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

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 If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission.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

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

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

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

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

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

Title 1—OFFICE OF ADMINISTRATION
Division 10—Commissioner of Administration
Chapter 17—Office of Equal Opportunity

PROPOSED RULE

1 CSR 10-17.010 Definitions

PURPOSE: This proposed rule defines terms related to the state of Missouri's Minority and Women's Business Enterprise Program, established by the Office of Administration and administered by the Office of Equal Opportunity.

(1) For purposes of the state of Missouri's Minority and Women's Business Enterprise Program, established by the Office of Administration and administered by the Office of Equal Opportunity, the following definitions apply:

(A) Certification or Certified—A determination made after an applicant has met the eligibility requirements to be qualified as a Minority Business Enterprise (MBE) or a Women's Business Enterprise (WBE) by the Office of Administration, Office of Equal Opportunity (OEO);

(B) Commissioner—The commissioner of the Office of Administration;

(C) Compliance—When a firm has met the requirements of these regulations, the applicable statutes, and the Minority and/or Women's Business Enterprise (M/WBE) provisions of its state contract;

(D) Contract—A legally-binding relationship obligating a contractor, subcontractor, or supplier to furnish goods or services and the buyer to pay for them. For the purposes of these regulations, leases and subcontracts may be considered contracts;

(E) Contractor—A firm that has a contract directly with the state of Missouri;

(F) Firm—A person or business lawfully existing under the laws of the state of Missouri or its state of origin, including but not limited to a sole proprietorship, corporation, partnership, limited partnership, joint venture, limited liability company (LLC), or professional corporation;

(G) Minority—Any individual who is a citizen or lawfully-admitted permanent resident of the United States and who is a member of any of the following groups:

1. Black Americans—Includes persons having origins in any of the black racial groups of Africa;

2. Hispanic Americans—Includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portugese culture or origin, regardless of race;

3. Native Americans—Includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

4. Asian-Pacific Americans—Includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Mariana Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

5. Asian-Indian Americans—Includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka; or

6. Any additional groups whose members are designated as socially and economically disadvantaged by the U.S. Small Business Administration (SBA), at such time as the SBA designation becomes effective;

(H) Minority Business Enterprise (MBE)—The definition in section 37.020.1(3), RSMo, will be applied;

(I) Noncompliance—Failure by the contractor, subcontractor, or supplier to achieve the goals of M/WBE participation set forth in the contract;

(J) OA—The state of Missouri's Office of Administration;

(K) Out-of-state applicant—Any applicant whose principal place of business is located outside Missouri. Such applicants must be certified by their home state. Certification by another state does not guarantee certification by OEO;

(L) Principal place of business—Where the individuals who manage the day-to-day operations and make executive decisions for the firm are located and where its records are kept;

(M) Rapid response applicant—Any applicant whose principal place of business is in Missouri and who possesses a current M/WBE certification from another certifying entity. Rapid response applicants may receive certification from OEO through a memorandum of understanding. Less documentation is needed than for a standard/initial applicant, and an on-site review is not required. Certification by another certifying entity does not guarantee certification by OEO;

(N) Subcontractor—A firm that does not have a contract directly with the state of Missouri but instead contracts a portion of the work of a state contract from the contractor or another subcontractor;

(O) Standard/initial applicant—Any applicant whose principal place of business is in Missouri and who does not currently hold any other M/WBE certifications. OEO may perform an on-site review at the applicant's place of business after reviewing the application and documentation; and

(P) Women's Business Enterprise (WBE)—The definition in section 37.020.1(6), RSMo, will be applied.

AUTHORITY: sections 34.050 and 37.020, RSMo 2000. Original rule filed June 1, 2011.

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 Commissioner of the Office of Administration, PO Box 809, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 1—OFFICE OF ADMINISTRATION
Division 10—Commissioner of Administration
Chapter 17—Office of Equal Opportunity

PROPOSED AMENDMENT

1 CSR 10-17.040 Minority/Women Business Enterprise Certification. The commissioner is repealing and reenacting every section of the rule.

PURPOSE: This amendment updates the procedures by which Minority Business Enterprises (MBEs) and Women Business Enterprises (WBEs) may be certified by the Office of Equal Opportunity (OEO).

[(1) The following standards shall be used by the Office of Equal Opportunity (OEO) in determining whether an individual, business, or organization is eligible to be certified as a Minority Business Enterprise/Women Business Enterprise (MBE/WBE). The list is not meant to be all inclusive but shall serve as a guideline for certification of MBE/WBEs.

(A) At least fifty-one percent (51%) of the enterprise's ownership and control shall be held by minorities or women.

(B) All securities which constitute ownership and/or control of the enterprise for purposes of establishing it as an MBE/WBE under these regulations shall be held directly by a minority or woman.

(C) Securities held in trust, or by a guardian for a minor, shall not be considered as held by a minority or woman in determining the ownership or control of a corporation.

(D) Ownership and control of the enterprise by the minorities/women shall be real, substantial, and continuing. The minorities/women shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with ownership interests.

(E) The minority or woman owner(s) shall possess the power to make day-to-day as well as major decisions on matters of management, policy and operation. There shall be no restrictions which limit the customary discretion of the minority or woman owner(s).

(F) The contribution of capital or expertise by the minorities or women shall be real and substantial. Examples of insufficient contributions include a promise to contribute capital, participation as an employee rather than a manager, etc.

(2) Any individual, business, or organization desiring certification as an MBE or WBE shall submit an MBE/WBE Certification Application and required documentation to the OEO.

(A) An MBE/WBE applicant whose principal place of business is located in a state other than Missouri must provide proof of certification by that state, if such certification is available.

(B) MBE/WBE applicants which have been certified by an organization which maintains a certification memorandum of understanding with the Office of Administration may be certified by the OEO based upon their previous certification. In such case, the MBE/WBE must provide proof of certification.

(C) Certification by another state or organization does not guarantee certification by the OEO.

(D) All applications shall be reviewed by the OEO and approved or denied.

1. The OEO may conduct an on-site review at the applicant's place of business to verify status as a certifiable MBE/WBE The state is not required to conduct on-site reviews if such review would require that the OEO incur unreasonable expenses to verify eligibility for certification. An example of an unreasonable expense would be travel outside the state of Missouri for an on-site review.

2. The OEO may require the applicant to submit documentation deemed necessary to determine eligibility for certification as an MBE/WBE Examples of required documentation may include: proof of minority or female status, initial capital contribution information, income tax returns, partnership agreement, articles of incorporation, proof of ownership, etc.

(E) If an applicant is approved, a letter of approval and certification shall be mailed to the certified MBE/WBE

(F) If an applicant is denied certification, it will be notified in writing. The notification will include reason(s) for the denial. Reasons for certification denial may include but are not limited to the following: improperly filed application, requested information not provided, failure to meet certification standards, inability to complete certification review.

(3) After certification, the MBE/WBE must notify the OEO of any changes of fact set forth in the application including, but not limited to: company ownership, officers, address, organizational structure, etc.

(4) All certifications, except joint ventures, shall be effective for a period not to exceed two (2) years.

(A) MBE/WBEs may request recertification by submitting a recertification application prior to the expiration date of their current certification.

(B) If an application for recertification is not submitted prior to the expiration date of the current certification, the business will be removed from the active certified list of vendors. In order to become recertified after the expiration date of the original certification, the applicant must submit the recertification application with an explanation of the delay.

(5) The OEO may revoke certification of an MBE/WBE The following list shall serve as a guideline for revocation determinations (it is not intended to be all inclusive):

(A) Change in the organization or ownership structure of the business entity;

(B) Revocation of certification by another certifying entity; or

(C) Falsification of information on applications, bids, etc.

(6) Any certified MBE/WBE desiring certification of a joint venture shall submit an application and required documentation to the OEO.

(A) In order to qualify for joint venture certification the MBE/WBE partner must be responsible for a clearly defined portion of the work to be performed and share in the ownership, control, management responsibilities, risk, and profits of the joint venture.

(B) The OEO may require the applicant to submit documentation deemed necessary to determine eligibility for certification as a joint venture. Examples of required documentation may include: copy of the joint venture agreement and copy of certification issued to MBE/WBE participant.

(C) Joint venture certification shall be effective for a period not to exceed one (1) year.

(D) Any changes proposed in the joint venture agreement must be filed with and approved by the OEO prior to the implementation of the changes in order to maintain certification.

(7) The applicant may appeal certification denial or revocation actions by requesting that the determination be reviewed by the commissioner of administration or designee.

(A) Any request for review must be in writing and filed with the commissioner within twenty-one (21) calendar days after the date of receipt of the notice of denial or revocation. The request must set forth specific reasons why denial or revocation should be reversed.

(B) The commissioner's determination shall be final and shall be mailed to all parties involved.

(8) Third parties who have reason to believe that an enterprise has been wrongly denied or granted certification as an MBE/WBE or joint venture may file a third party challenge with the OEO. Challenges by third parties are not considered an appeal.

(A) The third party challenge must be submitted in writing along with supporting documentation in sufficient detail to support the allegations. The OEO may require additional documentation from the challenger.

(B) The third party challenge must contain the name, address, telephone number and signature of the challenger.

(C) Third party challenges will not be considered confidential.

(D) The MBE/WBE will be notified in writing that a challenge has been received by the OEO.

(E) The OEO will investigate the challenge and issue a written decision.]

(1) Any firm desiring to obtain certification as a Minority Business Enterprise (MBE) or Women Business Enterprise (WBE) shall submit an application and required documentation to Office of Equal Opportunity (OEO). There are three (3) methods of certification: initial/standard, rapid response, and out-of-state.

(2) All applicants are required to submit documentation necessary to determine eligibility for certification. Such documentation may include, but is not limited to: shareholder meeting minutes, bylaws, board meeting minutes, partnership agreements, tax returns, and joint venture agreements.

(3) Every applicant seeking certification has the burden of demonstrating to OEO, by a preponderance of the evidence, that it meets the requirements of section 37.020, RSMo, and these regulations.

(4) Initial/standard certifications are effective for three (3) years. Rapid response and out-of-state certifications are based on the certification from other certifying entities and are effective until the expiration date that appears on the certificate provided to OEO. Joint venture certifications are effective for either one (1) year or the term of the joint venture.

(5) Out-of-State Certifications. OEO will not conduct on-site reviews outside the state of Missouri; certification determinations for out-of-state applicants will be made based upon a desk audit of the application and all submitted documentation. Out-of-state applicants may only be certified by OEO if their home state allows Missouri-based minority- and women-owned firms to certify there. All currently certified out-of-state firms who might be affected by this rule will be allowed to maintain certification unless upon expiration they do not complete the renewal process or fail to meet other standards of ownership and control required by these regulations.

(6) If an applicant is approved for certification, a letter of approval and a certificate will be mailed to the Minority and/or Women Business Enterprise (M/WBE).

(7) Firms certified by OEO must notify OEO of any changes that may affect their eligibility for continued certification under section 37.020, RSMo, and these regulations.

(8) Applicants denied certification will be notified in writing of the reasons for denial. Reasons may include but are not limited to: incomplete or inaccurate application, failure to provide requested information, failure to meet certification standards, or failure to cooperate during the certification process. If OEO denies certification, an applicant has twenty-one (21) calendar days from the date of the denial letter to appeal in writing to the commissioner. The appeal shall clearly state why the denial is alleged to be in error. Information that was requested but not provided before the denial will not be considered in an appeal. The commissioner's decision shall be final. Applicants denied certification are ineligible to reapply for one hundred eighty (180) days from the date of the denial letter.

(9) Third parties who have reason to believe that an applicant has been wrongly denied or granted certification as an M/WBE or joint venture may file a third-party challenge with OEO. Challenges by third parties are not considered appeals.

(A) The third-party challenge must be submitted in writing with supporting documentation in sufficient detail to support the allegations. OEO may require additional documentation from the challenger.

(B) The third-party challenge must contain the name, address, telephone number, and signature of the challenger.

(C) Third-party challenges will not be considered confidential.

(D) The M/WBE or applicant will be notified in writing that a challenge has been filed.

(E) OEO will investigate the challenge and issue a written decision.

(10) OEO will be guided by the following standards when evaluating applicants for certification:

(A) In determining whether an applicant meets the requirements of section 37.020, RSMo, and these regulations, OEO will consider all information in its possession.

(B) OEO will evaluate an applicant based on current circumstances and will not deny certification solely because an applicant was not owned or controlled by a minority or woman at some

time in the past.

(C) OEO may authorize a one (1)-year provisional certification in certain circumstances, such as to allow time for a minority or woman to transition from being an employee to a business owner or to review tax information that is not available for a new firm at the time of application.

(D) An applicant will not be denied certification solely because it is a newly-formed firm.

(E) OEO may decline rather than deny certification when one (1) or more questions are identified during the preview for certification. Applicants declined certification will be notified in writing and may respond with additional documentation or clarification within the time frame stated in the notice.

(11) Each year, OEO will send an annual update form to each firm certified under this program. Each firm must complete and return the form to OEO. OEO may revoke the certification of a firm that fails to complete and return the form. Information provided in the annual update form helps ensure that OEO's Directory of Certified M/WBEs remains accurate. It also provides verification that ownership and control have remained the same. If changes have taken place, the M/WBE must provide information and/or documentation to substantiate that it continues to meet the requirements of these regulations.

(12) OEO will send a Recertification Application to a certified firm one (1) month before the expiration date of the certification. This application must be completed and returned to OEO before the expiration date. Recertification will be determined by information submitted on the renewal form, tax returns, and any documented changes regarding ownership or control. Recertification is not guaranteed. If the recertification application is not submitted before the expiration date, the firm will be removed from the active list of certified M/WBE vendors. To become recertified after the expiration date of the original certification, the applicant must submit the renewal form with an explanation for the delay. If one (1) year or more has passed, a complete new application will be required.

(13) Revocation of Certification.

(A) OEO may revoke a firm's certification for reasons including, but not limited to, the following:

1. The firm does not meet the requirements of section 37.020, RSMo, and these regulations;

2. The firm's certification with OEO is based on certification by another entity, and that entity has revoked the firm's certification; or

3.The firm has falsified or intentionally misrepresented information to OEO.

(14) OEO will use the following standards in determining ownership:

(A) The contribution of capital or expertise by the minorities or women shall be real and substantial. Examples of insufficient contributions include: a promise to contribute capital, participation as employee rather than a manager, or an unsecured note payable to the firm or an owner who is not a minority or woman. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business would not render a firm ineligible, even if the debtor's ownership interest is security for the loan;

(B) Securities held in trust, or by a guardian for a minor, shall not be considered as held by a minority or woman in determining the ownership or control of a corporation. However, securities or assets held in trust are considered as held by a minority or a woman for purposes of determining ownership of the firm if—

1. The beneficial owner of securities or assets held in trust is a minority or a woman, and the trustee is the same or another such individual; or

2. The beneficial owner of a trust is a minority or a woman who, rather than the trustee, exercises effective control over the management, policy-making, and daily activities of the trust.

3. Assets held in a revocable living trust may be counted only if the same minority and/or woman is the sole grantor, beneficiary, and trustee;

(C) In determining ownership of a firm, assets or interests acquired in the following ways will be considered held by a minority or woman:

1. From a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with these regulations; or

2. Through inheritance, or otherwise because of the death of the former owner;

(D) Expertise of a minority or woman applicant may be regarded as a contribution toward ownership if the woman has a significant financial investment in the firm, and if the expertise is—

1. In a specialized field;

2. In areas critical to the firm's operations;

3. Indispensable to the firm's potential success;

4. Specific to the type of work the firm performs; and

5. Documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm;

(E) Ownership and control of the enterprise by the minorities or women must be real, substantial, and continuing. The minorities or women shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with ownership;

(F) The applicant must show that ownership has not been acquired as a gift or by transfer without adequate consideration from a non-minority or male, within one (1) year before application. Thereafter, it is presumed that ownership is not held by the minority or woman if received from a non-minority or male who—

1. Continues to be involved in the same firm for which the applicant is seeking certification or is an affiliate of that firm;

2. Continues to be involved in the same or similar line of business; or

3. Is engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification;

(G) To overcome the presumption in subsection (14)(F), the minority or woman must clearly demonstrate to OEO that—

1. The gift or transfer to the minority or woman was made for reasons other than obtaining certification; and

2. The minority or woman actually controls the management, policy, and daily operations of the firm, notwithstanding the continuing participation of a non-minority or male who provided the gift or transfer;

(H) When marital assets (other than the assets of the firm in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by a minority or woman spouse, OEO will deem the ownership interest in the firm to have been acquired by the minority or woman with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state of Missouri. A copy of the document legally transferring and renouncing the non-minority or female spouse's rights in the jointly-held or community assets used to acquire an ownership interest in the firm must be included with the firm's application;

(I) A contribution of capital may be real and substantial even though financing agreements, contracts for the purchase or sale

of real estate or personal property, bank signature cards, and the like, require the co-signature of a spouse who is not a minority or a woman.

(15) OEO will use the following standards in determining control:

(A) The minority or women owners must have the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy, and operations. There can be no restrictions upon the minority or woman's discretion;

(B) Only independent firms are eligible for certification. A firm is independent if its viability does not depend on its relationship with another firm or firms. In determining whether a firm is independent, OEO will consider the firm's relationships with non-M/WBEs in areas such as personnel, facilities, equipment, and financial and bonding support and other resources. OEO must consider whether a present or recent employer/employee relationship between minority or women owners of the applicant and any non-M/WBE firms or persons associated with those firms compromise the independence of the applicant;

(C) There can be no restrictions through corporate charters, by-laws, contracts, or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-minority or non-female partners, conditions precedent or subsequent, executor agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the minority or woman, without the cooperation or vote of any non-minority or male, from making any business decision of the firm. This does not preclude a spousal co-signature on documents;

(D) A minority or woman must hold the highest official position in the firm (e.g., chief executive officer or president). Board meeting minutes must be provided to verify the results of the most recent officer election, if applicable;

(E) In a corporation, the minority or women owners must control the board of directors. Shareholder meeting minutes and by-laws must be provided to verify who is elected to the board and establish who controls it. In a partnership, one or more of the minority or women owners must serve as general partners, with control over all partnership decisions. A written partnership agreement must be provided. In a limited liability corporation (LLC), the minority or women owners must be the managing members. The operating agreement must be provided to OEO;

(F) Certification will not be denied solely because non-minorities or males may be involved with a firm as owners, managers, employees, stockholders, officers, or directors. Non-minorities or males must not, however, have or exercise the power to control the firm, or be disproportionately responsible for the daily operations of the firm;

(G) The minority or women owners must have an overall understanding of, and managerial and technical competence or experience directly related to the type of business in which the firm is engaged, and the firm's operations. The minority or women owners must have the ability to evaluate information presented by other participants in the firm's activities and be able to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate competency of the business's area of expertise and control over its daily operations;

(H) If state or local law requires the business to maintain a particular license or other credential in order to own or operate a certain type of firm, then the minority or women owners who exercise majority control of that type of business must possess the required license or credential. If state or local law does not require those persons to have such a license or credential in order to own or operate such a firm, OEO will not deny certification solely on the grounds that the minority or women owners lack such license or credential. However, OEO will consider the absence of the license or credential as one (1) factor in determining whether the minority or women owners actually exercise daily control over the firm;

(I) OEO will consider the difference in remuneration between the minority or women owners and other participants in the firm in determining whether to certify a firm. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's practices and policies concerning the reinvestment of income, and any other explanations for the difference offered by the firm. Based upon the evidence, OEO will make a determination about whether a firm is controlled by its minority or women owners, even though that owner's remuneration may be lower than other participants in the firm. In a case where a non-minority or male owner has formerly controlled the firm, and a minority or a female owner now controls it, OEO may consider the difference between the remuneration of the former and current controller of the firm as a factor in determining who exercises true control over the firm, particularly when the non-minority or male owner remains involved with the firm and continues to receive greater compensation than the minority or female owner;

(J) In order to be viewed as controlling a firm, a minority or female owner cannot engage in outside employment or other business interests that could conflict with the management of the firm or prevent them from devoting sufficient time and attention to the affairs of the firm to control its daily activities. For example, absentee ownership of a firm and part-time work in a full-time firm are viewed as not exercising effective daily control over the firm;

(K) Minority or women owners may control a firm even though one (1) or more of the individual's immediate family members (who themselves are not minorities or women) participate in the firm as a manager, employee, owner, or in some other capacity. OEO will consider how much control the minority or women owners exercise as compared to other persons involved in the business, without regard to whether those other persons are immediate family members;

(L) If OEO cannot determine that the minority or woman owner versus the family as a whole actually controls the firm, then the minority or female owners have failed to meet their burden of proof concerning control, even though they may participate significantly in the firm's activities;

(M) If a firm was formerly owned and controlled by a non-minority or male who still remains involved in the firm, then the minority or women owners seeking certification must show that—

1. The transfer of ownership and/or control to the minority or women owners was not made solely to obtain certification; and

2. The minority or women owners actually control the management, policy, and daily operations of the firm, notwithstanding the continuing participation of a non-minority or male who formerly owned and/or controlled the firm;

(N) In determining whether a firm is actually controlled by its minority or women owners, OEO will consider whether the firm owns equipment necessary to perform its work. Lack of control by a minority or woman owner will not be found solely because a firm leases, rather than owns such equipment, if leasing equipment is a normal industry practice, and the lease is not with a contractor or other party that compromises the independence of the firm;

(O) Lack of control by a minority or woman owner will not be found solely because a firm leases employees so long as the minority or women owners maintain an employer-employee relationship with the leased employees and are responsible for hiring, firing, training, assigning, and otherwise controlling the leased

employees;

(P) A firm operating under a franchise or license agreement may be controlled by a minority or woman even though the franchise or license arrangement imposes restraints relating to standardized quality, advertising, accounting format, and the like, so long as the firm has the right to profit from its efforts, bears the risk of loss commensurate with ownership, and meets all other requirements of section 37.020, RSMo, and these regulations. Factors that indicate a lack of control by the minority or woman owner include common management or excessive restrictions on the sale or transfer of the franchise interest or license;

(Q) In order for a partnership to be deemed controlled by a minority or a woman, any non-minority or male partners must be incapable of, without the specific written authorization of the minority or female partners, contractually binding the partnership. A written partnership agreement is necessary to establish both ownership and control.

(16) An applicant that is not owned by minorities or women, but is instead owned by another firm, even though that firm is a certified M/WBE, is ineligible to be certified as an M/WBE except as provided below.

If the minority or women owners own and control the applicant firm through a parent or holding company, established for tax, capitalization, or other purposes consistent with industry practices, and the parent or holding company, in turn, owns and controls an operating subsidiary, OEO may certify the subsidiary if it otherwise meets all requirements of these regulations. In this situation, the individual owners and operators of the parent or holding company are deemed to control the subsidiary through the parent or holding company.

OEO may certify such a subsidiary as an M/WBE if and only if the subsidiary is fifty-one percent (51%) cumulatively owned by a minority or a woman. The following examples illustrate how the provision for cumulative ownership works:

Example 1: A minority or a woman owns one hundred percent (100%) of a holding company which in turn has a wholly-owned subsidiary. The subsidiary may be certified as an M/WBE, if it meets all other requirements of these regulations.

