 Movement of Livestock, Poultry and Exotic Animals Within Missouri

(3) *Equidae*. This includes exotic equine, donkeys, asses, burros, and zebras.

(C) *Equidae* Owned, Leased, or Rented by a Business or Public Entity.

1. *Equidae* owned, leased, or rented by a business or public entity that congregate with privately-owned *equidae* or other *equidae* offering the same service must have an official negative EIA test within the preceding twelve (12) months.

2. The owners or managers shall be responsible for maintaining proof (either the original VS Form 10-11 or any officially recognized federal/state EIA test chart, certified photocopy, or certified facsimile of the VS Form 10-11) of current negative test for each animal being used for the service. These records shall be available for inspection by a veterinarian or animal health officer employed by the Department of Agriculture or a veterinarian or animal health technician employed by United States Department of Agriculture (USDA), Animal and Plant Health Inspection Services (APHIS)-Veterinary Services.

(F) Procedures for Handling Missouri EIA Positive *Equidae*.

1. Upon notification of a positive EIA test from any accredited laboratory, the positive animal(s) will be permanently identified by microchip, quarantined, and isolated at least two hundred (200) yards from any other *equidae*.

2. All *equidae* determined or believed to be exposed to the positive animal will be quarantined, permanently identified by microchip, and blood collected by a veterinarian employed by the Missouri Department of Agriculture or a veterinarian employed by USDA, APHIS-Veterinary Services or a licensed accredited deputy veterinarian acting under the direction of the state veterinarian for official EIA testing.

3. The original reactor animal is to be tested a second time within thirty (30) days of the first positive test. The second sample will be drawn by state or federal regulatory personnel and will be submitted to a Department of Agriculture Animal Health Diagnostic Laboratory. The owner may request that the sample be split and submit one (1) to a private accredited laboratory of their choice at their own expense. There will be no laboratory charge for retests of positive or exposed animals submitted to a Department of Agriculture Animal Health Diagnostic Laboratory.

4. Upon confirmation of positive status by a Department of Agriculture Animal Health Diagnostic Laboratory and the National Veterinary Services Laboratory, the positive animal will be freeze-branded on the left side of the neck with an alphanumeric code that indicates the state of Missouri (by the number 43), EIA positive by (AP), the last digit of the year, followed by the positive EIA case number for that year. The freeze-brand will be a minimum of two inches (2") high and seven (7) characters long.

5. The owner or a representative of the owner must decide within fifteen (15) days the disposition of the positive animal with the following options:

A. Ship to an approved slaughter establishment on a VS Form 1-27 shipping permit issued by a veterinarian or animal health officer employed by the Department of Agriculture or a veterinarian or animal health technician employed by USDA, APHIS-Veterinary Services. Market veterinarians may issue a VS Form 1-27 shipping permit for positive animals going directly to slaughter from a licensed livestock market/sale;

B. Euthanasia with a written statement from the attending veterinarian including date and disposition of the animal(s); or

C. Permanently quarantined, with the owner agreeing to abide by all the stipulations required by signing an EIA Quarantine Affidavit (MO Form 350-1052).

6. All other *equidae* owned/managed or leased will be placed under quarantine for sixty (60) days after removal of the last known positive animal. Two (2) negative EIA tests will be required to be released from quarantine. The first test at the time exposure was discovered and the second test sixty (60) days or more after the removal of the last known positive animal.

A. All exposed animals will be permanently identified by electronic microchip.

B. Blood samples will be drawn by a veterinarian or animal health officer employed by the Department of Agriculture or a veterinarian or an animal health technician employed by USDA, APHIS-Veterinary Services and submitted to a Department of Agriculture Animal Health Diagnostic Laboratory (at no charge).

C. Foals from EIA positive mares will acquire passive antibody to EIA in the colostrum and may test positive for more than six (6) months. In these cases, the foal will be quarantined for at least sixty (60) days after weaning or separation from all positive equids and up to one (1) year of age pending negative EIA test results. If the animal is still test-positive by one (1) year of age, it is considered infected and will be handled as such.

7. Violation of quarantine by any person in possession of the positive animal(s) or exposed animal(s) or refusal to test or to allow microchip implanting will be in violation of section 267.603, RSMo, and may result in civil penalties not to exceed one thousand dollars (\$1,000) for each violation and penalties not to exceed five hundred dollars (\$500) for each day such person fails to cooperate as required.

(4) Sheep.

(A) All sheep (including exotic sheep and antelope), regardless of age or gender, exchanged, bartered, gifted, leased, or sold within Missouri must be free of symptoms of infectious or contagious diseases.

(E) All sheep (including exotic sheep and antelope) from a scrapie infected or source flock will be individually identified and quarantined. Official identification is required on any live scrapie-positive, suspect, or high-risk animal of any age and of any sexually intact exposed animal of more than one (1) year of age or any sexually intact exposed animal of less than one (1) year of age upon change of ownership (except for exposed animals moving in slaughter channels at less than one (1) year of age), whether or not the animal resides in a source or infected flock.

(5) Goats (Including Exotic Goats).

(A) All goats (including exotic goats), regardless of age or gender, exchanged, bartered, gifted, leased, or sold within Missouri must be free of symptoms of infectious or contagious diseases.

(E) All goats (including exotic goats) from a scrapie infected or source herd will be individually identified and quarantined. Official identification is required on any live scrapie-positive, suspect, or high-risk animal of any age and of any sexually intact exposed animal of more than one (1) year of age or any sexually intact exposed animal of less than one (1) year of age upon change of ownership (except for exposed animals moving in slaughter channels at less than one (1) year of age), whether or not the animal resides in a source or infected flock.

(6) Captive Cervids.

(A) Captive cervids including but not limited to elk, elk-hybrids, red deer, roe deer, white-tailed deer, mule deer, sika deer, moose, reindeer, mutjac, and fallow deer exchanged, bartered, gifted, leased, or sold in Missouri must be individually identified by official eartag as defined in Title 9, *Code of Federal Regulations*, Part 71, published by the United States Superintendent of Documents, 732 N Capital Street NW, Washington, DC 20402-0001, phone: toll free (866) 512-1800, DC area (202) 512-1800, website: <http://bookstore.gpo.gov>, legible tattoo, or any other means of permanent identification approved by the state veterinarian. This rule does not incorporate any subsequent amendments or additions.

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

ORDER OF RULEMAKING

By the authority vested in the Director of Agriculture under section 277.160, RSMo 2000, the director amends a rule as follows:

2 CSR 30-6.015 Requirements and Responsibilities of Market Licensees is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 15, 2009 (34 MoReg 1474–1475). 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 2—DEPARTMENT OF AGRICULTURE
Division 30—Animal Health
Chapter 6—Livestock Markets

ORDER OF RULEMAKING

By the authority vested in the Director of Agriculture under section 277.160, RSMo 2000, the director amends a rule as follows:

2 CSR 30-6.020 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 15, 2009 (34 MoReg 1475–1481). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The department staff members made two (2) comments.

COMMENT: After a thorough review of the proposed amendment, the department recommends two (2) changes to the proposed amendment. Change #1: In subparagraph (3)(C)2.A. clarify that a Certificate of Veterinary Inspection is not required on beef cattle two (2) months of age and older, both breeding and feeding, arriving at a Missouri licensed market from a state having a tuberculosis-free status. Change #2: In subparagraphs (3)(C)2.B. and (3)(C)3.A. and paragraph (3)(D)1. clarify that all requirements must be met prior to entering a licensed livestock market in the state of Missouri.

