

Volume 43, Number 22
Pages 3195–3342
November 15, 2018

SALUS POPULI SUPREMA LEX ESTO

“The welfare of the people shall be the supreme law.”



JOHN R. ASHCROFT
SECRETARY OF STATE

MISSOURI
REGISTER

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The *Missouri Register* is published semi-monthly by

SECRETARY OF STATE

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ISSN 0149-2942, USPS 320-630; periodical postage paid at Jefferson City, MO
Subscription fee: \$72.00 per year

POSTMASTER: Send change of address notices and undelivered copies to:

MISSOURI REGISTER
Office of the Secretary of State
Administrative Rules Division
PO Box 1767
Jefferson City, MO 65102

The *Missouri Register* and *Code of State Regulations* (CSR) are available on the Internet. The Register address is www.sos.mo.gov/adrules/moreg/moreg and the CSR is www.sos.mo.gov/adrules/csr/csr. These websites contain rulemakings and regulations as they appear in the paper copies of the Registers and CSR. The Administrative Rules Division may be contacted by email at rules@sos.mo.gov.

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IN THIS ISSUE:

EMERGENCY RULES

Department of Public Safety

Division of Alcohol and Tobacco Control3199

EXECUTIVE ORDERS3202

PROPOSED RULES

Office of Administration

Commissioner of Administration3205
 Division of Facilities Management, Design and
 Construction3215
 Division of Facilities Management3222
 Purchasing and Materials Management3226

Department of Natural Resources

State Environmental Improvement and Energy
 Resources Authority3237

Department of Public Safety

Division of Alcohol and Tobacco Control3240

Department of Revenue

Director of Revenue3263

Department of Social Services

Division of Youth Services3271

Department of Insurance, Financial Institutions and Professional Registration

State Board of Chiropractic Examiners3271
 Missouri Dental Board3274
 State Board of Nursing3278

ORDERS OF RULEMAKING

Department of Economic Development

Public Service Commission3279

Department of Higher Education

Commissioner of Higher Education3293

Missouri Department of Transportation

Missouri Highways and Transportation Commission3294

Department of Public Safety

Missouri Gaming Commission3294

Department of Insurance, Financial Institutions and Professional Registration

State Board of Nursing3299

IN ADDITIONS

Department of Health and Senior Services

Missouri Health Facilities Review Committee3301

DISSOLUTIONS3302

SOURCE GUIDES

RULE CHANGES SINCE UPDATE3304
 EMERGENCY RULES IN EFFECT3319
 EXECUTIVE ORDERS3322
 REGISTER INDEX3324

Register Filing Deadlines	Register Publication Date	Code Publication Date	Code Effective Date
July 2, 2018 July 16, 2018	August 1, 2018 August 15, 2018	August 31, 2018 August 31, 2018	September 30, 2018 September 30, 2018
August 1, 2018 August 15, 2018	September 4, 2018 September 17, 2018	September 30, 2018 September 30, 2018	October 30, 2018 October 30, 2018
September 4, 2018 September 17, 2018	October 1, 2018 October 15, 2018	October 31, 2018 October 31, 2018	November 30, 2018 November 30, 2018
October 1, 2018 October 15, 2018	November 1, 2018 November 15, 2018	November 30, 2018 November 30, 2018	December 30, 2018 December 30, 2018
November 1, 2018 November 15, 2018	December 3, 2018 December 17, 2018	December 31, 2018 December 31, 2018	January 30, 2019 January 30, 2019
December 3, 2018 December 17, 2018	January 2, 2019 January 15, 2019	January 29, 2019 January 29, 2019	February 28, 2019 February 28, 2019
January 2, 2019 January 15, 2019	February 1, 2019 February 15, 2019	February 28, 2019 February 28, 2019	March 30, 2019 March 30, 2019
February 1, 2019 February 15, 2019	March 1, 2019 March 15, 2019	March 31, 2019 March 31, 2019	April 30, 2019 April 30, 2019
March 1, 2019 March 15, 2019	April 1, 2019 April 15, 2019	April 30, 2019 April 30, 2019	May 30, 2019 May 30, 2019

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

HOW TO CITE RULES AND RSMO

RULES

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

Title		Division	Chapter	Rule
3	CSR	10-	4	.115
Department	<i>Code of State Regulations</i>	Agency Division	General area regulated	Specific area regulated

and should be cited in this manner: 3 CSR 10-4.115.

Each department of state government is assigned a title. Each agency or division in the department is assigned a division number. The agency then groups its rules into general subject matter areas called chapters and specific areas called rules. Within a rule, the first breakdown is called a section and is designated as (1). Subsection is (A) with further breakdown into paragraphs 1., subparagraphs A., parts (I), subparts (a), items I. and subitems a.

The rule is properly cited by using the full citation, for example, 3 CSR 10-4.115 NOT Rule 10-4.115.

Citations of RSMo are to the *Missouri Revised Statutes* as of the date indicated.

Code and Register on the Internet

The *Code of State Regulations* and *Missouri Register* are available on the Internet.

The *Code* address is www.sos.mo.gov/adrules/csr/csr

The *Register* address is www.sos.mo.gov/adrules/moreg/moreg

These websites contain rulemakings and regulations as they appear in the *Code* and *Registers*.

Rules appearing under this heading are filed under the authority granted by section 536.025, RSMo 2016. An emergency rule may be adopted by an agency if the agency finds that an immediate danger to the public health, safety, or welfare, or a compelling governmental interest requires emergency action; follows procedures best calculated to assure fairness to all interested persons and parties under the circumstances; follows procedures which comply with the protections extended by the *Missouri* and the *United States Constitutions*; limits the scope of such rule to the circumstances creating an emergency and requiring emergency procedure, and at the time of or prior to the adoption of such rule files with the secretary of state the text of the rule together with the specific facts, reasons, and findings which support its conclusion that there is an immediate danger to the public health, safety, or welfare which can be met only through the adoption of such rule and its reasons for concluding that the procedure employed is fair to all interested persons and parties under the circumstances.

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

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

Title 11—DEPARTMENT OF PUBLIC SAFETY Division 70—Division of Alcohol and Tobacco Control Chapter 2—Rules and Regulations

EMERGENCY AMENDMENT

11 CSR 70-2.240 Advertising of Intoxicating Liquor [and Nonintoxicating Beer]. The division is amending all sections.

PURPOSE: This amendment reflects the elimination of language that the Division of Alcohol and Tobacco Control has been enjoined from enforcing, which now allows manufacturers of intoxicating liquor to offer consumer rebate coupons and advertise of sales price below cost. This amendment further updates the regulation to reflect current trends in advertising, such as advertisements via the Internet, email, and text messages. Language regarding advertising that is duplicative of statute is eliminated, along with language that has become obsolete following the elimination of Chapter 312, RSMo, regarding non-intoxicating beer. Finally, this amendment revises the regulation to enhance clarity and remove unnecessary regulatory restrictions.

EMERGENCY STATEMENT: This emergency amendment is necessary to remove language the division has been enjoined from enforcing by the court's decision in Missouri Broadcasters Association v. Taylor, No. 2:13-cv-04034-MDH (W.D. Mo. June 29, 2018). This case, which dealt with the advertising of alcohol, resulted in the court enjoining enforcement of the regulations contained in 11 CSR subsection 70-2.240(5)(G) and 11 CSR subsection 70-2.240(5)(I). This emer-

gency amendment is necessary to protect governmental interest as members of industry and the public may feel compelled to follow rules that the court has enjoined from enforcement. Additionally, this amendment is necessary following Missouri Broadcasters to reflect new trends in the advertising of alcohol. As a result, the Division of Alcohol and Tobacco Control finds a compelling governmental interest, which requires this emergency action. A proposed amendment, which covers the same material, is published in this issue of the Missouri Register. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The Division of Alcohol and Tobacco Control believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed October 10, 2018, becomes effective October 20, 2018, and expires April 17, 2019.

(1) No person engaged in business as a producer, manufacturer, brewer, bottler, importer, wholesaler, or retailer of intoxicating liquor [or nonintoxicating beer], directly or indirectly, [shall] may publish or disseminate or cause to be published or disseminated [in any newspaper, magazine or similar publication] any advertisement of intoxicating liquor [or nonintoxicating beer], unless the advertisement is in conformity with the regulations.

(A) These provisions [shall] do not apply to the publisher of any newspaper, magazine, or similar publication, unless the publisher is engaged in business as a producer, manufacturer, brewer, bottler, importer, wholesaler, or retailer of intoxicating liquor [or nonintoxicating beer], directly or indirectly.

(2) The term advertisement includes any [advertisement] dissemination of information by print, audio, or video means, whether through the media [of] or otherwise, including but not limited to, radio, television, motion pictures, newspapers, internet, email, texting, website, mobile applications, magazines or similar publications [or any sign or outdoor billboard or], other printed or graphic matter, or any electronic means, except that the term shall not include:

(A) Any label affixed to any container of intoxicating liquor [or nonintoxicating beer] or any individual covering, carton, or other wrapper of a container; and

(B) Any editorial [or other reading matter] in any periodical or publication or newspaper for the preparation or publication of which no money or other valuable consideration is paid or promised, directly or indirectly, by any person subject to these regulations.

(3) Mandatory [S/statements/.] include:

(A) [The advertiser shall state t]The name and address of the producer, manufacturer, bottler, brewer, importer, wholesaler, or retailer responsible for its publication[.];

(B) [The advertisement shall contain a]A conspicuous statement of the class and type or other designation of the product, corresponding with the complete designation which appears on the brand label of the product[.];

(C) The alcoholic content [shall be] stated in the manner and form in which it appears on the labels of intoxicating liquor [or nonintoxicating beer] advertised[.];

(D) In the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification, if neutral spirits have been used in the production of distilled spirits, [there shall be stated in the advertisement] the percentage of neutral spirits so used and the name of the commodity from which the neutral spirits have been distilled in substantially the manner and form in which these statements appear on the labels of the distilled spirits advertised. In the case of neutral spirits or of gin produced by a process of continuous distillation, [there shall be stated in the advertisement] the name of the commodity from which the neutral spirits or

gin have been distilled substantially in the manner and form in which this statement appears on the labels of the distilled spirits advertised./;]

(E) Where an advertisement does not mention a specific product but merely refers to a class of intoxicating liquor *[or nonintoxicating beer]* (such as whiskey or beer) and the advertiser markets more than one (1) brand of intoxicating liquor *[or nonintoxicating beer]* of that class, or where the advertisement refers to several classes of intoxicating liquor *[or nonintoxicating beer]* (such as whiskey, brandy, rum, gin, liqueur, wine, beer, etc.) marketed under a single brand, the only mandatory information prescribed by section (1) applicable to advertisement would be the name and address of the responsible advertiser./; and

(F) Advertisements by retail establishments which merely refer to the availability of intoxicating liquor *[or nonintoxicating beer]* in these establishments, but which otherwise make no reference to a specific brand of intoxicating liquor *[or nonintoxicating beer shall be]* are subject only to the *[prohibited statements provisions]* prohibitions of section (5) of this rule.

(4) Statements required by these regulations to be stated in any written, printed, or graphic advertisement *[shall]* **should** appear in lettering or type of a size, kind, and color sufficient to render them both conspicuous and readily legible. In particular—

(A) Required information shall be stated against a contrasting background and in type or lettering which is at least the equivalent of eight- (8-)/- point type;

(B) *[Required]* **Mandated** information *[shall]* **should** be so stated as to appear to be a part of the advertisement and *[shall]* not be separated in any manner from the remainder of the advertisement;

(C) Where an advertisement relates to more than one (1) product, the *[required]* **necessary** information *[shall]* **is to** appear in a manner as to clearly indicate the particular products to which it is applicable; and

(D) *[Required]* **No mandated** information *[shall not]* **may** be buried or concealed in unrequired descriptive matter or decorative designs.

(5) No advertisements of intoxicating liquor *[or nonintoxicating beer shall]* **may** contain:

(A) Any statement that is false or misleading in any material particular;

(B) Any statement that is disparaging of a competitor's products;

(C) Any statement, design, device, or representation which is obscene, indecent, in poor taste, or conveys a derogatory connotation;

(D) Any statement design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which is likely to mislead the consumer;

(E) Any statement, design, device, or representation of or relating to any guarantee, irrespective of falsity, which is likely to mislead the consumer. Nothing in this subsection *[shall prohibit]* **prevents** the use of any enforceable guarantee in substantially the following form: "We will refund the purchase price to the purchaser if s/he is in any manner dissatisfied with the contents of this package";

(F) Any statement that the product is produced, blended, brewed, made, bottled, packaged, sold under, or in accordance with any authorization, law, or regulation of any municipality, county, state, federal, or foreign government unless the statement is *[required]* **necessary** or specifically authorized by the laws or regulations of the government; and, if a municipality, county, state, or federal permit number is stated, the permit number shall not be accompanied by an additional statement relating to it; **and**

[(G) Any statement offering any coupon, premium, prize, rebate, sales price below cost or discount as an inducement to purchase intoxicating liquor or nonintoxicating beer except, manufacturers of intoxicating liquor other than beer or wine shall be permitted to offer and advertise consumer cash rebate coupons and all manufacturers of intoxicating

liquor may offer and advertise coupons for nonalcoholic merchandise in accordance with section 311.355, RSMo;]

[(H)](G) Any statement offering free delivery or credit terms to consumers[,] as an inducement to purchase intoxicating liquor [or nonintoxicating beer; and].

[(I) A price that is below the retailer's actual cost.]

(6) *[The]* **No** advertisement *[shall not]* **may** contain any statement concerning a brand or lot of intoxicating liquor *[or nonintoxicating beer]* that is inconsistent with any statement on the labeling.

(7) *[The advertising shall not]* **No advertisement may** contain any statement, design, or device representing that the use of any intoxicating liquor *[or nonintoxicating beer]* has curative or therapeutic effects or tending to create an impression that it *[does have]* **has** curative or therapeutic effects.

(8) No advertisement *[shall]* **may** contain any statement, design, device, or pictorial representation of or relating to, or capable of being construed as relating to the armed forces of the United States or of the American flag, any state flag, or of any emblem, seal, insignia, or decoration associated with any such flag or the armed forces of the United States; nor *[shall]* **may** any advertisement containing any statement, device, design, or pictorial representation of or concerning any flag, seal, coat of arms, crest, or other insignia, likely to falsely lead the consumer to believe that the product has been endorsed, made *[or]*, used by, or produced *[for or]* under the supervision of or in accordance with the specifications of the government, organization, family, or individual with whom the flag, seal, coat of arms, crest, or insignia is associated.

(9) *[An]* **No** advertisement for distilled spirits *[shall not]* **may** contain:

(A) The words bond, bottled in bond, aged in bond, or phrases containing these or synonymous terms, unless these words or phrases appear upon the labels of the distilled spirits advertised and are stated in the advertisement in **substantially** the manner and form in which they appear upon the label;

(B) Any statement, design, or device, directly or by implication concerning age or maturity of any brand or lot of distilled spirits unless a statement of age appears on the labels of the advertised product. When any statement, design, or device concerning age or maturity is contained in any advertisement, it shall include (in direct conjunction with the advertisement and with substantially equal conspicuousness) all parts of the statement concerning age and percentages, if any, which appear on the label. However, an advertisement for any whiskey or brandy, which does not bear a statement of age on the label or an advertisement for rum which is four (4) years or more old, may contain general inconspicuous age, maturity, or other similar representations./ (for example, aged in wood, mellowed in fine oak cask); and

(C) A representation that intoxicating liquor *[or nonintoxicating beer]* was manufactured in or imported from a place or country other than of its actual origin or was produced or processed by one who was not in fact the actual producer or processor.

(10) *[An]* **No [a]** Advertisement for wine *[shall not]* **may** contain:

(A) Any statement of bonded winecellar or bonded winery numbers unless stated in direct conjunction with the name and address of the person operating the winery or storeroom. Statement of bonded winecellar and bonded winery numbers may be made in the following form: "Bonded Winecellar No. . . ." "Bonded Winery No," "B.W.C. No," or "B.W. No/," No additional reference to numbers shall be made, *[n]*or *[shall]* any use be made of a statement that may convey the impression that the wine has been made or matured under **the** United States government or any state government supervision or in accordance with **the** United States government or any state government specifications or standards./;

(B) Any statement, design, device, or representation which relates

to alcoholic content or which tends to create the impression that a wine is unfortified or has been fortified or has intoxicating qualities or contains distilled spirits except for a reference to distilled spirits in a statement of composition where the statement is required by these regulations to appear as a part of the designation of the product.

(11) No statement of age or representation relative to age (including words or devices in any brand name or mark) *[shall]* **may** be made, except that—

(A) In the case of vintage wine, the year of vintage may be stated if it appears on the label; and

(B) Truthful references of a general and informative nature relating to methods of production involving storage or aging¹. ¹For example, “This wine has been mellowed in oak casks,” “Stored in small barrels,” or “Matured at regulated temperatures in our cellars,” may be made.

(12) The statement of any bottling date *[shall]* **is not** *[be]* deemed to be a representation relative to age¹ if the statement appears without undue emphasis in the following form: “bottled in,” (inserting the year in which the wine was bottled).

(13) No date, except as provided in this section and section (12) of this rule with respect to statement of vintage year and bottling date, *[shall]* **may** be stated unless, in addition to the year and date, *[and]* **in** direct conjunction with the year and date, **and** in the same size and kind of printing *[there shall be stated]* an explanation of the significance of the date **is stated**. If any date refers to the date of establishment of any business, this date *[shall]* **is to** be stated without undue emphasis and in direct conjunction with the name of the person to whom it refers.

(14) *[The]* **No** advertisement *[shall not]* **may** represent that the wine was manufactured in, or imported from, a place or country other than that of the actual origin or produced or processed by one who was not in fact the actual producer or processor.

(15) No retail licensee *[shall]* **may** advertise for sale any brand of intoxicating liquor *[or nonintoxicating beer]* unless s/he has the particular brand and size of container or package of intoxicating liquor *[or nonintoxicating beer]* in his/her licensed premises for sale.

(16) No wholesale licensee *[shall]* **may** allow any sign owned by him/her or advertising his/her product to be placed or allowed to remain on or upon any building unless the building has an occupant holding a license issued by the supervisor.

(17) No wholesale or retail licensee *[shall]* **may** use any loudspeaker or public address system to advertise intoxicating liquor *[or nonintoxicating beer]*.

(18) No producer, manufacturer, brewer, bottler, importer, or wholesaler of intoxicating liquor *[or nonintoxicating beer shall]* **may** advertise the retail price or suggested retail price of intoxicating liquor *[or nonintoxicating beer]*.

AUTHORITY: section 311.660, RSMo [1994] Supp. 2018. This version of rule filed Feb. 8, 1973, effective Feb. 18, 1973. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Oct. 10, 2018, effective Oct. 20, 2018, expires April 17, 2019. A proposed amendment covering this same material is published in this issue of the Missouri Register.