Example 2: A minority or woman owns one hundred percent (100%) of a holding company which, in turn, owns fifty-one per cent (51%) of a subsidiary. The subsidiary may be certified, if it meets all other requirements of these regulations.

Example 3: A minority or woman owns eighty percent (80%) of a holding company which in turn, owns seventy percent (70%) of a subsidiary. In this case, the cumulative ownership of the subsidiary by a minority or a woman is fifty-six percent (80% of 70%=56%). This is more than the fifty-one percent (51%) threshold, so it may be certified as an M/WBE, if it meets all other requirements of these regulations.

Example 4: A minority or a woman owns sixty percent (60%) of the holding company, which, in turn, owns fifty-one percent (51%) of a subsidiary. In this case, the cumulative ownership would be thirty-one percent (60% of 51%=31%). This is less than the required fifty-one (51%) threshold, so it cannot be certified as an M/WBE.

Example 5: Someone other than the minority or women owners of the parent or holding company controls the subsidiary. Even though the subsidiary is owned by minorities or women, through the holding or parent company, it cannot be certified as an M/WBE because it does not meet the control requirement.

(17) Joint Venture. As required by section 37.020.1(3)(b), RSMo, in order to qualify for joint venture certification, at least fifty-one percent (51%) of the ownership interest in the joint venture must be held by minorities, and the management and daily business operations of the joint venture must be controlled by one (1) or more of the minorities who own it. OEO may require a joint venture applicant to submit documentation including but not limited to a copy of the joint venture agreement and a copy of the certification issued to the M/WBE participant in the joint venture. Any changes proposed in the joint venture agreement must be filed with and approved by OEO prior to the implementation of the changes in order to maintain certification. Failure to comply may result in revocation of the joint venture certification.

AUTHORITY: section 37.023, RSMo 2000. This rule originally filed as 1 CSR 40-1.080. Original rule filed Oct. 20, 1997, effective May 30, 1998. Amended: Filed March 24, 2000, effective Oct. 30, 2000. Amended: Filed June 1, 2011.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Commissioner of the Office of Administration, PO Box 809, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 1—OFFICE OF ADMINISTRATION
Division 10—Commissioner of Administration
Chapter 17—Office of Equal Opportunity

PROPOSED AMENDMENT

1 CSR 10-17.050 Minority *[/] and* **Women's Business Enterprise Participation in Procurement Process**. The commissioner is amending the purpose and sections (1)–(9) and adding a new section (7).

PURPOSE: This amendment updates the purpose statement, updates terminology, and expands collaborative practices throughout the rule to facilitate the utilization of Minority Business Enterprises (MBEs) and Women's Business Enterprises in the state procurement process consistent with Executive Order 10-24.

PURPOSE: This rule establishes a program to encourage and facilitate the [growth and development] ***utilization*** *of Minority Business Enterprises (MBEs) and Women's Business Enterprises (WBEs)* ***(collectively, M/WBEs)*** *by assuring that they have the maximum opportunity to participate in procurements financed in whole or in part with state funds.*

(1) The Office of Equal Opportunity (OEO) will provide assistance to Minority *[Business Enterprises/]* **and** Women**'s** Business Enterprises *[(MBE/WBEs)]* **(M/WBEs)**. *[Services]* **Assistance** provided may include but *[are]* **is** not *[necessarily]* limited to: workshops, bid history and pricing abstracts, minority vendor registration, *[exposure]* **access** to state agency*['s]* procurement staff *[and contracting opportunities MBE/WBE]*, **inclusion in the M/WBE online** directory**,** and *[newsletter]* **notification of bid opportunities** to promote increased participation.

(2) **By collaborating with the Divisions of Purchasing and Materials Management (DPMM) and Facilities Management, Design and Construction (FMDC) within the Office of Administration,** *[The]* OEO will encourage participation in the procurement process and fairness in consideration of bids*[/]* **and** proposals submitted by *[MBE/WBEs]* **M/WBEs**. Programs*[/]* **and** procedures designed by

[the] OEO to accomplish these objectives may include: providing diversity training for state procurement personnel*[,]***;** identifying minority and women personnel to serve on evaluation committees*[,]***;** closely reviewing the requirements for bonding*[,]***;** *[notification]* **notifying M/WBEs** of procurement opportunities*[, etc.]* **online; referring M/WBEs to agencies that may provide specialized training or assist with financing and bonding issues; and actively collaborating with executive branch agencies.**

(3) *[The]* OEO will compile*[,]* **and** maintain *[and make available]* a directory of *[MBE/WBEs]* **certified M/WBEs**. The directory *[shall be available, upon request, to all bidders and contractors]* **will include contact information for M/WBEs and information regarding the products and services they offer**. The directory *[shall specify the name of the MBE/WBE, the commodities or services it provides, its address, phone number and contact person]* **will be available online to bidders, contractors, and the public**.

(4) *[The]* OEO will establish *[MBE/WBE]* **M/WBE** participation goals and programs in accordance with section 37.020, RSMo*[,]***;** any successor or similar statutes*[, or]***;** executive orders based upon a study to determine the availability of qualified *[MBE/WBEs]* **M/WBEs;** and any other pertinent information. *[MBE/WBE]* **OEO will periodically review M/WBE** participation goals and programs *[shall be reviewed periodically to ascertain the need for continuance or revision of existing programs or the implementation of new programs]* **to determine whether existing programs should be continued or revised and whether new programs should be implemented.**

(5) *[The]* **By collaborating with DPMM, FMDC, and executive branch agencies,** OEO may recommend *[MBE/WBE]* **M/WBE** subcontracting goals **to the agencies**. *[The]* **To assist in achievement of those goals,** OEO may **also** recommend *[those types of]* **to agencies** solicitations in which *[MBE/WBE]* **M/WBE** subcontracting requirements may be appropriate**; recommend that qualified M/WBEs be included on solicitation lists; and, when feasible, recommend structuring contracts to maximize potential M/WBE participation**.

(6) The following expenditures may be counted toward meeting established *[MBE/WBE]* **M/WBE** goals **in a contract financed in whole or in part with state funds**:

(A) The total dollar value of a contract awarded to an *[MBE/WBE]* **M/WBE**;

(B) The total dollars paid by a prime contractor to an *[MBE/WBE]* **M/WBE** for supplies and materials provided to the state in fulfillment of the contract;

[(C) The total dollar value of work subcontracted to an MBE/WBE by a prime contractor;]

*[(D)]***(C)** That portion of the total dollar value subcontracted to a certified joint venture by a prime*[-]* contractor equal to the percentage of the ownership and control of the *[MBE/WBE]* **M/WBE** partner in the joint venture; and

*[(E)]***(D)** Only expenditures to *[MBE/WBEs]* **M/WBEs** that perform a commercially useful function related to the delivery of the supplies required by the contract.

(7) The total dollar value of a purchase procured from an M/WBE may be counted toward meeting established M/WBE goals in procurements under twenty-five thousand dollars ($25,000) financed in whole or in part with state funds.

*[(7)]***(8)** After the contract is established, *[the]* OEO may monitor the activity of the contractor to assure compliance with the *[MBE/WBE]* **M/WBE** utilization stipulated in *[their]* **the** contract.

*[(8)]***(9)** Contractors that fail to comply with the *[MBE/WBE]* **M/WBE** utilization stipulated in their contract**s***[,]* may be considered *[to be]* in breach of contract and may be subject to *[such]* **the** remedies *[as stipulated]* in the contract and as otherwise allowable by law.

*[(9)]***(10)** *[The]* OEO shall maintain statistics and issue periodic reports about *[MBE/WBE]* **M/WBE** participation.

AUTHORITY: sections 34.050[, RSMo Supp. 1999] and 37.020, RSMo [1994] 2000. This rule originally filed as 1 CSR 40-1.070. Original rule filed Oct. 20, 1997, effective May 30, 1998. Amended: Filed March 24, 2000, effective Oct. 30, 2000. Amended: Filed June 1, 2011.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Commissioner of the Office of Administration, PO Box 809, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

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

PROPOSED AMENDMENT

1 CSR 30-5.010 Minority/Women Business Enterprise ***and Service Disabled Veteran Business Enterprise*** **Participation in State Construction Contracts**. The commissioner is amending the rule title and sections (1) and (4)–(10).

PURPOSE: This amendment updates terminology consistent with Executive Order 10-24 and adds definitions and references for "service-disabled veteran" and "service-disabled veteran business enterprise" to implement the provisions of SCS HCS HBs 1524 and 2260 (2010) throughout the rule.

(1) Definitions.

(J) "Minority**.**" *[means—*

1. "Black Americans," which includes persons having origins in any of the black racial groups of Africa;

2. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin regardless of race;

3. "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts or Native Hawaiians;

4. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific or the Northern Marianas; or

5. "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan or Bangladesh.] **The definition in 1 CSR 10-17.010(1)(G) will be applied.**

(K) "Minority Business Enterprise**.**" *[means a business concern which is at least fifty-one percent (51%) owned by one (1) or more minorities as defined in (1)(J) or in the case of*

any publicly-owned business at least fifty-one percent (51%) of the stock of which is owned by one (1) or more minorities as defined in (1)(J) and whose management and daily business operations are controlled by one (1) or more minorities as defined in the rule.] **The definition in section 37.020.1(3), RSMo, will be applied.**

(N) "Service-disabled veteran" means any individual who is disabled as certified by appropriate federal agency responsible for the administration of veterans' affairs.

(O) Service-disabled veteran business enterprise (SDVE). The definition contained in section 34.074 RSMo, will be applied.

*[(N)]***(P)** "St. Louis metropolitan area" means the City of St. Louis and the Missouri counties of St. Charles and St. Louis.

*[(O)]***(Q)** "WBE" means Women Business Enterprise.

*[(P)]***(R)** "Women Business Enterprise" means a business concern which is at least fifty-one percent (51%) owned by one (1) or more women or in the case of any publicly-owned business at least fifty-one percent (51%) of the stock of which is owned by one (1) or more women and whose management and daily business operations are controlled by one (1) or more women.

[(Q) "OSWD" means Office of Supplier and Workforce Diversity.]

(S) "OEO" means the Office of Equal Opportunity.

*[(R)]***(T)** "FMDC" means Division of Facilities Management, Design and Construction.

(4) Commissioner, Duties**,** and Responsibilities.

(A) The commissioner shall, through the Office of *[Supplier and Workforce Diversity]* **Equal Opportunity (OEO) for MBE/WBEs and through the Division of Facilities Management, Design and Construction (FMDC) for SDVEs**—

1. Compile, maintain**,** and make available a directory of MBE/WBE **and SDVE** vendors along with their capabilities relevant to construction contracting requirements in general and to particular solicitations. *[The commissioner]* **OEO or FMDC** shall make the directory available, upon request, to all bidders and contractors. The directory shall specify the name of the MBE/WBE **or SDVE**, the type of business it conducts, **and** its address, phone number**,** and contact person;

2. To the extent deemed appropriate, include all MBE/WBEs **and SDVEs** on open solicitation mailing lists;

3. *[Instruct the director and the Office of Supplier and Workforce Diversity to a]***A**nnually report in writing to the commissioner concerning the awarding of contracts to MBE/WBEs **or SDVEs**; and

4. Certify the eligibility of MBE/WBEs and joint ventures involving MBE/WBEs*[. The OSWD may accept and review certifications made by other municipalities, counties, state and federal agencies which meet the requirements of the Office of Administration certification program]* **and maintain listings of SDVEs**.

(5) Percentage Goals and Compliance.

(A) For contracts bid and awarded in an amount greater than or equal to one hundred thousand dollars ($100,000), the successful bidder shall have as overall goals subcontracting not less than ten percent (10%) of the awarded contract price for work to be performed by MBEs, and shall have as overall goals subcontracting not less than five percent (5%) of the awarded contract price for work to be performed by WBEs**, and shall have as overall goals of subcontracting not less than three percent (3%) of the work to be performed by SDVEs**. Individual project goals may be set to higher than the overall goals where availability of MBE/WBEs has been demonstrated to be higher**,** such as the St. Louis and Kansas City metropolitan areas. Individual project goals may be set lower than the overall goals in areas where availability of MBE/WBEs has been demonstrated to be lower, such as rural communities.

(B) If after the contract has been awarded to the contractor, the contractor fails to meet or maintain the contracted participation amount(s), the contractor must satisfactorily explain to the director why the participation amount(s) cannot be achieved and why meeting the participation amount(s) was beyond the contractor's control.

1. It is the responsibility of the contractor to submit documentation that supports the utilization of MBE/WBE **subcontractors to OEO and the utilization of SDVE** subcontractors to FMDC on a regular basis, with the understanding that the amounts submitted might be verified by *[OSWD]* **OEO or FMDC** staff**.** *[and if]* **If** upon verification it is found that the amounts disagree, then the contractor must satisfactorily explain to the directors of FMDC *[and OSWD]* **or OEO** the reason for the discrepancies.

(6) Waiver.

(A) A bidder is required to make a good faith effort to locate and contract with MBE/WBEs **and SDVEs**. If a bidder has made a good faith effort to secure the required MBE/WBEs **and SDVEs** and has failed, the bidder may submit with their bid proposal the information requested on forms provided with the bid documents. The director will review the bidder's actions as set forth in the bidder's submittal documents and other factors deemed relevant by the director, to determine if a good faith effort has been made to meet the applicable percentage goal. If the bidder is judged not to have made a good faith effort, the bid shall be rejected.

(B) Bidders who demonstrate that they have made a good faith effort to include MBE/WBE **and SDVE** participation will be awarded the contract regardless of the percent of MBE/WBE **and SDVE** participation, provided the bid is otherwise acceptable.

(C) In reaching a determination of good faith, the director may evaluate, but is not limited to, the following factors:

1. The bidder's efforts to develop and sustain a working relationship with MBE/WBEs **and SDVEs**;

2. The bidder's efforts and methods to provide MBE/WBEs **and SDVEs** with full sets of plans and specifications or appropriate sections thereof sufficient to prepare a proposal to the bidder;

3. The bidder's efforts and methods to find and inform multiple local MBE/WBEs **and SDVEs** about the proposed work in a timely manner and define for them the specific scope of work for which a proposal is requested;

4. The bidder's efforts to make initial contact with at least three (3) MBE/WBEs **and SDVEs** for each category of work to be performed, follow*[-]* up with those contacted**,** and receive a proposal for those categories of work;

5. Reasons for rejecting MBE/WBEs **and SDVEs** proposal;

6. The extent to which the bidder divided work into projects suitable for subcontracting to MBE/WBEs **and SDVEs**;

7. The bidder's ability to provide sufficient evidence in the form of documentation that supports the information provided; and

8. Actual participation of MBE/WBEs **and SDVEs** achieved by the bidder.

(7) Bidder's Duties and Responsibilities.

(A) The bidder shall submit with their bid proposal the information requested on the form provided for every MBE/WBE **and SDVE** the bidder intends to use on the contract work.

(B) If the MBE/WBE **and SDVE** is a joint venture, and one (1) or more parties of the joint venture is not certified **or listed** as a MBE/WBE **and SDVE**, the bidder shall submit with their bid proposal the information requested on the form provided.

(C) The bidder shall use MBE/WBEs certified or approved by *[the Office of Supplier and Workforce Diversity]* **OEO or listed SDVEs**. Certified MBE/WBE vendors can be found at the *[OSWD]* **OEO** website **and listed SDVE vendors can be found on the websites for the Division of Purchasing and Material Management and FMDC**.

(D) For construction projects bid by FMDC, MBE/WBEs certified by other municipalities, counties, **and** state and federal agencies

that meet the basic requirements of the OA/*[OSWD]***OEO** certification program may be used and counted toward achieving the goals, provided that the names and certifications of these MBE/WBEs are referred to *[the OSWD]* **OEO** for subsequent follow-up and certification by *[OSWD]* **OEO**.

(E) If a**n** MBE/WBE **or SDVE** is replaced during the course of the contract, the contractor shall make a good faith effort to replace it with another certified MBE/WBE **or SDVE**. All substitutions shall be approved by the director.

(F) Successful bidders shall provide the director monthly reports on the bidder's progress in meeting its MBE/WBE **and SDVE** obligations.

(8) Counting MBE/WBE **and SDVE** Participation Toward Meeting MBE/WBE **and SDVE** Goals.

(A) The total dollar value of the work granted to the MBE/WBE **and SDVE** by the successful bidder is counted towards the applicable goal of the entire contract.

(B) A bidder may count towards their MBE/WBE **and SDVE** goals that portion of the total dollar value granted to a certified joint venture equal to the percentage of the ownership and control of the MBE/WBE **and SDVE** partner in the joint venture.

(C) A bidder may count toward their MBE/WBE **and SDVE** goals only expenditures to certified MBE/WBE **and listed SDVE** vendors that perform a commercially useful function in the work of a contract.

1. A**n** MBE/WBE **and SDVE** vendor is considered to perform a commercially useful function when it is responsible for executing a distinct element of the work contract and carrying out its responsibilities by actually performing, managing**,** and supervising the work involved. To determine whether a**n** MBE/WBE **or SDVE** vendor is performing a commercially useful function, the director shall evaluate the amount of work subcontracted by the MBE/WBE **and SDVE**, industry practices**,** and any other relevant factors.

2. A**n** MBE/WBE **and SDVE** vendor may subcontract a portion of the work. If a**n** MBE/WBE **and SDVE** subcontracts a greater portion of the work than would be expected on the basis of normal industry practices, the MBE/WBE **and SDVE** shall be presumed not to be performing a commercially useful function. The MBE/WBE **and SDVE** vendor may present evidence to rebut this presumption to the bidder. The bidder's decision on the rebuttal of this presumption is subject to review by the director.

(D) A bidder may count toward their MBE/WBE **and SDVE** goals only that portion of work performed at the lowest subcontract level such that the percentage of work performed by MBE/WBEs **and SDVEs** cannot exceed one hundred percent (100%).

(E) A bidder may count toward its MBE/WBE **and SDVE** goals expenditures for materials and supplies obtained from certified MBE/WBE **and listed SDVE** suppliers and manufacturers provided that the MBE/WBE **and SDVE** vendor assumes the actual and contractual responsibility for the provision of the materials and supplies.

1. The bidder may count its entire expenditure to a**n** MBE/WBE **or SDVE** manufacturer. For the purposes of this regulation, a manufacturer shall be defined as an individual or firm that produces goods from raw materials or substantially alters them before resale and is **a** certified **MBE/WBE** *[or]* approved through the state of Missouri certification program administered by *[OSWD]* **OEO or listed as an SDVE with the Division of Purchasing and Surplus Management or FMDC**.

2. The bidder may count its entire expenditures to MBE/WBE **or SDVE** suppliers provided that the MBE/WBE **or SDVE** supplier performs a commercially useful function, as defined in paragraph (8)(C)1. of this rule, in the supply process.

(9) Maintenance of Records and Reports. The director shall maintain records identifying and assessing the contractor's progress in achieving and maintaining MBE/WBE **and SDVE** percentage goals. These records shall show—

(B) The amount and nature of awards made by the contractor to MBE/WBE **and SDVE** vendors/suppliers/manufacturers; and

(C) Monthly reports from the contractor on its progress in meeting MBE/WBE **and SDVE** goals.

(10) Certification of MBE/WBE *[v]***V**endors.

(A) *[OSWD]* **OEO**, which was created under Executive Order**s** 05-30 **and 10-24**, is responsible for the certification of MBE/WBE vendors for the state of Missouri by following state regulation 1 CSR 10-17.040.

AUTHORITY: section 8.320, RSMo 2000. Original rule filed March 9, 1984, effective Aug. 11, 1984. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed June 1, 2011.*

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Commissioner of the Office of Administration, PO Box 809, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 1—OFFICE OF ADMINISTRATION
Division 30—Division of Facilities Management, Design and Construction
Chapter 7—Drug and Alcohol Testing Program Contractual Requirement

PROPOSED RULE

1 CSR 30-7.010 Drug and Alcohol Testing Program Requirements

PURPOSE: This rule sets forth the basis and legal requirements, contractual requirements, testing requirements, substance abuse testing protocols, threshold limits, consequences of refusal to submit to testing/confirmed positive results, reinstatement procedures, and compliance determination for a drug and alcohol program pursuant to section 161.371, RSMo Supp. 2010.

(1) Basis and Legal Requirements. In an effort to create safe and healthy schools and workplaces, the state of Missouri requires that contractors and subcontractors shall maintain and enforce a written substance abuse testing program for public works construction projects on public and charter elementary and secondary education construction projects that are subject to the control of the state of Missouri. This policy is not intended to be a substitute for the contractor's or subcontractor's complete written substance abuse policy. These requirements shall be the minimum requirements for complying with section 161.371, RSMo, and may be supplemented at the discretion of the contractor or subcontractor.

The state of Missouri has a vital interest in protecting the safety of students and maintaining safe, healthful, and efficient working conditions for both the state's and its contractors' and subcontractors' employees; and has determined that the educational and work environment is safer and more productive without the presence of illegal or inappropriate drugs, alcohol, or other substances in the body or on state property on which any state elementary or secondary school is located or being constructed or improved.

The use of illegal drugs, on or off duty, is inconsistent with law-abiding behavior expected of all persons. The use of illegal drugs, or

abuse of alcohol or prescription drugs, may impair the ability of employees to perform tasks that are critical to proper work performance. The result is an increase in accidents and failures that pose a serious threat to the safety of all students, employees, visitors, and the general public. Impaired employees also tend to be less productive, less reliable, and prone to greater absenteeism, resulting in the potential for increased cost and delays in the timely completion of contracts.

(2) Contractual Requirements.

(A) Each contract entered into for the performance of work on any public and charter elementary and secondary education construction project subject to the control of the state of Missouri shall require that each contractor or subcontractor have in place a drug and alcohol testing program consistent with this rule. These contractual requirements shall apply to contractor and subcontractor employees on public and charter elementary and secondary education construction projects that are subject to the control of the state of Missouri, including workers, new hires, replacements, and supervisory personnel. The contractor and all subcontractors shall comply with this contractual requirement. The state of Missouri shall determine, in its sole discretion, when this contractual requirement shall be applicable; in such instances, any bid submitted in response to a request for proposal shall comply with this contractual requirement.

(B) In order to be eligible to perform work on public and charter elementary and secondary education construction projects that are subject to the control by the state of Missouri, a contractor must have and enforce a written drug and alcohol testing program incorporating the following testing requirements, terms and conditions applicable to all its employees, prospective employees, and subcontractors. No employee or prospective employee of a contractor or subcontractor shall be permitted to work on public and charter elementary and secondary education construction projects that are subject to this rule unless such employee submits to testing as required by the contractual requirement required by this rule.

(C) Each contractor and each subcontractor subject to this rule shall train its supervisory employees in methods that will allow them to recognize the signs and symptoms of substance abuse and to take action provided by this contractual requirement in a manner consistent with generally accepted safety training procedures.

(D) Each contractor and each subcontractor subject to this rule is responsible for the cost of developing, implementing, and enforcing its drug and alcohol testing program, including the cost of drug and alcohol testing of its employees provided by the contractual requirement required by this rule.