RESPONSE AND EXPLANATION OF CHANGE: The department considered the changes and has agreed to accept the changes.

2 CSR 30-6.020 Duties and Facilities of the Market/Sale Veterinarian

(3) Cattle, Bison, and Exotic Bovids.

(C) Tuberculosis Requirements.

1. All test-eligible (those animals over two (2) months of age) animals must be individually identified by official eartag as defined by Title 9, *Code of Federal Regulations*, Part 71, published annually in January, herein incorporated by reference and made a part of this rule, as published by the United States Superintendent of Documents, 732 N Capital Street NW, Washington, DC 20402-0001, phone: toll free (866) 512-1800, DC area (202) 512-1800, website: <http://bookstore.gpo.gov>, individual brand, registration tattoo, or any other means approved by the state veterinarian and listed on the Certificate

of Veterinary Inspection. This rule does not incorporate any subsequent amendments or additions.

2. Beef cattle.

A. All classes of beef cattle (including exotic bovids and bison) two (2) months of age and older, both breeding and feeding, entering Missouri to a licensed market from a state having a tuberculosis-free status may enter without additional testing requirements, entry permit, or Certificate of Veterinary Inspection.

B. All classes of beef cattle two (2) months of age and older, both breeding and feeding, prior to entering Missouri to a licensed livestock market from a state having a tuberculosis status less than free must meet the following requirements:

(I) Must obtain an entry permit; and

(II) Must have a negative tuberculosis test within sixty (60) days of shipment, test date must be listed on the Certificate of Veterinary Inspection; or

(III) Move from an accredited tuberculosis-free herd (herd number and current herd test date must be listed on the Certificate of Veterinary Inspection); or

(IV) Move directly from a herd of origin that has one (1) complete negative herd test within one (1) year (date of test must be listed on the Certificate of Veterinary Inspection).

3. Dairy cattle.

A. All classes of dairy cattle two (2) months of age and older, both breeding and feeding, prior to entering Missouri to a licensed market must meet the following requirements:

(I) Must obtain an entry permit; and

(II) Must have a negative tuberculosis test within sixty (60) days of shipment, test date must be listed on the Certificate of Veterinary Inspection; or

(III) Move from an accredited tuberculosis-free herd (herd number and current herd test date must be listed on the Certificate of Veterinary Inspection); or

(IV) Move directly from a herd of origin that has one (1) complete negative herd test within one (1) year (date of test must be listed on the Certificate of Veterinary Inspection).

(D) Trichomoniasis Requirements.

1. All breeding bulls (excluding exotic bovines) prior to entering to a licensed market shall be—

A. Virgin bulls not more than twenty-four (24) months of age as determined by the presence of both permanent central incisor teeth in wear or by breed registry papers; or

B. Be tested negative for Trichomoniasis with an official culture test or official Polymerase Chain Reaction (PCR) test by an approved diagnostic laboratory within thirty (30) days prior to entry into the state.

(I) Bulls shall be tested three (3) times not less than one week apart by an official culture test or one (1) time by official PCR test prior to entering Missouri.

(II) Bulls shall be identified by official identification at the time the initial test sample is collected.

(III) Bulls that have had contact with female cattle subsequent to testing must be retested prior to entry.

2. If the breeding bulls are virgin bulls, less than twenty-four (24) months of age, they shall be—

A. Individually identified by official identification; and

B. Be accompanied with a breeder's certification of virgin status signed by the breeder or his representative attesting that they are virgin bulls.

C. The official identification number shall be written on the breeder's certificate.

3. A Certificate of Veterinary Inspection listing official identification and test performed, date of test, results, and laboratory, if testing is required.

4. Bulls going directly to slaughter are exempt from Trichomoniasis testing.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 5—Wildlife Code: Permits**

ORDER OF RULEMAKING

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

3 CSR 10-5.435 Migratory Bird Hunting Permit is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2009 (34 MoReg 1985). 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 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and
Transportation Commission
Chapter 11—Procurement of Supplies**

ORDER OF RULEMAKING

By the authority vested in the Missouri Highways and Transportation Commission under sections 226.020, 226.130, 227.030, and 227.210, RSMo 2000, the commission amends a rule as follows:

7 CSR 10-11.010 Definition of Terms is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 15, 2009 (34 MoReg 1483-1484). 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 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and
Transportation Commission
Chapter 11—Procurement**

ORDER OF RULEMAKING

By the authority vested in the Missouri Highways and Transportation Commission under sections 226.020, 226.130, 227.030, and 227.210, RSMo 2000, the commission rescinds a rule as follows:

7 CSR 10-11.020 Procedures for Solicitation, Receipt of Bids and Award of Contract is rescinded.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on July 15, 2009 (34 MoReg 1484). 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 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and
Transportation Commission
Chapter 11—Procurement of Supplies**

ORDER OF RULEMAKING

By the authority vested in the Missouri Highways and Transportation Commission under sections 226.020, 226.130, 227.030, and 227.210, RSMo 2000, the commission adopts a rule as follows:

7 CSR 10-11.020 Procedures for Solicitation, Receipt of Bids, and Award and Administration of Contracts is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on July 15, 2009 (34 MoReg 1484-1486). 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 Missouri Highways and Transportation Commission (MHTC) received two (2) comments on the proposed rule.

COMMENT #1: Steve Rudloff, with the Missouri Limestone Producers Association, noted that section 7 CSR 10-11.020(14) seems to offer no other option for rejected materials other than complete replacement. Rudloff requested an added provision to allow some delivered materials that are close to meeting original specifications to be purchased at a revised price. Rudloff further requested an added provision to allow corrective action on rejected materials rather than complete replacement if both the supplier and MoDOT agree that this would be acceptable.

RESPONSE: The language in the notice of proposed rulemaking actually allows more flexibility than the original 7 CSR 10-11.020(22), Rejection of Supplies, which states, "Products, equipment or items delivered that do not meet the specifications of the contract will be returned to the vendor at the vendor's expense. When a shipment or product is returned, the vendor must make immediate replacement in accordance with the specifications of the contract." (underlined language is MoDOT emphasis) The language in the notice of proposed rulemaking allows more flexibility by stating an item may be rejected. Ultimately, products not meeting specifications will be handled in accordance with the bid specifications that may include liquidated damages that will allow the acceptance of a non-conforming product at a lower cost or other remedies.

COMMENT #2: Steve Rudloff, with the Missouri Limestone Producers Association, noted that the language in the notice of proposed rulemaking, section 7 CSR 10-11.020(15), is troubling to the industry since it states that materials accepted at delivery, or a portion thereof, can be rejected later. Mr. Rudloff further stated that aggregate, while in a previously accepted stockpile or in the process of being handled and transported later, is easily subject to contamination, segregation, and degradation outside the control of the supplier. Rudloff requested an added provision to protect aggregate suppliers when they provide a material that meets specification at the time of delivery.