The Secretary of State shall publish all executive orders beginning January 1, 2003, pursuant to section 536.035.2, RSMo 2016.

EXECUTIVE ORDER 18-07

WHEREAS, on August 10, 1821, Missouri was admitted as the 24th state to the union; and

WHEREAS, on August 10, 2021, Missouri will celebrate its 200th anniversary as a state; and

WHEREAS, the progress of this great state and its citizens over the past 200 years is deserving of special recognition; and

WHEREAS, the Ninety-seventh General Assembly, First Regular Session, directed the State Historical Society of Missouri to develop plans, ideas, and proposals to commemorate and celebrate the Missouri bicentennial; and

WHEREAS, the Ninety-ninth General Assembly, Second Regular Session, appropriated \$200,000 to the State Historical Society for the purpose of furthering the bicentennial commemoration; and

WHEREAS, the State Historical Society of Missouri, in collaboration with the Missouri Bicentennial Alliance, has made exemplary progress in developing plans for the bicentennial commemoration:

NOW, THEREFORE, I Michael L. Parson, Governor of the State of Missouri, by virtue of the authority vested in me by the Constitution and the laws of the State of Missouri, do hereby establish the Missouri Bicentennial Commission whose purpose shall be to aid the State Historical Society of Missouri in its charge to plan for and implement the commemoration of the Missouri bicentennial and to further state efforts to honor the State of Missouri and its rich history and heritage on the occasion of its bicentennial. The Commission's composition shall be as follows:

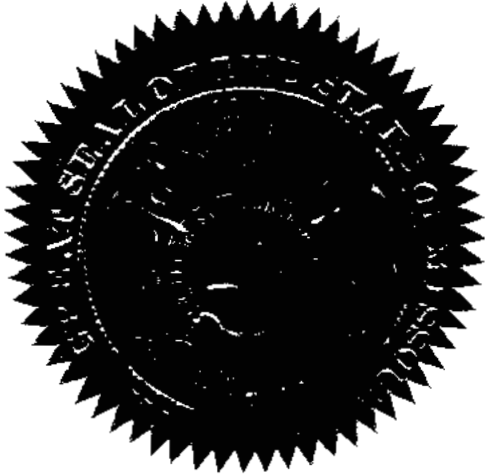
- The Lieutenant Governor, or his designee;
- The Secretary of State, or his designee;
- The President Pro Tempore of the Missouri Senate, or his designee;
- The Speaker of the Missouri House of Representatives, or his designee;
- The directors, or their designees, of the Department of Conservation, the Department of Natural Resources, the Department of Agriculture, and the Division of Tourism;
- The director, or his designee, of the State Historical Society of Missouri;
- The president, or her designee, of the Missouri Historical Society;
- The director, or his designee, of the Missouri Humanities Council;
- The chair, or her designee, of the Missouri State Capitol Commission;
- Four members of the public, to be appointed by the Governor; and
- Such other members as the Governor may from time to time appoint.

The Governor shall designate two members of the Commission to serve as co-chairpersons. The Commission will coordinate with non-profit organizations and government agencies in promoting and planning statewide projects commemorating the state's 200th anniversary.

The Commission shall report to the Governor as it deems necessary.

The Commission shall terminate on August 10, 2022.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri in the City of Jefferson, on this 12th day of October, 2018.



Michael L. Parson
Governor

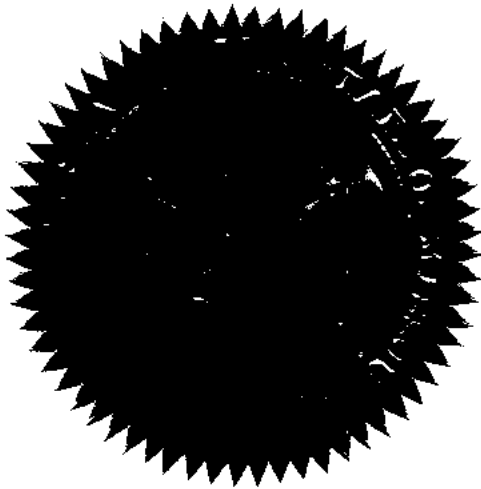
John R. Ashcroft
Secretary of State

**EXECUTIVE ORDER
18-09**

TO ALL DEPARTMENTS AND AGENCIES:

This is to advise that state offices will be closed on Friday, November 23, 2018.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 1st day of November, 2018.




MICHAEL L. PARSON
GOVERNOR

ATTEST:


JOHN R. ASHCROFT
SECRETARY OF STATE

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

Entirely new rules are printed without any special symbology under the heading of 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.

and to certify them as being regular and correct to the state treasurer for payment. This rule defines certain terms and describes situations related to this responsibility. In addition, this rule describes the requirements established to allow vendors on the Statewide Vendor File to participate in the direct deposit of payments and payroll deductions from employee compensation for participation in voluntary retirement plans, group hospital service plans, group life insurance plans, medical service plans, labor unions, employee associations, and credit unions.

(1) The following are types of *[claims certifiable as regular]* allowable claims:

(A) Claims for goods and services having a clear business relationship to the agency work program and submitted for payment after *[delivery]* receipt of goods or services. The claim *[must]* be documented with an invoice billed to the state *[department]* on the vendor's *[original]* descriptive business invoice form. Invoices *[must]* be from vendors typically engaged in a business practice of providing such goods or services. Reimbursements may be made to employees for minor purchases made on behalf of the state when accompanied by *[original]* descriptive receipts;

(C) Claims for *[expense account reimbursements and direct billed invoices for]* the payment of reasonable and necessary employee travel expenses actually incurred on behalf of the state. *Rules concerning employee travel expenses have been adopted and issued by the Office of Administration] and in accordance with 1 CSR 10-11.010 State of Missouri Travel Regulations;* and

(D) Claims for employee course tuitions/fees and related educational supplies that are either reimbursed or direct billed. **Course expenses may be reimbursed after receipt of [E]vidence of course completion [must be provided and reimbursement must be supported by] and proof of payment.** Course expenses may be paid in advance of course completion only when documentation indicates *[that]* the agency *[required]* requested the employee *[to]* take the course.

(2) The following are types of **unallowable** claims *[which may not be certified as regular claims]* unless special circumstances substantially justify the granting of an exception to this rule:

(A) Claims for the purchase of goods or services which are not apparently or cannot be substantially justified as directly related to the transaction of state business. For example, employee parties, agency team uniforms, employee gifts, holiday cards and decorations, personal club memberships, memorial flowers, political and charitable contributions, and traffic tickets. An exception is made for the purchase of retirement, service, and other recognition award gifts which may be certified as regular claims if reasonable in relation to the circumstances of the award and primarily represent a token of recognition and not a reward with a cash equivalent or substantial monetary value. Claims for the expenses of receptions for employee recognition events should be at a nominal price per person attending. Holiday decorations are allowed for commonly accessed public areas such as reception and waiting rooms;

(C) Claims with invoices prepared by state agencies rather than vendors. An exception would be for those types of payments not customarily initiated by a vendor, such as lottery *[awards]* prizes, uniform allowances, inter-agency billings, some refunds, and some program payments. *[An exception would also be for vendor invoices billed through electronic media rather than paper invoice. The agencies may submit copies of faxed invoices and print copies of invoices that were billed through electronic mail or billed on computer disk/tape;]* **The Missouri Lottery may write prize payment checks after the Lottery Commission submits the procedures for writing the prize payment checks to the commissioner of administration in accordance with section 313.321, RSMo;**

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 3—Preapproval of Claims and Accounts

PROPOSED AMENDMENT

1 CSR 10-3.010 Preapproval of Claims *[and]* Accounts and Direct Deposit: Definitions/Examples. The Division of Accounting is amending the purpose, sections (1)–(4), and adding sections (5) and (6).

PURPOSE: This amendment streamlines some of the requirements and combine three rules (1 CSR 10-13.010; 1 CSR 10-4.010; 1 CSR 10-9.010) into this rule.

PURPOSE: The commissioner of administration has the duty pursuant to section 33.030(3), RSMo to preapprove claims and accounts

(I) Claims to make payments on credit card accounts *[such as VISA or Master Card. Exceptions include proprietary charge cards issued by businesses to facilitate their centralized billing and accounting, such as used by oil companies and some retail stores]* not authorized through the Office of Administration;

(J) Claims submitted for payment before the goods or services have been received. Exceptions would be for those types of items or services for which payment in advance is the normal business practice, such as subscriptions, registrations, memberships, insurance, postage, maintenance agreements, and building/parking rentals. **Advance payment for travel expenses, such as air fare, conference fees, and lodging, may be allowed if in accordance with 1 CSR 10-11.010 State of Missouri Travel Regulations.** Advance payment is also allowed when *[the vendor requires]* prepayment is *[as]* a condition of the sale or is *[required by]* in accordance with contract terms. **Ensure** *[T]*the invoice or other claim documentation *[must]* clearly states this requirement if **advance payment is made**;

(L) Claims to reimburse imprest funds for expenditures that are not incidental in nature or are not for other specific uses authorized by law. Incidental expenditures are defined as payments that are occasional, minor, and immediately necessary for the proper operation of the facility. Travel expenses, including registration fees, are not to be paid from imprest funds. Imprest funds are not intended to be used as a means to circumvent state purchasing procedures; and

(M) Claims for late payment penalties *[that are not separately billed.]* not submitted in accordance with the accounting procedures established by the Office of Administration, Division of Accounting. **It is the submitting agencies' responsibility to verify that late payment penalties are calculated correctly pursuant to section 34.055, RSMo. The Office of Administration, Division of Accounting may ask for documentation to support that the agency has recalculated and verified the correct late payment penalty amount. Ensure a copy of the invoice that was paid late is attached to the late payment penalty invoice. Late payment penalties should be paid from funds appropriated in the fiscal year in which the goods or services were delivered. If that fiscal year has lapsed, use current fiscal year funds.**

(3) The following are **unallowable** claims *[which may not be certified as correct claims]* for the purpose of the appropriation charged:

(A) When the description of the claim indicates that the expenditure is not within the purpose of the appropriation being charged. For *[the purpose of certification for correct appropriation]* **allowable claims**, the following appropriation type definitions *[will]* apply:

1. Expense and equipment—all expenditures for operating services, supplies, rentals, professional and technical services, other charges necessary to the operation of an agency, acquisition of equipment and major repairs that extend the useful life of the equipment. This appropriation type also includes expenditures for operational repairs to state-owned facilities which do not increase their capacity or operating efficiency or enhance their function and are limited to ten thousand dollars (\$10,000) per project. Expense and equipment appropriations may also be used for capital improvements to offices and buildings up to ten thousand dollars (\$10,000) when no capital improvement appropriation exists and the expenditure is approved by the director of the Division of **Facilities Management** Design and Construction and the assistant director of the Division of Accounting. Expense and equipment appropriations do not include employee's wage/salaries, land acquisition, building acquisition, building construction, building demolition, and capital improvements other than those allowed above;

2. Capital improvements—substantial expenditures for the purchase of capital assets (land and buildings) and the extensive repairs and improvements to a capital asset which increases its capacity or operating efficiency by extending its useful life and/or enhancing its function. Purchase costs include purchase or contract price, delivered accessories, delivery charges, and other purchase-related costs.

Extensive repair and improvement costs include materials and supplies directly related to the project and necessary to its completion and other related costs to the project;

3. Personal services—all expenditures for salaries, wages, and related employee benefits; and

4. Program/specific—expenses for a group of activities or services performed for an identifiable group to serve a specific purpose. This appropriation type allows any type of expenditure necessary to fulfill the intent of the program as defined in the corresponding house bill. Program appropriations may be broadly constructed or contain restrictive language for specific purposes;

(B) When the invoice order date or service period indicates that the expenditure is being applied to an incorrect fiscal year appropriation. For the purpose of certification for correct fiscal year, the invoice should be dated within the fiscal year being charged. If the invoice is for services, it should indicate that the services were provided in a time frame within the fiscal year being charged. Unless exempted in the following paragraphs, claims for services provided in the next fiscal year cannot be charged to the prior year appropriation:

1. Exception: Invoices for subscriptions, membership dues, post office box rentals, maintenance agreements, and premium payments for insurance coverage, may be paid from the current fiscal year even though the terms may overlap into the next fiscal year;

[2. Exception: If invoices dated July or later are being charged to the previous year appropriation, the submitting agency must provide documentation indicating that the expenditure was obligated in the previous year;]

[3.]2. Exception: A prior year claim may be paid from a current fiscal year appropriation if the vendor presented the claim to the state agency within two (2) years after the claim began to accrue (section 33.120, RSMo);

*[4.]3. Exception: A service invoice may be paid from the current fiscal year for services to be provided in the next fiscal year if the vendor is requiring immediate payment in order to grant a cost savings discount or if it is *[required by]* in accordance with contract terms. An example would be an invoice for a seminar to be held in the next fiscal year for which the vendor is giving an early prepayment discount. Registration fees may be paid from the current fiscal year for events to be held in the next fiscal year when time is insufficient to process the payment; and*

[5.]4. Exception: A service invoice for services spanning two (2) fiscal years may be prorated between the two (2) fiscal years appropriations or paid entirely from the most recent fiscal year's appropriation; and

(4) The following are other types of **unallowable** claims *[which may not be certified as correct claims]* pending resolution of the incorrect condition when:

[(C)] *The warrant request does not contain the authorized department signature;]*

[(D)](C) The object codes used do not relate to the descriptions of the goods or services purchased pursuant to the object code descriptions published in the *[State of Missouri Financial Management and Control System Manual] Chart of Accounts Manual issued by the Office of Administration, Division of Accounting;*

[(E)](D) Travel expense *[reimbursement]* claims *[and direct billed travel expenses are in]* not in *[non]*compliance with the requirements of *[the State of Missouri Travel Regulations issued by the Office of Administration, Division of Accounting;]* **1 CSR 10-11.010 State of Missouri Travel Regulations; and**

[(F)](E) Claims for expenditures are not documented with one (1) of the delivery receiving report methods described in the *[State of Missouri MAPS/SAM Agency Procedures Manual] Financial Policies and Procedures Manual* issued by the Office of Administration, Division of Accounting.

Exceptions would be for those types of items or services for which **advance payment** *[in advance]* is the normal business practice or *[when prepayment is required by the vendor;]* **is a condition**

of the sale by the vendor or is in accordance with contract terms.

(G) Claims to establish, increase and reimburse imprest funds are not submitted in accordance with the accounting procedures of the State of Missouri MAPS/SAM Agency Procedures Manual issued by the Office of Administration, Division of Accounting; and

(H) Claims for late payment penalties are not submitted in accordance with the accounting procedures of the State of Missouri MAPS/SAM Agency Procedures Manual issued by the Office of Administration, Division of Accounting. It is the submitting agencies responsibility to verify that late payment penalties are calculated correctly pursuant to section 34.055, RSMo. The Office of Administration, Division of Accounting may ask for documentation to support that the agency has recalculated and verified the correct late penalty amount. A copy of the original invoice that was paid late, must be attached to the late payment penalty invoice. Late payment penalties should be paid from funds appropriated in the fiscal year in which goods or services were delivered. If that fiscal year has lapsed, current fiscal year funds must be used.]

(5) The following are the requirements for vendors who desire to have claims paid through direct deposit:

(A) Vendors on the Statewide Vendor File desiring to participate in the state's direct deposit program have two (2) options for enrolling. One (1) option is to complete a vendor Automated Clearing House/Electronic Funds Transfer (ACH/EFT) Application. The application is available on the web at www.oa.mo.gov/acct under Forms. The form is also available by contacting the Office of Administration, Division of Accounting at (573) 751-2971. The second option is to register on the State of Missouri's eProcurement system and include ACH/EFT information when completing the registration. The completed ACH/EFT application or registration authorizes the Office of Administration to deposit (credit) a vendor's designated checking or savings account for the payment amount. It also authorizes a vendor's account to be debited only when an error has occurred resulting in an erroneous payment to the vendor;

(B) Direct deposit of vendor payments will begin following the submission of a properly completed application form to the Office of Administration, Division of Accounting, or an approved registration in the eProcurement system, the successful processing of a test transaction through the banking system and the election by a state agency to make payment to a participating vendor using the direct deposit option; and

(C) The state will conduct vendor direct deposit through the automated clearing house system, utilizing an originating depository financial institution. The rules of the National Automated Clearing House Association and its member local Automated Clearing House Associations apply, as limited or modified by law.

(6) The following are the requirements established to allow payroll deductions from employee compensation for authorized voluntary products:

(A) Definitions. The following terms and meanings apply to vendor payroll deductions:

1. Vendor – any private insurance carrier or company, a labor union, an employee association, or credit union;

2. Labor union – an exclusive state employee bargaining representative established in accordance with sections 105.500-105.530, RSMo;

3. Employee association – an organized group of state employees that has a written document, such as bylaws, which govern its activity;

4. Credit union – a financial institution located in Missouri, which has a state charter and is insured by an agency of the United States government or credit union share guarantee corporation approved by the director of the Missouri Division of Credit

Unions; and

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

(B) The vendor providing a product or service is responsible for fulfilling all prescribed standards with applicable federal and state regulatory agencies;

(C) The proposed payroll deductions are to be for programs or services which do not duplicate existing programs and services provided by statutorily authorized entities (for example, Missouri State Employees' Retirement System, Missouri State Highway Employees' Retirement System, and State of Missouri Deferred Compensation Commission);

(D) The proposed service or program are to be offered on a consistent and continuing basis and be reasonably anticipated to be available for a period of five (5) or more years;

(E) Requests for payroll deductions by the vendor are to be submitted to the Office of Administration in writing on official company or association stationery plus all relevant product information and marketing materials that fully describe the proposed product;

(F) Within a period of ninety (90) days, the vendor applicant for payroll deduction authority is responsible for obtaining a minimum of one hundred (100) state employee-signed applications for the proposed product, employee association, or credit union membership. The ninety- (90-) day period for obtaining one hundred (100) employee signatures will commence on the date designated by the Office of Administration acknowledgement to a payroll deduction request in accordance with subsection (6)(E);

(G) The commissioner of administration will terminate voluntary payroll deduction authority for any product that does not maintain at least one hundred (100) active employee deductions;

(H) Solicitation by a vendor of signed employee applications or memberships are not to be performed in state facilities at any time with the exception of vendor products that are eligible under Section 125 of Title 26 of the United States Code and compliant with 1 CSR 10-15.010 and section 33.103, RSMo;

(I) Labor unions do not need to comply with subsections (6)(E)-(G) to become a vendor and collect dues, but are to be recognized as an exclusive bargaining representative by separate resolution agreement with the commissioner of administration in accordance with sections 36.510 and 105.500-105.525, RSMo;

(J) Vendors need to maintain a current primary point of contact with the Office of Administration;

(K) The commissioner of administration may reduce, suspend, or discontinue an employee's voluntary deduction when the net pay, after all mandatory deductions prescribed by law, is insufficient to meet wage garnishments, sequestrations, or levies prescribed by law or court order or when the vendor fails to fulfill the applicable standards prescribed by law or applicable federal and state regulatory agencies; and

(L) Send requests for payroll deduction authority to: Commissioner of Administration, Office of Administration, PO Box 809, Jefferson City, MO 65102.