(E) The contractor shall furnish a copy of its drug and alcohol testing program and certify that it and its subcontractors are in compliance with the provisions of this rule to the state of Missouri at the time it submits a bid for any contract with the state of Missouri for work on public and charter elementary and secondary education construction projects that are subject to the control of the state of Missouri. Additionally, each subcontractor shall furnish a copy of its substance abuse testing program to the contractor prior to commencement of work on public and charter elementary and secondary education construction projects that are subject to this contractual requirement. The contractor may reject a subcontractor's program as noncompliant with the contractual requirement required by this rule.

(3) Testing Requirements.

(A) Pre-Engagement Testing. Testing for all substances other than alcohol as described in this rule shall be conducted by each contractor and subcontractor for its employees or prospective employees within one hundred twenty (120) days prior to any employee's appearance on a public and charter elementary and secondary education construction project that is subject to this contractual requirement. Contractors' or subcontractors' employees that can provide certification of a previous drug test occurring within one hundred twenty (120) days or employees that have been subject during the preceding consecutive two (2) years to a random and periodic selection program that meets the standards as set forth in this rule and, if the employee actually has been tested, that indicates a negative result for each of the substances listed herein, may be exempted from pre-engagement testing provided by this rule. If the employee was not employed by the contractor or subcontractor that is his or her current employer at the time of the previous test, the employee may be exempted from pre-engagement testing only upon certification of the non-negative test directly from the administrator of the testing program that conducted the previous test.

(B) Random Testing. All employees of the contractor and subcontractor shall be subject to random testing by the contractor or subcontractor. For employees holding a commercial driver's license, the annualized drug and alcohol testing rate shall comply with 49 CFR Part 382, as may be amended from time-to-time, and similar applicable regulations of the Federal Highway Administration. All other employees of the contractor or subcontractor shall be subject to testing for all substances other than alcohol at the random annualized selection rate of fifty percent (50%) of the contractor's or subcontractor's employees. Employees selected for random testing shall report in a timely manner to the drug and alcohol testing laboratory or collection site where directed for drug and/or alcohol testing.

(C) Periodic Testing. All employees working on public and charter elementary and secondary education construction projects that are subject to this rule shall be subject to periodic and random testing for all substances other than alcohol on at least a biannual basis. Employees subject to periodic testing shall report in a timely manner as directed to the drug and alcohol testing laboratory or collection site for drug testing.

(D) Reasonable Suspicion Testing. All employees of the contractor and each subcontractor on public and charter elementary and secondary education construction projects that are subject to this rule shall be subject to a drug and alcohol test when an employee is acting in an abnormal manner that leads a supervisory employee of the contractor or subcontractor to have reasonable suspicion that the employee is under the influence of alcohol or controlled substances. Reasonable suspicion means suspicion based on specific personal observations by the supervisory employee concerning the appearance, behavior, speech, or breath odor of the employee.

(E) Post-Accident/Incident Testing. All employees of contractors and subcontractors on public and charter elementary and secondary education construction projects that are subject to this rule shall be subject to a drug and alcohol test following an on-the-job injury requiring medical treatment or following a serious or potentially serious incident, including near misses, during which safety precautions were violated; persons were or could have been injured; unsafe instructions or orders were given; vehicles, equipment, or property was damaged; careless acts were performed; or when prescribed personal protective or safety equipment was not worn. Employees involved or that may have contributed to the incident shall be subject to a drug and alcohol test. If it is impossible or impractical, because of the physical condition of the person involved in the accident to be subjected to drug and alcohol testing, and if in subsequent medical treatment that person's blood or other bodily fluid will be drawn, then that blood or other bodily fluids may be analyzed for drugs and alcohol.

(4) Substance Abuse Testing Protocol.

(A) A contractor or subcontractor subject to the provisions of this rule shall perform pre-engagement, random, periodic, reasonable suspicion, and post accident/incident testing in the following manner:

1. Drug Testing—

A. All urine samples collected under this program shall be analyzed by a laboratory certified by the National Institute on Drug Abuse/Substance Abuse and Mental Health Service Administration of the U.S. Department of Health and Human Services and shall include an initial Enzyme Multiplied Immunoassay Screening Test (EMIT) and, when necessary, confirmed by a Gas Chromatography

/Mass Spectrometry (GC/MS) confirmation test. All samples confirmed by the laboratory as non-negative shall be interpreted as positive or negative by a Medical Review Officer licensed by the American Association of Medical Review Officers, American College of Occupational and Environmental Medicine, Medical Review Officer Certification Council, or American Society of Addiction Medicine;

2. Alcohol Testing—

A. The initial screening tests for alcohol shall be performed by using either a saliva test or a Department of Transportation (DOT) approved breathalyzer; and

B. Alcohol confirmatory tests shall be performed by either a blood alcohol test or a DOT approved breathalyzer.

(B) Testing for the presence of drugs or alcohol in an employee's system and the handling of test specimens shall be conducted in accordance with guidelines for laboratory testing procedures and chain-of-custody procedures established by the Substance Abuse and Mental Health Service Administration of the U.S. Department of Health and Human Services.

(C) The program shall require notification to the employer and employee of the results of any non-negative drug and alcohol test and the Division of Facilities Management, Design and Construction shall be notified of the action taken to protect the safety of students as a result of such positive test, provided that no requirement of individual confidentiality of test results provided by federal law or regulation or state statute shall be violated in providing such notifications.

(5) Threshold Limits. All samples collected shall be analyzed by a laboratory certified by the Substance Abuse and Mental Health Service Administration of the U.S. Department of Health and Human Services and shall include an initial Enzyme Multiplied Immunoassy Screening Test (EMIT) and, when necessary, confirmed by a Gas Chromatography/Mass Spectrometry (GC/MS) Confirmation Test. Said testing must screen, at a minimum, for the substances and levels of such substances provided by 49 CFR Part 40 and for alcohol as provided by 49 CFR Part 382, as may be amended from time-to-time. The levels that shall be deemed to result in a negative test result shall be defined by 49 CFR Part 40 and 49 CFR Part 382, as may be amended from time-to-time; provided that if such regulations shall no longer define substances and testing levels in the future, testing as required by this rule shall screen for the following substances that shall not exceed the following levels in order to be deemed a negative test result:

	(EMIT) Confirmed Initial Level (ng/ml)	(GC/MS) Confirmation Test Cut-Off Level (ng/ml)
Drugs tested:		
Amphetamines (*See Note below)	500	250
Barbiturates	300	200
Benzodiazepines	300	200
Cocaine Metabolite	150	100
Cannabinoids (Marijuana THC)	50	15
Methadone	300	200
Opiates:		
Codeine/Morphine	2000	2000
Heroine Metabolite	10	10
Phencyclidine (PCP)	25	25
Propoxphene	300	200
Breath/Blood Alcohol Content (BAC)	.04%	.04%
Removal from jobsite	.0200–.0399%	.0200%–.0399%

*Note—includes Amphetamines, Methamphetamines, and Ecstasy (MDMA).

(6) Refusal to Submit to Testing/Confirmed Positive Results.

(A) Any employee of a contractor or subcontractor performing any duties or work that are subject to this rule who refuses to submit to testing or receives a confirmed positive test result for any of the substances indicated in section (5) shall be required to immediately leave the construction site and be prohibited from returning to any construction site subject to control of the state of Missouri until evidence is provided of the completion of the reinstatement procedures as set forth in section (7).

(B) Determination for Violation of Policy.

1. A confirmed positive drug or alcohol test.
2. Failure to contact the Medical Review Officer as directed.
3. Failure to report as directed for random testing.
4. The use, possession, sale, or distribution of alcohol or a controlled illegal or unauthorized substance, or the presence of any employee with such ingested substances for non-medical reasons on a public and charter elementary and secondary education construction project subject to the control of the state of Missouri.
5. Working, reporting to work, being on a public and charter elementary and secondary education construction project that is subject to the control of the state of Missouri, or in a state or employer owned, leased, or rented vehicle, while under the influence of alcohol (0.04% BAC or greater).
6. Switching, adulterating, or attempting to tamper with any sample submitted for drug or alcohol testing or otherwise interfering or attempting to interfere with the testing process.
7. Refusal to submit a specimen for testing shall be deemed to be a positive test result and shall be subject to the same consequences as specimens tested and confirmed as positive.
8. The use of a controlled substance by an individual other than the individual for whom the controlled substance was prescribed or the abuse of a controlled substance by the individual for whom it was prescribed.

(7) Reinstatement Procedures. An employee receiving a confirmed positive test result for any of the substances indicated in section (5) may return to work on a public and charter elementary and secondary education construction project that is subject to the control of the state of Missouri only after the following conditions have been satisfied:

(A) Evidence is submitted to the contractor or subcontractor that the employee has completed or is actively participating in an approved drug/alcohol assessment, treatment, and/or counseling program. The costs of this assessment, treatment, or program need not be borne by the contractor or subcontractor;

(B) Evidence is submitted of the employee passing a drug and alcohol test that meets the requirements of sections (4) and (5) of this rule. The costs of this subsequent retesting need not be borne by the contractor or subcontractor;

(C) The employee shall be subject to additional random drug and alcohol testing on a monthly basis while on any public and charter elementary and secondary education construction project that is subject to the control of the state of Missouri. The costs of this additional testing, treatment, or program need not be borne by the contractor or subcontractor; and

(D) An employee known by the contractor or subcontractor to have previously had a positive test result who receives a second or subsequent confirmed positive test result in connection with subsequent testing required by this section (7) of this rule shall be removed by the contractor or subcontractor from all public and charter elementary and secondary education construction projects that are subject to the control of the state of Missouri. The employee shall not return to work on any public and charter elementary and secondary education construction project subject to this rule until the employee has completed an approved drug/alcohol assessment, treatment, and/or counseling program and until after evidence is submitted of the employee passing a drug and alcohol test that meets the requirements of sections (4) and (5) of this rule and that indicates a blood alcohol concentration of less than 0.02 percent.

(8) Compliance Determination.

(A) The state of Missouri may audit any substance abuse testing program implemented pursuant to this contractual requirement to verify compliance, upon at least twenty-four (24) hours' notice by the state to the contractor of its intent to audit. The state shall have free access to all relevant records of the contractor and its subcontractors for this purpose.

(B) Any portion of this program that is in violation of applicable federal or state law or regulation shall be deemed unenforceable.

AUTHORITY: section 161.371, RSMo Supp. 2010. Original rule filed June 1, 2011.

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

PRIVATE COST: This proposed rule will cost private entities thirty-five thousand dollars to fifty-five thousand dollars ($35,000–$55,000) per year over the life of the rule in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with Commissioner of the Office of Administration, PO Box 809, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

FISCAL NOTE
PRIVATE COST

I. **Department Title:** 1 - OFFICE OF ADMINISTRATION
Division Title: 30 - Division of Facilities Management, Design and Construction
Chapter Title: 7 - Drug & Alcohol Testing Program Contractual Requirement

Rule Number and Title:	1 CSR 30-7.010 Drug & Alcohol Testing Program Requirements
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
The number will vary based upon the volume of state contracting for construction on state-owned schools	Contractors and subcontractors on school construction projects	$35,000-$55,000 per year over the life of the rule

III. WORKSHEET

IV. ASSUMPTIONS

Based on discussions with affected groups of contractors and subcontractors, expected annual cost to private entities is $35,000-55,000, based on the cost of individual tests (approximately $55 per test) multiplied by a factor relating to the current volume of state contracting for construction on state-owned schools.

Title 1—OFFICE OF ADMINISTRATION
Division 40—Purchasing and Materials Management
Chapter 1—Procurement

PROPOSED AMENDMENT

1 CSR 40-1.030 Definitions. The commissioner is amending subsections (1)(A), (1)(G), (1)(H), (1)(K), (1)(N), and (1)(O), adding two new subsections (1)(L) and (1)(M), and renumbering subsections as needed.

PURPOSE: This amendment adds definitions for "service-disabled veteran" and "service-disabled veteran business enterprise" to implement the provisions of SCS HCS HBs 1524 and 2260 (2010).

(1) As used in this chapter unless the content clearly indicates otherwise, the following terms shall mean:

(A) Bid/proposal security. A financial guarantee that the bidder/**offeror**, if selected, will accept the contract as bid;

(G) Minority. The definition contained in *[section 33.750, RSMo is incorporated by reference]* **1 CSR 10-17.010(1)(G) will be applied**;

(H) Minority business enterprise (MBE). The definition *[contained]* in section 37.020**.1(3)**, RSMo**,** *[is incorporated by reference]* **will be applied**;

(K) Performance security. A financial guarantee that the successful bidder/**offeror** will complete the contract as agreed;

(L) Service-disabled veteran. The definition contained in section 37.074, RSMo, will be applied;

(M) Service-disabled veteran business enterprise (SDVE). The definition contained in section 34.074, RSMo, will be applied;

*[(L)]***(N)** Solicitation. The process of notifying prospective bidders that the state wishes to receive bids or proposals to provide supplies. The term includes request for proposal (RFP), request for quotation (RFQ), invitation for bid (IFB), single feasible source (SFS)**,** and any other appropriate procurement method;

*[(M)]***(O)** State. The state of Missouri;

*[(N)]***(P)** Suspension. An exclusion from contracting with the state for a temporary period of time; and

*[(O)]***(Q)** Women**'s** business enterprise *[or]* (WBE). The definition *[contained]* in section 37.020**.1(6)**, RSMo**,** *[is incorporated by reference]* **will be applied**.

*AUTHORITY: section 34.050, RSMo [Supp. 1999] **2000 and section 34.074, RSMo Supp. 2010**. Original rule filed Oct. 15, 1992, effective June 7, 1993. Rescinded and readopted: Filed Oct. 20, 1997, effective May 30, 1998. Amended: Filed March 24, 2000, effective Oct. 30, 2000. Amended: Filed June 1, 2011.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Commissioner of the Office of Administration, PO Box 809, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 1—OFFICE OF ADMINISTRATION
Division 40—Purchasing and Materials Management
Chapter 1—Procurement

PROPOSED AMENDMENT

1 CSR 40-1.050 Procedures for Solicitation, Receipt of Bids, and Award and Administration of Contracts. The commissioner is amending sections (2)–(4), (7), and (10), deleting section (9), renumbering section (10), and adding new sections (10)–(20).

PURPOSE: This amendment adds procedures to implement purchasing requirements enacted in CCS SCS HB 1868 and SCS HCS HBs 1524 and 2260 (2010) and clarify division practices.

(2) When the procurement is estimated to be twenty-five thousand dollars ($25,000) or more, a formal method of solicitation must be utilized. Formal competitive bidding may be accomplished by utilizing an Invitation for Bid (IFB). **Pursuant to section 34.047, RSMo, information technology purchases estimated not to exceed seventy-five thousand dollars ($75,000) may be completed under an informal process provided the procurement does not exceed twelve (12) months and it is posted on the division online bidding/vendor registration system website.**

(3) When the procurement requires the utilization of competitive negotiation, the formal Request for Proposal (RFP) solicitation method should be utilized.

(B) Formal proposals received after the time set for the opening of *[bids]* **proposals** shall be considered late and will not be opened.

(C) Under extraordinary circumstances, the director or designee*[,]* may authorize the opening of a late *[bid]* **proposal**. In such cases, the *[bid]* **proposal** must have been turned over to the physical control of an independent postal or courier service with promised delivery time prior to the time set for the opening of *[bid]* **proposal**. All such decisions are at the sole discretion of the director or designee. The following guidelines may be utilized to determine the criteria for an extraordinary circumstance:

1. State offices were closed due to inclement weather conditions;

2. Postal or courier services were delayed due to labor strikes or unforeseen "Acts of God"; **or**

3. Postal or courier service did not meet delivery time promised to the offeror. In such a case, the offeror must provide written proof that promised delivery time was prior to the time set for the opening of proposals.

(D) Proposals received in response to an RFP shall not be available for public review until after a contract is *[executed]* **awarded** or all proposals are rejected.

(4) When the supplies meet the criteria delineated in section 34.044, RSMo, the division may elect to utilize the Single Feasible Source procurement method. The following delineates additional guidelines and examples to determine satisfaction of the criteria:

(A) The following guidelines may be utilized to determine if supplies may be purchased as a single feasible source due to being proprietary:

1. The parts are required to maintain validity of a warranty;

2. Additions to a system must be compatible with original equipment;

3. Only one (1) type of computer software exists for a specific application; *[or]*

4. Factory authorized maintenance must be utilized in order to maintain validity of a warranty;

5. The materials are copyrighted and are only available from the publisher or a single distributor; *[and]*

[6. The services of a particular provider are unique, e.g. entertainers, authors, etc.;]

6. State or federal laws require supplies be provided by one (1) supply source; and

7. The following categories do not require a written determination or advertisement of single feasible source:

A. Services of visiting speakers, professors, and performing artists;

B. Works of art and historical items for museum and public display;

C. Published books, maps, periodicals, and technical pamphlets for libraries;

D. Regulated utility services;

E. Trial use or testing specific items for suitability; and

F. Print, electronic, broadcast, and/or other media advertising;

(B) If past procurement activity indicates that only one (1) bid has been submitted in a particular region, a single feasible source procurement may be authorized. In these situations the division will monitor the market for developing competition; *[and]*

(C) The following guidelines will be utilized to determine if supplies may be purchased as a single feasible source due to being available at a discount for a limited period of time:

1. The discounted price must be compared to a price established through a reasonable market analysis **(i.e., competitive solicitation for the same item under similar circumstances)**; and

2. The discounted price should normally be at least ten percent (10%) less than the current contract or other comparable price. A discount of less than ten percent (10%) may be acceptable under appropriate market conditions. The discount should be compared to a price which, where feasible, should be no more than twelve (12) months old*[.]***; and**

(D) A vendor shall notify the division if, in his or her opinion, there is another feasible source for the supplies. Such notification shall be received by the division within the advertising requirement stated in section 34.044, RSMo. A review of the notification shall be made by the division and its decision shall be final.

(7) Regardless of the solicitation method utilized, the following procedures shall apply:

(C) The division may require bid/proposal security and/or performance security.

1. The acceptable form and amount of the bid/proposal security shall be stipulated in the solicitation document.

2. The bid/proposal securities of unsuccessful *[vendors]* **bidders/offerors** may be returned after the finalization of the award. If the successful *[vendor]* **bidder/offeror** fails to accept the contract, the amount of the bid/proposal security may be forfeited to the state.

3. If a performance security is required, the bid/proposal security of the successful *[vendor]* **bidder/offeror** may be returned after the receipt of the performance security. The acceptable form and amount of the performance security will be stipulated in the solicitation document. If the contractor fails to submit the performance security as required, the bid/proposal security may be forfeited to the state and the contract shall be void;

(E) After the bid/proposal opening, a *[vendor]* **bidder/offeror** may be permitted to withdraw a bid/proposal prior to award at the sole discretion of the division if there is a verifiable error in the bid/proposal and enforcement of the bid would impose an unconscionable hardship on the *[vendor]* **bidder/offeror**. This withdrawal will be considered only after receipt of a written request and supporting documentation from the *[vendor]* **bidder/offeror**. Withdrawal shall be the *[vendor's]* **bidder/offeror's** sole remedy for an error other than an obvious clerical error. Withdrawal of a bid/proposal may result in forfeiture of the bid/proposal security;

(F) For bids/proposals with a value of twenty-five thousand dollars ($25,000) or more, bidders/offerors who can certify that goods or commodities to be provided in accordance with the contract are manufactured or produced in the United States or imported in accordance with a qualifying treaty, law, agreement, or regulation shall be entitled to a ten percent (10%) preference over *[bidders]* **a bidder/offeror** whose products do not qualify. Failure to provide a certification may result in forfeiture of any preference**. All solicitation responses for the purchase of supplies, except software, with an estimated value of twenty-five thousand dollars ($25,000) or more must include proof of compliance requirements as stated in the solicitation document. If the division has any questions regarding either the information submitted on the form or the lack of a submitted form by a bidder/offeror, the division may contact the bidder/offeror for clarification before completing the cost evaluation if under consideration for award. If the division determines that an American-made product is competing against a foreign-made product, the division shall multiply the cost of the foreign-made product by ten percent (10%) and add this amount to the actual cost of the bid/proposal to reflect the Buy American preference in the cost evaluation. The division shall consider any exceptions to the Buy American preference before awarding any contract**;

[(G) Bids/proposals submitted for products and services manufactured, produced or assembled in qualified nonprofit organizations for the blind or in sheltered workshops holding a certificate of approval from the Missouri Department of Elementary and Secondary Education shall be entitled to five (5) bonus points in addition to other points awarded during the evaluation process. Bidders should notify the division if the products or services included in the bid meet these qualifications for bonus points;]

*[(H)]***(G)** In addition to cost, subjective *[judgment]* **and any other criteria deemed in the best interest of the state** may be utilized in the evaluation of bids/proposals provided that the *[method is]* **criteria are** published in the solicitation document;

*[(I)]***(H)** The division may request samples for evaluation purposes. Any samples requested must be provided free of charge. Samples which are not destroyed by testing will be returned at the *[vendor's]* **bidder/offeror's** expense if return of the samples is stipulated in the *[vendor's]* **bidder/offeror's** bid/proposal. Samples submitted by a *[vendor]* **bidder/offeror** who receives the award may be kept for the duration of the contract for comparison with shipments received;

*[(J)]***(I)** During the course of a solicitation, *[vendors]* **bidders/offerors** may be required to demonstrate proposed products. Such demonstration shall be coordinated by the division;

*[(K)]***(J)** When bids are equal in all respects, any preferences shall be applied in accordance with applicable statute. If all such bidders or none qualify for the statutory preference, the contract shall be awarded by a formal drawing of lot. Whenever practical, the drawing will be held in the presence of the *[vendors]* **bidders/offerors** who are considered equal. If this is not practical, the drawing will be witnessed by a disinterested person;

*[(L)]***(K)** The division may make multiple awards from a single solicitation document when such awards are in the best interest of the state;

*[(M)]***(L)** After an award is made, the solicitation file or facsimile thereof shall be **imaged and** made available to the public for inspection *[at any time during regular working hours]* **via the Internet**;

*[(N)]***(M)** Neither a contractor nor a state agency shall assign any interest in a contract to another party without written permission from the division;

*[(O)]***(N)** Unless otherwise specified in the contract, substitution of items, personnel**,** or services shall require the approval of the division prior to shipment or performance; *[and]*

*[(P)]***(O)** Employees of the division, evaluators, and any other persons involved in procurement decisions shall not accept for personal benefit gifts, meals, trips**,** or any other thing of significant value or of a monetary advantage, directly or indirectly, from a vendor*[.]***; and**

(P) Bidders/offerors on a list of individuals, entities, and contractors excluded from federal procurement and sales programs, non-procurement programs, and financial and non-financial benefits as provided by the General Services Administration (GSA) are precluded from contracting with the state when the procurement involves federal funds.