RESPONSE: This language in the notice of proposed rulemaking is the same as the language found in current 7 CSR 10-11.020(23). This language needs to remain the same as it serves to protect the commission and department when there are concealed or unknown product defects in the materials supplied. In addition, specification compliance testing is performed on many of the products utilized by the commission and department and the testing occurs after receipt of delivery.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and
Transportation Commission
Chapter 11—Procurement**

ORDER OF RULEMAKING

By the authority vested in the Missouri Highways and Transportation Commission under sections 226.020, 226.130, 227.030, and 227.210, RSMo 2000, the commission rescinds a rule as follows:

7 CSR 10-11.030 Bidder Registration, Official Mailing Lists, Suspension From List is rescinded.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on July 15, 2009 (34 MoReg 1487). 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 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and
Transportation Commission
Chapter 11—Procurement of Supplies**

ORDER OF RULEMAKING

By the authority vested in the Missouri Highways and Transportation Commission under sections 226.020, 226.130, 227.030, and 227.210, RSMo 2000, the commission adopts a rule as follows:

7 CSR 10-11.030 Vendor Registration, Notification of Competitive Bidding Opportunities, Suspension, and Debarment is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on July 15, 2009 (34 MoReg 1487). 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 10—DEPARTMENT OF NATURAL RESOURCES
Division 60—Safe Drinking Water Commission
Chapter 13—Grants and Loans**

ORDER OF RULEMAKING

By the authority vested in the Safe Drinking Water Commission under section 640.100, RSMo Supp. 2008, the commission amends a rule as follows:

10 CSR 60-13.020 Drinking Water Revolving Fund Loan Program is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 3, 2009 (34 MoReg 1561-1570). 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: On September 2, 2009, Department of Natural Resources staff provided oral testimony before the Safe Drinking Water Commission.

In February 2009 the president signed into law the American Recovery and Reinvestment Act (ARRA) of 2009. The ARRA provided additional funding for the Drinking Water State Revolving Fund Program. On July 1, 2009, an emergency regulation was published in the *Missouri Register* amending the Drinking Water Revolving Fund Loan Program regulation so that staff could proceed with funding drinking water infrastructure projects. Staff subsequently incorporated into the proposed amendment those changes necessitated by ARRA.

On August 3, 2009, the proposed amendment to 10 CSR 60-13.020 Drinking Water Revolving Fund Loan Program was placed on public notice. The public comment period was from August 3, 2009, date of publication in the *Missouri Register*, through September 2, 2009.

No comments were received.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 5—Conduct of Gaming**

ORDER OF RULEMAKING

By the authority vested in the Missouri Gaming Commission under section 313.805, RSMo Supp. 2008, the commission amends a rule as follows:

11 CSR 45-5.100 Chip Specifications is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 3, 2009 (34 MoReg 1578). 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: A public hearing was held on the proposed amendment on September 9, 2009. No one commented at the public hearing, and no written comments were received.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 10—Nursing Home Program**

ORDER OF RULEMAKING

By the authority vested in the MO HealthNet Division under section 208.159, RSMo 2000 and sections 208.153 and 208.201, RSMo Supp. 2008, the division amends a rule as follows:

13 CSR 70-10.016 Global Per Diem Adjustments to Nursing Facility and HIV Nursing Facility Reimbursement Rates is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 3, 2009 (34 MoReg 1582-1585). 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 10—Nursing Home Program**

ORDER OF RULEMAKING

By the authority vested in the MO HealthNet Division under sections 198.401, 198.403, 198.406, 198.409, 198.412, 198.416, 198.418, 198.421, 198.424, 198.427, 198.431, 198.433, 198.436, and 208.159, RSMo 2000 and sections 198.439, 208.153, and 208.201, RSMo Supp. 2008, the division amends a rule as follows:

13 CSR 70-10.110 Nursing Facility Reimbursement Allowance
is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 3, 2009 (34 MoReg 1586–1587). 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 15—Hospital Program**

ORDER OF RULEMAKING

By the authority vested in the MO HealthNet Division under section 208.201, RSMo Supp. 2008 and sections 208.453 and 208.455, RSMo 2000, the division amends a rule as follows:

13 CSR 70-15.110 Federal Reimbursement Allowance (FRA)
is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 3, 2009 (34 MoReg 1588–1589). 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 20—Pharmacy Program**

ORDER OF RULEMAKING

By the authority vested in the MO HealthNet Division under sections 208.201 and 338.505, RSMo Supp. 2008, the division amends a rule as follows:

13 CSR 70-20.320 Pharmacy Reimbursement Allowance
is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 3, 2009 (34 MoReg 1590–1591). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This pro-

posed 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 2030—Missouri Board for Architects,
Professional Engineers, Professional Land Surveyors,
and Landscape Architects
Chapter 2—Code of Professional Conduct**

ORDER OF RULEMAKING

By the authority vested in the Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects under section 327.041, RSMo Supp. 2008, the board amends a rule as follows:

20 CSR 2030-2.040 Standard of Care **is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 2009 (34 MoReg 1921). 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 2030—Missouri Board for Architects,
Professional Engineers, Professional Land Surveyors,
and Landscape Architects
Chapter 21—Professional Engineering**

ORDER OF RULEMAKING

By the authority vested in the Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects under section 327.041, RSMo Supp. 2008, the board amends a rule as follows:

20 CSR 2030-21.010 Design of Fire Suppression Systems
is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 2009 (34 MoReg 1921). 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: The board received two (2) comments in support of the proposed amendment.

COMMENTS #1 AND #2: The Fire Marshal's Association of Missouri (FMAM) and the Metropolitan Fire Marshal's Association (MFMA) urge final approval of the proposed amendment. The FMAM represents hundreds of public and private fire protection professionals from all corners of the state. The MFMA is a charter member of the International Code Council (ICC) and its membership consists of professionals whose functions are directly related to the enforcement of life safety in the St. Louis metropolitan area.

RESPONSE: The board acknowledges these comments and very

much appreciates the support. No changes have been made to the proposed amendment as a result of these comments.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2085—Board of Cosmetology and Barber
Examiners
Chapter 3—License Fees**

ORDER OF RULEMAKING

By the authority vested in the Board of Cosmetology and Barber Examiners under section 328.060.1, RSMo 2000 and section 329.025(4), RSMo Supp. 2008, the board amends a rule as follows:

20 CSR 2085-3.010 Fees is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 2009 (34 MoReg 1921–1924). 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 2085—Board of Cosmetology and Barber
Examiners
Chapter 9—Apprenticeships—Barber and Cosmetology**

ORDER OF RULEMAKING

By the authority vested in the Board of Cosmetology and Barber Examiners under sections 328.075, 329.025.1, and 329.045, RSMo Supp. 2008, and section 328.115, SB 296, Ninety-fifth General Assembly 2009, the board amends a rule as follows:

20 CSR 2085-9.020 Apprentice Supervisors is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 2009 (34 MoReg 1925–1927). 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 2085—Board of Cosmetology and Barber
Examiners
Chapter 12—Schools and Student Rules—Barber and
Cosmetology**

ORDER OF RULEMAKING

By the authority vested in the Board of Cosmetology and Barber Examiners under sections 329.025.1 and 329.040, RSMo Supp. 2008, the board amends a rule as follows:

**20 CSR 2085-12.040 Specific Requirements for Cosmetology
Schools is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 2009 (34 MoReg 1928). 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 2085—Board of Cosmetology and Barber
Examiners
Chapter 12—Schools and Student Rules—Barber and
Cosmetology**

ORDER OF RULEMAKING

By the authority vested in the Board of Cosmetology and Barber Examiners under sections 329.025.1, 329.040, and 329.050, RSMo Supp. 2008, the board amends a rule as follows:

20 CSR 2085-12.070 Manicuring Schools is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 2009 (34 MoReg 1928). 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 2085—Board of Cosmetology and Barber
Examiners
Chapter 12—Schools and Student Rules—Barber and
Cosmetology**

ORDER OF RULEMAKING

By the authority vested in the Board of Cosmetology and Barber Examiners under sections 329.025.1 and 329.040, RSMo Supp. 2008, the board amends a rule as follows:

20 CSR 2085-12.080 Esthetic Schools is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 2009 (34 MoReg 1928–1929). 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 2120—State Board of Embalmers and Funeral
Directors
Chapter 1—Organization and Description of Board**

ORDER OF RULEMAKING

By the authority vested in the State Board of Embalmers and Funeral Directors under section 333.011, SB 1, Ninety-fifth General Assembly 2009 and section 333.111, RSMo 2000, the board amends a rule as follows:

20 CSR 2120-1.040 Definitions is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 2009 (34 MoReg 1929). 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 2120—State Board of Embalmers and Funeral
Directors
Chapter 2—General Rules**

ORDER OF RULEMAKING

By the authority vested in the State Board of Embalmers and Funeral Directors under sections 333.041, 333.081, and 333.121, RSMo Supp. 2008, the board amends a rule as follows:

**20 CSR 2120-2.010 Embalmer's Registration and Apprenticeship
is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 2009 (34 MoReg 1929). 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 2120—State Board of Embalmers and Funeral
Directors
Chapter 2—General Rules**

ORDER OF RULEMAKING

By the authority vested in the State Board of Embalmers and Funeral Directors under sections 333.051 and 333.111, RSMo 2000 and section 333.091, SB 1, Ninety-fifth General Assembly 2009, the board amends a rule as follows:

20 CSR 2120-2.040 Licensure by Reciprocity is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 2009 (34 MoReg 1929–1930). 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 2120—State Board of Embalmers and Funeral
Directors
Chapter 2—General Rules**

ORDER OF RULEMAKING

By the authority vested in the State Board of Embalmers and Funeral Directors under sections 333.041, 333.042, and 333.121, RSMo Supp. 2008, section 333.111, RSMo 2000, and section 333.091, SB 1, Ninety-fifth General Assembly 2009, the board amends a rule as follows:

20 CSR 2120-2.060 Funeral Directing is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 2009 (34 MoReg 1930–1932). 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, the board amends a rule as follows:

20 CSR 2150-5.020 Nonpharmacy Dispensing is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2009 (34 MoReg 2001). 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 2234—Board of Private Investigator Examiners
Chapter 1—General Rules**

ORDER OF RULEMAKING

By the authority vested in the Board of Private Investigator Examiners under section 324.1100, RSMo Supp. 2008, the board adopts a rule as follows:

20 CSR 2234-1.010 Definitions is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 3, 2009 (34 MoReg 1593–1594). 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 board received one (1) comment on the proposed rule.

COMMENT: Peter Duffey, Director of Double Helix Services, Inc., stated that there is no definition on file for the word "Agency."

RESPONSE: The board reviewed the comment and noted that "private investigator agency" is defined in section 324.1100(8), RSMo, as a person who regularly employs any other person, other than an organization, to engage in the private investigator business. Therefore, the board made no changes to the text of the rule.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2234—Board of Private Investigator Examiners
Chapter 1—General Rules**

ORDER OF RULEMAKING

By the authority vested in the Board of Private Investigator Examiners under sections 324.1102 and 324.1138, RSMo Supp. 2008, the board adopts a rule as follows:

20 CSR 2234-1.020 General Organization is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 3, 2009 (34 MoReg 1594-1596). 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 board received one (1) comment on the proposed rule.

COMMENT: Michael Thomas, of Thomas Training Institute, submitted a comment stating section (1) of 20 CSR 2234-1.020 is covered in criminal law and the board should concentrate on first screening new applicants and preventing unsavory individuals from getting into the business and second handling complaints against existing investigators.

RESPONSE: Sections 324.1100 through 324.1148, RSMo, establish the duties of the board. Section (1) of 20 CSR 2234-1.020 merely summarizes the board's purpose and does not expand the board's authority. Therefore, no changes were made to the text of the rule.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2234—Board of Private Investigator Examiners
Chapter 1—General Rules**

ORDER OF RULEMAKING

By the authority vested in the Board of Private Investigator Examiners under section 324.1138, RSMo Supp. 2008, the board adopts a rule as follows:

20 CSR 2234-1.030 Policy for Release of Public Records is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 3, 2009 (34 MoReg 1597-1599). 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 board received no comments.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2234—Board of Private Investigator Examiners
Chapter 1—General Rules**

ORDER OF RULEMAKING

By the authority vested in the Board of Private Investigator Examiners under sections 324.1138 and 620.010.15(6), RSMo Supp. 2008, the board adopts a rule as follows:

20 CSR 2234-1.040 Complaint Handling and Disposition is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 3, 2009 (34 MoReg 1600-1602). 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 board received no comments.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2234—Board of Private Investigator Examiners
Chapter 1—General Rules**

ORDER OF RULEMAKING

By the authority vested in the Board of Private Investigator Examiners under sections 324.1102 and 324.1132, RSMo Supp. 2008, the board adopts a rule as follows:

20 CSR 2234-1.050 Fees is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 3, 2009 (34 MoReg 1603). 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 board received five (5) comments on the proposed rule.

COMMENT #1: The Kansas Association of Private Investigators (KAPI) stated that it does not seem appropriate to set the fee for a private investigator higher than the licensing fee for a private investigator agency since Missouri courts have ruled that licensing fees should reflect the cost of regulation. There is no apparent reason why more regulatory activity will be required for an individual than for an agency. Some might argue that the differing fee structure tended to favor agencies over independent, self-employed investigators. The proposed fees should be adjusted to meet the expected cost for the

regulatory effort for each category of licensee and to clearly reflect that fees are equally and fairly applied.

COMMENT #2: Valerie Summer, with Private Investigative Services LLC, implores the board to review the cost structure. Ms. Summer states that Kansas only charges one hundred seventy-five dollars (\$175) for a two (2)-year license and all parties she has spoken with certainly do not agree with a potential cost of five hundred dollars (\$500). Ms. Summer requested that the board inform all potential licensees of the actual costs to start this license process and review the actual costs before finalizing the fees.

COMMENT #3: Michael Thomas, with Thomas Training Institute, is concerned about the public and private cost(s) as there is nothing in the rules that definitively describes what these costs are. Mr. Thomas raised several questions: 1) Are these costs the cost of a license? 2) Do the costs include initial and continuing education training? Mr. Thomas also raised several concerns: 1) If it is just the cost of a license, I feel the cost is excessive and will be a hardship for investigators who are not as financially successful as the others; 2) Is this an attempt to eliminate potential licensees by making the license that expensive? In this economy, I feel it is wrong for a government entity to hinder free enterprise. Up until now the state has not even seen fit to regulate investigators. Now not only are they going to regulate them, the fees will be prohibitive for some who want to get into the business and some who are currently in the business.