AUTHORITY: section 33.030(3), RSMo [1986] 2016. Original rule filed Aug. 15, 1994, effective Jan. 29, 1995. Amended: Filed Oct. 3, 2018.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in

support of or in opposition to this proposed amendment with the 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 4—Vendor Payroll Deduction Regulations

PROPOSED RECISSION

1 CSR 10-4.010 State of Missouri Vendor Payroll Deductions. This rule established criteria for vendors and procedures which must be fulfilled prior to receiving payroll deduction authority.

PURPOSE: This rule is being rescinded and combined with 1 CSR 10-3.010 Preapproval of Claims and Accounts: Definitions/Examples to streamline the rules.

AUTHORITY: sections 33.103, 536.010, and 536.023, RSMo Supp. 2014, and section 370.395, RSMo 2000. Original rule filed May 15, 1990, effective Sept. 28, 1990. For intervening history, please consult the Code of State Regulations. Rescinded: Filed Oct. 3, 2018.

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

PRIVATE COST: This proposed rescission 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 rescission with 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 5—Parking Regulations

PROPOSED AMENDMENT

1 CSR 10-5.010 [Parking] Traffic Regulations for [the State Capitol Grounds] State Property. The Office of Administration is amending sections (1) through (5) of this regulation, as well as the title and purpose statement.

PURPOSE: The purpose of amending this rule is to update and clarify the facilities and property that this regulation applies to, to clarify the authority of Missouri Capitol Police, the commissioner of administration, and the facility manager, and to improve the readability of the regulation. The amendment also removes the amounts of the fines for violation of this regulation, which are set by statute.

PURPOSE: This regulation promulgates rules for the regulation of traffic and parking upon [the state capitol grounds and upon] the grounds of [other] state buildings located at the seat of government. [This rule was adopted pursuant to section 8.172, RSMo (1986).]

(1) Definitions. For the purpose of this rule—

(A) [Capitol grounds] State property means all state-owned or

leased real property, improved or unimproved, located within the City of Jefferson [and Cole County], Missouri [including, but not limited to the State Capitol Building, the Truman Building, the State Information Center Building, the Jefferson Building, the Broadway Building, the Supreme Court Building, the Electronic Data Processing Building, the Health Laboratory Building, the Highway Department Building, Lohman's Landing, the Chiller Building and the Governor's Mansion. It shall not mean property leased by Missouri];

(B) Missouri Capitol [p]Police officers means [Missouri Capitol police] officers employed and commissioned by the Missouri Capitol Police pursuant to the provisions of section 8.177, RSM[O]o [(Supp. 1995)];

(C) Over-parking [on capitol grounds] means[, for the purposes of sections 8.172, 8.177 and 8.178, RSMO (Supp. 1995)]—

1. Stopping, standing, or parking [of] a motor vehicle on a sidewalk or pedestrian crosswalk; at any place where the curb is painted yellow; in any space if stopping, standing, or parking a vehicle in that space would create an especially hazardous condition or cause unusual delay to traffic; or at any other place where official signs [as designated by the Office of Administration] prohibit stopping, standing, or parking;

2. Stopping, standing, or parking [of] a motor vehicle in any areas restricted to handicapped parking [only] unless the vehicle involved is marked by distinctive plates, placards, or hangtags issued to handicapped persons;

3. Stopping, standing, or parking [of] a motor vehicle in any area designated by appropriate signs as a restricted parking area, in violation of any such sign;

4. Stopping, standing, or parking [of] a motor vehicle by a state employee who works in a facility [on the capitol grounds] subject to this rule in an area designated as visitor parking on a weekday between the hours of 7:00 a.m. and 5:00 p.m.; and

5. Stopping, standing, or parking [of] a motor vehicle in an area designated as visitor parking on a weekday between the hours of 7:00 a.m. and 5:00 p.m. for a time period exceeding three (3) hours;

(D) Double-parking [on capitol grounds] means stopping, standing, or parking on the roadside of any vehicle stopped or parked at the edge or curb of a street; and

(E) Speeding means the operation of a motor vehicle at a speed exceeding twenty miles per hour (20 mph) [on capitol grounds].

(2) Traffic and Parking Restrictions. Except when necessary to avoid conflict with other traffic, or in compliance with law at the directions of a guard [or], police officer, or official traffic control device, no person operating a motor vehicle shall do any of the following on [capitol grounds] state property:

(A) Over-park;

(B) Speed;

(C) Double-park; [and] or

(D) Fail to yield the right-of-way to a pedestrian in a crosswalk.

(3) Fines. The fine for traffic violations [pursuant to] shall not exceed the amounts set forth in section 8.178, RSMo [(Supp. 1995)] shall not exceed five dollars (\$5) for over-parking, fifteen dollars (\$15) for double-parking and fifty dollars (\$50) for speeding, and]. [a]Any tickets issued by a Missouri Capitol [p]Police officer for violations of over-parking, speeding, or double-parking shall be referred to the circuit court of Cole County, which has authority under section 8.178, RSMo [(Supp. 1995)] to enforce this [law] regulation. [The spirit of the enforcement of these traffic rules shall recognizes that t]The ultimate goal of imposing fines for violations of this regulation is to achieve compliance with the regulation[s] rather than the generation of parking revenue.

(4) Towing of Over-Parked or Double-Parked Vehicles. Missouri Capitol [p]Police officers [appointed under the provisions of

section (1)) are authorized to remove a vehicle [which] that is over-parked or double-parked on any [capitol grounds from the capitol grounds] state property to the nearest garage or other place of safety or to a garage designated or maintained by the state. The owner or operator of the vehicle [who caused it to be] illegally over-parked or double-parked in violation of this regulation [shall be] is responsible for all cost incurred in the towing and storage of the illegally [over-]parked vehicle. Whenever possible, the Missouri Capitol [p/Police officer [may] will] notify the owner of the vehicle as to the action s/he has taken and the location of the vehicle.

(5) The director of the Division of Facilities Management, Design and Construction, with guidance from the [c/Commissioner of [a/Administration, may select the garage to which vehicles are to be towed under the provisions of this regulation/. The commissioner also] and may prescribe the form of the ticket to be issued to persons violating the provisions of this regulation.

(6) Designation of No Parking and Restricted Parking Areas. The [c/Commissioner of [a/Administration [shall] determines those spaces where the parking, standing, or stopping of a motor vehicle [would cause a hazardous condition] is not permitted. Those spaces shall be [marked] identified with a suitable sign or by marking the curb adjacent to the spaces [shall be plainly marked in an appropriate fashion.] as follows: [Y]yellow curb markings [shall] designate no parking zones, [while] diagonal stripes [shall] mark pedestrian crossings and restricted parking areas [shall be] are designated by an appropriate symbol or legend[; for example, Reserved Parking 10].

(7) In any prosecution for a violation of [any of the provisions of] this regulation, proof that the vehicle described in the complaint was [over-parked] in violation of any provisions of this regulation, together with proof that the defendant named in the complaint was, at the time of the [over-parking] violation, the owner of the vehicle, shall constitute [in evidence] a prima facie presumption that the owner of the vehicle was the person who [parked the vehicle at the point where, and for the time during which, the violation occurred] committed the violation.

AUTHORITY: section 8.172, RSMo [(Supp. 1995)] 2016. Emergency rule filed March 15, 1979, effective March 26, 1979, expired June 15, 1979. Original rule filed March 15, 1979, effective Aug. 11, 1979. For intervening history, please consult the Code of State Regulations. Amended: Filed Oct. 11, 2018.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the 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 7—Missouri Accountability Portal**

PROPOSED AMENDMENT

1 CSR 10-7.010 Missouri Accountability Portal. The Division of

Accounting is amending the purpose and sections (1)–(5), (7), (9), and (10).

PURPOSE: This amendment replaces who provides the requirements in section (4).

PURPOSE: This rule describes the requirements for reporting information on the Missouri Accountability Portal [required by] in accordance with the Senate Substitute #2 for Senate Committee Substitute for House Bill No.116 (2013).

(1) [As used in this section] **Definitions. For the purposes of this rule, terms and their meanings, unless the content clearly indicates otherwise, [the following terms shall mean:] are—**

(B) **Bond:** A debt security which represents an obligation for the issuer to pay principal and often interest to a bondholder with a period of repayment longer than one (1) year. Bonds do not include revolving lines of credit, loans that are not securitized, or short-term indebtedness having an original maturity less than one (1) year (such as revenue anticipation notes);

(E) **Federal Grant:** Any grant awarded to a state agency by any agency of the federal government which, at the time of the award, is expected to result in the receipt of one (1) million dollars or more in the aggregate, exclusive of any [required] mandatory state match, program income, rebates, and/or maintenance of effort;

(J) **Transfer:** A transfer occurs when one (1) state department/division receives the federal grant award and another state department/division spends the federal grant money; and

(2) The Missouri Accountability Portal [shall] will contain the following expenditure information as reported in Missouri's SAMII accounting system, or any successor system:

(3) Expenditure information [shall] will be updated daily.

(4) The Missouri Accountability Portal [shall] will contain the following budget restriction information:

(B) **Restriction and release information [shall] will** be updated as soon as practical following the governor's reporting pursuant to section 37.850.4, RSMo; and

(C) **Additional reporting is allowed but not [required] mandatory.**

(5) The Office of Administration will provide a web-based, password protected data entry system for those entities [required] mandated to report bond or debt issuances pursuant to section 37.850.2, RSMo, beginning on November 30, 2013. The data entry system [shall] will have such security measures as the commissioner may prescribe to insure the integrity and security of state information systems and the integrity, security, consistency, and accuracy of the Missouri Accountability Portal.

(7) The Office of Administration assumes no responsibility for the correctness or completeness of the bond and debt information reported and displayed on the Missouri Accountability Portal. Reporting entities [shall] will review all information as it appears on the Missouri Accountability Portal for completeness and accuracy.

(9) Each department of state government [shall] will report to the Office of Administration, in a form prescribed by the commissioner of the Office of Administration, a report of the original federal grants, as defined in 1 CSR 10-7.010(1)(E), awarded in its name or in the name of a division assigned to it for budgetary purposes as defined in 1 CSR 10-7.010(1)(D):

(10) In case of a transfer, defined in 1 CSR 10-7.010(1)(J), the department or division from which the funds were transferred [shall] will report to the Office of Administration, in a form prescribed by the commissioner of the Office of Administration, an accounting of

how the transferred funds were used and any statistical impact that can be discerned as a result of such usage as reported to it by the department or division receiving the transferred funds pursuant to section 33.087, RSMo. *[An Internet link to a report required by or] Other reports* prepared for the federal agency disbursing the funds that describes expenditures and measures outcomes *[shall]* will be sufficient to establish compliance with this section.

AUTHORITY: section 33.087, RSMo [Supp. 2013] 2016. Original rule filed Sept. 30, 2013, effective March 30, 2014. Amended: Filed Oct. 3, 2018.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the 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 8—Direct Deposit of Payroll Requirements**

PROPOSED AMENDMENT

1 CSR 10-8.010 Direct Deposit of Payroll Requirements. The Division of Accounting is amending all sections.

PURPOSE: This amendment replaces who provides the requirements in section (4).

(1) Effective January 1, 2008, all employees that are expected to be employed for longer than three (3) months *[are required to]* will participate in the state Payroll Direct Deposit program as a condition of employment. Employees are allowed to select the financial institution that will receive the direct deposit. Departments may temporarily or permanently waive application of this section for individuals or classes of individuals with approval from the commissioner of administration or his designee.

(2) Employees *[must]* will complete a Payroll Direct Deposit application form (MO 300-1269N) to participate. The completed application authorizes the Office of Administration to deposit (credit) the employee's net pay into a designated checking or savings account. It also authorizes an employee's account to be debited only when an error has occurred in a payment to the employee. The Payroll Direct Deposit form (MO 300-1269N) (11-02) which has been incorporated by reference is maintained by the Missouri Office of Administration, PO Box 809, Jefferson City, MO 65102. This form does not include any amendments or additions to the form. The form is available at the Office of Administration or online at <http://www.mo.gov/mo/samii/hr/hrp&p/ddapp.pdf> or by mailing a written request to the Missouri Office of Administration, PO Box 809, Jefferson City, MO 65102.

(3) Departments *[must]* forward the Payroll Direct Deposit application forms to the Division of Accounting as the information is received in the agency payroll office. Payroll Direct Deposit of the employee's net pay will begin the pay cycle following the acceptance of a properly completed application form and the successful process-

ing of a test transaction through the banking system.

(4) If an employee does not have a checking or savings account, the state has made available through banking contracts, choices of banks that will assist in setting up an account. If the employee chooses not to open a checking or savings account, a payroll card account *[must be chosen from the options provided by the State Treasurer's Office]* may be selected upon approval by the Office of Administration. Agencies *[must]* will follow the policies established by the commissioner of administration.

(5) The state will conduct Payroll Direct Deposit through the automated clearing house system, utilizing an originating depository financial institution. The rules of the National Automated Clearing House Association and its member local Automated Clearing House Associations *[shall]* apply, as limited or modified by law.

AUTHORITY: 33.155, RSMo [2000] 2016. Emergency rule filed July 17, 1990, effective Aug. 28, 1990, expired Dec. 24, 1990. Original rule filed July 17, 1990, effective Dec. 31, 1990. Amended: Filed Nov. 17, 1997, effective July 1, 1998. Amended: Filed June 16, 2005, effective Dec. 30, 2005. Amended: Filed May 14, 2007, effective Nov. 30, 2007. Amended: Filed Oct. 3, 2018.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the 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 9—Requirements for Direct Deposit of Vendor
Payments**

PROPOSED RECISSION

1 CSR 10-9.010 Requirements for Direct Deposit of Vendor Payments. This rule described the requirements established to allow vendors on the Statewide Vendor File to participate in the direct deposit of vendor payments.

PURPOSE: This rule is being rescinded and combined with 1 CSR 10-3.010 Preapproval of Claims and Accounts: Definitions/Examples to streamline the rules.

AUTHORITY: section 33.155, RSMo 2000. Emergency rule filed Aug. 25, 1992, effective Oct. 1, 1992, expired Jan. 28, 1993. Emergency rule filed Dec. 30, 1992, effective Jan. 29, 1993, expired May 28, 1993. Original rule filed Aug. 25, 1992, effective April 8, 1993. Amended: Filed Jan. 3, 2008, effective July 30, 2008. Rescinded: Filed Oct. 3, 2018.

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

PRIVATE COST: This proposed rescission 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 rescission with 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 11—Travel Regulations**

PROPOSED AMENDMENT

1 CSR 10-11.010 State of Missouri Travel Regulations. The Division of Accounting is amending 1 CSR 10-11.010 throughout and combining 1 CSR 10-11.020 and 1 CSR 10-11.030 into this rule.

PURPOSE: This amendment is to reflect current practices and reduce unnecessary duplication.

PURPOSE: The Office of Administration has authority to establish regulations concerning the payment of travel and subsistence expenses and this rule describes the most cost-effective and reasonable mode of travel as in accordance with section 37.450, RSMo. This rule establishes guidance for officials and employees of Missouri who travel on official business for the state, except where specific statutes provide otherwise. In addition, this rule provides guidance in reimbursing officials and employees of the counties of Missouri who use privately-owned vehicles while traveling on official business for the county.

(1) **Definitions.** For the purpose of *[these regulations, the following definitions shall apply:]* this rule, terms and their meanings for officials and employees of the state of Missouri, unless the content clearly indicates otherwise, are—

(A) **Officials and employees** are all members of the state of Missouri, statewide elected officials, members of boards, commissions, committees, advisory councils, or other individuals who are not considered employees of the state of Missouri but who are otherwise eligible for travel expense reimbursement.

(B) **State agencies and officials** are all departments of state government within the state of Missouri and all statewide elected officials, boards, commissions, committees, advisory councils, or other divisions of state government that authorize mileage reimbursement.

[(A)](C) **Approved state credit cards** *[shall be]* are those purchasing and fuel cards *[issued and approved]* authorized through the Office of Administration;

[(B)](D) **Official domicile** *[shall be]* is the actual working or headquarters location of an employee or official to be determined by the *[Office of Administration]* head of the department or their authorized representative as best serves the interest of the state and not for the convenience or benefit of the employee;

[(C)](E) **Travel authorization and reimbursement forms** are those approved by the Office of Administration; and

[(D)](F) **Residence** *[shall be]* is the city or town in which the individual has an abode or dwelling place.

(2) Reimbursable travel expenses are limited to those expenses authorized and essential for transacting official business of the state. Expenses incurred for the sole benefit of the state employee or official *[shall]* is not *[be allowed as reimbursable]* an allowable travel expense[s]. Expenses for laundry service and dry cleaning *[shall be]* are allowed only for extended travel outside of the United States. Incidental expenses not directly *[concerned with]* related to travel may be allowed when necessary to perform official business while traveling. *[These necessary]* Ensure incidental expenses *[shall*

be] are itemized on the expense report with detailed receipts attached. *[In determining reimbursable expenses and required documentation, a]* Agencies *[should]* will follow the policies established by the commissioner of administration for determining reimbursable expenses and necessary documentation.

(3) Officials and employees will be allowed travel expenses when *[required to]* traveling away from their official domicile on official state business. To qualify for reimbursement for meal(s), officials and employees *[must]* will be in continuous travel status for twelve (12) hours or more. The commissioner of administration will establish per diem meal rates and procedures for individuals to follow when requesting meal expenses on the expense report.

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

[(4)](5) State department directors are authorized to promulgate and enforce regulations governing travel. Departmental regulations may be more restrictive than these regulations. Departmental regulations *[shall]* are not to grant expenses that are not allowed under the state of Missouri travel regulations or policies established by the commissioner of administration.

[(5)](6) The commissioner of administration or an authorized representative may approve unusual travel expenses not covered by these regulations or modify procedures for the payment of travel expenses. The commissioner of administration may make exceptions to any of these regulations when deemed appropriate and in the best interests of the state. The request for reimbursement of exception travel expenses, or of unusual travel expenses *[shall]* will be made in writing to the Office of Administration.

[(6)](7) Employees and officials are expected to exercise the same care in incurring expenses as a prudent person would exercise if traveling on personal business.

[(7)](8) *[Officials and employees shall not incur expenses for the purchase of alcoholic beverages for reimbursement as a travel expense or payments made directly by an agency]* Alcoholic beverages are not an allowable travel expense for officials and employees.