[(9) The division will encourage participation in the procurement process and fairness in consideration of bids/proposals submitted by Minority Business Enterprises (MBEs) and

Women Business Enterprises (WBEs). Programs/procedures designed to accomplish these objectives may include: inclusion of MBE/WBE subcontractor requirements in solicitation documents, close review of requirements for bonding, targeted notice of procurement opportunities, utilization of minority and women personnel on evaluation committees, etc.]

*[(10)]***(9)** A bid or proposal award protest must be submitted in writing **to the director or designee** and must be received by the division within ten (10) calendar days after the date of award. If the tenth day falls on a Saturday, Sunday**,** or state holiday, the period shall extend to the next state business day. A protest submitted after the ten (10) calendar**-**day period shall not be considered. The written protest should include the following information:

(A) Name, address, and phone number of the protester;

(B) Signature of the protester or the protester's representative;

(C) Solicitation number;

(D) Detailed statement describing the grounds for the protest; and

(E) Supporting exhibits, evidence, or documents to substantiate claim.

A protest which fails to contain the information listed above may be denied solely on that basis. All protests filed in a timely manner will be reviewed by the director or designee. The director or designee will only issue a determination on the issues asserted in the protest. A protest which is untimely or fails to establish standing to protest will be summarily denied. In other cases, the determination will contain findings of fact, an analysis of the protest, and a conclusion that the protest will either be sustained or denied. If the protest is sustained, remedies include canceling the award. If the protest is denied, no further action will be taken by the division.

(10) Section 34.165, RSMo, provides for a ten (10)-point bonus on bids/proposals submitted by qualified nonprofit organizations for the blind and qualified sheltered workshops, if the participating organization provides the greater of two percent (2%) or five thousand dollars ($5,000) of the total contract value of bids/proposals for a purchase not exceeding ten (10) million dollars.

(A) The bonus points can apply if the bidder/offeror is a qualified organization for the blind or sheltered workshop or if the bidder/offeror is subcontracting with an organization for the blind or sheltered workshop.

(B) Supplies provided by an organization for the blind or sheltered workshop must provide a commercially useful function that offers added value to a contract. Supplies shall be provided exclusive to the performance of a contract, and the organization's obligation outside of a state contract shall not be considered an added value. Services or supplies to be provided by an organization that are outside the usual and customary business of the organization may be considered not to offer added value.

(C) The bonus shall not apply if the solicitation is for a no-cost option to the state.

(D) The bidder/offeror shall submit documents as required by the solicitation that: 1) describes the products or services the blind or sheltered workshop will provide; 2) indicates the blind and sheltered workshop's commitment to aid the bidder/offeror in the performance of the required services and the provision of the required products; and 3) provides evidence of the blind and sheltered workshop qualifications such as a copy of the certification or certification number.

(E) If all requirements are met, the bidder/offeror shall receive a ten (10)-point bonus to a bid/proposal meeting specifications or bid/proposal that includes subjective or other criteria deemed in the best interest of the state and provided in the solicitation document.

(F) If the bid/proposal is awarded, the percentage or dollar level of the blind or sheltered workshop participation committed to by the bidder/offeror in required documentation shall be a binding contractual requirement.

(G) For procurements which utilize the award criteria of low bid meeting specifications, the following procedure will be followed in applying this preference:

1. If the low priced bidder qualifies for the preference, no further calculation is necessary;

2. If a bidder that qualifies for the preference is not low bid, the division will convert the pricing to a point comparison as outlined in the solicitation;

3. For procurements that utilize a combination of cost and subjective criteria for evaluation and award recommendation, ten (10) bonus points will be added to the evaluation points for any preference qualified bidders/offerors; and

4. The bidder/offeror with the most total points is recommended for contract award.

(H) Once a contract is awarded, a contractor shall submit on or before the fifteenth of the month immediately following the reporting period until full payment is made a report detailing all payments it made to all blind and sheltered workshops participating in the contract. The report shall be submitted to the division on a division form. The division may waive this reporting requirement at any time for good cause.

(I) If a participating entity is unable to satisfactorily perform its blind and sheltered workshop participation level, or if there are other reasons the contractor needs to replace an entity, the contractor must obtain written approval from the division prior to replacing the entity. If approved, the contractor must obtain other participation in compliance with its original commitment as approved by the division. The division's approval shall not be arbitrarily withheld. If the contractor cannot obtain a replacement, it may apply to the division for a participation waiver by providing documentation detailing all efforts made to secure a replacement and a good cause statement establishing why the participation level cannot be obtained. If the contractor has met its burden of proof, the division may grant a waiver for good cause.

(J) If the contractor's participation level or payment to a participating blind and sheltered workshop entity is less than the amount committed, and no waiver for good cause has been obtained, the division may cancel the contract and/or suspend or debar the contractor from participating in future state procurements or withhold payment to the contractor in an equal amount to the value of the participating commitment less actual payments made by the contractor to the participating entity. If the division determines that a contractor has become compliant with the commitment amount, any withheld funds shall be released.

(K) At the time of contract renewal, a contractor must verify it is meeting its participation level and required payment to all blind and sheltered workshop entities. If the contractor is not meeting said requirements, the contract renewal may not be processed unless and until said requirements are satisfactorily met or a waiver for good cause is obtained from the division.

(11) The division will encourage participation in the procurement process and fairness in consideration of bids/proposals submitted by Missouri Service-Disabled Veteran Business Enterprises (SDVEs). Programs/procedures designed to accomplish these objectives may include: inclusion of SDVE subcontractor goals in solicitation documents; close review of requirements for bonding; notice of procurement opportunities on the division's website; access to bid history and pricing abstracts on the division's website; access to the division's procurement staff; utilization of service disabled personnel on evaluation committees, if available; etc.

(A) The division will compile, maintain, and make available a listing of SDVEs. The listing shall be made available to all bidders/offerors and contractors on the division's website. The listing may include the following: name; address; contact information of

SDVE; the general area of commodities or services it provides; etc. The division shall also maintain statistics and issue periodic reports about SDVE participation.

(B) The following expenditures may be counted toward meeting established SDVE goals:

1. The total dollar value of a contract awarded to an SDVE;

2. The total dollars paid by a prime contractor to an SDVE for supplies and materials provided to the state in fulfillment of the contract;

3. The total dollar value of work subcontracted to an SDVE by a prime contractor; and

4. That portion of the total dollar value subcontracted to a joint venture by a prime contractor equal to the percentage of the ownership and control of the SDVE partner in the joint venture.

(C) Section 34.074, RSMo, established a goal of awarding three percent (3%) of all contract value to service-disabled veteran businesses.

(D) The following standards shall be used by the division in determining whether an individual, business, or organization is eligible to be listed as a service-disabled veteran business enterprise (SDVE):

1. Doing business as a Missouri firm, corporation, or individual or maintaining a Missouri office or place of business, not including an office of a registered agent;

2. Having not less than fifty-one percent (51%) of the business owned by one (1) or more service-disabled veterans (SDVs) or, in the case of any publicly-owned business, not less than fifty-one percent (51%) of the stock of which is owned by one (1) or more SDVs;

3. Having the management and daily business operations controlled by one (1) or more SDVs;

4. Having a copy of the SDV's award letter from the Department of Veterans Affairs or discharge paper (DD Form 214, Certificate of Release or Discharge from Active Duty) and documentation of certifying disability by the appropriate federal agency responsible for the administration of veterans' affairs;

5. The SDVE(s) shall possess the power to make day-to-day as well as major decisions on matters of management, policy, and operation;

6. All SDVE listings and renewals shall be effective for a period not to exceed five (5) years, unless otherwise found inapplicable; and

7. If it has been determined that the SDVE at any time no longer meets the requirements stated above, it shall be removed from the listing.

(E) If the bidder/offeror meets the requirement of a SDVE, the bidder/offeror shall receive the Missouri service-disabled veteran business preference of a three (3)-point bonus on bids/proposals for the performance of any job or service, except for a no cost contract and any other exception provided for in this regulation as approved by the director.

(F) The three percent (3%) goal can be met, and the bonus points obtained, by a qualified SDVE vendor and/or through the use of qualified subcontractors or suppliers that provide at least three percent (3%) of the total contract value.

(G) Supplies provided by an SDVE must provide a commercially useful function that offers added value to a contract. Supplies shall be provided exclusive to the performance of a contract, and a SDVE's obligation outside of a state contract shall not be considered an added value. Services or supplies to be provided by an SDVE that are outside the usual and customary business of the SDVE may be considered not to offer added value.

(H) If a bidder/offeror is proposing SDVE vendor participation, it must provide the following to the division:

1. Complete information as required by the solicitation document including a list of each proposed SDVE vendor, the committed percentage of participation for each SDVE, and the commercially useful supplies to be provided by each listed SDVE. If the bidder/offeror is a listed SDVE vendor, then the bidder/offeror must also list itself; and

2. A copy of the SDV award letter from the Department of Veterans Affairs or service-disabled veteran's discharge form (DD Form 214 Certification of Release or Discharge from Active Duty) and documentation of certifying disability by the appropriate federal agency responsible for the administration of veterans' affairs, unless the SDVE is listed with the division on its website in which case said documentation is not required.

(I) If the bid/proposal is awarded, the percentage level of the SDVE participation committed to by the bidder/offeror in required documentation shall be a binding contractual requirement.

(J) If the solicitation will not include subjective criteria, the division will convert the pricing to a point comparison as outlined in the solicitation and add the bonus points to the cost points calculated. If the solicitation will include subjective criteria, the division must include the SDVE requirements in the solicitation document, except when a solicitation is for a no cost contract. Any other exception must be approved at the discretion of the director.

(K) Once a contract is awarded, a contractor shall submit on or before the fifteenth of the month immediately following the reporting period until full payment is made a report detailing all payments it made to all SDVEs participating in the contract. This is not required if the SDVE is acting as a prime contractor. However, it may be required if the prime contractor is also using other subcontractors to meet required goals outlined in the contract. The report shall be submitted to the division on a division form. The division may waive this reporting requirement at any time for good cause.

(L) If a contractor is unable to satisfactorily perform its SDVE participation level, or if there are other reasons the vendor needs to replace an SDVE, the contractor must replace the business per the terms of the contract. If the contractor cannot obtain a replacement per the terms of the contract, it may apply to the division for a participation waiver by providing documentation detailing all efforts made to secure a replacement and a good cause statement establishing why the participation level cannot be obtained. If the contractor has met its burden of proof, the division may grant a waiver of the contractual obligation for good cause.

(M) If the contractor's participation level or payment to a participating SDVE is less than the amount committed, and no waiver of the contractual obligation for good cause has been obtained, the state may cancel the contract and/or suspend or debar the contractor from participating in future state procurements or withhold payment to the contractor in an equal amount to the value of the participating commitment less actual payments made by the contractor to the participating business. If the division determines that a contractor has become compliant with the commitment amount, any withheld funds shall be released.

(N) At the time of contract renewal, a contractor must verify it is meeting its participation level and required payment to all SDVEs. If the contractor is not meeting said requirements, the contract renewal may not be processed unless and until said requirements are satisfactorily met or a waiver for good cause is obtained from the division.

(12) The division director or designee shall evaluate each recommendation in conjunction with each agency designee. The division shall either accept or reject each recommendation or request additional clarification from each evaluation team.

(13) For solicitations using weighted criteria evaluations, the evaluation criteria and point assessment assigned to each criterion, as well as the award process, shall be stated in the solicitation documents. The evaluation criteria shall not be changed during

the bid process. The division shall consult with the applicable agency to determine which criteria are most important. Points assigned to cost do not have to be fifty percent (50%) or more of the assigned points.

(14) Any clerical error, apparent on its face, may be corrected by the division before contract award. Upon discovery of an apparent clerical error, the division shall contact the bidder/offeror and request clarification of the intended bid/proposal. The correction shall be incorporated in the notice of award. Examples of apparent clerical errors are misplacement of a decimal point and obvious mistake in designation unit.

(15) Minor technicalities or irregularities in bid/proposals can be waived by the division if the waiver does not create a competitive advantage for any bidder/offeror. Such waiver is appropriate for a condition that does not conform with a mandatory requirement of the solicitation document, and therefore could otherwise be considered non-responsive, but is so minor in nature that to determine non-responsiveness could be considered unreasonable and would not be to the state's advantage.

(16) The division has the right to request clarification of any portion of the bidder/offeror's response in order to verify the intent of the bidder/offeror.

(17) When evaluating a bid/proposal, the division has the right to consider relevant information and fact, whether gained from a bid/proposal response, from a bidder/offeror, from a bidder/offeror's references, or from any other source. Any information submitted with a bid/proposal response, regardless of the format or placement of such information, may be considered in making decisions related to the responsiveness and merit of a bid/proposal and the award of a contract.

(18) Awards shall be made to the bidder/offeror whose bid/proposal complies with—

(A) All mandatory specifications and requirements of the bid/proposal;

(B) Is the lowest and best proposal in accordance with the evaluation methodology outlined in the bid/proposal; and

(C) Complies with Chapter 34, RSMo, other applicable Missouri statutes, and all applicable Executive Orders.

(19) With regard to competitive negotiation procurements, the basic steps of the evaluation should generally include the following:

(A) Proposals are reviewed for non-responsiveness (non-compliance) with mandatory requirements in the solicitation document. In conjunction with the evaluation committee, if applicable, the division shall obtain any clarifications to a response necessary to make a determination of compliance or non-responsiveness. A proposal which contains non-responsiveness issues which could never be expected to be brought into compliance, even if given an opportunity for competitive negotiations, is considered unacceptable or non-responsive and eliminated from further consideration in the evaluation. Proposals with non-responsiveness issues which could be corrected during competitive negotiations, if conducted, are considered potentially acceptable and remain in the evaluation process until a decision is made in regard to competitive negotiations. If competitive negotiations are not conducted, proposals with non-responsiveness issues are considered non-responsive and are eliminated from further consideration in the evaluation. If competitive negotiations are conducted, the non-responsiveness issues are identified as deficiencies in the best and final offer request;

(B) Unless shortlisting of proposals has been determined to be appropriate, when competitive negotiations are necessary regarding the Request for Proposal, the division shall request a written best and final offer (BAFO) from each potentially acceptable offeror. Although not required, the BAFO letter should identify all proposal deficiencies that may make the proposal unacceptable. The BAFO request letter should provide the offeror the opportunity to reconsider any other aspect of its proposal, including pricing. All offerors shall be given the same amount of time to respond to the BAFO request, but the issuance of a request letter does not necessarily have to be simultaneous;

(C) Request for Proposal revisions may be permitted for the purpose of obtaining best and final offers and making changes to the proposal that are in the best interest of the state;

(D) The division may issue more than one (1) round of negotiations via the BAFO process; and

(E) In conducting BAFO offers, there shall be no disclosure of any information submitted by competing offerors.

(20) The division will encourage participation in the procurement process and fairness in consideration of bids/proposals submitted by Minority Business Enterprises (MBEs) and Women's Business Enterprises (WBEs). Programs/procedures designed to accomplish these objectives may include: inclusion of M/WBE subcontractor targets in solicitation documents, close review of requirements for bonding, targeted notice of procurement opportunities, utilization of minority and women personnel on evaluation committees, if available, etc.

(A) M/WBE goals can be met by a qualified M/WBE vendor and/or through the use of qualified subcontractors, suppliers, joint ventures, or other arrangements that afford meaningful opportunities for M/WBE participation. The M/WBE vendor shall be certified by the Office of Equal Opportunity (OEO) by the opening date of a bid/proposal. If an M/WBE vendor's certification has expired but the vendor had submitted its renewal application to OEO prior to the bid/proposal opening and certification is reinstated prior to contract award, then the M/WBE vendor shall be considered qualified.

(B) Supplies provided by M/WBE vendors must provide a commercially useful function that provide added value to a contract. Supplies shall be provided exclusive to the performance of a contract, and an M/WBE vendor's obligation outside of a state contract shall not be considered an added value to the contract.

(C) If a bidder/offeror is proposing M/WBE vendor participation it must provide the following to the division:

1. Documentation regarding M/WBE participation as required in the solicitation must be completed. This information should include, but is not limited to, the following:

A. Bid/proposal forms outlining M/WBE commitment percentage;

B. Bid/proposal forms outlining M/WBE participation and what services or supplies the vendor will supply; and

C. M/WBE vendor certification number or copy of certification issued by OEO.

(D) If the bidder/offeror's bid/proposal is awarded, the percentage level of the M/WBE vendor participation committed to by the vendor shall be a binding contractual requirement.

(E) A bidder/offeror that is certified as both an MBE and WBE can meet both MBE and WBE target participation goals as long as the vendor is performing at least the total of the target MBE and WBE percentage of the contract value.

(F) A bidder/offeror meeting or exceeding the state's MBE or WBE target participation goals shall receive the maximum points allowed. A bidder/offeror with a lesser participation commitment shall receive a lesser amount of points. M/WBE participation evaluation points shall be assigned using a formula as documented in the solicitation.

(G) If the solicitation will not include subjective criteria, the division is not required to address MBE and WBE participation targets in the solicitation. If the solicitation will include subjective criteria, the division must include the MBE and WBE

requirements in the solicitation document, except when a solicitation is for a no cost contract. Any other exception must be approved at the discretion of the director.

(H) The division shall indicate the maximum number of points for the M/WBE participation criteria and it shall be documented in the solicitation.

(I) Once a contract is awarded, a contractor shall submit on or before the fifteenth of the month immediately following the reporting period until full payment is made a report detailing all payments it made to all M/WBEs participating in the contract. The report shall be submitted to the division on a division form. The division may waive this reporting requirement at any time for good cause.

1. If a participating entity is unable to satisfactorily perform its M/WBE participation level, or if there are other reasons the contractor needs to replace an entity, the contractor must obtain written approval from the division prior to replacing the entity. If approved, the contractor must obtain other participation in compliance with its original commitment as approved by the division. The division's approval shall not be arbitrarily withheld. If the contractor cannot obtain a replacement, it may apply to the division for a participation waiver by providing documentation detailing all efforts made to secure a replacement and a good cause statement establishing why the participation level cannot be obtained. If the contractor has met its burden of proof, the division may grant an M/WBE waiver for good cause.

2. If the contractor's participation level or payment to a participating M/WBE entity is less than the amount committed, and no M/WBE waiver for good cause has been obtained, the division may cancel the contract and/or suspend or debar the contractor from participating in future state procurements, or withhold payment to the contractor in an equal amount to the value of the participating commitment less actual payments made by the contractor to the participating entity. If the division determines that a contractor has become compliant with the commitment amount, any withheld funds shall be released.

3. At the time of contract renewal, a contractor must verify it is meeting its participation level and required payment to all M/WBE entities. If the contractor is not meeting said requirements, the contract renewal shall not be processed unless and until said requirements are satisfactorily met or an W/MBE waiver for good cause is obtained from the division.

*AUTHORITY: section 34.050, RSMo [Supp. 1999] **2000 and section 34.074, RSMo Supp. 2010**. Original rule filed Oct. 15, 1992, effective June 7, 1993. Rescinded and readopted: Filed Oct. 20, 1997, effective May 30, 1998. Amended: Filed March 24, 2000, effective Oct. 30, 2000. Amended: Filed June 1, 2011.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with Commissioner of the Office of Administration, PO Box 809, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 1—OFFICE OF ADMINISTRATION
Division 40—Purchasing and Materials Management
Chapter 1—Procurement

PROPOSED AMENDMENT

1 CSR 40-1.060 Vendor Registration, Notification of Bidding Opportunities, Suspension, and Debarment. The commissioner is amending the rule title and sections (3) and (4), adding a new section (5), and renumbering sections (5)–(7).

PURPOSE: This amendment makes the fee charged for automatic notification of bid opportunities optional rather than mandatory and clarifies that a contract may include a negotiated term requiring payments to the state or its designee.

(3) The *[Division of Purchasing and Materials Management will]* **division may** institute an annual fee to allow registered vendors the ability to receive automatic e*[-]*mail notification of bidding opportunities for their selected commodity/service codes through the online registration system and the ability to submit electronic bids.

(4) E*[-]*mail notification and online bidding capabilities will be limited to those vendors that have properly registered and paid the annual fee**, if required**.

(5) The division may include contract clauses requiring the awarded contractor to issue a payment to the state or the state's designee for a stated percentage as outlined in the contract.

*[(5)]***(6)** The director, or designee, may suspend a vendor for cause. The vendor shall be mailed a formal notice of suspension outlining the reasons for, the specific conditions of, and the effective period of the suspension. Upon completion of the suspension period it shall be the responsibility of the vendor to request reinstatement if desired. A request for reinstatement should be made in writing.

(A) Any bids/proposals submitted by the suspended vendor shall not be considered.

(B) The suspension of a vendor may be for a period of up to one hundred eighty (180) days for a first violation*[,]* and for not more than a year for subsequent violation(s).

(C) The vendor may appeal suspension by submitting a written request to the director or commissioner within fourteen (14) calendar days after receipt of the formal notice. The vendor must provide specific evidence and reasons why suspension is not necessary. On the basis of this information, the suspension may be modified, rescinded, or affirmed. The decision shall be final and mailed to all parties.

*[(6)]***(7)** The director may debar a vendor whenever, in the director's sole discretion, it is in the best interest of the state to do so. A vendor may be debarred for a single incident of serious misconduct or after multiple less serious incidents. The director shall notify the vendor of the reason for debarment and any action the vendor must take in order to be found eligible to contract again.

(A) Any bids/proposals submitted by the debarred vendor shall not be considered.

(B) The vendor may appeal the debarment by requesting that the determination be reviewed by the commissioner of administration or the commissioner's designee. Any request for review must be in writing and filed with the commissioner within fourteen (14) calendar days after the date of receipt of the notice of debarment. The request must set forth specific evidence and reasons why debarment should be reversed. The commissioner's determination shall be final and shall be mailed to all parties involved.

*[(7)]***(8)** The following shall be sufficient cause for suspension or debarment. The list is not meant to be all inclusive but shall serve as a guideline for vendor discipline and business ethics*[.]*—

(A) Failure to perform in accordance with the terms and conditions and requirements of a contract/purchase order;

(B) Violating any federal, state**,** or local law, ordinance**,** or regulation in the performance of a contract/purchase order;

(C) Providing false or misleading information on an application, in a bid/proposal, or in correspondence to the division or a state agency;

(D) Failing to honor a bid/proposal for the length of time specified;

(E) Colluding with others to restrain competition;

(F) Obtaining information, by whatever means, related to a proposal submitted by a competitor in response to a Request for Proposal in order to obtain an unfair advantage during the negotiation process;

(G) Contacting proposal/bid evaluators or any other person who may have influence over the award, without authorization from the division, for the purpose of influencing the award of a contract; or

(H) Giving gifts, meals, trips**,** or any other thing of value or a monetary advantage for personal benefit, directly or indirectly, to an employee of the division or to any evaluator of bids/proposals.

AUTHORITY: section 34.050, RSMo 2000. Original rule filed Oct. 15, 1992, effective June 7, 1993. Rescinded and readopted: Filed Oct. 20, 1997, effective May 30, 1998. Amended: Filed March 24, 2000, effective Oct. 30, 2000. Amended: Filed June 14, 2005, effective Dec. 30, 2005. Amended: Filed June 1, 2011.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Commissioner of the Office of Administration, PO Box 809, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 4—Wildlife Code: General Provisions

PROPOSED AMENDMENT

3 CSR 10-4.130 Owner May Protect Property; Public Safety. The commission proposes to amend sections (1) and (4) of this rule.