RESPONSE: The board evaluated and discussed fees extensively in several open meetings in which members of the public were present. Because this is a new board, a start-up fund is necessary to allow the board to begin its regulatory functions. The primary revenue source for the board is license and renewal fees. Section 324.1114, RSMo, requires fees be set at a level which does not substantially exceed the cost of administering the provisions of sections 324.1100 through 324.1148, RSMo. The board's intent is to keep license fees at the lowest level possible to maintain the necessary functions of the board. The board will continue to look for opportunities to lower fees in future renewal periods. However, the board made no changes to the text of the rule.

COMMENT #4: Peter Duffey, Director of Double Helix Services, Inc., suggested that the fees be combined or reduced for individuals applying for both a personal and agency license at the same time. Together, they place a burden on an individual who is opening a new agency of nine hundred dollars (\$900). Also Mr. Duffey stated that the rules do not state anywhere if you do or do not have to have an agency license to do business if you do not work for another agency.

RESPONSE: Sections 324.1100 through 324.1148, RSMo, do not require an individual to hold an agency license in order to conduct private investigations in the state of Missouri. Section 324.1114, RSMo, specifically authorizes an individual holding a private investigator license in the state of Missouri to conduct investigations; however, section 324.1114, RSMo, requires an agency license to be applied for separately and held by an individual who is licensed as a private investigator. The board does not regulate an individual's personal decision to open a business. Therefore, no changes were made to the text of the rule.

COMMENT #5: Terry Threadgill, Case Manager for Protective Services and Licensing Administrator for Clarence M. Kelley & Associates, Inc., stated that he was very surprised to hear that an agency must have "bricks and mortar" in Missouri as their primary location, and individual private investigators from out of state would be licensed by paying higher fees. Mr. Threadgill believes that the out-of-state licensees should have the same fees as the in-state licensees. He would like to see the rate structure modified.

RESPONSE: After an extensive legal review, the board determined sections 324.1100-324.1148, RSMo, do not require a physical Missouri address in the state of Missouri. However, section 324.1132, RSMo, prohibits any licensee from advertising or con-

ducting business from any Missouri address other than that shown on the records of the board as the licensee's principal place of business unless the licensee has received an additional agency license for such location. Therefore, an agency located outside of the state of Missouri may apply for a private investigator agency license by paying the required fee and if the individual is licensed as a private investigator as required in section 324.1114, RSMo. Based on these facts, the board made no changes to the text of the rule.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2234—Board of Private Investigator Examiners
Chapter 2—Private Investigator**

ORDER OF RULEMAKING

By the authority vested in the Board of Private Investigator Examiners under sections 324.1102, 324.1108, 324.1110, 324.1112, and 324.1114, RSMo Supp. 2008, the board adopts a rule as follows:

20 CSR 2234-2.010 Application for Licensure—Private Investigator is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 3, 2009 (34 MoReg 1603-1608). 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 board received four (4) comments on the proposed rule.

COMMENT #1: Peter Duffey, Director of Double Helix Services, Inc., suggested that personal and/or professional references should also be necessary.

RESPONSE: During the promulgations of rules, the board considered including the submission of personal references in subsection (2)(G), however, due to potential burden on applicants to request the references and the increased workload for staff to verify references, the board did not believe this means of evidence would be cost effective or of true value in determining work experience. The board will continue to review what documentation other boards within the division accept and the value each component contributes to the validation process. Therefore, at this time the board made no changes to the text of the rule.

COMMENT #2: The Kansas Association of Private Investigators (KAPI) states that the requirement to provide an insurance certificate from a company licensed to do business in the state of Missouri may need to be revised. Private detectives licensed in the state of Kansas have found in the past that no state-regulated insurance agencies actually offered the professional liability insurance, with errors and omissions coverage, required by the state licensing statute. The insurance must be obtained from unregulated carriers that are frequently from out of state. A requirement to use only Missouri-regulated insurers may prove to be unworkable.

RESPONSE: Section 375.161, RSMo, requires any insurance company conducting business in Missouri to obtain Missouri licensure. Therefore, the board made no changes to the text of the rule.

COMMENT #3: J. A. Terranson commented that there is no explicit description of the purpose of the fingerprints for a background check. If the purpose is to prevent licensure, the board should explicitly state what would prevent licensure.

RESPONSE: Section 324.1110, RSMo, requires the board to conduct

a complete investigation of each applicant for licensure. The fingerprints are necessary for the Missouri State Highway Patrol to obtain criminal history information. Therefore, the board made no changes to the text of the rule.

COMMENT #4: Ron Buretta, with Ron R. Buretta & Associates, Inc., commented that if an agency owner claims exemption from carrying workers' compensation as being a sole practitioner or having only one (1) or (2) employees, then their website should be inspected.

RESPONSE: Missouri law is very clear on workers' compensation requirements. The board would become involved should a complaint be filed and through the investigative process. Therefore, the board made no changes to the text of the rule.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION**

**Division 2234—Board of Private Investigator Examiners
Chapter 2—Private Investigator**

ORDER OF RULEMAKING

By the authority vested in the Board of Private Investigator Examiners under section 324.1100, RSMo Supp. 2008, the board adopts a rule as follows:

**20 CSR 2234-2.020 Name and Address Changes—Private
Investigator is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 3, 2009 (34 MoReg 1609-1612). 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 board received one (1) comment on the proposed rule.

COMMENT: John Ellis, with the Kansas Association of Private Investigators (KAPI), commented that the regulating agency workload created by the requirement to report changes of address, telephone numbers, or email addresses in writing could potentially be lessened by allowing electronic reporting of the changes. The mailing list form currently found on the Division of Professional Registration's website could be adapted to perform this function. This should reduce the regulating costs.

RESPONSE: The board can accept address, telephone numbers, or email changes by facsimile, email, or through the United States postal service. Licensees will also have the ability to go to the Board of Private Investigator Examiners' website and complete a change of address form. The division's current licensing system is not capable of web-based interfacing. Therefore, the board made no changes to the text of the rule.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION**

**Division 2234—Board of Private Investigator Examiners
Chapter 2—Private Investigator**

ORDER OF RULEMAKING

By the authority vested in the Board of Private Investigator Examiners under section 324.1100, RSMo Supp. 2008, the board adopts a rule as follows:

**20 CSR 2234-2.030 Replacement of Renewal License—Private
Investigator is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 3, 2009 (34 MoReg 1613-1616). 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 board received one (1) comment on the proposed rule.

COMMENT: Peter Duffey, Director of Double Helix Services Inc., commented that the state should bear the cost of a replacement license in the case of an incorrect license being provided to the applicant or agency. Otherwise, the applicant should bear the cost.

RESPONSE: Licensees can currently obtain a duplicate license at no charge. Therefore, no changes were made to the text of the rule.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION**

**Division 2234—Board of Private Investigator Examiners
Chapter 2—Private Investigator**

ORDER OF RULEMAKING

By the authority vested in the Board of Private Investigator Examiners under sections 324.1102 and 324.1126, RSMo Supp. 2008, the board adopts a rule as follows:

**20 CSR 2234-2.040 Licensure Renewal—Private Investigator
is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 3, 2009 (34 MoReg 1617-1620). 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 board received no comments.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION**

**Division 2234—Board of Private Investigator Examiners
Chapter 3—Private Investigator Agency**

ORDER OF RULEMAKING

By the authority vested in the Board of Private Investigator Examiners under sections 324.1102, 324.1108, 324.1110, 324.1112, 324.1114, and 324.1132, RSMo Supp. 2008, the board adopts a rule as follows:

20 CSR 2234-3.010 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 3, 2009 (34 MoReg 1621-1625). Those sections with changes have been reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The board received five (5) comments on the proposed rule.