[(8) Individuals on state business should use the approved state credit card when available. For necessary travel expenses which cannot be paid by state credit card, individuals shall use personal funds or credit cards. Air travel should be paid using a state credit card. Employees may pay for air fare and receive reimbursement on their expense report if circumstances require it; however, the general practice should be payment by state credit card. Prepayment for air fare, conference fees, and lodging shall be made by state credit card, or should be direct billed to the agency when payment is required by the vendor or advance payment results in a cost savings. Reimbursement to the employee for air fare, conference fees, and lodging can only be made after the travel has occurred.

(9) Travel expenses shall not be billed to the state, except for lodging, commercial transportation (vehicle, rental, air, bus and rail), and conference registration. Travel expenses should only be billed to the state when payment by state credit card is not an option.]

(9) Travel expenses for lodging, commercial transportation (vehicle rental, air fare, bus, taxi, or similar rideshare services and rail), fuel and conference registration will be paid using the approved state credit cards when available. Travel expenses may be direct billed to the state or reimbursed to the employee if necessary; however, the general practice is for payment by state credit card. Advance payment for air fare, conference fees, and lodging is allowed if it is a condition of the expense or if advance payment results in a cost savings. Reimbursement to the employee for lodging, commercial transportation, conference registration, meals, incidentals, and mileage can only be made after the travel has occurred.

(10) Travel may be accomplished by plane, train, bus, private or state-owned vehicle, rented vehicle, or taxi or similar rideshare services, whichever method serves the requirements of the state most economically and advantageously. *[When an airport is within fifty (50) miles of the employee's official domicile or residence and transportation to and from the airport is provided by a family member or friend, the employee may be reimbursed for vehicle mileage for up to two (2) round trips. The routing of each trip for mileage computation shall be by the most commonly traveled route unless unusual circumstances warrant other less direct routes]* The following rules apply for traveling by vehicle or commercial transportation.

(A) Officials and employees will utilize the most cost effective vehicular travel option when traveling on state business. All relevant factors such as the urgency; nature of travel required; type of vehicle required for the number of passengers, tool or equipment load; employee time and effort; official domicile; proximity to rental or state vehicles; and other administrative costs will be considered when selecting the most cost effective travel option.

(B) Officials or agencies will establish internal procedures that require appropriate documentation to support the vehicular travel decisions made by their agency and employees. Officials and employees will utilize the Trip Optimizer or other equivalent method to calculate travel costs and ensure officials and employees use the most cost effective vehicular travel option for each trip. The Trip Optimizer assists in determining the most cost effective travel option for instate single trips. A single trip includes any number of trips taken by an individual during the same day. Officials or agencies will specifically approve and justify any exceptions to this rule and retain the documentation as part of the related financial transaction.

(C) Officials and employees traveling to the same destination will car pool whenever possible. Employees who elect to travel using their personal vehicle when car pooling is available will be denied reimbursement if space is reasonably available in a state-owned or rental vehicle traveling to the same destination for the same purpose.

(D) Officials and employees will drive state vehicles while on state business that requires travel unless an exception applies as set forth in subsection (9)(I) of this rule. When a state vehicle is available to the official or employee and the official or employee elects to drive a privately-owned vehicle, the maximum reimbursement rate for an official or employee is limited to the established state fleet rate. When a state vehicle is not available, but a rental vehicle is reasonably available and is a lower cost option for the trip, the maximum mileage reimbursement for the official or employee is not to exceed the cost of the rental option, including the cost of fuel.

(E) Officials or agencies may establish savings thresholds whereby an official or employee may utilize the next lowest cost option without supervisory approval. Officials or agency thresholds may vary depending on several factors including: proximity of state vehicles or rental vehicles and administrative expenses involved in making travel arrangements.

(F) For travel in privately-owned vehicles, the state mileage allowance will be at the current rate(s) ordered by the commis-

sioner of administration pursuant to section 33.095, RSMo. The commissioner of administration will periodically issue mileage reimbursement rates comprised of a standard rate and a state fleet rate. Agencies should use the appropriate rate for each trip as determined by policy established by the commissioner of administration. Reimbursement rates should not exceed the rate established by the commissioner of administration unless required by a court order. When more than one (1) person travels in the same vehicle, only the owner of the vehicle is allowed mileage. The state mileage reimbursement rate(s) represents full compensation for the costs of operating a privately-owned vehicle. The mileage reimbursement rate shall be computed at a rate not to exceed the Internal Revenue Service (IRS) standard mileage rate less three cents (3 cents) per mile. Any change to the maximum rate is effective on July 1 of the year the IRS changes their standard mileage rate. The state fleet reimbursement rate reflects the average cost of operating a mid-size sedan in the state vehicle fleet. The standard mileage and state fleet rate may be more restrictive depending on the budget. Physical damage or loss to a private vehicle and/or its personal property contents is not covered by the state. Coverage should be obtained through personal auto insurance. Liability coverage must be maintained through personal auto insurance in accordance with state law.

(G) Officials or employees incurring commuting miles in a state vehicle will report such use utilizing the cents-per-mile method for inclusion in employee gross income and in accordance with procedures issued by the commissioner of administration.

(H) For travel by rented vehicle, the rental should be paid using the approved state credit card or direct billed to the state if necessary. The preferred method of refueling rental vehicles on state business is to utilize a fleet fuel card designed by the agency as a rental card, otherwise, the employee may be reimbursed for fuel expenses. Weekly or monthly vehicle rental rates will be allowed if the cost is less than the total cost of renting at the daily rate and the employee has a business need for the vehicle rental the majority of the working days during the rental period. Rental vehicles are considered state vehicles and should be used for official business only in accordance with state policy. The State Legal Expense Fund provides liability coverage for the usage of rental vehicles for official state business. For that reason, employees will not be reimbursed for any vehicle rental insurance incurred. Employees will carry insurance coverage for personal use of rental vehicles at their own expense. Accident(s) in rental vehicles should be reported to the Office of Administration, Risk Management Section.

(I) Notwithstanding subsection (9)(D) of this rule, officials or employees who use privately owned vehicles for official state business may be reimbursed up to the standard mileage reimbursement rate when—

1. They are members of boards, commissions, committees, advisory councils or other individuals who are not considered employees of the state of Missouri but who are otherwise eligible for mileage reimbursement;

2. They are officials or employees who otherwise would be traveling in a state vehicle and where another official or employee could utilize the state vehicle to a greater extent;

3. The Trip Optimizer results indicate that mileage reimbursement is the lowest cost option; or

4. They are officials or employees who have a documented physical condition that requires them to operate vehicles equipped to accommodate their specific needs.

(J) Officials or employees denied the use of a state vehicle due to their driving record may be reimbursed for use of a privately-owned vehicle up to the state fleet rate.

(K) Officials or employees who operate their personal vehicle on state business must do so in compliance with the Motor Vehicle Financial Responsibility Law, Chapter 303, RSMo. Officials or employees and/or their insurer may be held liable for damages resulting from an accident that occurs while operating

their vehicle on state business.

(L) When an airport is within fifty (50) miles of the employee's official domicile or residence and transportation to and from the airport is provided by a family member or friend, the employee may be reimbursed for vehicle mileage for up to two (2) round trips. The routing of each trip for mileage computation will be by the most commonly traveled route unless unusual circumstances warrant other less direct routes.

(M) Commercial air travel is the preferred method of transportation outside of the state unless other methods of travel are more economical or advantageous to the state. Air travel is not, however, to exceed coach fare for the most direct available route. Travel in a chartered aircraft (chartered from a nonaffiliated party and piloted by the charter service) may be allowed upon prior approval by the commissioner of administration. Travel outside the state by commercial common carrier surface transportation, in lieu of air transportation, will be limited to the actual cost of the surface carrier plus any other actual expenses (meals, conference registration, lodging, etc.). Travel outside of the state by rented vehicle or privately owned vehicle, in lieu of air transportation, will be limited to the cost of the rented vehicle and necessary fuel or state mileage allowance plus any actual expenses which would have been allowed or provided if taking air transportation. The total allowable expenses cannot, however, exceed the reasonable coach airfare available at that time to the same destination.

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

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

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

(13) For travel in a chartered aircraft (chartered from a non-affiliated party and piloted by the charter service), prior

authorized approval shall be obtained as provided in policies established by the commissioner of administration.]

[(14)](12) No official or employee [shall] will be allowed hotel or meals while in their city of official domicile[, except as provided in policies established by the commissioner of administration]. While traveling on state business, employees and officials will not be allowed hotel expenses when it would be more economical and advantageous to the state to return to their residence. Mileage [shall] will be reimbursed and computed between the travel site destination and the employee's official domicile or residence, if leaving directly from the residence, whichever is less. [Reimbursement or direct billing may be made for agency-provided meal expenses within the city of official domicile when it is incurred as part of a department or agency required meeting or a department sponsored conference. This represents meals served to officials and employees at conferences and meetings who are interacting and conducting state business during the meal period.] Agency-provided meal expenses will be in accordance with department provided food policy.

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

(A) Descriptive invoices for lodging, conference registration, airline/air charter, vehicle rental, bus, and rail transportation [must] will be provided and, if applicable, a copy of an approved Out of State Travel Authorization Form attached to each payment request.

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

1. The individual requesting reimbursement [must] will provide:

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

B. An original signature on the expense report verifying that the reimbursement claim is correct. Rubber stamps or facsimile signatures for the claimant and/or supervisor are [prohibited] not allowed. An electronic signature may be used with prior approval by the commissioner of administration or designee after appropriate audit trails and controls have been established for such signatures.

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

2. Fiscal personnel [must:] will—

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

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

(C) All claims for reimbursement of expenses [must] will be itemized and attested to by the claimant and approved by individuals so designated by the director of the department or as otherwise provided by state law.

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

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

other judicial branch employees and elected officials of the executive branch and their employees;

(B) Air travel shall be the primary method of transportation outside of the state unless other methods of travel are more economical or advantageous to the state. Air travel shall not, however, exceed coach fare for the most direct available route. Travel outside the state by commercial common carrier surface transportation, in lieu of air transportation, shall be limited to the actual cost of the surface carrier. Travel outside of the state by rented vehicle, in lieu of air transportation, shall be limited to the cost of the rented vehicle and necessary fuel. Travel outside the state by privately-owned vehicle, in lieu of air transportation, shall be limited to the state mileage allowance plus any actual expenses which would have been allowed or provided if taking air transportation. The total allowable expenses cannot, however, exceed the reasonable coach airfare available at that time to the same destination.]

[(17)](14) Reimbursement for recruiting and relocation expenses for new or existing employees and their families will be made in accordance with the applicable department's policy. [Before paying or reimbursing any recruiting or relocation expenses, departments shall submit their policies to the commissioner of administration for approval.] If a department does not [submit a] have a written policy [for approval], those expenses [shall] will be paid based upon the Office of Administration employee relocation policy.

(15) Where an officer or employee of any county, except for first class counties with a charter form of government, is paid a mileage allowance or reimbursement, the allowance or reimbursement may be computed at a rate determined by the county, but not to exceed the Internal Revenue Service (IRS) standard mileage rate less three cents (3¢) per mile. Any change to the maximum rate is effective on July 1, of the year the IRS changes their standard mileage rate.

AUTHORITY: section 33.090, RSMo [2000] 2016. Original rule filed Jan. 22, 1974, effective Feb. 1, 1974. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Oct. 3, 2018.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the 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 11—Travel Regulations**

PROPOSED RESCISSION

1 CSR 10-11.020 County Travel Regulations, Mileage Allowance. This rule provided guidance in reimbursing officials and employees of the counties of Missouri who used privately-owned vehicles while traveling on official business for the county.

PURPOSE: This rule is being rescinded and combined with a similar rule in the State of Missouri Travel Regulations 1 CSR 10-11.010.

AUTHORITY: section 33.095, RSMo 2000. Emergency rule filed March 28, 1980, effective April 7, 1980, expired Aug. 5, 1980. Original rule filed March 28, 1980, effective July 11, 1980. For intervening history, please consult the *Code of State Regulations*. Rescinded: Filed Oct. 3, 2018.

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

PRIVATE COST: This proposed rescission 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 rescission with 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 11—Travel Regulations**

PROPOSED RESCISSION

1 CSR 10-11.030 State of Missouri Vehicular Travel Regulations. This rule established guidelines for determining the most cost effective and reasonable mode of travel for single trips from the following options: passenger rail, vehicle rental, state-owned vehicles, and reimbursement for personal vehicle use.

PURPOSE: This rule is being rescinded and combined with a similar rule in the State of Missouri Travel Regulations 1 CSR 10-11.010.

AUTHORITY: section 33.095, RSMo 2000 and section 37.450, RSMo Supp. 2007. Original rule filed May 10, 2006, effective Nov. 30, 2006. Amended: Filed Nov. 29, 2007, effective July 30, 2008. Rescinded: Filed Oct. 3, 2018.

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

PRIVATE COST: This proposed rescission 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 rescission with 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 13—Missouri Lottery Payment of Prizes**

PROPOSED RESCISSION

1 CSR 10-13.010 Missouri Lottery Payment of Prizes. This rule allowed the lottery to write prize payment checks at its offices.

PURPOSE: This rule is being rescinded and combined with 1 CSR 10-3.010 Preapproval of Claims and Accounts: Definitions/Examples to streamline the rules.

AUTHORITY: section 313.321, RSMo Supp. 1988. Original rule filed Nov. 2, 1988, effective Jan. 13, 1989. Rescinded: Filed Oct. 3, 2018.

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

PRIVATE COST: This proposed rescission 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 rescission with 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 16—Convention and Sports Complex
Regulations**

PROPOSED AMENDMENT

1 CSR 10-16.010 Convention and Sports Complex. The Division of Accounting is amending section (1).

PURPOSE: This amendment is to streamline the rule.

(1) Prior to the expenditure of any state appropriation to a Convention and Sports Complex Fund, the governing body of the city or county **[shall] are mandated to** comply with the following:

(A) Section 67.639, RSMo authorizes each city or county as defined in section 67.638, RSMo to establish by ordinance or order of the county or city governing board, a Convention and Sports Complex Fund for the purpose of developing, maintaining, or operating sports, convention, exhibition, or trade facilities within its jurisdiction. In order to comply with section 67.639, RSMo, **submit** a copy of the ordinance or order authorizing the establishment of the Convention and Sports Complex Fund, in accordance with sections 67.638 and 67.645, RSMo, **[must be submitted]** to the Office of Administration, Division of Accounting;

(B) In addition, section 67.641.2., RSMo requires each city or county which administers a Convention and Sports Complex Fund to enact or promulgate rules or ordinances pursuant to the terms and provisions of section 70.859, RSMo for the purchase of goods and services and for construction of capital improvements for the facility prior to receipt of any appropriations pursuant to section 67.641, RSMo. **[Accordingly, each city or county shall] In order to comply with the terms and conditions of section 70.859, RSMo,** submit to the Office of Administration, Division of Accounting **[,]** a copy of those regulations which have been enacted **[in order to comply with the terms and provisions of section 70.859, RSMo];**

(C) With respect to certain counties or cities, section 67.641, RSMo states “No moneys shall be transferred under this section to the benefit of a sports complex for a county in any year unless each professional sports team which leases playing facilities within the county continue to lease the same playing facilities which were leased on August 28, 1989.” If applicable, **[the city or county] annually [shall forward] submit** a copy of **[that] the** contract or lease between the county or city and the professional sports team to the Office of Administration, Division of Accounting, before any

state moneys will be expended;

(D) **[Each city/county shall s/]**Submit to the Office of Administration, Division of Accounting, a monthly financial certification, on the form listed as Appendix A. The state of Missouri will commence monthly transfers on a prorated basis for the remainder of the initial fiscal year. For all succeeding fiscal years, monthly transfers will continue subject to receipt of—

1. The monthly financial certification form; and

2. Notice that the county or city has paid two (2) million dollars into its fund or, in the case of a first class county not having a charter form of government or a charter city within a first class county not having a charter form of government, notice that the county or city has commenced payment into its fund, as specified in section 67.641.3., RSMo; and

(E) **[The city/county shall c/]**Comply with the reporting and audit requirements set forth in section 67.645, RSMo. Failure to comply with any of these regulations or sections 67.638–67.645, RSMo will result in the termination of monthly payments. **Submit [A/a]** copy of the annual report **[must be provided by the city/county]** to the Office of Administration, Division of Accounting.

AUTHORITY: section 33.040, RSMo [1986] 2016. Emergency rule filed June 18, 1991, effective June 28, 1991, expired Oct. 1, 1991. Original rule filed March 18, 1991, effective Sept. 30, 1991. Amended: Filed Oct. 3, 2018.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the 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 3—Capital Improvement and Maintenance
Program**

PROPOSED AMENDMENT

1 CSR 30-3.030 Project Design. The Division of Facilities Management, Design and Construction is amending sections (1)–(5) and (7), as well as the purpose statement, and deleting section (8).

PURPOSE: This amendment deletes provisions that are unnecessarily restrictive, and revises and reorganizes the rule to better reflect FMDC’s current practices and to increase the readability of the regulation.

PURPOSE: This rule sets forth the procedure for design of **[Capital Improvement and Maintenance/Repair/Renovation] projects.**

(1) Selection of Designer. **[Selection of a consultant firm for design of projects in the Capital Improvement Maintenance Program will be made within seventy-five (75) calendar days after the appropriations are passed and signed. Department/agencies participate in the selection of designers for projects included in their program. Quality based**

selections are made by the department/agency capital improvement coordinator/service level managers based upon the criteria in the Architect Contractor Engineer (ACE) database.]

(A) Design by Department/Agency. The department/agency may recommend in-house design for those projects within their capability and capacity, provided they have licensed engineers or architects to seal the prepared plans and specifications. The director will concur with this recommendation unless there appears to be a substantial question of capability or capacity. The director will be the determining authority for questions of department/agency capacity and/or capability for design of projects.

(B) Design by Division of Facilities Management, Design and Construction. The director *[shall]* will examine projects remaining after selections for in-house department/agency design. Those projects *[which]* that are cost prohibitive to be done by consultants or *[require minor design]* for which the Division of Facilities Management, Design and Construction has the capability and capacity may be selected for in-house design by that division.

(C) Design by Consultants. Private consultants will be selected by the director for design of the balance of the projects *[in the program established by the capital improvement and maintenance appropriations. It is the policy of the division to provide the greatest possible opportunity for qualified and competent consultants to participate in this program].*

1. The director *[shall]* will maintain a file and *[ACE]* database of consultant firms who have expressed interest in *[the program performing work on projects]*. This file *[shall]* will include notations of specific areas of *[interest,]* experience or expertise as expressed by each consultant firm and ratings of previous projects completed and evaluated by the division.

[1.2. [Service level managers/agency capital improvement coordinators] The department/agency may make recommendations for selections of consultants for design of projects not selected for in-house design.

3. The selection of consultants will be based on *[knowledge of, or experience with, these consultants on current or prior projects and performance ratings or new and/or Minority Business Enterprise/Women's Business Enterprise (MBE/WBE) firms that have a demonstrated competency and interest. Program managers may assist in the selections by making recommendations regarding the need for and special expertise or continuity between current and previous or proposed future work.]* the factors set forth in section 8.289, RSMo.