PURPOSE: This amendment clarifies the treatment of cervid species that are included within this rule.

(1) Subject to federal regulations governing the protection of property from migratory birds (including raptors), any wildlife except *[deer]* **white-tail deer, mule deer, elk**, turkeys, black bears, mountain lions**,** and any endangered species which beyond reasonable doubt is damaging property may be captured or killed by the owner of the property being damaged, or by his/her representative, at any time and without permit, but only by shooting or trapping except by written authorization of the director or, for avian control, of his/her designee. Wildlife may be so controlled only on the owner's property to prevent further damage.

(4) *[Deer]* **White-tail deer, mule deer, elk**, turkeys, and endangered species that are causing damage may be killed only with the permission of an agent of the department and by methods authorized by him/her.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. ***and section 252.240, RSMo 2000.*** *Original rule filed Aug. 15, 1973, effective Dec. 31, 1973. For intervening history, please consult the* ***Code of State Regulations****. Amended: Filed May 31, 2011.*

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. 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 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 5—Conduct of Gaming

PROPOSED RULE

11 CSR 45-5.194 Operator Content Delivery Systems

PURPOSE: This rule establishes the minimum standards for operator content delivery systems (OCDSs). The OCDSs technology authorizes video mixing technology which is displayed on the Electronic Gaming Device (EGD) monitor(s). The OCDS is limited to activities involving promotional and service windows.

(1) For the purposes of this rule, the following words are defined as:

(A) Content—All images, graphics, text, and messages displayed on the electronic gaming device (EGD) game monitor(s);

(B) Game monitor(s)—The video display(s) used by an EGD;

(C) Gaming window—A window that contains the underlying content which is produced, controlled, and transmitted by the EGD critical program storage media (CPSM), displayed on the EGD game monitor(s);

(D) System window—A window that contains the underlying content, which is produced, controlled, and transmitted by a source independent of the EGD CPSM, displayed on the EGD game monitor(s);

(E) Operator content delivery systems (OCDSs)—Hardware and software which is responsible for providing content to the system window;

(F) Promotional giveaway credits—Credits based on predefined criteria outlined by the rules of the promotion, where the patron provides no consideration and there is no chance or skill involved in the attainment of the credits; and

(G) Player reward credits—Credits that are earned by patrons and which increment with play based on predetermined formulas (e.g., player reward points).

(2) The manufacturer and supplier of any OCDSs which include functionality to introduce communication messages between an EGD or its host online computer monitoring system, as defined by 11 CSR 45-1.090 and 11 CSR 45-5.220 respectively, shall obtain a supplier's license as outlined in 11 CSR 45-4.

(3) OCDSs shall be subject to testing by the commission or a commission licensed independent testing laboratory. The OCDS shall be reviewed and approved by the commission prior to the implementation of the system by a Class B licensee and following implementation, prior to any changes thereto, or at any other time the commission deems appropriate. The cost for review and approval shall be borne by the submitting licensee.

(4) A system window being displayed during game play shall not—

(A) Overwrite, overlap, or otherwise obscure content in the gaming window; and

(B) Exceed thirty percent (30%) of the game monitor.

(5) A system window being displayed while an EGD has credits shall not obstruct the view of the credit meter.

(6) The OCDS shall—

(A) Accurately remap and/or reproduce the content and equipment functionality associated with the original gaming window;

(B) Be designed in a manner which logically separates critical files from noncritical files;

(C) Be designed to permit an on-demand, independent integrity check of all files which are deemed critical to the proper operation of the OCDS by a commission licensed independent testing laboratory. The integrity check (i.e., authentication process) shall be accomplished by utilizing a commission approved, external third-party verification tool; and

(D) Perform an integrity check of all critical memory, including a self-test before any communication is established to an external device.

(7) A system window may be displayed at any time provided the window does not interfere with or impede the EGD from displaying information required by the Missouri *Code of State Regulations* (CSR) and Minimum Internal Control Standards (MICS).

(8) Any OCDS which interfaces with an EGD must do so in such a manner that does not adversely impact the requirements set forth by 11 CSR 45-5.270, the play of the game, operation of peripheral hardware or software on the EGD, or any computer monitoring system meters.

(9) EGDs connected to an OCDS shall include a mechanism, approved by the commission, which permits the patron to close the system window, on demand, and return to the original gaming window.

(10) OCDSs shall be prohibited from delivering content which is considered a gambling game as defined in Chapter 572, RSMo, or which is otherwise prohibited by commission rules. The use of promotional giveaway credits and player reward credits as consideration in order to participate in any type of promotional activity with a chance of winning something of value would be considered a gambling game and hence prohibited. The Class B licensees shall be responsible for all content displayed in the system window.

AUTHORITY: section 313.004, RSMo 2000 and sections 313.800 and 313.805, RSMo Supp. 2010. Original rule filed May 26, 2011.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Gaming Commission, PO Box 1847, Jefferson City, MO 65102. To be considered, written comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. A public hearing is scheduled for August 10, 2011, at 10:00 a.m., in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 15—Hospital Program

PROPOSED AMENDMENT

13 CSR 70-15.010 Inpatient Hospital Services Reimbursement Plan; Outpatient Hospital Services Reimbursement Methodology. The division is amending sections (1), (2), (3), (5), (6), (13), (14), (16), (18), and (21).

PURPOSE: This amendment provides the State Fiscal Year (SFY) 2012 trend factor; clarifies new federal audit and record retention requirements in accordance with federally mandated Disproportionate Share Hospital (DSH) audit standards; references new regulations relating to DSH and Upper Payment Limit (UPL) payments; and revises when Enhanced Graduate Medical Education payments are paid to hospitals.

(1) General Reimbursement Principles.

(C) The Title XIX reimbursement for hospitals, excluding those located outside Missouri and in-state federal hospitals, shall include per diem payments, outpatient payments, disproportionate share payments **as described in this regulation through May 31, 2011, and as described in 13 CSR 70-15.220 beginning June 1, 2011**; various MO HealthNet Add-On payments, as described in this rule; or a safety net adjustment, paid in lieu of Direct Medicaid Payments described in section (15) and Uninsured Add-Ons described in *[subsection (18)(B)]* **this regulation through May 31, 2011, and described in 13 CSR 70-15.220 beginning June 1, 2011**. Reimbursement shall be subject to availability of federal financial participation (FFP).

1. Per diem reimbursement—The per diem rate is established in accordance with section (3).

2. Outpatient reimbursement is described in 13 CSR 70-15.160.

3. Disproportionate share reimbursement—The disproportionate share payments described in section (16), and subsection (18)(B), include both the federally-mandated reimbursement for hospitals which meet the federal requirements listed in section (6) and the discretionary disproportionate share payments which are allowable but not mandated under federal regulation. These Safety Net and Uninsured Add-Ons shall not exceed one hundred percent (100%) of the unreimbursed cost for MO HealthNet and the cost of the uninsured unless otherwise permitted by federal law. **Beginning June 1, 2011, hospital disproportionate share reimbursements are defined in 13 CSR 70-15.220.**

4. MO HealthNet Add-Ons—MO HealthNet Add-Ons are described in sections (13), (14), (15), (19), and (21) and are in addition to MO HealthNet per diem payments. These payments are subject to the federal Medicare Upper Limit test.

5. Safety Net Adjustment—The payments described in subsection (16)(A) are paid in lieu of Direct Medicaid Payments described in section (15) and Uninsured Add-Ons described in subsection (18)(B).

(2) Definitions.

(A) Allowable costs. Allowable costs are those related to covered MO HealthNet services defined as allowable in 42 CFR chapter IV, part 413, except as specifically excluded or restricted in 13 CSR 70-15.010 or the MO HealthNet hospital provider manual and detailed on the desk-reviewed Medicare/Medicaid cost report. Penalties or incentive payments as a result of Medicare target rate calculations shall not be considered allowable costs. Implicit in any definition of allowable cost is that this cost is allowable only to the extent that it relates to patient care; is reasonable, ordinary, and necessary; and is not in excess of what a prudent and cost-conscious buyer pays for the given service or item. **For purposes of calculating disproportionate share payments and to ensure federal financial participation**

(FFP), allowable uncompensated costs must meet definitions defined by the federal government.

(I) Disproportionate share reimbursement. The disproportionate share payments described in section (16), and subsection (18)(B), include both the federally-mandated reimbursement for hospitals which meet the federal requirements listed in section (6) and the discretionary disproportionate share payments which are allowed but not mandated under federal regulation. These Safety Net and Uninsured Payment Add-Ons shall not exceed one hundred percent (100%) of the unreimbused cost for MO HealthNet and the cost of the uninsured unless otherwise permitted by federal law. **Beginning June 1, 2011, disproportionate share reimbursement is described in 13 CSR 70-15.220.**

(3) Per Diem Reimbursement Rate Computation. Each hospital shall receive a MO HealthNet per diem rate based on the following computation.

(B) Trend Indices (TI). Trend indices are determined based on the four (4)-quarter average DRI Index for DRI-Type Hospital Market Basket as published in *Health Care Costs* by DRI/McGraw-Hill for each State Fiscal Year (SFY) 1995 to 1998. Trend indices starting in SFY 1999 will be determined based on CPI Hospital indexed as published in *Health Care Costs* by DRI/McGraw-Hill for each State Fiscal Year (SFY).

1. The TI are—

A. SFY 1994—4.6%
B. SFY 1995—4.45%
C. SFY 1996—4.575%
D. SFY 1997—4.05%
E. SFY 1998—3.1%
F. SFY 1999—3.8%
G. SFY 2000—4.0%
H. SFY 2001—4.6%
I. SFY 2002—4.8%
J. SFY 2003—5.0%
K. SFY 2004—6.2%
L. SFY 2005—6.7%
M. SFY 2006—5.7%
N. SFY 2007—5.9%
O. SFY 2008—5.5%
P. SFY 2009—5.5%
Q. SFY 2010—3.9%
R. SFY 2011—3.2%—The 3.2% trend shall not be applied in determining the per diem rate, Direct Medicaid payments, or uninsured payments.
S. SFY 2012—4.0%

2. The TI for SFY 1996 through SFY 1998 are applied as a full percentage to the OC of the per diem rate and for SFY 1999 the OC of the June 30, 1998, rate shall be trended by 1.2% and for SFY 2000 the OC of the June 30, 1999, rate shall be trended by 2.4%. The OC of the June 30, 2000, rate shall be trended by 1.95% for SFY 2001.

3. The per diem rate shall be reduced as necessary to avoid any negative Direct Medicaid payments computed in accordance with subsection (15)(B).

4. A facility previously enrolled for participation in the MO HealthNet Program, which either voluntarily or involuntarily terminates its participation in the MO HealthNet Program and which reenters the MO HealthNet Program, shall have its MO HealthNet rate determined in accordance with section (4).

(5) *[Administrative Actions]* **Reporting Requirements**.

(B) Records.

1. All hospitals are required to maintain financial and statistical records in accordance with 42 CFR 413.20. For purposes of this plan, statistical and financial records shall include beneficiaries' medical records and patient claim logs separated for inpatient and outpatient services billed to and paid for by MO HealthNet (excluding cross-over claims) respectively. Separate logs for inpatient and outpatient services should be maintained for MO HealthNet participants covered by managed care. All records must be available upon request to representatives, employees, or contractors of the MO HealthNet program, Missouri Department of Social Services, General Accounting Office (GAO), or the United States Department of Health and Human Services (HHS). The content and organization of the inpatient and outpatient logs shall include the following:

A. A separate MO HealthNet log for each fiscal year must be maintained by either date of service or date of payment by MO HealthNet for claims and all adjustments of those claims for services provided in the fiscal period. Lengths of stay covering two (2) fiscal periods should be recorded by date of admission. The information from the MO HealthNet log should be used to complete the Medicaid worksheet in the hospital's cost report;

B. Data required to be recorded in logs for each claim include:

(I) Participant name and MO HealthNet number;

(II) Dates of service;

(III) If inpatient claim, number of days paid for by MO HealthNet, classified by adults and peds, each subprovider*[s]*, newborn, or specific type of intensive care;

(IV) Charges for paid inpatient days and inpatient ancillary charges for paid days classified by cost center as reported in the cost report or allowed outpatient services, classified by cost center as reported on cost report;

(V) Noncovered charges combined under a separate heading;

(VI) Total charges;

(VII) Any partial payment made by third-party payers (claims paid equal to or in excess of MO HealthNet payment rates by third-party payers shall not be included in the log);

(VIII) MO HealthNet payment received or the adjustment taken; and

(IX) Date of remittance advice upon which paid claim or adjustment appeared;

C. A year-to-date total must appear at the bottom of each log page or after each applicable group total, or a summation page of all subtotals for the fiscal year activity must be included with the log; and

D. Not to be included in the outpatient log are claims or line item outpatient charges denied by MO HealthNet or claims or charges paid from an established MO HealthNet fee schedule. This would include payments for hospital-based physicians and certified registered nurse anesthetists billed by the hospital on a professional services claim, payments for certain specified clinical diagnostic laboratory services, or payments for services provided by the hospital through enrollment as a MO HealthNet provider-type other than hospital outpatient.

2. Records of related organizations, as defined by 42 CFR 413.17, must be available upon demand to those individuals or organizations as listed in paragraph (5)(B)1. of this rule.

3. Records to support and document DSH payments must be maintained and available for future federal audits. Records used to complete DSH audit surveys shall be kept seven (7) years following the final DSH audit. For example, the SFY 2011 state DSH survey will use 2009 cost data which must be maintained seven (7) years following the completion of the 2014 DSH audit (2022). Records provided by hospitals to the state's independent auditor shall also be maintained for seven (7) years following the completion of the final federal 2014 DSH audit.

*[3.]***4.** The MO HealthNet Division shall retain all uniform cost reports submitted for a period of at least three (3) years following the date of submission of the reports and will maintain those reports pursuant to the record-keeping requirements of 42 CFR 413.20. If an audit by, or on behalf of, the state or federal government has begun but is not completed at the end of the three (3)-year period, or if audit findings have not been resolved at the end of the three (3)-year

period, the reports shall be retained until resolution of the audit findings.

*[4.]***5.** The MO HealthNet Division shall maintain any responses received on this plan, subsequent changes to this plan, and rates for a period of three (3) years from the date of receipt.

(D) Audits.

1. A comprehensive hospital audit program shall be established in cooperation with the Missouri Medicare fiscal intermediary. Under the terms of the Common Audit Agreement, the Medicare intermediary shall perform the following:

A. Desk review all hospital cost reports;

B. Determine the scope and format for on-site audits;

C. Perform field audits when indicated in accordance with Title XIX principles; and

D. Submit to the state agency the final Title XVIII cost report with respect to each provider.

2. The state agency shall review audited Medicare/Medicaid cost reports for each hospital's fiscal year in accordance with 13 CSR 70-15.040.

3. Annual DSH audits are completed by an independent auditor in accordance with federal DSH audit standards. Hospitals receiving DSH payments are subject to the annual DSH audit.

(6) Disproportionate Share **and Direct Medicaid Qualifying Criteria**. **Effective June 1, 2011, disproportionate share payment methodology and criteria that must be met to receive DSH payments are described in 13 CSR 70-15.220. The definitions set forth in this section (6) will continue to be used to determine eligibility for Direct Medicaid Payments (section (15)) and the Safety Net adjustment (section (16)).**

(F) Hospital-*[s]***S**pecific DSH *[c]***C**ap. Unless otherwise permitted by federal law, disproportionate share payments shall not exceed one hundred percent (100%) of the unreimbursed cost for MO HealthNet and the cost of the uninsured. The hospital-specific DSH cap shall be computed by combining the estimated unreimbursed MO HealthNet costs for each hospital, as calculated in section (15), with the hospital's corresponding estimated uninsured costs, as determined in section (18). If the sum of disproportionate share payments exceeds the estimated hospital-specific DSH cap, the difference shall be deducted in order as necessary from safety net payments, other disproportionate share lump sum payments, direct Medicaid payments, and if necessary, as a reduced per diem. All DSH payments in the aggregate shall not exceed the federal DSH allotment within a state fiscal period. **Effective June 1, 2011, hospital-specific DSH limits shall be calculated in accordance with federally-mandated DSH audit standards as described in 13 CSR 70-15.220.**

(13) Trauma Add-On Payments. Hospitals that meet the following will receive additional Add-On payments.

(E) Effective July 1, 2011, trauma add-on payments will be replaced with Upper Payment Limit payments as described in 13 CSR 70-15.230.

(14) Trauma Outlier Payments.

(F) Effective July 1, 2011, trauma add-on payments will be replaced with Upper Payment Limit payments as described in 13 CSR 70-15.230.

(16) Safety Net Adjustment. A safety net adjustment, in lieu of the Direct Medicaid Payments and Uninsured Add-Ons, shall be provided for each hospital which qualified as disproportionate share under the provision of paragraph (6)(A)4. The safety net adjustment payment shall be made prior to the end of each federal fiscal year.

(E) Effective June 1, 2011, DSH payment calculations and criteria are described in 13 CSR 70-15.220.

(18) In accordance with state and federal laws regarding reimbursement of unreimbursed costs and the costs of services provided to uninsured patients, reimbursement for each State Fiscal Year (SFY) (July 1–June 30) shall be determined as follows:

(G) Effective June 1, 2011, DSH payment calculations and criteria are described in 13 CSR 70-15.220.

(21) Enhanced Graduate Medical Education (GME) Payment—An enhanced GME payment shall be made to any acute care hospital that provides graduate medical education (teaching hospital).

(A) The enhanced GME payment shall be computed in accordance with subsection (21)(B). The payment shall be made *[at]* **following** the end of the state fiscal year. The enhanced GME payment for each state fiscal year shall be computed using the most recent cost data available when the enhanced GME payment is computed. If the cost report is less than or more than a twelve (12)-month period, the cost report data will be adjusted to reflect a twelve (12)-month period. The state share of the enhanced GME payment to a hospital that has cash subsidies shall come from funds certified by the hospital.

AUTHORITY: sections 208.152, 208.153, ***and*** *208.201[, and 208.471], RSMo Supp. 2010. This rule was previously filed as 13 CSR 40-81.050. Original rule filed Feb. 13, 1969, effective Feb. 23, 1969. For intervening history, please consult the* ***Code of State Regulations****. Emergency amendment filed May 20, 2011, effective June 1, 2011, expires Nov. 28, 2011. Amended: Filed May 20, 2011.*

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions $28.9 million annually.

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be delivered by regular mail, express or overnight mail, in person, or by courier within thirty (30) days after publication of this notice in the ***Missouri Register****. If to be hand-delivered, comments must be brought to the MO HealthNet Division at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.*

FISCAL NOTE
PUBLIC COST

I. **Department Title:** Title 13 - Department of Social Services
Division Title: Division 70 - MO HealthNet Division
Chapter Title: Chapter 15 – Hospital Program

Rule Number and Name:	13 CSR 70-15.010 Inpatient Hospital Services Reimbursement Plan; Outpatient Hospital Services Reimbursement Methodology
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Social Services, MO HealthNet Division	**SFY 2011 = $0** **SFY 2012 = $79.1 million; state share = $28.9 million**

III. WORKSHEET

Estimated Cost for SFY 2012:

4% DRI trend	$79,100,000
Total State Share	$28,900,000

IV. ASSUMPTIONS

Estimated Cost for SFY 2012:

4% DRI trend – Estimated cost is based upon data included in FRA 11-3, trended by 4% for SFY 2012.

SFY 2012 state share percentage = 36.59%.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 15—Hospital Program

PROPOSED RULE

13 CSR 70-15.220 Disproportionate Share Hospital Payments

PURPOSE: This rule implements a new state methodology for paying Disproportionate Share Hospital (DSH) payments in order to comply with the new federally-required DSH audit standards. The regulation provides for an interim adjustment to DSH payments and provides for final adjustment to DSH payments based upon the federally-mandated DSH audits.

(1) General Reimbursement Principles.

(A) In order to receive federal financial participation (FFP), disproportionate share payments are made in compliance with federal statutes and regulations. Section 1923 of the Social Security Care Act (42 U.S. Code) describes the hospitals that must be paid DSH payments and those that the state may elect to pay DSH payments.

(B) Hospitals that must be paid DSH payments are considered to be federally-deemed disproportionate share hospitals. The state must pay DSH payments to hospitals that meet the following criteria:

1. Obstestrics requirements as described in paragraph (2)(A)1.; and

2. Have a Medicaid Inpatient Utilization Rate (MIUR) at least one (1) standard deviation above the statewide mean as defined in paragraph (2)(A)2., or a Low Income Utilization Rate (LIUR) greater than twenty-five percent (25%) as defined in paragraph (2)(A)3.

(C) Hospitals that may be paid DSH must meet obstetric requirements as defined in paragraph (2)(A)1. and have a MIUR of at least one percent (1%).

(D) Section 1923(g) of the Social Security Act (Act) limits the amount of DSH payments states can pay to each hospital and earn FFP. To be in compliance with the Act, DSH payments shall not exceed one hundred percent (100%) of the uncompensated care costs of providing hospital services to Medicaid and uninsured individuals. Hospital-specific DSH limit calculations must comply with federally-mandated DSH audit standards and definitions. If the disproportionate share payments exceed the hospital-specific DSH costs, the difference shall be deducted from disproportionate share payments or recouped from future payments.

(E) All DSH payments in the aggregate shall not exceed the federal DSH allotment within a state fiscal period. The DSH allotment is the maximum amount of DSH payments a state can distribute each year and receive FFP.

(F) The state must submit an annual independent audit of the state's DSH program to the Centers for Medicare and Medicaid Services (CMS). FFP is not available for DSH payments that are found to exceed the hospital-specific eligible uncompensated care cost limit. All hospitals that receive DSH payments are subject to the independent federal DSH audit.

(G) Hospitals qualify for DSH for a period of one (1) state fiscal year and must requalify at the beginning of each state fiscal year to continue to receive disproportionate share payments.

(2) Federally-Deemed DSH Hospitals.

(A) The state must pay disproportionate share payments to hospitals that meet specific obstetric requirements and have either a MIUR at least one (1) standard deviation above the state mean or a LIUR greater than twenty-five percent (25%).

1. Obstetric requirements and exemptions.

A. Hospitals must have two (2) obstetricians, with staff privileges, who agree to provide non-emergency obstetric services to Medicaid eligibles. Rural hospitals, as defined by the federal Executive Office of Management and Budget, may qualify any physician with staff privileges as an obstetrician.

B. Hospitals are exempt from the obstetric requirements if the facility did not offer non-emergency obstetric services as of December 21, 1987.

C. Hospitals are exempt if inpatients are predominantly under eighteen (18) years of age.

2. MIUR calculations.

A. As determined from the fourth prior year desk-reviewed cost report, the facility has a MIUR of at least one (1) standard deviation above the state's mean MIUR for all Missouri hospitals.