COMMENT #1: Upon review of the proposed rule, the board noted that the rule did not clearly state that the private investigator-in-charge must also be licensed in Missouri. Peter Duffey, Director of Double Helix Services, Inc., also commented that section (3) of 20 CSR 2234-3.010 could easily be construed to mean that investigators cannot meet new or potential clients outside of the office, work from our vehicles, or from a home office if that is not the "primary office" or a "branch office" as designated by registration with the board. Investigators are not going to want their home address on file as a branch office and we all work from home offices from time-to-time. RESPONSE AND EXPLANATION OF CHANGE: Unless an exception in section 324.1106, RSMo, applies, all private investigators must be licensed to do business in Missouri. In order to have effective and efficient regulation, a private investigator holding him or herself out to be in charge of other private investigators doing business in Missouri must also be licensed. Therefore, the board decided to add the word "Missouri" in subsection (2)(B) for clarification purposes. However, nothing prohibits a private investigator from meeting clients at a location other than the primary office.

COMMENT #2: Mr. Duffey commented that this particular section is being interpreted to mean that there must be a "brick and mortar" office in Missouri.

RESPONSE: After an extensive legal review, the board determined sections 324.1100–324.1148, RSMo, do not require a physical Missouri address in the state of Missouri. However, section 324.1132, RSMo, prohibits any licensee from advertising or conducting business from any Missouri address other than that shown on the records of the board as the licensee's principal place of business unless the licensee has received an additional agency license for such location. Therefore, an agency located outside of the state of Missouri may apply for a private investigator agency license by paying the required fee and if the individual is licensed as a private investigator as required in section 324.1114, RSMo. Based on these facts, the board made no changes to the text of the rule.

COMMENT #3: John W. Ellis, President of Kansas Association of Private Investigators (KAPI), commented that the requirement to provide an insurance certificate from a company licensed to do business in the state of Missouri may need to be revised. Private detectives licensed in the state of Kansas have found in the past that no state-regulated insurance company actually offered the professional liability insurance (with errors and omissions coverage) required by the state licensing statute. The insurance must be obtained from unregulated carriers that are frequently from out of state. A requirement to use only Missouri regulated insurers may prove to be unworkable.

RESPONSE: Section 375.161, RSMo, requires any insurance company conducting business in Missouri to obtain Missouri licensure. Therefore, the board made no changes to the text of the rule.

COMMENT #4: Tom Dupriest, Chairman of the Board of Directors/Senior Advisory Consultant for Clarence M. Kelley and Associates, Inc. (CMKA), is concerned with the wording in sections (2) and (3) as it seems to indicate that a licensed private investigative company must have its primary office in Missouri in order to work in Missouri. CMKA is currently licensed in thirteen (13) states and six (6) cities throughout the United States, none of which require that private investigator companies have their primary office in that state or for that matter that any office of the agency must be in that state. CMKA respectfully requests that consideration be given to amending the requirement as if its left a part of the statute, most all companies that conduct private investigations on a national or even a regional basis will be unable to operate in Missouri, eliminating work and jobs that are currently held by Missouri residents, our employees, and those of other companies, and the resultant taxes paid as a result of those jobs.

RESPONSE: After an extensive legal review, the board determined

sections 324.1100–324.1148, RSMo, do not require a physical Missouri address in the state of Missouri. However, section 324.1132, RSMo, prohibits any licensee from advertising or conducting business from any Missouri address other than that shown on the records of the board as the licensee's principal place of business unless the licensee has received an additional agency license for such location. Therefore, an agency located outside of the state of Missouri may apply for a private investigator agency license by paying the required fee and if the individual is licensed as a private investigator as required in section 324.1114, RSMo. Based on these facts, the board made no changes to the text of the rule.

COMMENT #5: Stu Macfarlane, President of Blue Eagle Investigations, Inc., commented with regards to the agency license. Mr. Macfarlane would like to license seven (7) investigators in Missouri. Since he does not have a physical office there, their license fees would be five hundred dollars (\$500) each, or three thousand five hundred dollars (\$3,500) total. However, if he had an agency license, this cost would be four hundred dollars (\$400) for the agency, and fifty dollars (\$50) for each investigator, equaling seven hundred fifty dollars (\$750) total. That is a huge difference. Likewise, renewals would be two thousand one hundred dollars (\$2,100) versus one hundred seventy-five dollars (\$175). The economics of the agency rules will prohibit companies, like his, from having multiple investigators licensed in Missouri. Again, he believes this is detrimental to the industry in terms of companies like his not being able to do more work in Missouri and current gainfully employed investigators losing a lot of income, if not their jobs. The requirement for a "brick and mortar" building in Missouri for an agency should be dropped as most states do not require this. With regards to the "felon" language, he believes this was passed based on recommendations from the entity that started statewide licensing. It was shortsighted and never should have been passed and it should be retracted, however he thanks the board for reminding him and everyone that this will have to be addressed with the legislature.

RESPONSE: After an extensive legal review, the board determined sections 324.1100–324.1148, RSMo, do not require a physical Missouri address in the state of Missouri. However, section 324.1132, RSMo, prohibits any licensee from advertising or conducting business from any Missouri address other than that shown on the records of the board as the licensee's principal place of business unless the licensee has received an additional agency license for such location. Therefore, an agency located outside of the state of Missouri may apply for a private investigator agency license by paying the required fee and if the individual is licensed as a private investigator as required in section 324.1114, RSMo. Based on these facts, the board made no changes to the text of the rule.

20 CSR 2234-3.010 Application for Licensure—Private Investigator Agency

(2) A completed application for licensure must be typewritten or printed in black ink, signed, and notarized, and shall include:

(B) The name of the Missouri licensed private investigator-in-charge and designate a primary office in Missouri;

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION Division 2234—Board of Private Investigator Examiners Chapter 3—Private Investigator Agency

ORDER OF RULEMAKING

By the authority vested in the Board of Private Investigator Examiners under sections 324.1100 and 324.1132, RSMo Supp. 2008, the board adopts a rule as follows:

20 CSR 2234-3.020 Change of Name, Ownership, Location, or Private Investigator-In-Charge—Private Investigator Agency **is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 3, 2009 (34 MoReg 1626–1629). 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 board received no comments.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2234—Board of Private Investigator Examiners
Chapter 3—Private Investigator Agency**

ORDER OF RULEMAKING

By the authority vested in the Board of Private Investigator Examiners under sections 324.1102 and 324.1126, RSMo Supp. 2008, the board adopts a rule as follows:

20 CSR 2234-3.030 Licensure Renewal—Private Investigator Agency **is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 3, 2009 (34 MoReg 1630–1633). 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 board received no comments.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2234—Board of Private Investigator Examiners
Chapter 3—Private Investigator Agency**

ORDER OF RULEMAKING

By the authority vested in the Board of Private Investigator Examiners under sections 324.1102, 324.1116, and 324.1118, RSMo Supp. 2008, the board adopts a rule as follows:

20 CSR 2234-3.040 Application for Licensure—Licensed Agency Investigator Employee **is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 3, 2009 (34 MoReg 1634–1638). 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 board received no comments.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2234—Board of Private Investigator Examiners
Chapter 3—Private Investigator Agency**

ORDER OF RULEMAKING

By the authority vested in the Board of Private Investigator Examiners under section 324.1100, RSMo Supp. 2008, the board adopts a rule as follows:

20 CSR 2234-3.050 Name and Address Changes—Licensed Agency Investigator Employee **is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 3, 2009 (34 MoReg 1639–1640). 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 board received one (1) comment on the proposed rule.