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

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

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

(2) Consultant Firm Design.

[(A) Responsibilities.

1. *Division of Facilities Management, Design and Construction.]*

[A.](A) Contracts. The *[director]* division will negotiate contracts for consultant studies and/or design **in accordance with section 8.291, RSMo.** These contracts will be negotiated *[on the basis of]* for a reasonable fee considering scope, difficulty, research, disciplines involved, and proposals by the selected consultant. The director *[shall]* reserves the right to approve additional consultants retained by the selected consultant for work on the project or study.

[B. Supervision and approval of design or study. The

director shall be responsible for periodic review and approval of studies and/or designs for projects in the program. Reviews shall include examination of technical adequacy, as well as economy of materials and construction methods proposed. In addition, reviews shall examine estimated costs to assure that projects remain within funding authorizations. Those reviews shall be coordinated with the department/agency concerned.

C. Approval of payments. The director shall be responsible for review and approval of consultants' requests for payment. Approval of payment to consultants will be based on review and approval of work completed to the date of the payment request.]

[D.](B) Communications. All official communication and direction to the consultant *[shall]* will be issued by the director~~.~~ **or his/her designee, and all official communications for all designs and/or studies by the consultant will be with the director or his/her designee. This will include all submissions for approval or payment, recommendations for modifications of scope, or other guidance and resolution of any differences or problems encountered.** This will not limit informal communication or coordination between consultants and department/agencies. *[The service level managers can make a valuable contribution to understanding requirements and problems for the project.]* Informal communication and working conferences between the *[staff]* department/agency, and the consultant are essential to successful completion of a project **and are encouraged.** Knowledgeable personnel shall be made available **by the department/agency** for consultations and site visits by the consultant. The consultant, by prior arrangement, shall have access to the project site at reasonable times. **Records and conclusions reached at any working conference(s) between the department/agency and the consultant will be forwarded to the director or his/her designee by the consultant for review and approval.**

[(3)](C) Consultant's General Responsibilities. The consultant is responsible for establishing the concept and planning for the project, as well as providing completed designs, studies, or both as indicated in consultant contract. For project design, the consultant is responsible for providing plans and specifications to fully describe the equipment, materials and work for completion of the project in accordance with the criteria, funding, and scope provided by the director. Periodically, as scheduled in the contract, the consultant will submit work for review and approval. The submissions will include estimated costs for all project work. When estimates for the complete project work exceed allocated funding, the consultant immediately shall notify the director, recommending adjustments and requesting further instructions before proceeding with additional design and/or study. Acceptance of the contract by the consultant includes acceptance of the adequacy of allocated funding for the work and the responsibility for redesign, if necessary, to establish a scope of project work within allocated funding.

[(A) Communication. Official communications for all designs and/or studies will be with the director. This will include all submissions for approval or payment, recommendations for modifications of scope or other guidance and resolution of any differences or problems encountered. Informal and working conferences with department/agency and site/complex personnel are essential and encouraged. Records and conclusions reached at those conferences will be forwarded as recommendations for the director's review and approval.]

[(B)](D) Payments. Payment method and/or periods will be as stipulated in the consultant's contract. *[Payment will be made after review and approval of work and/or demonstrated progress. After receipt by the director, review, approval and administrative processing of payment requests in the Office of Administration shall be completed within fifteen (15) working days.]* The director is responsible for review and approval of a consultant's requests for payment. Approval of payment to a consultant will be based on review and approval of work completed to

the date of the payment request. Where there appear to be differences between the payment request and the demonstrated progress, those differences *[shall]* **will** be resolved by decision of the director or his/her designee. *[Review, approval and administrative processing shall then be completed within fifteen (15) working days after resolution of these differences.]*

[(4)](3) Design Review. Designs and/or studies will be submitted to the director or his/her *[representative]* **designee** for review and approval in **all projects designed by a department/agency or a consultant.** The director's review will include examination of technical adequacy, as well as economy of materials and construction methods proposed. In addition, the director will examine estimated costs to assure that projects remain within funding authorizations. The review/s will be commensurate with the scope, complexity, and cost of the work. *[Response to the designer shall be completed within ten (10) working days after receipt by the project manager and approval by the Division of Facilities Management, Design and Construction.]* In the case of design by a consultant, review will be coordinated with the department/agency concerned. One (1) complete copy of each submission will be forwarded by the designer to the department/agency simultaneously with the submission to the director or his/her *[representative]* **designee.** Comments by the department/agency representative, if any, will be forwarded to the project manager *[within five (5) working days after receipt of the design or study by the department/agency].* Department/agency comments, along with comments of the Division of Facilities Management, Design and Construction, will be used as the basis for response to the designer. *[Adjustment of review period for large projects, projects requiring coordination with other agencies or for unusual or complex designs, may be granted by the director.]*

(A) Pre-Design Conference. **For projects designed by a consultant,** *[A]*a pre-design conference will be scheduled by the project/*[construction]* manager with the *[designer]* **consultant** and the representative of the department/agency concerned. The project definitions established in the initial coordination will be reviewed to confirm or adjust project criteria, scope, cost, scheduling, and funding allocation. Initial fund distribution for the cost elements of the project will also be reviewed to confirm or adjust this fund distribution. Limitations and/or requirements expressed in the appropriation language *[shall]* **should** be carefully observed to assure that the project scope, costs, and funding remain within the authorization of the appropriations. The designer must agree that the scope of work can be accomplished within the available funding. When appropriate, the pre-design conference will be held at the project site to assure that all parties are familiar with the conditions under which the work will proceed, and that accommodations necessary to support the work are available. The design schedule begins with completion of the pre-design conference. After that, no changes will be made in the scope or funding of projects without written approval of the director.

(B) Design Review Submissions. **For projects designed by a consultant,** *[N]*normally, a minimum of three (3) design review submissions *[shall]* **will** be made. These submissions will be *[required]* **made** at approximately twenty percent (20%), fifty percent (50%), and one hundred percent (100%) of design completion to provide for timely review of technical and economic considerations in the design. For minor projects, the first two (2) submissions, with the approval of the project/*[construction]* manager, may be combined to provide design reviews at fifty percent (50%) and one hundred percent (100%) of design completion.

1. Schematic. Initial submission (approximately twenty percent (20%)) *[shall]* **should** provide drawings and an outline of specifications, in sufficient detail to demonstrate the proposed concept for arrangement, as well as the criteria and general parameters used for architectural, electrical, mechanical, and structural development. Proposed innovative methods or development *[shall]* **should** be presented in sufficient detail to permit a review in depth. An estimate *[shall]* **should** be submitted in sufficient detail to demonstrate the

costs of the various elements of work as well as the total cost for completion of all project work. A copy of all items in the schematic submission will be furnished to the *[end user who]* **department/agency that will occupy or use the completed project.** Comments and/or recommendations of the *[end user]* **department/agency** will be forwarded *[simultaneously]* to the project/*[construction]* manager, *the Division of Facilities Management, Design and Construction and the department/agency within five (5) working days after receipt by the end user.* Comments by the department/agency will also be forwarded to the project/*[construction]* manager, *Division of Facilities Management, Design and Construction.* The project scope and cost estimate *[shall]* **should** be reviewed carefully to assure compliance with requirements and/or limitations of appropriation language. Approval by the director's representative of schematic submission will indicate acceptance of, or required revisions to, scope, criteria, design parameters, and cost estimate.

2. Design *[d]*Development. The second submission (approximately fifty percent (50%)) *[shall]* **should** provide drawings and outline specifications to indicate general architectural, electrical, mechanical, and structural development of the approved concept. The development *[shall]* **should** clearly demonstrate sizes, capacities, and arrangement*[,]*, and include *[S]*sufficient details *[shall be included]* to define major elements of architectural and structural work and to define sizing, location, routing, and application of mechanical and electrical equipment and/or work. An estimate *[shall]* **should** be submitted in sufficient detail to demonstrate costs of the various elements of work as well as the total cost for completion of all project work. The detail *[shall]* **should** indicate costs for major items of equipment as well as a breakdown of labor and material costs for each trade with significant work on the project. When the first two (2) design review submissions are combined, a copy of all items in the design development submission will be forwarded to the *[end user who]* **department/agency that will occupy or use the completed project.** Comments and/or recommendations of the end user will be forwarded *[simultaneously]* to the project/*[construction]* manager, *Division of Facilities Management, Design and Construction and the department/agency within five (5) working days.* Comments and/or recommendations of the department/agency also shall be forwarded to the *Division of Facilities Management, Design and Construction.* When a project site is in a city or county, *which]* **that** has adopted codes for regulation of work involved in a project, the designer will furnish *[for information,]* one (1) courtesy copy of the design development drawings and specifications to the code review authority of that city or county. The transmittal shall note that the plans and specifications are furnished as a courtesy, for information **only**, and that the code review authority, if it desires, may submit comments to the director's representative for consideration.

3. Final *[r]*Review. The final review submission is to contain one hundred percent (100%) of the completed drawings and specifications, including the documentation required to solicit bids. Drawings and specifications will be submitted in accordance with the latest issue of State of Missouri's Standard Specification Format as published by the Division of Facilities Management, Design and Construction. The documents are to be complete, and sealed by appropriate engineering and/or architectural disciplines. A final construction cost estimate *[shall]* **should** be submitted in sufficient detail to demonstrate costs of the various elements of work as well as the total cost for completion of all project work. The detail *[shall]* **should** indicate costs for major items of equipment as well as a breakdown of labor and material costs for each trade with significant work on the project. The final review documents and a copy of all previous comments and responses generated during the design development submission will be included with the submittal. Comments and/or recommendations of the *[end user]* **department/agency** will be forwarded *[simultaneously]* to the project/*[construction]* manager, *Division of Facilities Management, Design and Construction and the department/agency within five (5)*

working day. Comments and/or recommendations of the department/agency also shall be forwarded to the Division of Facilities Management, Design and Construction].

4. Construction [d]Documents. This final submission shall consist of drawings and specifications and construction cost estimate. The documents are to be complete, sealed by appropriate engineering and/or architectural disciplines, and ready for issuance for bidding. Upon receipt, the [construction/]project manager [shall] will finalize [the Divisions 0 and 1 specification sections of] the bidding documents. [Chief Engineer/Architect] The director's designee performs an administrative review of the documents and, if acceptable, signs the documents as appropriate.

[(D)](4) Codes and Standards. The following are adopted as the codes and standards for work [under the Capital Improvement and Maintenance Program] on state facilities, with the exception of facilities operated and maintained by agencies exempted from the requirements of this regulation as set forth below. The chief engineer/architect of the division is the authority for code determinations.

[1.](A) International Building Codes (IBC—current edition);

[2.](B) The Americans with Disabilities Act (ADAAG—current edition);

[3.](C) National Fire Code [NEC] NFPA 70 - National Electrical Code and NFPA 101—Life Safety Code—current editions);

[4.](D) International Mechanical Code (IMC—current edition);

[5.](E) International Plumbing Code (IPC—current edition);

[6. National Fire Protection Association (NFPA 101—current edition);]

[7.](F) American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE Standards 90.1 for Energy Efficient Design of New Buildings except Low-Rise Residential Buildings—current edition);

[8.](G) American Society of Mechanical Engineers (ASME—current edition);

[9.](H) American National Standards Institute (ANSI—current edition);

[10.](I) American Concrete Institute (ACI—current edition);

[11.](J) Sheet Metal and Air Conditioning Contractor's National Association (SMACNA—current edition);

[12.](K) Boiler and Pressure Vessel Act of the State of Missouri—(current edition).

[(E) If there are significant differences between the local codes and current international codes, the designer shall discuss with the local authority to resolve the issues. If a resolution cannot be reached, the division chief engineer/architect shall be contacted for final ruling.]

[(F)](L) Local Codes. Current codes adopted by a Missouri city and/or county in which a project site is located. These codes are applicable only to the extent that they are not in conflict with [code determinations by the chief engineer/architect] the codes listed above or are otherwise required by statute. The State of Missouri and its contractors are exempt from paying license, inspection, or similar fees for work on state premises.

(5) Bidding.

(A) Prospective Bidders. Consultants retained for design work [under the program shall] should assist the director in establishing a list of prospective bidders for projects they design. If necessary, consultants [shall] will contact prospective bidders to determine and/or solicit interest in bidding for the work. The department/agency [shall] will provide, within its capability, similar assistance.

(B) Bid Review and Recommendations. The project/[construction] manager [shall] will notify the designer and the [agency capital improvement coordinator/service level manager of the] department/agency [concerned] of scheduled project bid dates. Immediately following the opening of bids for a project, the project manager may coordinate a review of the bids with the department/agency [capital

improvement coordinator/service level manager] and, when appropriate, with the designer. If the bids for the project are within available funding and there is agreement on the low responsive bidder, the department/agency [shall] will forward its written recommendation for award to the director along with the encumbrance for the amount of the recommended award [within five (5) working days]. If project bids are not within available funding or agreement on the low responsive bidder is not reached, the department/agency, [within five (5) working days, shall] will forward to the director its written recommendation for subsequent action on the project. When requested by the director, the designer also [shall] will forward, [within five (5) working days,] a recommendation on the bids received and/or subsequent action on the project.

(7) Exemptions. There are specific exemptions from requirements of this rule provided by the Missouri Constitution and by the Revised Statutes of Missouri.

(B) Institutions of higher learning, community junior colleges, and the Department of Conservation are exempted by section 8.310, RSMo [Supp. 2007] from provisions of this rule which require coordination with or approval by the commissioner of administration and/or the director of the Division of Facilities Management, Design and Construction for defining projects, determining fund allocation, negotiation or approval of contracts, and approval of payments.

[(8) This rule becomes effective with the appropriation for the applicable fiscal year.]

AUTHORITY: sections 8.310 and 8.320, RSMo [2000] 2016. Original rule filed July 9, 1981, effective Feb. 15, 1982. Emergency amendment filed June 14, 1985, effective July 1, 1985, expired Oct. 29, 1985. Amended: Filed June 14, 1985, effective Aug. 26, 1985. Rescinded and readopted: Filed Nov. 5, 2007, effective June 30, 2008. Amended: Filed Oct. 11, 2018.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the 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 3—Capital Improvement and Maintenance Program

PROPOSED AMENDMENT

1 CSR 30-3.040 Project Contracts and Work Completion. The Division of Facilities Management, Design and Construction is deleting sections (1) and (2) and amending what were previously sections (3) and (4) of this rule. The purpose statement is also being amended.

PURPOSE: This amendment deletes provisions that were moved to another regulation or are unnecessarily restrictive. This amendment also revises the rule to better reflect FMDC's current practices and

to increase the readability of the regulation.

PURPOSE: This rule establishes the procedures for accomplishing the work on [Capital Improvements and Maintenance P]projects under the supervision of the director of the Division of Facilities Management, Design and Construction.

[(1) Bidding.

(A) *Soliciting Bids.* Section 8.250, RSMo requires that public bids be solicited for work under this program. It is the policy of Missouri to solicit proposals from all parties with interest in work under this program. When appropriate, solicitation for bids will go beyond the minimum requirements of the statutes and/or this rule. Notice of solicitation for bids on projects in major metropolitan areas will be sent to minority contractor assistance organizations. Solicitation for bids shall be authorized only after review and approval of drawings and specifications have been completed in accordance with 1 CSR 30-3.030. If installed function equipment is separately procured, specifications for the equipment will be coordinated with the Division of Facilities Management, Design and Construction prior to initiating any purchasing procedures. This coordination is essential to assure that the facility can accommodate the equipment.

1. Contracts costing more than twenty-five thousand dollars (\$25,000). Contracts costing more than twenty-five thousand dollars (\$25,000) will have solicitation advertised in accordance with section 8.250, RSMo Supp. 2007. In addition, when appropriate, individual firms shall be contacted to determine their interest and/or solicit their interest.

2. Projects costing twenty-five thousand dollars (\$25,000) or less. Projects costing twenty-five thousand dollars (\$25,000) or less will be referred to in these regulations as small projects. Small projects may be accomplished through the use of standing maintenance contracts in accordance with 1 CSR 30-4.030(3) or they may be individually procured by the agency in accordance with these instructions and, when appropriate, the current policies of the Division of Purchasing. They may be funded from operations appropriations or non-appropriated funds following these procedures.

3. *Emergency repairs.* For emergency repair projects, firms that are available and competent to perform required work will be invited to visit the site for examination and discussion of the work. Attending firms will be provided with available drawings, specifications, proposal forms and instructions for submitting proposals. Telephone bids for an hourly rate with a "total not to exceed" amount may be accepted. Work included in an emergency request for proposals shall be held to the minimum necessary to eliminate hazards and/or prevent further damage. Corrective work shall not be included in the emergency request, but shall be incorporated into a separate project for later solicitation. Projects for emergency repairs the cost of which exceeds twenty-five thousand dollars (\$25,000) require approval of the director. Requests shall include scope, source of funding and, when appropriate, drawings, specifications and proposal forms.

(B) *Pre-Bid Conference.* When appropriate, a pre-bid conference will be held at the project site. Interested firms will be invited to inspect and discuss the project work. Answers and clarification, or both, to substantive questions raised at the pre-bid conference will be published in an addendum distributed to all plan holders having made deposits.

(C) *Addenda.* Substantive changes or clarifications established between the times of solicitation and receipt of proposals will be issued as addenda to all plan holders who hold plans. Sufficient time, including an extension if necessary, shall be allowed for addenda to be received, considered and

incorporated into proposals submitted for the work.

(D) *Receipt and Opening of Proposals.* Unless otherwise approved by the director, all proposals will be received at the office of the Division of Facilities Management, Design and Construction. Proposals received in response to a solicitation shall be held secure until the bid opening. If requested in writing and properly identified prior to the set date and time for opening, proposals may be returned to the firm making the submission. At the set date and time, all proposals received shall be opened and made public. Proposals received after the set date and time for openings shall be returned unopened to the firm making the late submission. For good and sufficient cause in the best interest of Missouri, the director may reject any or all proposals.

(E) *Evaluation of Proposals.* Proposals received shall be evaluated based on the method of procurement as defined in the bidding documents within the available appropriations. When several appropriation items are combined in a single lump sum bid item, the total price for the single bid item shall not exceed the total of the amounts appropriated for all the included items.

(2) *Contracts.* Approval by the director of a contract(s) for a project in the program for twenty-five thousand dollars (\$25,000) or more will be granted only after review and approval of drawings and specifications in accordance with 1 CSR 30-3.030. The bid tabulation and the contract shall be submitted together for review and approval.

(A) Award of contracts shall be made to the bidder successfully meeting the requirements of the bidding documents within the available appropriations.

(B) *Intent to Award.* An intent to award letter shall be issued to the successful bidder upon approval by the director. The purpose of the intent to award is to notify the successful bidder of their selection so they may obtain the necessary insurance and performance bond to allow the notice to proceed to be issued. The contract period begins with the issuance of the intent to award letter.