B. The MIUR is calculated as follows:

(I) The MIUR will be expressed as the ratio of total Medicaid days (TMD) provided under a state plan divided by the provider's total number of inpatient days (TNID).

(II) The state's mean MIUR will be expressed as the ratio of the sum of the total number of the Medicaid days for all Missouri hospitals divided by the sum of the total patient days for the same Missouri hospitals. Data for hospitals no longer participating in the program will be excluded.

$$\text{MIUR} = \frac{\text{TMD}}{\text{TNID}}$$

3. LIUR calculations.

A. As determined from the fourth prior year desk-reviewed cost report, the LIUR shall be the sum (expressed as a percentage) of the fractions, calculated as follows:

(I) Total MO HealthNet patient revenues (TMPR) paid to the hospital for patient services under a state plan plus the amount of the cash subsidies (CS) directly received from state and local governments, divided by the total net revenues (TNR) (charges, minus contractual allowances, discounts, and the like) for patient services plus the CS; and

(II) The total amount of the hospital's charges for patient services attributable to charity care (CC) (care provided to individuals who have no source of payment, third-party, or personal resources) less CS directly received from state and local governments in the same period, divided by the total amount of the hospital's charges (THC) for patient services. The total patient charges attributed to CC shall not include any contractual allowances and discounts other than for indigent patients not eligible for MO HealthNet under a state plan.

$$\text{LIUR} = \frac{\text{TMPR} + \text{CS}}{\text{TNR} + \text{CS}} + \frac{\text{CC} - \text{CS}}{\text{THC}}$$

(3) State-Elected DSH Payments.

(A) The state may elect to make hospital disproportionate share payments to hospitals that meet the obstetric requirements defined in paragraph (2)(A)1. and have a MIUR of at least one percent (1%) as calculated in subparagraph (2)(A)2.B.

(4) DSH Audit Payment Adjustments.

(A) Beginning in Medicaid state plan year 2011, DSH payments made to hospitals will be revised based on the results of a state DSH survey which uses federally-mandated DSH audit standards. These revisions are to serve as interim adjustments until the federally-mandated DSH audits are complete. DSH audits are finalized three (3) years following the SFY year-end reflected in the audit. For example, the SFY 2011 DSH audit will be finalized in 2014. The interim adjustments shall be determined as follows:

1. Based upon the state's analysis of the 2011 state's DSH survey using federally-mandated DSH audit standards, DSH payments will be limited to the hospital's projected hospital-specific DSH limit.

2. DSH payments as provided in the state's DSH survey that exceed the projected hospital-specific DSH limits will be recouped from the hospitals to reduce their payments to their projected hospital-specific DSH limit.

(B) Any payments that are recouped from hospitals as a result of the DSH audit will be redistributed to hospitals that are shown to have been paid less than their hospital-specific DSH limits. These redistributions will occur proportionally based on each hospital's uncompensated care shortfall to the total shortfall, not to exceed each hospital's specific projected DSH limit.

1. Redistribution payments to hospitals that have been paid less than their SFY 2011 projected hospital-specific DSH limit must occur after the recoupment of payments made to hospitals that have been paid in excess of their hospital-specific DSH limits. The state may establish a hospital-specific recoupment plan. However, total industry redistribution payments may not exceed total industry recoupments collected to date.

2. If the Medicaid program's original DSH payments did not fully expend the federal DSH allotment for any plan year, the remaining DSH allotment may be paid to hospitals that are under their hospital-specific DSH limit. These redistributions will occur proportionally based on each hospital's uncompensated care shortfall to the total shortfall, not to exceed each hospital's specific DSH limit.

(5) Disproportionate Share Hospital (DSH) Interim Payments.

(A) SFY 2012 interim DSH payments will be based on the 2011 state DSH survey after applying the trend factor published in *Health Care Costs* by DRI/McGraw-Hill for the current fiscal year.

(B) Federally-deemed hospitals will receive the nominal DSH payment of five thousand dollars ($5,000) and the greater of their upper payment limit payment or their hospital-specific DSH limit as calculated from the state DSH survey. Except for federally-deemed hospitals, hospitals may elect to receive an upper payment limit payment as defined in 13 CSR 70-15.230 in lieu of DSH payments.

(C) Disproportionate share payments will coincide with the semi-monthly claim payment schedule.

(D) New facilities will be paid based on the industry average as determined from the state DSH survey.

(E) Facilities not providing a state DSH survey will have DSH payments calculated using the most recent hospital-specific information provided to the state by the independent auditor.

(6) Department of Mental Health Hospital (DMH) DSH Adjustments and Payments.

(A) Effective June 1, 2011, interim DSH payments made to DMH hospitals will be revised based on the results of a DMH state DSH survey which uses federally-mandated DSH audit standards. These revisions are to serve as interim adjustments until the federally-mandated DSH audits are complete in 2014.

(B) Beginning in SFY 2012, due to structural changes occurring at the DMH facilities, interim DSH payments will be based on the third prior base year cost report trended to the current SFY adjusted for the federal reimbursement allowance (FRA) assessment paid by DMH hospitals. Additional adjustments may be done based on the results of the federally-mandated DSH audits as set forth below in subsection (7)(A).

(C) If the Medicaid program's original DSH payments did not fully expend the federal Institute for Mental Disease (IMD) DSH allotment for any plan year, the remaining IMD DSH allotment may be paid to hospitals that are under their projected hospital-specific DSH limit.

(7) Final DSH Adjustments.

(A) Final DSH adjustments will be made after actual cost data is available and the DSH audit is completed. DSH audits are completed three (3) years following the initial independent DSH audit. For example, final adjustments for 2011 will be made following the completion of the annual independent DSH audit in 2014 (SFY 2015).

(8) Record Retention.

(A) Records used to complete the state's DSH survey shall be kept until the final audit is completed. For example, the SFY 2011 state DSH survey will use 2009 cost data which must be maintained until the 2014 DSH audits are completed in SFY 2015.

(B) Records provided by hospitals to the state's independent auditor shall also be maintained until the 2014 federal DSH audit is complete.

AUTHORITY: sections 208.152, 208.153, and 208.201, RSMo Supp. 2010. Emergency rule filed May 20, 2011, effective June 1, 2011, expires Nov. 28, 2011. Original rule filed May 20, 2011.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions $259.1 million annually.

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be delivered by regular mail, express or overnight mail, in person, or by courier within thirty (30) days after publication of this notice in the ***Missouri Register****. If to be hand-delivered, comments must be brought to the MO HealthNet Division at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.*

FISCAL NOTE
PUBLIC COST

I. **Department Title:** Title 13 - Department of Social Services
Division Title: Division 70 - MO HealthNet Division
Chapter Title: Chapter 15 – Hospital Program

Rule Number and Name:	13 CSR 70-15.220 Disproportionate Share Hospital Payments
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Social Services, MO HealthNet Division	**SFY 2011 = $50.0 million** **SFY 2012 = $708.0 million; state share = $259.1 million**

III. WORKSHEET

Estimated Cost for SFY 2011:

Interim adjustment to SFY 2011 DSH payments	$ 0
Distribution of remaining federal DSH allotment	$ 50,000,000
Final adjustment of SFY 2011 DSH payments	$ 0
Total Estimated Cost	$ 0

Estimated Cost for SFY 2012:

2012 DSH payments based on 2011 State DSH Survey	$708,000,000
Final adjustment of SFY 2011 DSH payments	$ 0
Total Estimated Cost	$708,000,000
Total State Share	$259,100,000

IV. ASSUMPTIONS

Estimated Cost for SFY 2011:

Interim adjustment to SFY 2011 DSH payments -- Any DSH payments made to hospitals that are in excess of hospital-specific DSH limits will be recouped and paid to

hospitals whose payments have not met their hospital-specific DSH limit so the net impact is $0.

Distribution of remaining federal DSH allotment – MHD plans on making additional payments in SFY 2011 to spend the entire federal DSH allotment, provided it has state match available through non-general revenue transactions and fund balances.

Final adjustment of SFY 2011 DSH payments – These adjustments will not be made until completion of the federally mandated DSH audits which occurs 3 years after each SFY so there would be no impact in SFY 2011. Furthermore, any DSH payments made to hospitals that are in excess of hospital-specific DSH limits will be recouped and paid to hospitals whose payments have not met their hospital-specific DSH limit so the net impact is $0.

Estimated Cost for SFY 2012:

2012 DSH payments based on 2011 State DSH Survey – Estimated cost is based upon preliminary calculations using the 2011 State DSH Survey, trended by 4% for SFY 2012. The method of determining DSH payments for individual hospitals is different under this rule than under the current rule, 13 CSR 70-15.010, but payments under this new rule will equal payments authorized under the current rule, 13 CSR 70-15.010, so there are no new costs. DSH payments are limited by the federal DSH allotment and what can be funded through FRA and IGT transactions so the total amount of payments that we can make is the same under both rules.

Final adjustment of SFY 2012 DSH payments – These adjustments will not be made until completion of the federally mandated DSH audits which occurs 3 years after each SFY so there would be no impact in SFY 2012. Furthermore, any DSH payments made to hospitals that are in excess of hospital-specific DSH limits will be recouped and paid to hospitals whose payments have not met their hospital-specific DSH limit so the net impact is $0.

SFY 2012 state share percentage = 36.59%.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 15—Hospital Program

PROPOSED RULE

13 CSR 70-15.230 Supplemental Upper Payment Limit Methodology

PURPOSE: This rule establishes a methodology for determining Upper Payment Limit (UPL) payments provided to hospitals beginning July 1, 2011. The regulation also establishes an additional UPL supplemental payment for hospitals with a Low Income and Needy Care Collaboration Agreement.

(1) General Principles.

(A) Hospital Upper Payment Limit (UPL) payments cannot exceed the Medicare Upper Payment Limit as authorized by federal law and included in Missouri's State Plan.

(2) Beginning with State Fiscal Year 2012, each participating hospital may be paid supplemental payments up to the Medicare Upper Payment Limit (UPL).

(A) UPL Payment. Supplemental payments may be paid to qualifying hospitals for inpatient services. The total amount of supplemental payments made under this section in each year shall not exceed the Medicare Upper Payment Limit, after accounting for all other supplemental payments. Payments under this section will be determined prior to the determination of payments under subsection (2)(B) below authorizing Medicaid UPL Supplemental Payments for Low Income and Needy Care Collaboration hospitals.

1. The state shall determine the amount of Medicaid supplemental payments payable under this section on an annual basis. The state shall calculate the Medicare Upper Payment Limit for each of the three (3) categories of hospitals: state hospitals, non-state governmental hospitals, and private hospitals. The state shall apportion the Medicaid supplemental payments payable under this section to each of the three (3) categories of hospitals based on the proportionate Medicare Upper Payment Limits for each category of hospitals.

2. Each participating hospital may be paid its proportional share of the UPL gap based upon its Medicaid inpatient utilization.

(B) Supplemental Payments for Low Income and Needy Care Collaboration Hospitals. Additional Supplemental Payments for Low Income and Needy Collaboration Hospitals may be made if there is room remaining under the UPL to make additional payments without exceeding the UPL, after making the UPL payments in subsection (2)(A) above.

1. Effective for dates of services on or after July 1, 2011, supplemental payments may be issued to qualifying hospitals for inpatient services after July 1, 2011. Maximum aggregate payments to all qualifying hospitals under this section shall not exceed the available Medicare Upper Payment Limit, less all other Medicaid inpatient payments to private hospitals under this State Plan which are subject to the Medicaid Upper Payment Limit.

2. Qualifying criteria. In order to qualify for the supplemental payment under this section, the private hospital must be affiliated with a state or local governmental entity through a Low Income and Needy Care Collaboration Agreement. The state or local governmental entity includes governmentally-supported hospitals.

A. A private hospital is defined as a hospital that is owned or operated by a private entity.

B. A Low Income and Needy Care Collaboration Agreement is defined as an agreement between a private hospital and a state or local governmental entity to collaborate for purposes of providing healthcare services to low income and needy patients.

C. Reimbursement methodology. Each qualifying private hospital may be eligible to receive supplemental payments. The total supplemental payments in any fiscal year will not exceed the lesser of—

(I) The difference between each qualifying hospital's inpatient Medicaid billed charges and Medicaid payment the hospital receives for covered inpatient services for Medicaid participants during the fiscal year; or

(II) For hospitals participating in the Medicaid Disproportionate Share Hospital (DSH) program, the difference between the hospital's specific DSH cap and the hospital's DSH payments during the fiscal year.

D. Payments under this section will be determined after the determination of payments under subsection (2)(A) above authorizing Medicaid UPL supplemental payments.

AUTHORITY: sections 208.152, 208.153, and 208.201, RSMo Supp. 2010. Emergency rule filed May 20, 2011, effective July 1, 2011, expires Dec. 28, 2011. Original rule filed May 20, 2011.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions $44.1 million annually.

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be delivered by regular mail, express or overnight mail, in person, or by courier within thirty (30) days after publication of this notice in the **Missouri Register**. If to be hand-delivered, comments must be brought to the MO HealthNet Division at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.*

FISCAL NOTE
PUBLIC COST

I. **Department Title:** Title 13 - Department of Social Services
Division Title: Division 70 - MO HealthNet Division
Chapter Title: Chapter 15 – Hospital Program

Rule Number and Name:	13 CSR 70-15.230 Supplemental Upper Payment Limit Methodology
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Social Services, MO HealthNet Division	**SFY 2011 = $0** **SFY 2012 = $120.5 million; state share = $44.1 million**

III. WORKSHEET

Estimated Cost for SFY 2012	$120,500,000
Total State Share	$ 44,100,000

IV. ASSUMPTIONS

Estimated Cost for SFY 2012 – Estimated cost is based upon data included in the estimated UPL for SFY 2011, trended by 4% for SFY 2012. The current regulation, 13 CSR 70-15.010, allows for UPL payments which are distributed based upon trauma criteria The method for distributing the UPL payments to hospitals is different under this rule than under the current rule, 13 CSR 70-15.010, but payments under this new rule will equal payments authorized under the current rule, 13 CSR 70-15.010, so there are no new costs. UPL payments are limited by the federal rules so the total amount of payments that we can make is the same under both rules.

SFY 2012 state share percentage = 36.59%.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 73—Missouri Board of Nursing Home Administrators
Chapter 1—Organization and Description of Board

PROPOSED AMENDMENT

19 CSR 73-1.010 General Organization. The department is amending sections (2)–(6).

PURPOSE: The amendment provides clarification of the operations, methods, and procedures where the public may obtain information or make submissions or requests.

(2) It is the function of the board to—

(A) Determine the qualifications of applicants for licensure to practice *[nursing home]* administration **of a long-term care facility, as defined in section 344.010, RSMo,** in this state;

(3) The board is further charged with maintaining high standards of professional competence and ethical conduct among *[nursing home]* **licensed** administrators**, as defined in 19 CSR 73-2.020**.

(4) The board *[may investigate complaints against licensees and upon finding grounds for disciplinary action, as defined in section 344.050, RSMo Supp. 1987, may cause a formal complaint to be filed before the Administrative Hearing Commission, seeking a determination of whether the licensee is subject to disciplinary action of his/her license. Upon finding grounds for denial of an initial or renewal license, the board shall send written notice of denial by certified mail indicating the right of the applicant to seek a formal hearing on the board's decision with the Administrative Hearing Commission according to the provisions of sections 621.015–621.198, RSMo Supp. 1987]* **has authority to discipline licensees either through the Administrative Hearing Commission and/or enter into probationary settlement agreements as specifically set out in 19 CSR 73-2**.

(5) The board shall meet as necessary to *[fully]* attend to the matters before the board. Public notice shall be given by the executive secretary before the date of the meeting. The time and location for each meeting may be obtained by contacting the executive secretary of the board*[, 2023 St. Mary's Boulevard, PO Box 570, Jefferson City, MO 65102,]* **at the following website: http://www.health.mo.gov/information/boards/bnha or by telephone at** (573) 751-3511.

(6) The public may obtain information *[from the board,]* or make submissions or requests *[to the board,]* by writing the executive secretary of the board.

*AUTHORITY: section 344.070, RSMo [2000] **2010**. This rule was previously filed as 13 CSR 73-1.010. Original rule filed Sept. 10, 1976, effective Dec. 11, 1976. For intervening history, please consult the **Code of State Regulations**. Amended: Filed June 15, 2011.*

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

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

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Sally McKee, Missouri Board of Nursing Home Administrators, 3418 Knipp Drive, PO Box 570, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. A public hearing is scheduled for 9:00 a.m., August 4, 2011, Conference Rooms 102 and 103, 3418 Knipp Drive, Jefferson City, Missouri.*

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 73—Missouri Board of Nursing Home Administrators
Chapter 2—General Rules

PROPOSED AMENDMENT

19 CSR 73-2.010 Definitions. The department is amending sections (1)–(4) and (6)–(8); deleting section (5); adding new sections (1), (7), (8), and (10); and renumbering throughout.

PURPOSE: This amendment adds new definitions and clarifies the current definitions as used in Chapter 344, RSMo, and in these rules.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) Administrator shall mean a person that is currently licensed by the board to administer, manage, or supervise a long-term care facility, including individuals who have ownership of a facility and/or individuals who share administrative duties and functions with others.

*[(1)]***(2)** Clock hour shall mean sixty (60) minutes of formal instruction by *[an]* **a board-**approved presenter.

*[(2)]***(3)** Continuing education means post-licensure education in *[health-care]* **health care** administration *[undertaken]* to maintain professional competency to practice *[nursing home]* administration*[, improve administrative skills and effect standards of excellence in the interest of safety, health and welfare of the people served]* **in long-term care facilities, as defined in section 344.010, RSMo**.

*[(3)]***(4)** *[Education in health-care]* **Health care** administration shall mean the completion of a course of instruction designed to teach the elements of *[health-care]* **health care** facility administration and management*[, including training regarding the protection of the rights of residents or patients in health-care facilities]*.

*[(4)]***(5)** Examination shall mean a written examination, an oral examination, or *[both]* **a computer-based examination, in conformance with the Americans with Disabilities Act of 1990, 42 U.S.C. Chapter 126, which is incorporated by reference in this rule as published by and available at the U.S. Government Printing Office, Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250-7954, or at www.gpoaccess.gov/uscode/. This rule does not include any later amendments or additions.**

[(5) "Experience in health-care administration" shall mean having management responsibility, which shall include the on-site supervision of at least three (3) staff persons in a

licensed long-term care or acute care facility or a licensed inpatient mental health facility, or a department of one of these facilities.]

(6) *[Health-care]* **Health care** facility shall mean a licensed long-term care **facility,** *[or]* licensed acute*[-]* care facility**,** or *[a facility]* licensed *[as an]* inpatient mental health facility.

(7) Health care or aging-related experience shall mean full-time equivalency experience in a licensed home health agency, licensed hospice agency, licensed acute care or long-term care facility, licensed adult day care program, or licensed mental health facility.

(8) Nursing Home Administrator shall mean an administrator, as defined in section (1), that administers, manages, or supervises a long-term care facility, as defined in section 344.010, RSMo.

*[(7)]***(9)** Resident shall mean a person residing in a long-term *[health-care]* **care** facility**, as defined in section 344.010, RSMo**.

(10) Residential Care and Assisted Living Administrator shall mean an administrator, as defined in section (1), that administers, manages, or supervises an assisted living facility or residential care facility, as defined in Chapter 198, RSMo. This includes residential care facilities that were licensed as a residential care facility II on or before August 27, 2006, and that continue to meet the licensure standards for a residential care facility II in effect on August 27, 2006.

*[(8)]***(11)** Training agency shall mean—

(A) An accredited educational institution; or

(B) A statewide or national membership agency, association, professional society or organization in the fields of health care or **health care** management approved by the board to provide courses of instruction and training.

*AUTHORITY: section 344.070, RSMo Supp. [1997] **2010**. This rule was previously filed as 13 CSR 73-2.010. Original rule filed March 5, 1974, effective March 15, 1974. For intervening history, please consult the **Code of State Regulations**. Emergency amendment filed May 5, 2011, effective May 15, 2011, expires Feb. 23, 2012. Amended: Filed June 15, 2011.*

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

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

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Sally McKee, Missouri Board of Nursing Home Administrators, 3418 Knipp Drive, PO Box 570, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. A public hearing is scheduled for 9:00 a.m., August 4, 2011, Conference Rooms 102 and 103, 3418 Knipp Drive, Jefferson City, Missouri.*

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 73—Missouri Board of Nursing Home Administrators
Chapter 2—General Rules

PROPOSED AMENDMENT

19 CSR 73-2.015 Fees. The department is amending sections (1) and (2).

PURPOSE: This amendment removes the state exam fee since it will be administered by an outside source and adds another option for fee payment.

(1) The following fees are required by the Board of Nursing Home Administrators:

(A) Application Review Fee (including reciprocity)	$150
[(B) State Exam Fee	*$100]*
*[(C)]***(B)** License Renewal Fee	
1. One **(1)**-year license	$ 50
2. Two **(2)**-year license	$100
3. Inactive License	$ 50
*[(D)]***(C)** License Renewal Late Penalty Fee (This fee is in addition to the renewal fee listed in subsection (1)*[(C)]***(B)**)	$ 25
*[(E)]***(D)** Inactive License Fee	$ 50
*[(F)]***(E)** Reactivate Inactive License Fee	$100
*[(G)]***(F)** Retired License Fee	$ 50
*[(H)]***(G)** Duplicate License Fee	$ 10
*[(I)]***(H)** Single Offering Fee (per requested clock hour)	$ 15
*[(J)]***(I)** Single Offering Late Filing Fee	$ 50
*[(K)]***(J)** Insufficient Funds Charge	$ 25

(2) Fees must be made payable to the Department of Health and Senior Services in the form of a cashier's check, **personal check,** company check**,** *[or]* money order**, or through the on-line application system by credit card**.

*AUTHORITY: section 344.070, RSMo Supp. [2007] **2010**. This rule was previously filed as 13 CSR 73-2.015. Original rule filed Jan. 3, 1992, effective May 14, 1992. For intervening history, please consult the **Code of State Regulations**. Amended: Filed June 15, 2011.*

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 cost private entities six thousand six hundred dollars ($6,600) annually in the aggregate.

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Sally McKee, Missouri Board of Nursing Home Administrators, 3418 Knipp Drive, PO Box 570, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. A public hearing is scheduled for 9:00 a.m., August 4, 2011, Conference Rooms 102 and 103, 3418 Knipp Drive, Jefferson City, Missouri.*

FISCAL NOTE
PRIVATE COST

I. Department Title: 19-Department of Health and Senior Services
Division Title: 73-Board of Nursing Home Administrators
Chapter Title: 2-General Rules

Rule Number and Title:	19 CSR 73-2.015 Fees
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
120 state exams** 120 exams x $55 increase	Individuals	$6,600.00 annually
	Total	$6,600.00 annually

III. WORKSHEET

See table on previous page.

IV. ASSUMPTIONS

Figures based on estimate of FY10 actuals and FY11 projections.

The dollar amounts in the above worksheet include the dollar amount of the processing fee per credit card transaction.