COMMENT: John Ellis, President of the Kansas Association of Private Investigators (KAPI), commented that regulating agency workload created by the requirement to report changes of address, telephone numbers, or email addresses in writing could potentially be lessened by allowing electronic reporting of the changes. The mailing list form currently found on the Division of Professional Registration's website could be adapted to perform this function. This should reduce the regulating costs.

RESPONSE: The board can accept address, telephone numbers, or email address changes by facsimile, email, or through the United States postal service. Licensees will also have the ability to go to the Board of Private Investigator Examiners' website and complete a change of address form. The division's current licensing system is not capable of web-based interfacing. Therefore, the board made no changes to the text of the rule.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2234—Board of Private Investigator Examiners
Chapter 3—Private Investigator Agency**

ORDER OF RULEMAKING

By the authority vested in the Board of Private Investigator Examiners under section 324.1100, RSMo Supp. 2008, the board adopts a rule as follows:

20 CSR 2234-3.060 Replacement of Renewal License—Licensed Agency Investigator Employee **is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 3, 2009 (34 MoReg 1641–1642). 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 board received no comments.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2234—Board of Private Investigator Examiners
Chapter 3—Private Investigator Agency**

ORDER OF RULEMAKING

By the authority vested in the Board of Private Investigator Examiners under sections 324.1102 and 324.1126, RSMo Supp. 2008, the board adopts a rule as follows:

20 CSR 2234-3.070 Licensure Renewal—Licensed Agency Investigator Employee **is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 3, 2009 (34 MoReg 1643-1644). 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 board received no comments.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2234—Board of Private Investigator Examiners
Chapter 4—Private Investigator Trainers**

ORDER OF RULEMAKING

By the authority vested in the Board of Private Investigator Examiners under section 324.1140, RSMo Supp. 2008, the board adopts a rule as follows:

20 CSR 2234-4.010 Application for License—Private Investigator Trainer **is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 3, 2009 (34 MoReg 1645-1649). 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 board received no comments.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2234—Board of Private Investigator Examiners
Chapter 4—Private Investigator Trainers**

ORDER OF RULEMAKING

By the authority vested in the Board of Private Investigator Examiners under sections 324.1138 and 324.1140, RSMo Supp. 2008, the board adopts a rule as follows:

20 CSR 2234-4.020 Trainer Responsibilities—Private Investigator Trainer **is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 3, 2009 (34 MoReg 1650-1652). 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 board received no comments.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2234—Board of Private Investigator Examiners
Chapter 4—Private Investigator Trainers**

ORDER OF RULEMAKING

By the authority vested in the Board of Private Investigator Examiners under section 324.1100, RSMo Supp. 2008, the board adopts a rule as follows:

20 CSR 2234-4.030 Name and Address Changes—Private Investigator Trainer **is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 3, 2009 (34 MoReg 1653-1656). 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 board received one (1) comment on the proposed rule.

COMMENT: John W. Ellis, President of the Kansas Association of Private Investigators (KAPI), commented that the regulating agency workload created by the requirement to report changes of address, telephone numbers, or email addresses in writing could potentially be lessened by allowing electronic reporting of the changes. The mailing list form currently found on the Division of Professional Registration's website could be adapted to perform this function. This should reduce the regulating costs.

RESPONSE: The board can accept address, telephone numbers, or email address changes by facsimile, email, or through the United States postal service. Licensees will also have the ability to go to the Board of Private Investigator Examiners' website and complete a change of address form. The division's current licensing system is not capable of web-based interfacing. Therefore, the board made no changes to the text of the rule.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2234—Board of Private Investigator Examiners
Chapter 4—Private Investigator Trainers**

ORDER OF RULEMAKING

By the authority vested in the Board of Private Investigator Examiners under section 324.1100, RSMo Supp. 2008, the board adopts a rule as follows:

20 CSR 2234-4.040 Replacement of Renewal License—Private Investigator Trainer **is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 3, 2009 (34 MoReg 1657-1660). 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 board received no comments.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2234—Board of Private Investigator Examiners
Chapter 4—Private Investigator Trainers**

ORDER OF RULEMAKING

By the authority vested in the Board of Private Investigator Examiners under sections 324.1102 and 324.1126, RSMo Supp. 2008, the board adopts a rule as follows:

**20 CSR 2234-4.050 Licensure Renewal—Private Investigator
Trainer is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 3, 2009 (34 MoReg 1661–1664). 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 board received no comments.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2234—Board of Private Investigator Examiners
Chapter 5—Examination Requirements**

ORDER OF RULEMAKING

By the authority vested in the Board of Private Investigator Examiners under section 324.1100, RSMo Supp. 2008, the board adopts a rule as follows:

20 CSR 2234-5.010 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 3, 2009 (34 MoReg 1665–1667). 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 board made one (1) comment on the proposed rule.

COMMENT: During the board's review of the exam development process, it was decided that better clarification of the exemption requirements was needed.

RESPONSE AND EXPLANATION OF CHANGE: The board has updated the language in subsection (2)(A) for those applicants who are exempt from the examination.

20 CSR 2234-5.010 Examination

(2) The following applicants are exempt from examination:

(A) An applicant whose complete application is filed with the board, and who is able to show previous two (2) years of lawful practice from the date the application was complete; and

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2234—Board of Private Investigator Examiners
Chapter 6—Continuing Education Requirements**

ORDER OF RULEMAKING

By the authority vested in the Board of Private Investigator Examiners under sections 324.1126 and 324.1138, RSMo Supp. 2008, the board adopts a rule as follows:

20 CSR 2234-6.010 Continuing Education is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 3, 2009 (34 MoReg 1668–1673). 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 board received two (2) comments on the proposed rule.

COMMENT #1: John W. Ellis, President of the Kansas Association of Private Investigators (KAPI), commented that the restrictions placed on approved trainers and courses needs to be expanded because it fails to include courses currently being offered which clearly support the purpose of continuing education. The board should either alter the definitions of the approved trainers/courses to include courses at accredited universities, colleges, or technical schools or publish a list of university curriculums or certification courses that are approved. This would reduce the expense for the private investigators trying to comply with the rules and would also reduce the volume of regulatory work that must be performed by the regulating agency.

RESPONSE: The board appreciates Mr. Ellis's comments regarding continuing education, but it appears Mr. Ellis misunderstands the law regarding continuing education. Therefore, no changes to the rule are being made.

COMMENT #2: Ron R. Buretta, with Ron R. Buretta & Associates, Inc., commented that the continuing education requirement should be very broad on what constitutes satisfaction of this requirement. Quality seminars related to the industry or business courses in general should be sufficient.

RESPONSE: Sections 324.1122 and 324.1126, RSMo, establishes continuing education requirements. The statutory sections are broad and require education to be "relevant to the private investigator business." Therefore, no change to the rule was made.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2234—Board of Private Investigator Examiners
Chapter 7—Code of Conduct**

ORDER OF RULEMAKING

By the authority vested in the Board of Private Investigator Examiners under section 324.1138, RSMo Supp. 2008, the board adopts a rule as follows:

20 CSR 2234-7.010 Code of Conduct is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 3, 2009 (34 MoReg 1674–1679). 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 board received (4) comments on the proposed rule.