(C) *Contract Documents.* Contract documents normally shall require, as appropriate, performance/payment bond, Workers' Compensation insurance, comprehensive general liability and property damage insurance, automobile public liability and damage insurance, owner's protection liability insurance, builder's risk (or installation floater) insurance and special hazard insurance. The director or his/her designee shall determine the form and items required to provide the complete contract documents. Evidence of these items shall be furnished on the forms and in amounts determined by the director to be necessary and/or in compliance with current statutes. In addition, drawings and specifications on which proposals were submitted shall be incorporated by reference in the contract signed by the successful bidder. Contracts shall not be approved until these contract documents, properly executed, are received by the director. Acceptance of insurers by the director is required for all bonds and insurance tendered. Failure to perform on a prior contract may be cause for rejection of an insurer. Failure to furnish the required contract documents in a reasonable time may be treated by the director as refusal to accept the contract and/or execute the contract.

(D) *Notice to Proceed.* Notice to proceed with work on a project under this program shall be issued by the director, or his/her designee and work on a project will not be authorized until a notice is issued. This notice shall be issued only after encumbrance of funds for the contract. The date established by the intent to award letter establishes the start of the time for completion stated in the contract.]

[(3)](1) Project Supervision. The director[, as representative for

the owner, shall be) is responsible for supervision of work on all projects *[under this program]* with the exception of projects for agencies that are exempt from this rule as set forth below.

(A) Department/Agency/Site. The department/agency and personnel at the project site are responsible for providing the contractor with reasonable access to the project site, available utility connections, and authorized storage areas. These *[shall]* will be arranged *[so as]* to minimize interference between necessary operations at the facility and the project work. Department/agency/site personnel shall:

1. Cooperate *[in exchange of]* by exchanging information and *[informal coordination]* coordinating with the contractor, but shall not assist the contractor with, or issue instructions on, project work; *[and]*

2. Cooperate with and assist, to the extent possible, the *[inspector of the work]* director's on-site representative and the designer in observing the work, equipment, and materials on the site*[/]; and*

3. Report *[U]*unusual occurrences or apparent problems *[will be reported to the inspector]* to the director's on-site representative at the earliest opportunity.

(B) Division of Facilities Management, Design and Construction. For each project *[in the program]*, the director shall designate an on-site representative. **The director's on-site representative may be a division employee, a consultant, or a department/agency employee, as the director deems appropriate for that project.** The director's on-site representative *[shall have responsibility]* is responsible for supervision and administration of the *[contract(s) on the]* project*(s)*. *This representative shall,* including the following:

1. *[Issue]* Issuing, in coordination with the designer, official instructions to the contractor*[/];*

2. *[provide]* Providing coordination as necessary with site personnel and verifying work or materials included in payment estimates;

[3.]3. Assisting with coordinating and scheduling the work and *[provide]* providing coordination between contractors working at the project site;

[3.]4. *[Be responsible]* Performing or arranging for testing when indicated by conditions or special requirements*[/, as well as for periodic reports or recommendations to the director];*

5. Providing periodic reports and/or recommendations to the director;

[4.]6. Notifying the department/agency *[program manager/service level manager]* of scheduled visits, meetings, and inspections; and

[5.]7. Maintaining records of payments, proposals, request for information, contract changes, etc. having to do with the progress of the work.

(C) Designer. The designer*[/, when construction administration is included in their responsibility,]* shall provide construction administration as set forth in the terms of the designer's contract or, if the designer is a state employee, as follows:

1. Provide on-site observation to assure that the work is performed in accordance with the contract documents;

2. Issue, in coordination with the *[inspector]* director's on-site representative, official instructions to the contractor and verify work or materials included in payment estimates;

3. Assist the contractor in establishing the sequence and control for the several phases and trades involved in the project work;

4. Provide expeditious review and response for all submissions from the contractor and/or along with clarifications or interpretations of the intent of the contract documents;

5. Provide reports for all meetings called to review the work or progress or to resolve problems. Reports for periodic progress meetings *[shall]* should include a *[resume]* review of work to date, progress for the period, scheduled versus actual progress, and efforts to resolve differences between the schedule and actual progress;

6. Provide recommendations for resolving problems of unusual

occurrences or unanticipated requirements; and

7. Provide a complete set of reproducible, as-built drawings for the project.

(D) Contractor. The contractor shall be responsible for providing^(/) all services set forth in the contractor's contract.

[1. A superintendent on the project site at all times when work is in progress. This superintendent shall have the capability and authority to supervise the work and to make decisions relating to the work. Inspection and/or observation by others shall not be used as a substitute for the contractor's superintendent;

2. Assurance that the quality and quantity of workmanship, materials and equipment on-site and/or incorporated in the project will meet the requirements of the contract documents;

3. Coordination of all activities, personnel and equipment involved in the work under the contract along with coordination, as appropriate, with other contractors or personnel on the site. Access to the work site and/or storage areas will be controlled carefully to minimize interference with other personnel or activities at the site;

4. Payment for any substantial costs of connections for, as well as metering and use of, utilities available at the site;

5. Complete sets of records, to include drawings legibly marked to show any changes to, or deviation from, the original contract drawings, all approved shop drawings and operating instructions for all equipment installed under the contract; and

6. A safe work environment in compliance with Occupational Safety and Hazard Administration (OSHA) regulations must be maintained at all times.]

(E) Preconstruction Conference. The *[inspector of the work]* director's on-site representative shall call together the contractor, the designer, a *[site]* department/agency representative, and other interested parties for a conference at the site prior to the start of work on the project. The administrative procedures *[as well as]*, coordination of access, security, storage, utility connections, areas of responsibilities, and the authority for interpretations and/or issuance of instructions will be reviewed to assure understanding by all parties. *[Instructions will be provided by the inspector]* **The director's on-site representative will provide instructions** for any requirements or conditions requiring special attention.

(F) Construction Progress Meetings. The *[inspector]* director's on-site representative shall periodically call together the designer and the contractor to review progress of the work in addition to the review and verification of payment requests. Schedule versus actual progress will be examined. When actual progress has fallen behind scheduled progress, adjustments in work force, materials, equipment, or other factors, as appropriate, *[shall]* should be established at the progress meeting to assure completion within the time allowed.

(G) Contract Changes. Changes in the work shall be approved only when the director determines that it would be detrimental to bid the work separately. If possible, pricing for contract changes will be determined from unit prices stated in, or derived from, the contractor's original bid proposal. Contract changes shall not be used to expand the scope of work beyond the intent of the appropriation. Contract changes *[shall]* will be submitted in such form as may be established by the director, and the proposed work shall not proceed until approved by the director or his/her designee. The designer *[shall]* will coordinate proposed changes with the *[inspector]* director's on-site representative and the department/agency and then prepare the contract change, including appropriate drawings and specifications. After review and approval of the contractor's proposal, the designer shall furnish the contract change and proposal to the *[inspector for recommendation and forwarding to the]* director's on-site representative. Submission and approval of an encumbrance in the amount of the contract change *[shall]* should proceed concurrently with approval and signature for the contract change. Notice to proceed with work under a contract change *[shall]* will be

issued only after confirmation of available funding.

[(H) Inspections. The contractor is responsible for completion of all work in accordance with the contract documents. Periodic visits and observations by the inspector and designer are for assistance and shall not be used as a substitute for the contractor's required responsibilities under the terms of the contract.]

1. Pre-final inspection. When the contractor **notifies the director's on-site representative that the contractor** has substantially completed the work, *s/he shall notify the inspector requesting a pre-final inspection and provide a complete list of all items remaining to be completed.*, *[T]he [inspector] on-site representative*, with the designer and contractor, shall review this list, examine the work, and note any exceptions or additional items to be corrected or completed. After review of the items to be corrected and completed and considering the time necessary to accomplish these, a time and date will be set for final inspection.

2. Final inspection. Final inspection *[shall be]* is an examination of the completed project, with particular emphasis on the items for correction and completion established in the pre-final inspection. Representatives of the department/agency, *and when appropriate, the grantor or donor of support funding shall* will be invited to participate in the final inspection along with the *[inspector] director's on-site representative*, the designer, and contractor. Any items remaining for correction and completion shall be noted and the contractor *[shall be]* given a specific time to accomplish these items. Items of testing and adjustment *[which]* that are incomplete due to seasonal requirements will be scheduled for completion in the appropriate season. Final acceptance may be made after completion of all items except for testing or adjusting seasonal equipment.

3. Warranty period. **All equipment, materials, and work should be guaranteed or warranted for at least one (1) year after final acceptance, unless otherwise approved by the director.** During the warranty period the facility operator shall inform the contractor of all deficiencies encountered needing correction. If not corrected within a reasonable period of time, the *[inspector] director's on-site representative* shall be notified.

4. Warranty inspection. *[All items of equipment, materials and work are guaranteed or warranted for at least one (1) year after final acceptance.]* During the tenth or eleventh month following completion, the designer shall schedule a meeting at the project site with the contractor, a representative of the department/agency/site, and a representative of the director. Performance of items under guaranty or warranty will be examined to assure that *[they are] the contractor is* providing satisfactory service. Deficiencies shall be noted and the contractor *s shall be* given a specific time for correction. Payment/performance bonds shall not be released until after the warranty inspection and correction of noted deficiencies. This warranty inspection shall not be construed to limit or relieve any **contractual** responsibility of the contractor to provide call-back or other service or correction of deficiencies during the warranty period for the equipment, materials, or work on the project.

[(4)](2) Exemptions. There are specific exemptions from requirements of this rule provided by the Missouri Constitution or by the Revised Statutes of Missouri.

(A) Department of Transportation projects and expenditures for highway construction and highway maintenance are exempted from provisions of this rule by Article IV, Section 29, *Missouri Constitution of 1945*.

(B) Institutions of higher learning, community junior colleges, and the Department of Conservation are exempted by section 8.310, RSMo from provisions of this rule which require coordination with or approval by the commissioner of administration, Division of Facilities Management, Design and Construction, or both, for soliciting and receipt of proposals, award of and payments for contracts and contract supervision.

[(C) The director of the Division of Facilities Management,

Design and Construction may waive the requirement of competitive bids for construction projects when the director has determined that there exists a threat to life, property, public health or public safety or when immediate projects are necessary for repairs to state property in order to protect against further loss of, or damage to, state property, to prevent or minimize serious disruption in state services or to ensure the integrity of state records. Emergency contracts for construction shall be made with as much competition as is practicable under the circumstances.]

AUTHORITY: sections 8.310 and 8.320, RSMo [2000] 2016 and subsections 6 and 7 of section 15, 1974 Reorganization Act. Original rule filed July 9, 1981, effective Feb. 15, 1982. For intervening history, please consult the Code of State Regulations. Amended: Filed Oct. 11, 2018.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the 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 3—Capital Improvement and Maintenance Program

PROPOSED AMENDMENT

1 CSR 30-3.050 Project Payments, Acceptance and Occupancy. The Division of Facilities Management, Design and Construction is amending sections (1) and (2) and deleting section (4) of this rule.

PURPOSE: This amendment deletes provisions that are unnecessarily restrictive. This amendment also revises the rule to better reflect FMDC's current practices and to increase the readability of the regulation.

PURPOSE: This rule establishes the procedures for payments[,] and acceptance and occupancy of projects.

(1) Payments. Payments *[shall]* to the contractor will be made after review and verification of work and materials in place and/or on-site. Review and verification *[shall]* will generally be accomplished as part of *[the]* a periodic construction progress meeting. **When possible, [A]apparent differences between the requests for payment and work or material [shall] will be resolved [in order] so that the request for payment may be signed by the [construction manager] director's on-site representative, the contractor and the designer prior to conclusion of the progress meeting. [The contractor's request for payment shall be transmitted expeditiously to the Division of Facilities Management, Design and Construction. Administrative processing and approval in the Office of Administration shall be completed within fifteen (15) working days after receipt by the director of the payment request.]** When *[required]* necessary, the payment request *[shall]*

will be transmitted to the department/agency. [Signature for t]The department/agency shall sign and return the payment request to the [Division of Facilities Management, Design and Construction shall be accomplished by the department/agency] division within five (5) working days after receipt of the payment request.

(A) Projects Costing One Hundred Thousand Dollars (\$100,000) or More. Payment for labor and material on projects costing one hundred thousand dollars (\$100,000) or more shall be made in accordance with section 8.260, RSMo [Supp. 2007]. [Requests for payments shall be submitted in the form and be supported by documentation as may be required by the director. When more than one (1) payment is made on those projects, the contractor shall furnish a payment certificate with the second and succeeding payment requests. The certificate shall affirm that subcontractors and suppliers have been paid in proportion to the work and materials paid for on previous payment requests.]

(B) Projects Costing Less Than One Hundred Thousand Dollars (\$100,000). Payment for labor and materials on projects costing less than one hundred thousand dollars (\$100,000) shall be made in accordance with section 8.270, RSMo [Supp. 2007]. [Requests for payment shall be submitted in the form and be supported by documentation as required by the director.]

(C) Final Payment. Final payment [shall] will not be made until all work under the contract has been completed and accepted, documentation as required by the director has been furnished, and project records have been delivered to the [construction manager. The contractor shall provide releases from all subcontractors and suppliers or a letter of release from the surety holding the performance and payment bond evidencing that they have been paid in full or covered by the bond provisions] director's on-site representative. After review and approval of the requests for payment, reports, records, and other documentation by the director or his/her designee, final payment may be made. [Administrative processing of final payment in the Office of Administration shall be completed within fifteen (15) working days after receipt by the director of completed documentation and final payment request.]

(D) Projects Supported with Non-Appropriated Funds. All payments for projects supported directly with donated, grant, or other funding not appropriated by the [g]General [a]Assembly shall be made in accordance with agreements established in the initial coordination of that project and after approval of the director or his/her designee.

(2) Acceptance and Occupancy.

(C) Project Records. The [construction manager/project manager] division shall deliver one (1) copy of project shop drawings, operation and maintenance manuals, record drawings, warranties, and all other pertinent files to a representative of the department/agency. The department/agency shall cause these records to be preserved and stored at the project site or other suitable location. Those records shall be readily available for reference in [maintenance, repair and] future work at the site.

(D) Reporting Changes in Facility Conditions. The department/agency [as part of the periodic facility inspection process] shall report any substantive change in condition of the facility to the [director] division. Substantive changes in condition of the facility resulting from accidents[,] or acts of God [or other causes] shall be reported to the [director] division at the time of occurrence.

[[4] This rule becomes effective with the appropriation for the upcoming fiscal year.]

AUTHORITY: sections 8.310 and 8.320, RSMo [2000] 2016. Original rule filed July 9, 1981, effective Feb. 15, 1982. For intervening history, please consult the Code of State Regulations. Amended: Filed Oct. 11, 2018.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the 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 35—Division of Facilities Management Chapter 1—Facility Maintenance and Operation

PROPOSED AMENDMENT

1 CSR 35-1.050 Public Use of State Facilities. The Division of Facilities Management, Design and Construction is amending all sections of this rule, moving the information regarding the use of parking lots to a new section (6), and adding completely new sections (4) and (8). The remaining sections have been renumbered to reflect these additions.

PURPOSE: The purpose of this amendment is to better reflect current practices, eliminate outdated information, and increase the readability of the regulation. Section (4) is being added to address the use of Carnahan Memorial Garden, and section (8) is being added to address the operation of unmanned aircrafts on state property. The information on parking lots is being moved to a separate section (section (6)) and has been revised to reflect current practices and clarify the meaning. Section (7) regarding weapons on state property (formerly section (5)) is being amended to address changes in state law and to allow authorized individuals picking up deposits from state agencies to carry weapons based on comments received. A limit on smoking was added to section (2) regarding public buildings and grounds other than the Capitol, to be consistent with current OA statewide policy SP-II.

(1) Facilities Subject to this Rule; Definitions.

(A) This rule governs public use of the Capitol Building and grounds[, as defined in subsection (1)(B) hereof,] and [of] other public buildings and grounds, as defined [in subsection (1)(D) hereof] herein.

(B) As used in this rule, the term “Capitol Building [and grounds]” means [the first floor of the Capitol rotunda, the museum area, corridors, restrooms and all other common areas on the first floor of the Capitol Building, the south steps of the Capitol Building, the circular drive and the Capitol grounds] all interior and exterior areas of the Missouri State Capitol Building, with the exception of the house and senate chambers, the house and senate committee rooms, the offices of members of the house and senate, the house and senate lounges, and the offices of the Governor, Lieutenant Governor, State Treasurer, Secretary of State, and State Auditor. The term “Capitol grounds,” means all lands adjacent to the Capitol, as shown on Appendix A included herein, [extend to High Street on the south and to and to Jefferson Street on the east, but do not include Parking Lots Number 1, 2, 4 and 15A, nor the Highway and Transportation Building and its grounds nor the buildings and grounds known as “Lohman’s Landing.”] with the exception of Parking Garage No. 2.

[[C] Regulations governing the public use of the Capitol Building and grounds are set forth in section (4) of this rule.

(D) Other Public Buildings and Grounds.]

(C) As used in this rule, “common areas” include the meeting rooms, conference rooms, sidewalks, lawns, plazas, entrances, hallways, stairways, restrooms, and other public facilities inside public buildings.

[1.](D) As used in this rule, the term “other public buildings and grounds” means all property, *except the Capitol Building and grounds, and except the Governor’s Mansion and its grounds, which* that is owned, leased, or occupied by an agency of the [S/State of Missouri], **with the exception of the Capitol Building and grounds, the Governor’s Mansion and its grounds, and property that is owned, leased, or occupied by the Conservation Commission, the Highways and Transportation Commission, colleges or universities, or the Department of Natural Resources for use as a state park or historic site.**

[2. It includes, but is not limited to, the following: the Jefferson Building, the Broadway Building, the Supreme Court Building, the Environmental Control Center, the Harry S Truman Office Building, the E.D.P. Building, the Health Lab, and the Missouri State Information Center, all in Jefferson City; the Wainwright State Office Building and the Midtown State Office Building in St. Louis; the Kansas City State Office Building; the St. Joseph State Office Building; the Springfield State Office Complex; and all parking lots or parking structures on the said sites. Drawings showing the property lines of these sites are included herein as Appendix A to this rule.

3.] In the case of multi-tenant buildings, the term “other public buildings and grounds” includes only the offices **and common areas** occupied **exclusively** by agencies of the [S/State of Missouri *and those portions of the common areas*].

(E) Regulations concerning the public use of other public buildings and grounds which are occupied by agencies of the state of Missouri, are set forth in section (2) of this rule.

(F) Regulations concerning the public use of other public buildings and grounds, which are not occupied by agencies of the state of Missouri are set forth in section (3) of this rule.]