**State exams will be administered by the National Association of Long-Term Care Administrator Boards (NAB); therefore, there will be no cost to Board office. Applicants will be able to apply for the examination at $155 through NAB for computerized testing versus what is currently being done now. At this time, applicants send in a paper application along with the $100 fee. The exams are administered by the Board office twice a month and the exams are paper/pencil exams. By outsourcing the state exams to NAB, this will allow applicants to have more choices in dates/time to take the exam at a local computer testing center. Outsourcing will save the applicant time and money by not traveling to Jefferson City to take the exam.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 73—Missouri Board of Nursing Home Administrators
Chapter 2—General Rules

PROPOSED AMENDMENT

19 CSR 73-2.020 Procedures and Requirements for Licensure of Nursing Home Administrators. The department is amending sections (1) and (2).

PURPOSE: This amendment clarifies the procedures and requirements for licensure of nursing home administrators.

(1) *[Every]* **An** applicant **interested in becoming a licensed nursing home administrator** shall obtain an application form from the board. The application form, MO *[580-2578 (4-04)]* **580-2518 (03-11),** Application for Licensure **NHA**, is incorporated by reference in this rule and is available on the web at *[www.dhss.mo.gov/BNHA]* **www.health.mo.gov/information/boards/bnha** or by contacting the board at PO Box 570, Jefferson City, MO 65102, (573) 751-3511. This rule does not incorporate any subsequent amendments or additions. The application shall be completed and returned to the board with *[a nonrefundable application fee of one hundred fifty dollars ($150) made payable to the Department of Health and Senior Services]* **the fee referenced in 19 CSR 73-2.015**. Information provided in the application shall be attested by signature to be true and correct to the best of the applicant's knowledge and belief.

(2) The completed application form shall provide satisfactory proof that the applicant has met the following minimum requirements for Missouri **nursing home administrator** licensure:

*AUTHORITY: section 344.070, RSMo Supp. [2007] **2010**. This rule was previously filed as 13 CSR 73-2.020. Original rule filed March 5, 1974, effective March 15, 1974. For intervening history, please consult the **Code of State Regulations**. Emergency amendment filed May 5, 2011, effective May 15, 2011, expires Feb. 23, 2012. Amended: Filed June 15, 2011.*

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 cost private entities six thousand four hundred twenty-eight dollars and fifty cents ($6,428.50) annually in the aggregate.

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Sally McKee, Missouri Board of Nursing Home Administrators, 3418 Knipp Drive, PO Box 570, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. A public hearing is scheduled for 9:00 a.m., August 4, 2011, Conference Rooms 102 and 103, 3418 Knipp Drive, Jefferson City, Missouri.*

FISCAL NOTE
PRIVATE COST

I. Department Title: 19-Department of Health and Senior Services
Division Title: 73-Board of Nursing Home Administrators
Chapter Title: 2-General Rules

Rule Number and Title:	19 CSR 73-2.020 Procedures and Requirements for Licensure of Nursing Home Administrators
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
115 applicants for licensure out of the total of 175 applicants* 115 applicants x ($50 increase + $5.90 processing fee)	Individuals	$6,428.50 annually
	Total	$6,428.50 annually

III. WORKSHEET
See table above.

IV. ASSUMPTIONS
Figures based on estimate of FY10 actuals and FY11 projections.

The dollar amount in the above worksheet include the dollar amount of the processing fee per credit card transaction.

*Please refer to Fiscal Note Private Cost form for 19 CSR 73-2.015 Fees.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 73—Missouri Board of Nursing Home Administrators
Chapter 2—General Rules

PROPOSED RULE

19 CSR 73-2.022 Procedures and Requirements for Licensure of Residential Care and Assisted Living Administrators

PURPOSE: This proposed rule specifies the minimum requirements for licensure as a residential care and assisted living administrator in Missouri to make the rule consistent with the changes that were made to sections 344.010 and 344.020, RSMo, as part of CCS No. 2 for HCS for SCS for SB 754, 95th General Assembly, Second Regular Session (2010).

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) An applicant interested in becoming a licensed residential care and assisted living administrator shall obtain an application form prescribed by the board. The application form, MO 580-2987 (03-11), Application for Licensure RCAL, is incorporated by reference in this rule and is available on the web at www.health.mo.gov/information/boards/bnha or by contacting the board at PO Box 570, Jefferson City, MO 65102, (573) 751-3511. This rule does not incorporate any subsequent amendments or additions. The application shall be completed and returned to the board with the fee referenced in 19 CSR 73-2.015. Information provided in the application shall be attested by signature to be true and correct to the best of the applicant's knowledge and belief.

(2) The completed application form shall provide satisfactory proof that the applicant has met the following minimum requirements for Missouri residential care and assisted living administrator licensure:

(A) Twenty-one (21) years of age or over;

(B) A high school diploma or equivalent;

(C) Of good moral character;

(D) Has not been convicted of any crime, an essential element of which is fraud, dishonesty, or moral turpitude, or which involves the operation of a long-term care facility or other health care facility, whether or not sentence is imposed. A copy of the record of conviction or plea of guilty or *nolo contendere* shall be conclusive evidence of the conviction; and

(E) Experience and/or education from an accredited educational institution in one (1) of the following areas:

1. Experience: A minimum of two (2) years of health care or aging-related experience including management responsibility and supervision of two (2) staff persons; or

2. Experience and education in one (1) of the following areas:

A. Associate degree AND one (1) year of health care or aging-related experience including six (6) months of management responsibilities and supervision of at least two (2) staff persons; or

B. Baccalaureate degree (BS or BA) or beyond AND six (6) months of health care or aging-related experience including management responsibilities and supervision of at least two (2) staff persons.

(3) The applicant shall be eligible to take the examinations upon board approval and payment of the required examination fees.

(4) If the board determines the applicant has failed to meet one (1) of the criteria outlined in 19 CSR 73-2.020(2)(E)1.–2., the applicant—

(A) Must complete the course of instruction and training approved by the board pursuant to 19 CSR 73-2.031. The planned curriculum, including a description of each planned course, must be submitted to the board in writing for PRIOR review and approval. Failure to do so within six (6) months following notification of the board's decision will cause reapplication to become necessary for any future consideration; or

(B) May submit additional information for reevaluation if done so no later than two (2) weeks prior to the next board meeting. The applicant will be given notice of the next board meeting date.

AUTHORITY: section 344.070, RSMo Supp. 2010. Emergency rule filed May 5, 2011, effective May 15, 2011, expires Feb. 23, 2012. Original rule filed June 15, 2011.

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

PRIVATE COST: This proposed rule will cost private entities three thousand three hundred fifty-four dollars ($3,354) annually in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with Sally McKee, Missouri Board of Nursing Home Administrators, 3418 Knipp Drive, PO Box 570, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. A public hearing is scheduled for 9:00 a.m., August 4, 2011, Conference Rooms 102 and 103, 3418 Knipp Drive, Jefferson City, Missouri.*

FISCAL NOTE
PRIVATE COST

I. Department Title: 19-Department of Health and Senior Services
Division Title: 73-Board of Nursing Home Administrators
Chapter Title: 2-General Rules

Rule Number and Title:	19 CSR 73-2.022 Procedures and Requirement for Licensure of Residential Care and Assisted Living Administrators
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
60 applicants for licensure out of the total of 175 applicants* 60 applicants x ($50 increase + $5.90 processing fee)	Individuals	$3,354.00 annually
	Total	$3,354.00 annually

III. WORKSHEET
See table above.

IV. ASSUMPTIONS
Figures based on FY11 projections due to creating another licensure level of administrator licensure.

*Please refer to the Fiscal Note Private Cost on rule amendment 19 CSR 737-2.015 Fees.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 73—Missouri Board of Nursing Home Administrators
Chapter 2—General Rules

PROPOSED AMENDMENT

19 CSR 73-2.025 Licensure by Reciprocity. The department is amending sections (1), (2), and (5)–(8).

PURPOSE: This amendment clarifies the procedures and requirements for reciprocity licensure.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) An applicant who holds a current license as *[a nursing home]* **an** administrator in any state, territory**,** or the District of Columbia may apply for *[a license]* **the appropriate-licensure level** by reciprocity*[.]* **(nursing home administrator license or residential care and assisted living administrator license). The application forms, MO 580-2518 (03-11), Application for Licensure NHA, and MO 580-2987 (03-11), Application for Licensure RCAL, are incorporated by reference in this rule and are available on the web at www.health.mo.gov/information/boards/bnha or by contacting the board at PO Box 570, Jefferson City, MO 65102, (573) 751-3511. This rule does not incorporate any subsequent amendments or additions.**

(2) The applicant must file *[an]* **the appropriate** application for licensure, along with a nonrefundable application fee *[of one hundred fifty dollars ($150) made payable to the Department of Health and Senior Services]* **referenced in 19 CSR 73-2.015**, and supply the board with satisfactory evidence that the following requirements have been met:

(E) Performance as a licensed administrator in a state, territory**,** or the District of Columbia for at least *[one (1) year]* **three (3) years**.

(5) *[Each case of discipline shall be reviewed by the board to determine if the case for discipline falls within the provisions of section 344.050, RSMo.]* **In the event of a record of discipline, the board shall consider the provisions of section 344.050, RSMo, whether to grant reciprocity.**

(6) Upon meeting the requirements of section (2) of this rule and upon board approval, the applicant must *[pay a one hundred dollar ($100)-examination fee and successfully complete the state examination administered by the board. The minimum passing score on that examination is seventy-five percent (75%)]* **complete and pass the state examination**.

(7) If the applicant is unable to meet the requirements of subsection (2)(E) of this rule, but meets all other requirements of section (2), the candidate shall be considered an applicant for initial licensure pursuant to 19 CSR 73-2.020(2)(E). If the results of that evaluation show that the applicant meets the criteria, the board shall accept the applicant's passing of the national examination in another state if it was taken within three (3) years of the applicant's submission for licensure in Missouri. The applicant then must meet the requirements of section (6) of this rule by *[paying the examination fee and]* successfully *[complete]* **completing and passing** the state examination *[administered by the board]*. If the applicant does not meet the criteria, the applicant will be required to complete a prescribed course of instruction and training as outlined in 19 CSR 73-2.031.

(8) Applicants for licensure by reciprocity shall not act or serve in the capacity of *[a nursing home]* **an** administrator in this state without first procuring a license from this board as provided in sections 344.010–344.108, RSMo.

*AUTHORITY: section 344.070, RSMo Supp. [2007] **2010**. This rule was previously filed as 13 CSR 73-2.025. Original rule filed June 28, 1990, effective Dec. 31, 1990. For intervening history, please consult the **Code of State Regulations**. Emergency amendment filed May 5, 2011, effective May 15, 2011, expires Feb. 23, 2012. Amended: Filed June 15, 2011.*

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 cost private entities eight hundred thirty-eight dollars and fifty cents ($838.50) annually in the aggregate.

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Sally McKee, Missouri Board of Nursing Home Administrators, 3418 Knipp Drive, PO Box 570, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. A public hearing is scheduled for 9:00 a.m., August 4, 2011, Conference Rooms 102 and 103, 3418 Knipp Drive, Jefferson City, Missouri.*

FISCAL NOTE
PRIVATE COST

I. Department Title: 19-Department of Health and Senior Services
Division Title: 73-Board of Nursing Home Administrators
Chapter Title: 2-General Rules

Rule Number and Title:	19 CSR 73-2.025 Licensure by Reciprocity
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
15 applicants for licensure* 15 applicants x ($50 increase + $5.90 processing fee)	Individuals	$838.50 annually
	Total	$838.50 annually

III. WORKSHEET

See table above.

IV. ASSUMPTIONS

Figures based on estimate of FY10 actuals and FY11 projections.

The dollar amount in the above worksheet include the dollar amount of the processing fee per credit card transaction.

*Please refer to Fiscal Note Private Cost form for 19 CSR 73-2.015 Fees. The fifteen (15) estimated applicants for licensure are estimated to be approximately ten (10) of the fifteen (15) will be for the NHA licensure and five (5) of the fifteen (15) will be for the RCAL licensure. The ten (10) for the NHA licensure is incorporated in the 115 applicants as projected on Fiscal Note Private Cost form 19 CSR 73-2.020 and the five (5) for the RCAL licensure is incorporated in the 60 applicants as projected on Fiscal Note Private Cost form 19 CSR 73-2.022.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 73—Missouri Board of Nursing Home Administrators
Chapter 2—General Rules

PROPOSED AMENDMENT

19 CSR 73-2.031 Prescribed Course of Instruction and Training. The department is amending sections (1)–(3), (5), and (10).

PURPOSE: This amendment clarifies the course of instruction and training that is prescribed by the board under the authority as set forth in section 344.030.1, RSMo.

(1) Applicants who do not otherwise qualify for examination shall complete one **(1)** of the following courses of instruction and training. The formal instruction shall be coursework qualifying for academic credit, completed with a grade of not less than "C." A portion of the formal instruction may be from an intensive and comprehensive seminar of at least forty (40) clock hours specific to *[nursing home]* **long-term care** administration which has been approved by the board. An applicant who has completed—

(2) The course of instruction and training shall follow the core of knowledge areas and other subject matter as deemed necessary by the board to properly prepare an applicant for health care administration. The core of knowledge shall include, but shall not be limited to, the following subject areas:

(J) Physical Resource Management:
1. Building and grounds management;
2. Environmental services **and sanitation**;
3. Safety procedures and programs; and
4. Fire and disaster plans; and

(3) The course of instruction and training shall include instruction in the services which must be provided in *[nursing homes]* **long-term care facilities**, the protection of the rights and interests of the residents**,** and the elements of good *[nursing home]* **long-term care** administration**,** as well as other subject matter as deemed necessary by the board to properly prepare that applicant for *[nursing home]* **long-term care** administration.

(5) Internships as required by section (1) shall be under the direct supervision of a licensed *[nursing home]* administrator approved and designated as a preceptor by the Missouri Board of Nursing Home Administrators. An administrator may be approved and designated as a preceptor for a period of two (2) years, if s/he—

(A) Has been licensed *[and employed as a Missouri nursing home administrator for at least thirty-six (36) months immediately prior to application to become a preceptor]* **for at least three (3) years**;

(B) Has been employed as a Missouri administrator for at least one (1) year within the three (3) years before applying to be a designated preceptor;

*[(B)]***(C)** Is currently serving as the administrator of a duly licensed intermediate care facility (ICF), skilled nursing facility (SNF), assisted living facility (ALF)**,** or any *[R]***r**esidential *[C]***c**are *[F]***f**acility (RCF) that was licensed as a residential care II on or before August 27, 2006**,** that continues to meet the licensure standards for a residential care facility II in effect on August 27, 2006, with sixty (60) or more beds;

*[(C)]***(D)** Is an administrator of an ICF, SNF, ALF**,** or RCF (as described above) with sixty (60) or more beds**,** which is in substantial compliance with the rules governing *[nursing homes]* **long-term care facilities**; and

*[(D)]***(E)** Has not been the subject of any action by any board of nursing home administrators or licensing authority which resulted in discipline, including but not limited to, formal reprimand, probation, suspension**,** or revocation of license or privileges as *[a nursing home]* **an** administrator; and

*[(E)]***(F)** Has successfully completed a board-approved preceptor training program.

(10) A portion of an internship may be completed in a duly-licensed ALF or RCF (as described above) with *[sixty (60)]* **thirty (30)** or more beds if the intern desires such experience. The maximum hours of internship that may be served in such an ALF or RCF (as described above) are designated as follows. Applicants may complete up to—

*AUTHORITY: section 344.070, RSMo Supp. [2007] **2010**. This rule was previously filed as 13 CSR 73-2.031. Original rule filed May 13, 1980, effective Aug. 11, 1980. For intervening history, please consult the **Code of State Regulations**. Amended: Filed June 15, 2011.*

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

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

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Sally McKee, Missouri Board of Nursing Home Administrators, 3418 Knipp Drive, PO Box 570, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. A public hearing is scheduled for 9:00 a.m., August 4, 2011, Conference Rooms 102 and 103, 3418 Knipp Drive, Jefferson City, Missouri.*

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 73—Missouri Board of Nursing Home Administrators
Chapter 2—General Rules

PROPOSED AMENDMENT

19 CSR 73-2.050 Renewal of Licenses. The department is amending sections (2) and (4), deleting section (3), and renumbering sections (4)–(6).

PURPOSE: This amendment clarifies the conditions and procedures for renewal of an administrator license according to the provisions of section 344.040, RSMo.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(2) Licenses *[that expire on June 30, 2007]* will be renewed if the licensee*[:]***—**

(A) Files an application for renewal on *[a]* **the appropriate licensure-level (nursing home administrator or residential care and assisted living administrator)** form furnished by the board on or before *[June 15.]* **May 30. The application forms, MO 580-2991 (03-11), Application for License Renewal NHA, and MO 580-2988**

(03-11), Application for License Renewal RCAL, are incorporated by reference in this rule and are available on the web at www.health.mo.gov/information/boards/bnha or by contacting the board at PO Box 570, Jefferson City, MO 65102, (573) 751-3511. This rule does not incorporate any subsequent amendments or additions. Information provided in the application shall be attested to by signature to be true and correct to the best of the applicant's knowledge and belief and include an attestation verifying that the licensee has completed at least *[twenty (20)]* **forty (40)** clock hours of board-approved continuing education, as outlined in 19 CSR 73-2.050*[(4)]***(3)**(A)–(B)*[, obtained during the current licensure year or carried from the preceding year]*. A minimum of *[five (5)]* **ten (10)** clock hours must be in patient-care related offerings, as defined in 19 CSR 73-2.031(2)(A)–(F).

1. Licensees must maintain proof of having completed the number of continuing education hours claimed at the time of renewal.

2. Upon request of the board, make that proof available for audit to verify completion of the number and validity of hours claimed;

(B) Submit *[a]* **the** renewal fee *[of one hundred dollars ($100) made payable to the Department of Health and Senior Services]* **referenced in 19 CSR 73-2.015**; **and**

(C) A two (2)-year license *[expiring on June 30, 2009]* will be issued.

[(3) Licensees seeking renewal on June 30, 2008 or later shall, on or before June 15, of the year of renewal, file an application for renewal on a form furnished by the board, and shall submit a renewal fee of one hundred dollars ($100) made payable to the Department of Health and Senior Services. Information provided in the application shall be attested to by signature to be true and correct to the best of the applicant's knowledge and belief and include an attestation verifying that the licensee has completed at least forty (40) clock hours of board-approved continuing education obtained during the current licensure period. A minimum of ten (10) clock hours must be in patient-care related offerings, as defined in 19 CSR 73-2.031(2)(A)–(F).]

*[(4)]***(3)** Licensees must maintain proof of having completed the number of continuing education hours claimed at the time of renewal and shall, upon request of the board, make that proof available for audit to verify completion of the number and validity of hours claimed. Documentation to prove completion of continuing education hours must be maintained by each licensee for four (4) years from the last day of the licensure year in which the hours were earned.

(A) A minimum of thirty (30) clock hours toward the forty (40) required shall be obtained through attendance at board-approved continuing education programs or academic courses, as defined in 19 CSR 73-2.031(2)(A)–(K). A maximum of twenty (20) clock hours of the forty (40) clock hours may be from on-line continuing education programs if a Missouri board-approved training agency offers the program. The continuing education programs and the academic courses must meet the following criteria:

1. Be approved by the board. In the case of academic courses, the licensee must submit a course description from the college for board review. A maximum of five (5) clock hours per semester hour may be approved by the board. Upon successful completion of the course (grade of "C" or above), an official transcript or grade report must be submitted to the board office, upon request, as verification of course completion;

2. Be offered by a registered training agency approved by the board or a single offering provider (as outlined in 19 CSR 73-2.060);

3. Be approved by another state licensure board for *[nursing home]* **long-term care** administrators or by the National Continuing Education Review Service (NCERS) under the National Association of Boards (NAB)*[, if the program is held out-of-state]*.

(B) A maximum of ten (10) clock hours toward the forty (40) required may be obtained as follows:

1. For the purposes of this subsection, the following definitions shall apply:

A. Referred publication—a publication that undergoes an anonymous review process that determines whether or not the article will be published; and

B. National health-care publication—a publication that is—

(I) Published by a health-care association whose mission statement/bylaws indicate its scope is national;

(II) Mailed nationwide; and

(III) Addressing content contained within the long-term care core of knowledge outlined in 19 CSR 73-2.031(2)(A)–(K);

2. Publishing health-care related articles of at least fifteen hundred (1,500) words shall be granted*[—*

A. Five (5) clock hours if article appears in a national health-care referred publication;

B. Four (4) clock hours if article appears in a regional health-care referred publication;

C. Three (3) clock hours if article appears in a state health-care referred publication;

D. Two (2) clock hours if article appears in a national health-care publication; and

E One] **one** (1) clock hour if article is published **in a magazine or journal publication**; **and**

3. An administrator lecturing at a board-approved seminar may receive credit equal to each hour or quarter hour of presentation time with a maximum of six (6) hours credit earned per licensure period. This credit may be in addition to actual hours of attendance at the seminar but credit shall be granted for only one (1) presentation of the same seminar.

(C) Serving as a registered preceptor for an applicant who has been required by the board to complete an internship as described in 19 CSR 73-2.031. One (1) clock hour per full month as a preceptor shall be granted with a maximum of ten (10) clock hours per internship. During the two (2)-year licensure period, a maximum of twenty (20) clock hours will be granted.

(D) Each licensee whose initial licensure period is less than twenty-four (24) months shall be required to obtain at least one and one-half (1 1/2) hours of continuing education for each month in the initial licensure period which shall include programs covering patient-care related topics as defined in 19 CSR 73-2.031(2)(A)–(F). The minimum number of clock hours required in patient-care (PC) related programs is as follows. Initial licensure period of*[:]***—**

1. 23 months to 18 months—8 PC clock hours
2. 17 months to 12 months—6 PC clock hours
3. 11 months to 6 months—4 PC clock hours
4. 5 months or less—2 PC clock hours.

*[(5)]***(4)** The board shall annually select on a random basis at least five percent (5%) of the licensees applying for renewal to have their claims of continuing education hours audited for compliance with board requirements. A licensee will be notified by mail when a renewal application has been selected for audit and will have up to thirty (30) days to provide copies of all certificates of attendance and other documentation supporting the continuing education clock hours claimed on the renewal application. Nothing in this section shall prevent the board from requiring any individual licensee to provide evidence satisfactory to the board of having completed the continuing education hours required for license renewal. Failure to provide proof of continuing education hours as reported on the renewal application or submission of falsified records can be cause for discipline pursuant to section 344.050.2, RSMo.

*[(6)]***(5)** When the required information, documentation**,** and fee are received and approved by the board within the specified time period, the board shall issue the license.