COMMENT #1: Terry Threadgill wants to know the board's definition of a "primary office in Missouri" and also requests that the board defines reciprocity. Mr. Threadgill would also like to know how an armed, plain clothes security guard is going to be licensed. Currently most of the private investigators licensed with the city of Kansas City, Missouri are licensed as armed. How will this change particularly since the proposed Missouri rules do not mention armed or unarmed licensure? Also, how does the board plan to respond to the comments on the proposed rules, via mail?

RESPONSE: Primary office is defined by board rule 20 CSR 2234-1.010. The board also stated that 20 CSR 2234-2.010 requires the board's records to reflect that actual location of the business. Section 324.1142, RSMo, establishes the board authority to enter into reciprocal agreements; therefore, the board determined that a definition in rule was not warranted. Sections 324.1100 through 324.1148, RSMo, establish licensure for private investigators throughout the state of Missouri but do not authorize the board to issue a conceal and carry weapons license (CCW). At this time the board is uncertain how this issue will be handled for private investigators that have been issued a CCW private investigator license with the Kansas City Police Department. The board will be discussing this issue during future board meetings. Therefore, no changes to the rule were made.

COMMENT #2: Ron R. Buretta, with Ron R. Buretta & Associates, Inc., hopes that once licensing goes into effect, the yellow page advertisements are inspected. Mr. Buretta states that there are blatant misrepresentations currently in print.

RESPONSE: The board has only that authority given it by the legislature. The board will handle all complaints made to the board regarding alleged violations of Missouri law. Therefore, no changes to the rule were made.

COMMENT #3: Joe Bramer commented that the requirements for licensure are ridiculous for someone with his extensive backgrounds and he and others like him should be granted an exemption from licensure, especially when they are only working part-time.

RESPONSE: The exemptions for licensure can be found in section 324.1106, RSMo. All others must be licensed. Therefore, no change was made to the rule.

COMMENT #4: Michael Knoke, CPP, Director of Investigations, Corporate Security and Safety with Express Scripts, Inc., commented that a review of the rules regarding private investigator licensing indicates that a person who has been certified or accredited by a national or state association does not need a private investigator's license, specifically an expert witness.

RESPONSE: Section 324.1106(12), RSMo, contains an exemption for expert witness. However, its intent is to exempt expert witness coming into Missouri to testify in a Missouri court of law, not to conduct private investigator business. To conduct private investigator business in Missouri the individual must possess a Missouri license, unless the practice falls into the exemptions of Missouri law contained in section 324.1106, RSMo. Therefore, no changes were made to the proposed rule.

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

ORDER OF RULEMAKING

By the authority vested in the Office of Tattooing, Body Piercing, and Branding under section 324.522, RSMo Supp. 2008, the office amends a rule as follows:

20 CSR 2267-2.010 Licenses is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 2009 (34 MoReg 1932-1936). 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: The office received eight (8) comments on the proposed amendment.

COMMENT #1: Donald W. Corah, owner/operator of Artisan Tattoo Company, member of the Alliance of Professional Tattooists, and Chair of the Professional Business Practices and Ethics Committee, generally supports the office's regulations. However, Mr. Corah expressed concern that the three hundred (300) hours of supervision are insufficient to prepare an apprentice for the practice of tattooing, body piercing, and branding.

RESPONSE: The three hundred (300) hours of supervision is currently set in the rules and regulations and was not part of this proposed amendment. The office does appreciate receiving Mr. Corah's response.

COMMENT #2: Ron Henning ("Ronnie J.") proposed three (3) changes for the regulations: 1) An apprentice trainer should be required to provide proof of at least five (5) years of experience before serving as a trainer; 2) After completion of one thousand five hundred (1,500) hours of training, apprentices should be required to take a written and practical exam; and 3) The office should limit the number of shops within a given geographic area.

RESPONSE: The office appreciates Mr. Henning's comments and will consider the recommendation to require an individual to be licensed for a specific period of time before they are allowed to train. At this time, the office does not believe that an examination is necessary. Finally, the office does not have the authority to limit the number of shops within any given area.

COMMENT #3: Caroline Evans with Radiant Energy, LLC commented that the minimum amount of hours under supervision should be increased.

RESPONSE: Ms. Evans' comments are appreciated; however, the number of training hours was not a part of this proposed amendment.

COMMENT #4: Melonie Gonzalez, owner of Belton's Ink Spot, proposed: 1) requiring tattooists, body piercers, and branders to wear a surgical mask to prevent possible transmissions of bloodborne pathogens; and 2) requiring all tattoo artists, body piercers, and branders to get Hepatitis vaccinations and be tested for communicable diseases and rechecked every two (2) years.

RESPONSE: All practitioners are required by the rules and regulations to adhere to the Center for Disease Control's Universal Precautions, which prevents the spread of diseases. The office does not feel it is appropriate to require individuals to be vaccinated.

COMMENT #5: John Glone, Ozark Ink Tattoo Emporium, proposed two (2) questions in response to the proposed rule: 1) What is it going to cost to apprentice someone through the state? and 2) How will this affect current license holders?

RESPONSE: The cost of the apprenticeship varies, however, that cost is not directly established by the office. In addition, current license holders are not required to comply with this proposed amendment.

COMMENT #6: Mollie Ahlers-Estes, Timeless Tattoo, inquired as to the documentation required by the office of three hundred (300) hours of training for a body piercer apprentice.

RESPONSE: Ms. Ahlers-Estes was informed that there is a sample affidavit available for use to verify the completion of the required hours and procedures.

COMMENT #7: Duane Sims, House of Ink, raised two (2) questions in his comment to the proposed rule: 1) Will the office require a log for apprentices? 2) What information should he provide to the office for his current apprentices? Mr. Sims also proposed requiring an apprentice license to track the length of apprenticeships.

RESPONSE: The proposed amendment will require that proof of completing the apprenticeship on forms provided by the office. Mr. Sims was notified to inform the office of his current apprentices. The office does not have the statutory authority at this time to issue an apprentice license; this may be considered in the future.

COMMENT #8: Jeff Wells commented that he is opposed to any regulation requiring an apprenticeship because it could lead to additional regulations.

RESPONSE: The office is here for public protection and to ensure the hygienic and sanitary operations of both the practitioners and establishments. Applicants are required to have completed a first aid, CPR, and bloodborne pathogens course.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 2009 (34 MoReg 1937). 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 2267—Office of Tattooing, Body Piercing, and
Branding
Chapter 6—Complaints and Investigations**

ORDER OF RULEMAKING

By the authority vested in the Office of Tattooing, Body Piercing, and Branding under section 324.522, RSMo Supp. 2008, the office rescinds a rule as follows:

20 CSR 2267-6.030 Initiation of Disciplinary Proceedings
is rescinded.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on September 1, 2009 (34 MoReg 1937). 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 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2270—Missouri Veterinary Medical Board
Chapter 4—Minimum Standards**

ORDER OF RULEMAKING

By the authority vested in the Missouri Veterinary Medical Board under sections 41.946, 340.210, 340.258, and 340.268, RSMo 2000, the board amends a rule as follows:

20 CSR 2270-4.042 Minimum Standards for Continuing Education for Veterinarians **is amended.**