[(G)](E) As used in this rule, the term “[*facility manager*] **director**” means the [*individual designated by the*] director of the Division of Facilities Management [*to manage a facility*], **Design and Construction or his/her designee.**

[(H)](F) As used in this rule, the term “grounds” means the land lying between a public building and the property line of the land on which the building is situated.

[(I)](G) As used in this rule, the term “quasi-public governmental body” means any person, corporation, or partnership organized or authorized to do business in Missouri under the provisions of Chapters 352, 353, or 355, RSMo, or an unincorporated association which either:

1. Has as its primary purpose to enter into contracts with public governmental bodies, or to engage primarily in activities carried out pursuant to an agreement or agreements with public governmental bodies; or

2. Performs a public function, as evidenced by a statutorily based capacity to confer or otherwise advance, through approval, recommendation, or other means, the allocation or issuance of tax credits, tax abatement, public debt, tax-exempt debt, rights of eminent domain, or the contracting of leaseback agreements on structures whose annualized payments commit public tax revenues; or any association that directly accepts the appropriation of money from a public governmental body.

(H) As used in this rule, “unmanned aircraft” means a device that is used or intended to be used for flight in the air without the possibility of direct human intervention from within or on the device. This term includes all types of devices that meet this definition (e.g., model airplanes, quadcopters, drones) that are used for any purpose, including for recreation or commerce.

(2) Public Use of Other Public Buildings and Grounds Occupied by State Agencies (Non-Capitol).

(A) General Rule.

1. The use of other public buildings and grounds *[which]* that are occupied by agencies of the [S/State of Missouri *[shall be]* is restricted to the conduct of state business and to other activities whose principal purpose is to improve the efficiency of a state agency in achieving its objectives or [is] to promote the health, safety, welfare, morale, education, or training of state employees.

2. Such activities may include, but are not limited to[:], the usual business of state government, agency staff meetings, governmental task force meetings, safety meetings, employee education classes, seminars and training sessions sponsored by state institutions for the benefit of the public, employee[-of-the-month] recognition[s,] ceremonies *[to recognize retiring state employees]*, [*holiday*] luncheons for state employees, [*Missouri S*]state [*E*]employees [*C*]charitable [*C*]campaign meetings, employee wellness programs, and the like.

(B) Prohibited Activities. The following activities and conditions are not permitted in *[the common areas of]* any of the other public buildings and grounds *[which]* that are occupied by a state agency:

1. Purely private social events, such as weddings, regardless of the type or content;

2. Commercial activities, including soliciting the sale of any goods or services and any other activities undertaken for the primary purpose of obtaining a financial return for the benefit of an individual or organization, whether organized for profit or not[:], except that this paragraph shall not prohibit vendors from soliciting state employees for the purpose of effecting sales of the vendors’ products or services, *if the products or services are offered* to the state, or *[if they are offered]* to employees through a state-sponsored program;

3. Solicitation of any kind, including the solicitation of contributions, gifts or donations, the solicitation of signatures on petitions, and the solicitation of support for any political candidate or cause, *except as otherwise specifically authorized in this rule*. **This rule shall not prevent state agencies from making solicitations in connection with charitable fundraisers or events;**

4. The distribution of any leaflets or other materials, except for such materials as are distributed by the [*facility manager*] **director**, and except that certified employee bargaining units may distribute written materials in the common areas of the buildings where the members of their unit are employed, if authorized by the [*facility manager*] **director** to do so;

5. Any activity that obstructs the free ingress or egress of those wishing to enter or leave the public building;

6. A sound level, noise, or any other activity that disrupts the business of government in the public building;

7. Camping, *[including]* **which means** the use of the grounds for living accommodation purposes such as sleeping [*activities, making preparations for sleeping activities*], making preparations to sleep (including the placement of bedding *[for the purpose of sleeping]*), storing personal belongings, making any fire, using any tents or other shelters *[for sleeping]*, doing any digging or earth-breaking, or carrying on cooking activities;

8. The service or consumption of alcoholic beverages;

9. Guns or weapons of any kind, except as authorized in section *[(5)](7)* of this rule;

10. Wood, metal, or plastic poles or standards *[shall not be]* **including** those used to support signs or banners *[and shall not be brought into the public building or onto the grounds]*;

11. Smoking, vaping, or the use of any tobacco products, except in those areas that have specifically been designated as “smoking areas,” or in a private vehicle;

[11.]12. Any other activity that presents a significant likelihood of damage to the public building;

[12.]13. Any activity that is a violation of federal, state, or local law.

(C) Conference Rooms and Meeting Rooms.

1. Permission required. Usage of the conference rooms and meeting rooms in other public buildings, *other than those inside the office suite of an agency,* shall be restricted to entities and instrumentalities of the state, federal, and local governments and to quasi-public governmental bodies, as defined in *[section (1) of] this rule, and shall*. **Usage of the conference rooms and meeting rooms in public buildings, other than those inside the office suite of an agency,** require the permission of the *[facility manager] director*.

2. Application for permission. Applications for permission to use conference rooms and meeting rooms shall include the following information, if *[required] requested* by the *[facility manager] director*:

A. The full name, mailing address, and telephone number of the person or organization sponsoring the proposed activity and of an individual who agrees to accept responsibility for supervising the proposed activity;

B. The purpose of the activity or meeting;

C. A description of the proposed activity and an estimate of the number of persons who will participate in the proposed activity;

D. The time and date requested for the activity;

E. Whether food or beverage will be consumed or permitted at the activity, and if so, a description of the food and beverage, and the methods used to serve it and to ensure cleanliness; and

F. A description of the equipment and services that will be *[required] needed*, such as chairs, podiums, microphones, easels, and audio-visual equipment.

3. Grant of permission. The *[facility manager shall] director will* respond to all requests for permission to use a conference room or meeting room as promptly as possible. The *[facility manager shall] director will* grant permissions, on a first-come, first-served basis to those persons or organizations who comply with the requirements of this rule, except that state agencies may be given preference over other applicants. If permission is denied for any reason, the *[facility manager shall] director will* issue to the applicant a written denial, including an explanation of the reason for the denial.

4. Conditions for grants of permission to use conference rooms and meeting rooms. The grants of permission to use conference rooms and meeting rooms are subject to the following conditions:

A. The *[facility manager] director* may impose such conditions, **including a cleaning deposit**, concerning the service of food and drink as are reasonably necessary to ensure the cleanliness of the facility and good sanitation practices*./*;

B. Services normally provided at the building for which the permit is issued *[shall] will* be provided to the permittee without charge. However, the *[facility manager] director* may impose reasonable charges for the cost of any food or drink, utilities, supporting physical arrangements, security or other personnel, or equipment over and above the services normally provided at the building during the time of the activity. The *[facility manager] director* may waive such costs for government entities or if it is not practicable to identify the amount of the additional costs or if the amount is insignificant. The *[facility manager] director* may require a deposit in the amount of the estimated additional costs before issuing a permit*./*; and

C. Permittees shall conduct their activity in strict compliance with this rule, the statements contained in their application for permit, and any restrictions on the activity *[which] that* are imposed by the *[facility manager] director* and are listed on the permit.

5. The *[facility manager] director* may disapprove any application and may cancel an issued permit, even after the applicant has begun using the facility, and may remove the applicant from the facility if the application is false or incomplete or if the applicant fails to comply with the conditions specified in the permit or with the provisions of this rule.

6. The *[facility manager shall also have] director has* the authority to $[:]$ reserve conference rooms and meeting rooms for official government business on specified days $[:]$, preempt an approved use of a conference room or meeting room to allow for official government business $[:]$, and set conference rooms and meeting rooms

aside for maintenance, construction, or repair on specified days.

[(D) Parking Lots.

1. *Use on business days. Between the hours of 6:00 a.m. and 7:00 p.m. on every business day, the parking lots which are part of the other public buildings and grounds occupied by state agencies, shall be reserved for the use of the employees and clients of the occupying agencies and for visitors conducting business with the occupying agencies. Public use of the parking lots shall not be permitted on such days.*

2. *Use at other times.*

A. *At all other times, these parking lots shall be made available to the employees, clients and visitors of the occupying agency, for the conduct of state business, unless contractual obligations of the state prohibit such use.*

B. *Any other persons who wish to use a parking lot on a nonbusiness day must submit a written request for permission to do so. Permits may only be issued to: applicants who hold a parade permit issued by the local governmental authority and who wish to use the parking lot as a staging area; state or local governmental and quasi-governmental entities for their use in programs to promote public health and safety, such as driver training, bicycle safety, fire safety and the like; or others for the purposes and objectives described in subsection (2)(A). Commercial activities and solicitation shall not be permitted in the parking lots at any time. If an emergency arises which requires that the state have the use of the parking lot, the facility manager may cancel a permit, even after it has been issued.]*

[(E)](D) Other Common Areas.

1. *For purposes of this rule, "other common areas" include the sidewalks, lawns, plazas and entrances to other public buildings, and the hallways, restrooms and other public facilities inside such other public buildings.]*

2.1. The use of *[such other] common areas other than meeting rooms and conference rooms* shall be reserved for the employees, clients and visitors of the agencies occupying the public building $]$, and for the purposes described in subsection (2)(A)]. Permitted activities in such other common areas *[shall specifically]* include the operation of cafeterias, vending machines, newsstands, and similar facilities, if authorized by the *[facility manager] director* as part of the operation of the public building for the benefit of employees, clients, and visitors of the public agency. Permitted activities may also include special events $]$, such as *Christmas caroling or other concerts], if authorized by the *[facility manager] director*.*

3.2. The *[facility manager shall have] director has* authority to bar or evict any persons who fail to comply with the requirements of this rule in any way.

[(F)](E) Agency Offices. The use of any agency office which is located within any *[other] public building [shall be]* is reserved exclusively for the employees, clients, and visitors of the agency and *[shall be]* subject to the control of the agency's office supervisor **to the extent not inconsistent with this regulation.**

(3) Public Use of Other Public Buildings and Grounds Not Occupied by State Agencies. The use to be made of other public buildings and grounds or portions thereof *[which] that* are occupied by individuals or organizations other than the *[s/State of Missouri, under a lease or sublease from the [s/State of Missouri or otherwise, [shall] will* be determined solely by the occupant of the facility, *[but shall be]* subject to any restrictions imposed by the lease or sublease or by any laws.

(4) Public Use of Carnahan Memorial Garden.

(A) **The public use of Carnahan Memorial Garden shall be subject to the same restrictions as those for the Capitol Building and grounds as set forth below, except that weddings and private social events are permitted with approval of the director. Permits**

for use of Carnahan Memorial Garden are handled in the same manner as permits for use of the Capitol Building and grounds.

[(4)](5) Public Use of the Capitol Building and Grounds.

(A) The following activities and conditions are not permitted in or about the Capitol Building and grounds, as defined in *[section (1) of]* this rule:

1. Purely private social events, such as weddings, regardless of the type or content;

2. The service or consumption of alcoholic beverages, except as *[provided in paragraph (4)(A)3.] part of a state government function and approved by the Board of Public Buildings;*

3. *[Box lunches, buffet style or "sit down" food service, or any other]* The service of food or nonalcoholic beverages *[is prohibited] in the [rotunda] Capitol Building, except [that the service of food and beverage, including alcoholic beverages, is permitted if it is] as part of a state government function and [is] approved by the Board of Public Buildings[.], or [T]the service of food or nonalcoholic beverages on the Capitol grounds [is prohibited] unless approved by the [facility manager] director and the food or beverage is served without charge;*

4. *[In order to minimize damage to the rotunda floor, d]Dance events, including demonstrations such as clogging, square dancing, and other such activit[y]ies, [are prohibited] in the rotunda, unless the events are part of a state government function and are approved by the Board of Public Buildings;*

5. Commercial activities, including the sale of any goods or services and any other activities undertaken for the primary purpose of obtaining a financial return for the benefit of an individual or organization, whether organized for profit or not, *except as otherwise authorized in this rule;*. **This rule does not prohibit vendors from soliciting state employees for the purpose of effecting sales of the vendors' products or services to the state or to employees through a state-sponsored program. This restriction also shall not apply to souvenirs sold by the Department of Natural Resources;**

6. The solicitation of contributions, gifts, or donations is prohibited in all common areas of the Capitol Building, *[and the distribution of leaflets or other materials]* and all other forms of solicitation, including solicitation of support for any political candidate or cause, is prohibited in all common areas of the Capitol Building except **in** the rotunda and **on** the south steps;

7. Making any speech or conducting any organized activity involving two (2) or more persons without first obtaining a permit from the *[facility manager, or] director;*

8. *[d]Distributing leaflets or other materials [which] that have not been provided to the [facility manager] director in conjunction with an application for a permit, or leaving leaflets or other materials unattended;*

[8.]9. Any activity that obstructs the free ingress or egress of those wishing to enter or leave the rotunda or other portions of the Capitol;

[9.]10. A sound level, noise, or any other activity that disrupts the business of government in the Capitol;

[10.]11. The use of balloons of any kind in **the common areas of the Capitol Building, including** the rotunda;

[11.]12. Smoking *[in any of the common areas inside the Capitol Building], vaping, or the use of tobacco products,* except in those areas that have specifically been designated as "smoking areas" **or in a private vehicle;**

[12.]13. Guns or weapons of any kind, except as authorized in section *[(5)] (7)* of this rule;

[13.]14. The use₁, *[in the rotunda,]* of lighted candles or other devices *[which] that* produce flames;

[14.]15. Signs, banners, and like material shall not be fastened in any way to the walls, surfaces, or railings *[surrounding the rotunda]*. Wood, metal, or plastic poles or standards shall not be used to support signs or banners and shall not be brought **into the Capitol Building or** onto the Capitol grounds. Signs displayed dur-

ing an activity shall not contain any obscene words or symbols;

16. Camping, as previously defined in this rule;

[15.]17. Any other activity that presents a significant likelihood of damage to *[the rotunda or other portions of]* the Capitol **Building and grounds; and**

[16. Camping, as previously defined in this rule; and]

[17.]18. Any activity that is a violation of federal, state, or local law.

(B) Permit System for Use of Capitol. No person or organization shall have the exclusive use of any portion of the rotunda or any other part of the Capitol Building and grounds, unless the *[facility manager] director* has issued to that person or organization a permit for the use of the facility. The terms and conditions for the issuance of permits *[shall be] are as [specified in paragraphs (4)(B)1.–3.] follows:*

1. Applications for Permits. Applications for permits shall be *[in writing and shall include the following information] made through the Division of Facilities Management, Design and Construction website and shall include all information requested by the director including, but not limited to, the following:*

A. The full names, mailing addresses, and telephone numbers of the person or organization sponsoring the proposed activity and of an individual who agrees to accept responsibility for supervising the proposed activity;

B. A description of the proposed activity and an estimate of the number of persons who will participate in the proposed activity;

C. A description of the part of the Capitol Building and grounds that the applicant wishes to use and a listing of the dates and hours during which the applicant wishes to use them; and

D. A description of the sanitation facilities, utilities, security, and other equipment and services that will be *[required] needed* for the proposed activity, such as chairs, podiums, and microphones, and a description of the means proposed for providing those items.

2. Issuance of permits. Permits *[shall] will* be issued by the *[facility manager] director*, on a first-come, first-served basis to those persons or organizations who comply with the requirements of this rule.

3. Conditions.

A. The *[facility manager] director* may impose reasonable limits on the duration of the activity and the space allocated to it, and may furnish materials, supplies, and equipment needed for the activity, if such are available, but may limit the amount furnished so that government property may remain accessible to other members of the general public. **Generally, activities and events will be limited to a period of three (3) hours, including set up and clean up.** All permits issued *[shall] will* require the permittee to comply with the *[conditions described in subsection (4)(A) hereof] restrictions described above.*

B. The *[facility manager] director* may also impose such other conditions as are reasonably necessary to prevent damage to state government property, prevent disruption of the conduct of state business, provide for the safety and security of the public, provide adequate sanitation facilities, and protect the health and safety of those attending or participating in the activity covered by the permit.

C. The *[facility manager] director* may also impose reasonable charges for the cost of any food or drink, utilities, supporting physical arrangements, security or other personnel, or equipment over and above the services normally provided at the building during the time of the activity. The *[facility manager] director* may waive such costs for government entities, or if it is not practicable to identify the amount of the additional costs or if the amount is insignificant.

4. Disapprovals; cancellations. The *[facility manager] director* may disapprove any application and may cancel an issued permit, even after the applicant has begun using the facility, if the application is false or incomplete *[or]*, if the applicant fails to comply with the conditions specified in the permit, or fails to comply with the provisions of this rule. In addition, the *[facility manager] director* may disapprove applications submitted by those who have repeatedly

failed to comply with the terms and conditions of permits previously issued to them.

5. Exceptions. The Board of Public Buildings may make exceptions to this rule if it deems the exception to be in the best interest of the state. **The Board of Public Buildings may delegate its authority to grant exceptions to this rule to the Commissioner of Administration.**

(6) Parking Lots.

(A) Use on business days. Public use of the parking lots that are part of the Capitol Building and grounds and other public buildings and grounds occupied by state agencies shall not be permitted between the hours of 6:00 a.m. and 7:00 p.m. on business days. During those times, parking lots are reserved for the use of the employees and clients of the occupying agencies and for visitors conducting business with the occupying agencies, unless contractual obligations of the state prohibit such use.

(B) Use at other times. Persons who wish to use a parking lot at times other than those set forth above must submit a written request to the director for permission to do so. Permission may be issued to applicants who hold a parade permit issued by the local governmental authority and who wish to use the parking lot as a staging area, to state or local governmental and quasi-governmental entities for their use in programs to promote public health and safety, or to others at the discretion of the director. Commercial activities and solicitation shall not be permitted in the parking lots at any time. The director may revoke permission to use the parking lot at his or her discretion, even after it has been granted.

[(5)](7) Weapons Capable of Lethal Use Prohibited; Exceptions.

(A) Carrying a firearm or any other weapon readily capable of lethal use into the Capitol Building and grounds [as defined in subsection (1)(B), the offices in the Capitol Building occupied by the Governor and the Governor's administration, the offices in the Capitol Building of the Lieutenant Governor, the offices in the Capitol Building of the State Auditor, the offices in the Capitol Building of the State Treasurer, any other building and grounds as defined in subsection (1)(D), or the Governor's Mansion and grounds,] or any other public building or grounds is prohibited, except that holders of a valid concealed carry permit may carry weapons into the Capitol Building and grounds to the extent allowed by sections 571.107 and 571.215, RSMo.

1. This prohibition shall not apply to the following persons acting in their official capacity: state and federal law enforcement officers, peace officers, probation and parole officers, wardens and superintendents of prisons or penitentiaries, members of the armed forces and national guard, and persons vested with judicial authority by the state or federal court, and members of the state General Assembly, acting in their official capacity].