*AUTHORITY: sections 344.040 and 344.070, RSMo Supp. [2007] **2010**. This rule was previously filed as 13 CSR 73-2.050. Original*

rule filed May 13, 1980, effective Aug. 11, 1980. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed June 15, 2011.*

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 cost private entities forty-six thousand nine hundred forty-six dollars and seventy-five cents ($46,946.75) annually in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Sally McKee, Missouri Board of Nursing Home Administrators, 3418 Knipp Drive, PO Box 570, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. A public hearing is scheduled for 9:00 a.m., August 4, 2011, Conference Rooms 102 and 103, 3418 Knipp Drive, Jefferson City, Missouri.*

FISCAL NOTE
PRIVATE COST

I. Department Title: 19-Department of Health and Senior Services
Division Title: 73-Board of Nursing Home Administrators
Chapter Title: 2-General Rules

Rule Number and Title:	19 CSR 73-2.050 Renewal of Licenses
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
850 license renewals for two-year license 850 renewals x ($50 increase + $4.43 processing fee)	Individuals	$46,265.50 annually
25 license renewals for one-year license** 25 renewals x ($25 increase + $2.25 processing fee)	Individuals	$681.25 annually
	Total	$46,946.75 annually

III. WORKSHEET
See table above.

IV. ASSUMPTIONS
Figures based on estimate of FY10 actuals and FY11 projections.

The dollar amount in the above worksheet include the dollar amount of the processing fee per credit card transaction.

*Please refer to Fiscal Note Private Cost form for 19 CSR 73-2.015 Fees.

**One-year license renewals are issued to licensed administrators entered into a Probationary Settlement Agreement with the Board.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 73—Missouri Board of Nursing Home Administrators
Chapter 2—General Rules

PROPOSED AMENDMENT

19 CSR 73-2.051 Retired Licensure Status. The department is amending sections (1)–(3), (5), and (7).

PURPOSE: This amendment clarifies the procedures by which a currently licensed administrator may retire his/her license and the procedures for reactivating the license, pursuant to section 344.105, RSMo.

(1) Any currently licensed *[nursing home]* administrator may request to retire the license if s/he has maintained an active Missouri license at least ten (10) years and has retired from the practice of *[nursing home]* **long-term care** administration.

(2) Licensees interested in making application must submit the following information to the board:

(A) *[A]* **The** fee *[of fifty dollars ($50) made payable to the Department of Health and Senior Services]* **referenced in 19 CSR 73-2.015**;

(C) One **(1)** of the following:

1. An affidavit that includes the date on which the licensee retired from such practice and such other facts the *[B]***b**oard may require to verify the retirement; or

2. Sign the request for retired status that appears on the *[nursing home]* administrator license renewal application and return such application to the *[B]***b**oard prior to the active license expiring on June 30 of the year of renewal.

(3) Information provided in the request for retired status shall be given under oath subject to the penalties for making a false affidavit. *[A sample Affidavit Requesting Retired Licensure Status is hereby incorporated by reference as part of this rule.]*

(5) A retired license may be reactivated within five (5) years of the granting of the retired license by filing the following information with the board:

(B) *[A]* **The** fee *[of one hundred dollars ($100) made payable to the Department of Health and Senior Services]* **referenced in 19 CSR 73-2.015**; and

(7) No person shall act or serve in the capacity of *[a nursing home]* **an** administrator in this state or hold himself or herself out as *[a nursing home]* **an** administrator if his or her license is retired.

*AUTHORITY: section 344.070, RSMo Supp. [2007] **2010**. This rule was previously filed as 13 CSR 73-2.051. Original rule filed Oct. 24, 2000, effective May 30, 2001. For intervening history, please consult the **Code of State Regulations**. Amended: Filed June 15, 2011.*

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

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

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Sally McKee, Missouri Board of Nursing Home Administrators, 3418 Knipp Drive, PO Box 570, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. A public hearing is scheduled for 9:00 a.m., August 4, 2011, Conference Rooms 102 and 103, 3418 Knipp Drive, Jefferson City, Missouri.*

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 73—Missouri Board of Nursing Home Administrators
Chapter 2—General Rules

PROPOSED AMENDMENT

19 CSR 73-2.053 Inactive Licensure Status. The department is amending sections (1), (2), (5), and (7)–(9).

PURPOSE: This amendment clarifies procedures by which a currently licensed administrator may place his/her license on an inactive status and the procedures for reactivating the license, pursuant to section 344.108, RSMo.

(1) Any *[nursing home]* administrator possessing a current license to practice as *[a nursing home]* **an** administrator in Missouri may request an inactive license.

(2) Licensees interested in requesting an inactive license must submit the following information to the board prior to June 30 of the year of renewal of the administrator's active license*[.]***:**

(A) *[A]* **The** fee *[of fifty dollars ($50) made payable to the Department of Health and Senior Services]* **referenced in 19 CSR 73-2.015**;

(B) His/her original wall license and all other indicia of licensure, or evidence satisfactory to the board that the license has been lost, stolen**,** or destroyed;

(5) Licensees seeking to renew shall, on or before June 30*[,]* of the year of renewal, file an application for renewal, **as provided in 19 CSR 73-2.050,** on forms furnished by the board that includes evidence satisfactory to the board of completion of ten (10) clock hours of continuing education in the area of patient care and shall be accompanied by *[a]* **the** renewal fee *[of fifty dollars ($50) made payable to the Department of Health and Senior Services]* **referenced in 19 CSR 73-2.015**.

(7) An inactive license may be reactivated by submitting a written request to the board, accompanied by evidence satisfactory to the board of the completion of forty (40) clock hours of continuing education and *[a]* **the** fee *[of one hundred dollars ($100) made payable to the Department of Health and Senior Services]* **referenced in 19 CSR 73-2.015**. The forty (40) clock hours of continuing education shall be earned no earlier than six (6) months prior to the request for reactivation and no later than six (6) months after the inactive license has been reactivated. If the holder of an inactive license requests reactivation prior to completing the forty (40) clock hours of continuing education, the board shall issue a six (6)-month interim license to the licensee. The interim license shall expire six (6) months from the date of issuance or at such earlier time as the licensee earns the forty (40) clock hours of continuing education *[and submits evidence]* **deemed** satisfactory to the board of completion of the required hours.

(8) A request for reactivation of an inactive license shall show, under oath or affirmation of the *[nursing home]* administrator, a statement that the *[nursing home]* administrator has not practiced during the inactive period and is not presently practicing in this state.

(9) No person shall practice as *[a nursing home]* **an** administrator or hold himself or herself out as *[a nursing home]* **an** administrator in this state while his or her license is inactive.

*AUTHORITY: section 344.070, RSMo Supp. [2007] **2010**. Original rule filed Dec. 28, 2007, effective Aug. 30, 2008. For intervening history, please consult the **Code of State Regulations**. Amended: Filed June 15, 2011.*

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 cost private entities nine hundred sixty dollars and ninety-five cents ($960.95) annually in the aggregate.

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Sally McKee, Missouri Board of Nursing Home Administrators, 3418 Knipp Drive, PO Box 570, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. A public hearing is scheduled for 9:00 a.m., August 4, 2011, Conference Rooms 102 and 103, 3418 Knipp Drive, Jefferson City, Missouri.*

FISCAL NOTE
PRIVATE COST

I. Department Title: 19-Department of Health and Senior Services
Division Title: 73-Board of Nursing Home Administrators
Chapter Title: 2-General Rules

Rule Number and Title:	19 CSR 73-2.053 Inactive Licensure Status
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
20 inactive license renewals 20 inactive renewals x ($25 increase + $2.25 processing fee)	Individuals	$545.00 annually
10 inactive licenses 10 inactive licenses x ($25 increase + $2.25 processing fee)	Individuals	$272.50 annually
5 reactivate inactive licenses 5 licenses x ($25 increase + $3.69 processing fee)	Individuals	$143.45 annually
	Total	$960.95 annually

III. WORKSHEET
See table above.

IV. ASSUMPTIONS
Figures based on estimate of FY10 actuals and FY11 projections.

The dollar amount in the above worksheet include the dollar amount of the processing fee per credit card transaction.

*Please refer to Fiscal Note Private Cost form for 19 CSR 73-2.015 Fees.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 73—Missouri Board of Nursing Home Administrators
Chapter 2—General Rules

PROPOSED AMENDMENT

19 CSR 73-2.055 Renewal of Expired License. The department is amending sections (2)–(4) and (7).

PURPOSE: This amendment clarifies the conditions and procedures for renewing a license that has expired.

(2) The licensee must complete and forward to the board office a license renewal application *[(see 19 CSR 73-2.050(2) or (3), accordingly to the date the license expired)]* **referenced in 19 CSR 73-2.050**, along with a renewal fee *[of one hundred dollars ($100)]* **referenced in 19 CSR 73-2.015** for a two (2)-year license, plus *[a twenty-five dollar ($25)]* **the** penalty fee. Satisfactory evidence of board-approved continuing education*[,]* (as outlined in *[19 CSR 73-2.050(2) or (3), according to the date the license expired,]* **19 CSR 73-2.050**) must also be submitted with the license renewal application. Information provided in the application shall be attested to by signature to be true and correct to the best of the applicant's knowledge and belief and include an attestation verifying that the licensee has completed the required number of board-approved continuing education clock hours obtained during the current licensure period.

(3) The licensee shall also supply the board with a statement indicating employment status from the point the license expired through the filing of the application for late renewal. The licensee shall include in the statement written reasons *[as to]* why the license was not renewed prior to the expiration date of June 30.

(4) The board-approved continuing education must be obtained as described in *[19 CSR 73-2.050(5)(A) and may include clock hours as outlined in 19 CSR 73-2.050(5)(B)1.–4]* **19 CSR 73-2.050**.

(7) Upon expiration of the license, a licensee cannot act in the capacity of *[a nursing home]* **an** administrator. To do so is a violation of section 344.020, RSMo**,** and may be grounds for denial of the late renewal application or be cause for discipline of the license.

*AUTHORITY: sections 344.040 and 344.070, RSMo Supp. [2007] **2010**. This rule was previously filed as 13 CSR 73-2.055. Original rule filed June 28, 1990, effective Dec. 31, 1990. For intervening history, please consult the **Code of State Regulations**. Amended: Filed June 15, 2011.*

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 cost private entities one thousand six hundred three dollars and twenty cents ($1,603.20) annually in the aggregate.

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Sally McKee, Missouri Board of Nursing Home Administrators, 3418 Knipp Drive, PO Box 570, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. A public hearing is scheduled for 9:00 a.m., August 4, 2011, Conference Rooms 102 and 103, 3418 Knipp Drive, Jefferson City, Missouri.*

FISCAL NOTE
PRIVATE COST

I. Department Title: 19-Department of Health and Senior Services
Division Title: 73-Board of Nursing Home Administrators
Chapter Title: 2-General Rules

Rule Number and Title:	19 CSR 73-2.055 Renewal of Expired License
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
20 late license renewals for two-year license 20 late renewals x ($50 increase + $25 late fee + $5.16 processing fee)	Individuals	$1603.20
	Total	$1603.20 annually

III. WORKSHEET
See table above.

IV. ASSUMPTIONS
Figures based on estimate of FY10 actuals and FY11 projections.

The dollar amount in the above worksheet include the dollar amount of the processing fee per credit card transaction.

*Please refer to Fiscal Note Private Cost form for 19 CSR 73-2.015 Fees.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 73—Missouri Board of Nursing Home Administrators
Chapter 2—General Rules

PROPOSED AMENDMENT

19 CSR 73-2.070 Examination. The department is amending sections (3), (4), and (6).

PURPOSE: This amendment changes the conditions and procedures for examinations.

(3) Qualified applicants will be eligible to take the **appropriate licensure-level (nursing home administrator license or residential care and assisted living administrator license)** national examination through the **National Association of Boards of Examiners of Long Term Care Administrators (NAB).** *[testing service by following the procedures set forth in subsections (A)–(D).*

(A) Applicants must submit the National Association of Boards of Examiners of Long Term Care Administrators (NAB) Application Form for Computerized Testing and the required fees to NAB. The applicant will receive from the testing service an authorization letter including a list of testing center vendors, each center's toll-free telephone number and instructions on the scheduling process.

(B) Applicants must schedule to sit the examination within sixty (60) days of the date on the testing service's authorization letter.

(C) Failure to schedule and sit the examination(s) within the sixty (60)-day period will cause the applicant's name to be removed from the eligibility list kept by the testing service. Applicants may reschedule by resubmitting the NAB Application Forms and paying any required fees.

(D) Applicants must comply with all criteria and requirements established by the board, the National Association of Board of Examiners of Long Term Care Administrators (NAB), the testing service and the testing center.]

(4) Qualified applicants will be eligible to take the **appropriate licensure-level (nursing home administrator license or residential care and assisted living administrator license)** state examination *[administered by the board once a written request and the one hundred dollar ($100) fee are received by the board. The examination will be scheduled at least monthly if one (1) or more applicants are awaiting examination]* **prescribed by the board**.

(6) Applicants shall obtain a passing score on the examination(s) *[administered]* **prescribed** by the board. The passing score shall be based up on the scale score passing point of one hundred thirteen (113) on the *[federal portion of the]* **national** examination and seventy-five percent (75%) on the state *[portion of the]* examination.

*AUTHORITY: section 344.070, RSMo Supp. [2007] **2010**. This rule was previously filed as 13 CSR 73-2.010. Original rule filed May 13, 1980, effective Aug. 11, 1980. For intervening history, please consult the **Code of State Regulations**. Emergency amendment filed May 5, 2011, effective May 15, 2011, expires Feb. 23, 2012. Amended: Filed June 15, 2011.*

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 cost private entities six thousand six hundred dollars ($6,600) annually in the aggregate.

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Sally McKee, Missouri Board of Nursing Home Administrators, 3418 Knipp Drive, PO Box 570, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. A public hearing is scheduled for 9:00 a.m., August 4, 2011, Conference Rooms 102 and 103, 3418 Knipp Drive, Jefferson City, Missouri.*

FISCAL NOTE
PRIVATE COST

I. Department Title: 19-Department of Health and Senior Services
Division Title: 73-Board of Nursing Home Administrators
Chapter Title: 2-General Rules

Rule Number and Title:	19 CSR 73-2.070 Examination
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
120 state exams* 120 exams x $55 increase	Individuals	$6,600.00 annually
	Total	$6,600.00 annually

III. WORKSHEET

See table above.

IV. ASSUMPTIONS

Figures based on estimate of FY10 actuals and FY11 projections.

The dollar amounts in the above worksheet include the dollar amount of the processing fee per credit card transaction.

*Please refer to Fiscal Note Private Cost form for 19 CSR 73-2.015 Fees for explanation.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 73—Missouri Board of Nursing Home Administrators
Chapter 2—General Rules

PROPOSED AMENDMENT

19 CSR 73-2.080 Temporary Emergency Licenses. The department is amending sections (1)–(4).

PURPOSE: This amendment clarifies the procedure for requesting an emergency license and extension and the conditions which must be met as authorized by Chapter 344, RSMo.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) *[Application]* **The appropriate-licensure level (nursing home administrator license or residential care and assisted living administrator license) application** for a temporary emergency license shall be made to the executive secretary of the board. **The application forms, MO 580-2664 (03-11), Temporary Emergency License Application NHA, and MO 580-2989 (03-11), Temporary Emergency License Application RCAL, are incorporated by reference in this rule and are available on the web at www.health.mo.gov/information/boards/bnha or by contacting the board at PO Box 570, Jefferson City, MO 65102, (573) 751-3511. This rule does not incorporate any subsequent amendments or additions.** The application shall demonstrate that the applicant meets the requirements for a temporary emergency license as set forth in section 344.030.5, RSMo**,** and shall include the following:

(E) *[A complete copy]* **The date and the event identification** of the most recent statement of deficiencies from the Missouri Department of Health and Senior Services for the facility where the emergency exists; and

(2) After receipt and review of the required information, the board may issue a temporary emergency license for a period not to exceed ninety (90) days. The person to whom it is issued is fully responsible for the facility as if initially licensed as *[a nursing home]* **an** administrator and shall confirm his/her understanding of this fact in a statement upon receipt of the temporary emergency license.

(3) A temporary emergency license shall not be granted by the board to an individual to act as an administrator in a newly-licensed facility unless clear and convincing evidence is presented which, in the board's best *[judgement]* **judgment**, demonstrates that the departure of the previous administrator was not anticipated by the operator at the time the facility was newly licensed. All individuals or entities intending either to build or become the operator of a facility must be familiar with the laws pertaining to licensure of *[nursing home]* administrators and long-term care facilities and take necessary steps to insure continued compliance with the statutory and regulatory provisions before becoming an operator.

(4) A temporary emergency license may be issued only to a person—

(B) Who had been preceded in the position by a fully-licensed *[nursing home]* administrator; and

(C) Who previously has not been denied *[a nursing home]* **an** administrator's license or has not had *[a nursing home]* **an** administrator's license suspended or revoked.

*AUTHORITY: sections 344.030.4 and 344.070, RSMo Supp. [2007] **2010**. This rule was previously filed as 13 CSR 73-2.080. Original rule filed May 13, 1980, effective Aug. 11, 1980. For intervening history, please consult the **Code of State Regulations**. Amended: Filed June 15, 2011.*

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

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

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Sally McKee, Missouri Board of Nursing Home Administrators, 3418 Knipp Drive, PO Box 570, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. A public hearing is scheduled for 9:00 a.m., August 4, 2011, Conference Rooms 102 and 103, 3418 Knipp Drive, Jefferson City, Missouri.*

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 73—Missouri Board of Nursing Home Administrators
Chapter 2—General Rules

PROPOSED AMENDMENT

19 CSR 73-2.085 Public Complaints. The department is amending sections (1)–(5).

PURPOSE: This amendment clarifies the procedures for receipt, handling, and disposition of public complaints by the Missouri Board of Nursing Home Administrators.

(1) The State Board of Nursing Home Administrators shall receive and process each complaint made against any licensed *[nursing home]* administrator, or other person or entity, which complaint alleges certain acts or practices which may constitute one (1) or more violations of the provisions of Chapter 344, RSMo. Any member of the public or the profession, or any federal, state**,** or local official, may make and file a complaint with the board. Complaints received from sources outside Missouri will be processed in the same manner as those originating within Missouri. No **voting** members of the State Board of Nursing Home Administrators shall file a complaint with this board while s/he holds that office, unless that member excuses him/herself from further board deliberations or activity concerning the matters alleged within that complaint. Any staff member or employee of the board may file a complaint pursuant to this rule in the same manner as any member of the public.

(2) *[Complaints]* **Written complaints** should be *[mailed or delivered]* **sent** to the following *[address]*: State Board of Nursing Home Administrators, PO Box 570, Jefferson City, MO 65102 **or email at bnha@health.mo.gov**. However, actual receipt of the complaint by the board at its administrative offices in any manner shall be sufficient. Complaints may be based upon personal knowledge, or upon information and belief, reciting information received from other sources.

(3) All complaints shall be made in writing and shall fully identify their maker by name and address. Complaints may be made on forms provided by the board, which shall be available upon request. *[Complaints need not be made by affidavit, but oral]* **Oral** or

telephone communications will not be considered or processed as complaints. Any person attempting to make an oral or telephone complaint against an individual will be provided with a complaint form and requested to complete it and return it to the board. Any staff member or employee of the board may make and file a complaint based upon information and belief, in reliance upon oral, telephone**,** or written but unsigned communications received by the board, unless those communications are believed by that staff member or employee to be false.

(4) *[Each]* **A record of each** complaint received under this rule shall be *[logged in a book maintained]* **retained** by the board *[for that purpose]*. Complaints shall be logged in *[consecutive]* **the** order as received*[. The logbook]* **and** shall contain*[:]* a record of each complainant's name and address; the name and address of the subject(s) of the complaint; the date each complaint is received by the board; a brief statement of the acts complained of, including the name of any person injured or victimized by the alleged acts or practices; a notation whether the complaint resulted in its dismissal by the board or in formal charges being filed with the Administrative Hearing Commission; and the ultimate disposition of the complaint. *[This logbook]* **The complaint information** shall be a closed record of the board.

(5) Each complaint *[logged pursuant to this rule]* shall be acknowledged in writing. The acknowledgment shall state that the complaint is being investigated and shall be referred to the board or an appropriate board subcommittee for consideration following the investigation. The complainant may be notified of the ultimate disposition of the complaint, excluding judicial appeals, and may be provided with a copy of the decisions (if any) of the Administrative Hearing Commission and the board. The provisions of this section shall not apply to complaints filed by staff members or employees of the board, based upon information and belief, acting in reliance on third-party information received by the board.

*AUTHORITY: section 344.070, RSMo Supp. [2007] **2010**. This rule was previously filed as 13 CSR 73-2.085. Original rule filed Oct. 4, 1988, effective March 15, 1989. For intervening history, please consult the **Code of State Regulations**. Amended: Filed June 15, 2011.*

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

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

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Sally McKee, Missouri Board of Nursing Home Administrators, 3418 Knipp Drive, PO Box 570, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. A public hearing is scheduled for 9:00 a.m., August 4, 2011, Conference Rooms 102 and 103, 3418 Knipp Drive, Jefferson City, Missouri.*

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 73—Missouri Board of Nursing Home Administrators
Chapter 2—General Rules

PROPOSED AMENDMENT

19 CSR 73-2.120 Duplicate License. The department is amending section (1).

PURPOSE: This amendment simplifies the fee process.

(1) In the event a license is lost or stolen, mutilated**,** or destroyed, the administrator is required to report the loss immediately to the board office. Upon receipt of satisfactory evidence that a license has been lost, mutilated**,** or destroyed, the board may issue a duplicate license upon payment of *[a]* **the** fee *[of ten dollars ($10)]* **referenced in 19 CSR 73-2.015**. Satisfactory evidence is construed to be a notarized affidavit stating facts of the loss, mutilation**,** or destruction of the license.

*AUTHORITY: section 344.070, RSMo Supp. [2007] **2010**. This rule was previously filed as 13 CSR 73-2.120. Original rule filed May 13, 1980, effective Aug. 11, 1980. For intervening history, please consult the **Code of State Regulations**. Amended: Filed June 15, 2011.*

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

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

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Sally McKee, Missouri Board of Nursing Home Administrators, 3418 Knipp Drive, PO Box 570, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. A public hearing is scheduled for 9:00 a.m., August 4, 2011, Conference Rooms 102 and 103, 3418 Knipp Drive, Jefferson City, Missouri.*

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 73—Missouri Board of Nursing Home Administrators
Chapter 2—General Rules

PROPOSED AMENDMENT

19 CSR 73-2.130 Notice of Change of Address. The department is amending section (1).

PURPOSE: This amendment clarifies the conditions and procedures for reporting change of address.

(1) Each administrator shall notify the board office of *[a current mailing address]* **his/her current contact information** within twenty-one (21) days of change of personal *[address]* **contact information**, facility employment**,** or both. **Contact information shall include the following: mailing address, email, and telephone number(s).**

*AUTHORITY: section 344.070, RSMo Supp. [1993] **2010**. This rule was previously filed as 13 CSR 73-2.130. Original rule filed May 13, 1980, effective Aug. 11, 1980. For intervening history, please consult the **Code of State Regulations**. Amended: Filed June 15, 2011.*

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Sally McKee, Missouri Board of Nursing Home Administrators, 3418 Knipp Drive, PO Box 570, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. A public hearing is scheduled for 9:00 a.m., August 4, 2011, Conference Rooms 102 and 103, 3418 Knipp Drive, Jefferson City, Missouri.*