2. This prohibition shall not apply to any person who has a valid concealed carry endorsement issued pursuant to sections 571.101 to 571.121, RSMo while such person is servicing an automated teller machine (ATM) in a state-owned or leased building; provided, however, that/ or gaining possession of a deposit from a state agency for transport to another location. [e/Employers of such persons must supply in writing to the [state facilities operations manager] director the names, addresses, and photographs of [their employees authorized to service such ATMs] such persons at least five (5) business days before such persons start servicing the ATMs or providing such deposit services, and the employers must immediately advise the director in writing [to the state facilities operations manager] when any such employee is no longer working for said employer.

3. Possession of a firearm [by a person holding a valid state concealed carry endorsement] in a vehicle located in a parking area upon the premises of any area referenced in this rule [shall not be prohibited] is permitted so long as the firearm is not removed

from the vehicle or brandished while the vehicle is on the premises.

(8) Use of Unmanned Aircraft.

(A) Launching, landing, or operating an unmanned aircraft from or on the Capitol Building and grounds, Carnahan Memorial Garden, and other public buildings and grounds, as defined in this rule, is prohibited except as pre-approved in writing by the director.

(B) Operators given permission by the director to operate an unmanned aircraft on state property identified above shall comply with all restrictions imposed by the director and all applicable state and federal laws and regulations, including, but not limited to, the regulations of the Federal Aviation Administration. This includes notifying and obtaining approval from all applicable state and federal entities, airports, air traffic control facilities, and helipads.

AUTHORITY: sections 8.110[,] and 8.320, RSMo 2016 [34.030], and section 37.005, RSMo Supp. 2017 [and 536.025, RSMo 2000 and 536.023.3, RSMo Supp. 2005]. Original rule filed April 23, 1998, effective Nov. 30, 1998. Emergency amendment filed Oct. 9, 2003, effective Oct. 19, 2003, expired April 15, 2004. Amended: Filed Oct. 9, 2003, effective April 30, 2004. Amended: Filed Oct. 27, 2005, effective April 30, 2006. Amended: Filed Oct. 11, 2018.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the 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 RESCISSION

1 CSR 40-1.010 Organization. This rule provided a description of the Division of Purchasing.

PURPOSE: This rule is being rescinded and portions of the existing language are included in an amendment to 1 CSR 40-1.050.

AUTHORITY: sections 34.050 and 536.023, RSMo Supp. 1999. Original rule filed Oct. 20, 1997, effective May 30, 1998. Amended: Filed March 24, 2000, effective Oct. 30, 2000. Rescinded: Filed Oct. 2, 2018.

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

PRIVATE COST: This proposed rescission 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 Karen Boeger, Division of Purchasing, 301 West High Street, Room 630,

Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

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

PROPOSED RESCISSION

1 CSR 40-1.030 Definitions. This rule provided definitions used in the chapter.

PURPOSE: This rule is being rescinded and portions of the existing language are included in an amendment to 1 CSR 40-1.050.

AUTHORITY: section 34.050, RSMo 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, effective Nov. 30, 2011. Rescinded: Filed Oct. 2, 2018.

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

PRIVATE COST: This proposed rescission 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 Karen Boeger, Division of Purchasing, 301 West High Street, Room 630, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

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

PROPOSED RESCISSION

1 CSR 40-1.040 Authority Delegations. This rule provided the procedure for delegating procurement authority as provided under section 34.100, RSMo.

PURPOSE: This rule is being rescinded and portions of the existing language are included in an amendment to 1 CSR 40-1.050.

AUTHORITY: section 34.050, RSMo Supp. 1997. Original rule filed Oct. 15, 1992, effective June 7, 1993. Rescinded and readopted: Filed Oct. 20, 1997, effective May 30, 1998. Rescinded: Filed Oct. 2, 2018.

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

PRIVATE COST: This proposed rescission 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 Karen Boeger, Division of Purchasing, 301 West High Street, Room 630,

Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 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 division is adding sections (1)–(2), (6), and (25), renumbering as needed, and amending sections (3), (4), (5), (7), (10), (12), (13)–(17), and (21)–(24).

PURPOSE: This amendment combines the former provisions related to the state's competitive bid process in 1 CSR 40-1.010, 1 CSR 40-1.030, 1 CSR 40-1.040, and 1 CSR 40-1.090, with the current provisions of 1 CSR 40-1.050, so that the relevant procurement provisions are found in one (1) rule. This rule fulfills the statutory requirement of section 536.023(3), RSMo.

(1) The Division of Purchasing is responsible for the procurement of supplies, equipment, and services for state departments. The division is also responsible for the operation of the cooperative procurement program for political subdivisions of the state and any other activities assigned or delegated to it by the Commissioner of Administration. These regulations address formal, informal, and statutory procurements under Chapter 34, RSMo.

(2) As used in this chapter unless the content clearly indicates otherwise, the following terms are defined as:

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

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

(C) Contract. A legal and binding agreement between two (2) or more competent parties, for a consideration for the procurement of supplies;

(D) Debarment. An exclusion from contracting with the state for an indefinite period of time;

(E) Director. The director of the Division of Purchasing;

(F) Division. The Division of Purchasing within the Office of Administration;

(G) Minority. The definition contained in 1 CSR 10-17.010(1)(G) will be applied;

(H) Minority business enterprise (MBE). The definition in section 37.020.1(3), RSMo, will be applied;

(I) Multiple award. A purchase order or contract awarded to two (2) or more bidders in order to meet the needs of agencies;

(J) OA. The Office of Administration;

(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 34.074, RSMo, will be applied;

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

(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;

(O) State. The state of Missouri;

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

(Q) Women's business enterprise (WBE). The definition in section 37.020.1(6), RSMo, will be applied.

All other terms will follow their relevant statutory or regulatory definitions.

[(1)](3) When the procurement is estimated to be less than twenty-five thousand dollars (\$25,000), an informal method of solicitation may be utilized. Informal methods of procurement may include Request for Quotation (RFQ), telephone quotes, etc.

(A) The division will establish a target date and time for submission of informal bids.

(B) The division may proceed with the evaluation and award anytime after the expiration of the target date and time. Bids received after the target date and time, but before the award of a contract, may be included in the evaluation at the discretion of the division.

[(2)](4) 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.

[(A) Formal bids should be received in the division or a secured electronic database in a sealed format by the time set for the opening of bids.

(B) Formal bids received after the time set for the opening of bids shall be considered late and will not be opened except in those circumstances described below.

(C) Under extraordinary circumstances, the director or designee, may authorize the opening of a late bid. In such cases, the bid 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 bids. 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 bidder/offeror. In such a case, the bidder/offeror must provide written proof from the delivery service that promised delivery time was prior to the time set for the opening of bids.

(D) Bids received in response to an IFB shall be available for public review after the bid opening during regular working hours.]

[(E)](A) When the division decides that all bids are unacceptable and circumstances do not permit a rebid, negotiations may be conducted with only those bidder/offerors who submitted bids in response to the IFB. No additional bidder/offerors may be solicited. Upon determination that negotiations will be conducted, the bids and related documents will be closed to public viewing in accordance with section 610.021, RSMo. All negotiations will be conducted in accordance with the competitive negotiation provisions provided for in these regulations, or as provided for in the solicitation, if applicable.

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

[(A) Formal proposals should be received in the division or a secured electronic database in a sealed format by the time set for the opening of the proposals.

(B) Formal proposals received after the time set for the opening of proposals shall be considered late and will not be opened, except in those circumstances described below.

(C) Under extraordinary circumstances, the director or

designee may authorize the opening of a late proposal. In such cases, the 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 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 from the delivery service 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 awarded or all proposals are rejected.

(E) Offerors who obtain information concerning a competitor's proposal may be disqualified for consideration for a contract award.]

(6) Submission of Bids or Proposals. Formal bids/proposals should be received in the division or a secured electronic database in a sealed format by the time set for the opening of the bids/proposals.

(A) In the event that the division receives a container which is not identifiable as a specific bid/proposal, an authorized person within the division may open the container to determine the contents. If the contents are determined to be a bid/proposal, the container will be resealed and the solicitation number, opening date, and time will be noted on the outside. The container will then be filed until the official time for opening.

(B) Formal bids/proposals received after the time set for the opening of proposals shall be considered late and will not be opened, except in those circumstances described below.

(C) Under extraordinary circumstances, the director or designee may authorize the opening of a late proposal. In such cases, the 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 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 bidder/offeror. In such a case, the bidder/offeror must provide written proof from the delivery service that promised delivery time was prior to the time set for the opening of bids/proposals.

4. Evidence that the bid/proposal was in the division's post office box or physical possession before the time of bid opening; or

5. Any other evidence relevant to the specific situation.

(D) Bids/Proposals received in response to a procurement will be disclosed in accordance with Missouri law.

(E) Bidders or Offerors who improperly obtain information concerning a competitor's bid or proposal may be disqualified for consideration for a contract award.

(F) After the bid/proposal opening, a 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, the bidder/offeror is unable to meet the commitments contained in the bid/proposal, or if enforcement of the bid

would impose an unconscionable hardship on the bidder/offeror. This withdrawal will be considered only after receipt of a written request and supporting documentation from the bidder/offeror. Withdrawal is the 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.

[(4)](7) 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, although the following list is not intended to be exhaustive:

1. The parts are [required] specified 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;
4. Factory authorized maintenance [must be utilized] is specified 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.);

(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;

(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] The Division will review [of] the notification [shall be made by the division] and its decision [shall be] is final.

[(5)](8) When conditions meet the criteria outlined in section 34.045, RSMo, emergency procurement procedures may be utilized. The requirement for formal competitive bids or proposals may be waived. However, the emergency procurement should be made with as much informal bidding as practicable. Emergency procedures should only be utilized to purchase those supplies which are necessary to alleviate the emergency.

[(6)](9) When circumstances dictate that it would be most advantageous, the state may purchase supplies from, or in cooperation with, another governmental entity pursuant to section 34.046, RSMo.

(A) Supplies purchased from another governmental entity should be limited to those supplies which are provided directly by such entity.

(B) Supplies purchased in cooperation with another governmental entity may be purchased based on contracts established in accordance with that entity's laws and regulations.

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

(A) The division [shall] will develop standardized terms and conditions to be included with the solicitation documents;

(B) The division may request bids/proposals for new, used, rebuilt, or remanufactured equipment employing the trade-in of used equipment. The solicitation document may request pricing with a trade-in and without a trade-in;

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

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

2. The bid/proposal securities of unsuccessful bidders/offerors may be returned after the finalization of the award. If the successful 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] specified in the solicitation, the bid/proposal security of the successful 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] voided;

(D) In the event that the division receives a container which is not identifiable as a specific bid/proposal, an authorized person within the division may open the container to determine the contents. If the contents are determined to be a bid/proposal, the container will be resealed and the solicitation number, opening date, and time will be noted on the outside. The container will then be filed until the official time for opening;

(E) After the bid/proposal opening, a 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 bidder/offeror. This withdrawal will be considered only after receipt of a written request and supporting documentation from the bidder/offeror. Withdrawal shall be the 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) In accordance with section 34.353, RSMo, 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] are entitled to a ten percent (10%) preference as stated below over 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 goods or commodities, 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] will 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] will consider any applicable exceptions, including those set by statute or executive order, to the Buy American preference before awarding any contract;

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

(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

bidder/offeror's expense if return of the samples is stipulated in the bidder/offeror's bid/proposal. Samples submitted by a bidder/offeror who receives the award may be kept for the duration of the contract for comparison with shipments received;

(I) During the course of a solicitation, **a demonstration may be permitted to allow** bidders/offerors *[may be required]* to demonstrate proposed products or services. *[Such]* **The division will coordinate such a demonstration** *[shall be coordinated by the division]*;

(J) When bids/proposals are equal in all respects, any preferences *[shall be]* **will be** applied in accordance with applicable statute. If all such bidder/offerors 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 bidders/offerors who are considered equal. If this is not practical, the drawing will be witnessed by at least two (2) disinterested persons;

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

(L) After an award is made, the solicitation file or facsimile thereof *[shall]* **will be** made available to the public for inspection via the Internet;

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

(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;

(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.

[(8)](11) Contracts awarded as the result of a competitive solicitation may be amended when such an amendment is in the best interest of the state and does not significantly alter the original intent or scope of the contract.

[(9)](12) 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) business days after the date of award. If the tenth day falls on a Saturday, Sunday, or state holiday, the period *[shall]* **will** extend to the next state business day. A protest submitted after the ten (10) business-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)](13) Section 34.165, RSMo, provides for a *[ten- (10-)]* five

to **fifteen (5-15)** point bonus on bids/proposals submitted by qualified nonprofit organizations for the blind and qualified sheltered workshops, if the participating organization provides, **at a minimum**, 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.

[1. An organization performs a commercially useful function when it is responsible for executing a distinct element of the work of the contract and is carrying out its responsibilities by actually performing, managing, or supervising the work involved. To perform a commercially useful function, the organization must also be responsible, when applicable, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.

2. To determine whether an organization is performing a commercially useful function, the division may evaluate the amount of work subcontracted, whether the amount the organization is to be paid under the contract is commensurate with the work it is actually performing and the organization's credit claimed for its performance of the work, and other relevant factors.

3. An organization does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of an organization's participation. In determining whether an organization is such an extra participant, the division may examine similar transactions, particularly those in which organizations do not participate.]

(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]* **specified** by the solicitation that: 1) describes the products or services the organization for the blind or sheltered workshop will provide and the percentage or dollar level of the participation which must meet or exceed the minimum participation amount specified in section 34.165, RSMo; 2) indicates the organization for 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; 3) provides evidence of the organization for the blind and sheltered workshop qualifications such as a copy of the certification or certification number; and 4) includes affirmation from each organization for the blind and sheltered workshop that it is willing to participate in the contract in the kind and amount of work provided in the bidder/offeror's response.

(E) If all requirements are met, the bidder/offeror shall receive a *[ten (10)-]* **five to fifteen (5-15)** 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.

1. A sliding scale for the award of points shall range from a minimum of five (5) points to a maximum of fifteen (15) points. The award of the minimum five (5) points shall be based on the bid/proposal containing a commitment that the participating nonprofit organization or workshop is providing the greater of

two percent (2%) or five thousand dollars (\$5,000) of the total contract value of bids for purchase not exceeding ten (10) million dollars.

2. Where the commitment in the bid/proposal exceeds the minimum level set forth in section 34.165 to obtain five (5) points, the awarded points shall exceed the minimum five (5) points, up to a maximum of fifteen (15) points. The formula to determine the awarded points for commitments above the two percent (2%) minimum shall be calculated based on the commitment in the bid/proposal (expressed as a number, not as a percentage) times two and one-half (2.5) points:

Vendor's Commitment Number x 2.5 points = Awarded Points

Examples: A commitment of 3% would be calculated as: 3×2.5 points = 7.5 awarded points. A commitment of 5.5% would be calculated as: 5.5×2.5 points = 13.75 awarded points. If an offeror's bid/proposal lists a dollar figure, instead of a percentage, that is over the minimum amount, the dollar figure shall be converted into the percentage of the offeror's total contract value for calculation of the awarded points. Commitments at or above six percent (6%) receive the maximum of fifteen (15) points.

(F) If the bid/proposal is awarded, the percentage or dollar level of the organization for the blind or sheltered workshop participation committed to by the bidder/offeror in required documentation *[shall be]* is 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, unless another timeframe is approved by the division, until full payment is made a report detailing all payments it made to all organizations for the blind and sheltered workshops participating in the contract. This is not required if the organization for the blind or sheltered workshop is acting as a prime contractor. However, it may be required if the prime contractor is also using other subcontractors to meet *[required]* the 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.

1. No dollar value of work performed under a contract by an organization for the blind and sheltered workshop after it has ceased to be certified can be counted.

2. The participation of a sheltered workshop on a contract cannot be counted until the amount being counted has actually been paid to the organization for the blind and sheltered workshop.

(I) An organization for the blind and sheltered workshop participation will be credited by the division only for the value of the work actually performed by the entity toward the division individual contract percentage or dollar level, including cost of supplies and materials obtained or leased by the entity. The total dollar value of the work granted to the entity by the prime contractor is counted toward the applicable contract requirement. When counting an entity for the organization for the blind and sheltered workshop participation, the division will consider the following:

1. A contractor's entire expenditure to be paid to an organization for the blind and sheltered workshop supplier or manufacturer

for material furnished which becomes a permanent part of the contract work. For the purpose of this regulation, a manufacturer *[shall be]* is defined as an individual or firm that produces goods from raw materials or substantially alters them before resale and is a qualified organization for the blind and sheltered workshop;

2. By counting the work an organization for the blind and sheltered workshop contractor commits to perform with its own labor as well as the work that it commits to perform with organization for the blind and sheltered workshop subcontractors and suppliers;

3. When an organization for the blind and sheltered workshop performs as a participant in a joint venture, only the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the organization for the blind and sheltered workshop performs with its own forces shall count toward individual contract percentages or dollar levels; and

[4. When an organization, during the contract, is presumed not to be performing a commercially useful function as provided in subsection (10)(B) of this rule, the organization may present evidence to rebut this presumption. The director may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.]

(J) If a participating entity is unable to satisfactorily perform its organization for the 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]* will 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.

(K) If the contractor's participation level or payment to a participating organization for the 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]* will be released.

(L) At the time of contract renewal, a contractor must verify it is meeting its participation level and required payment to all organization for the blind and sheltered workshop entities, or the contractor must submit a statement of when such blind and sheltered participation is scheduled to occur. If the contractor is not meeting said requirements, the contract renewal may not be processed unless and until said requirements are satisfactorily met, a cure plan is approved, the statement is accepted by the division, or a waiver for good cause is obtained from the division.

[[11]](14) 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]* will 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]* are 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 Certificate of Release or Discharge from Active Duty (DD Form 214), and a disability rating letter issued by the Department of Veterans Affairs establishing a service connected disability rating, or a Department of Defense determination of service connected disability, unless the SDVE is listed with the division on its website as previously certified in which case said documentation is not required;
5. The SDV(s) *[shall possess]* possesses 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]* are effective for a period not to exceed three (3) 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]* is removed from the listing.

(E) If the bidder/offeror meets the requirement of an SDVE, the bidder/offeror *[shall]* will 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) An SDVE must provide a commercially useful function that offers added value to a contract.

[1. An SDVE performs a commercially useful function when it is responsible for executing a distinct element of the work of the contract and is carrying out its responsibilities by actually performing, managing, or supervising the work involved. To perform a commercially useful function, the SDVE must also be responsible, when applicable, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. Supplies shall be provided exclusive to the performance of a contract, and an 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.

2. To determine whether an SDVE is performing a commercially useful function, the division may evaluate the amount of work subcontracted, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the firm's credit claimed for its performance of the work, and other relevant factors.

3. A firm does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of SDVE participation. In determining whether a firm is such an extra participant, the division may examine similar transactions, particularly those in which SDVEs do not participate.

4. If an SDVE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the SDVE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the director will presume that it is not performing a commercially useful function.

5. When an SDVE is presumed not to be performing a commercially useful function as provided in subsection (11)(G) of this rule, the SDVE may present evidence to rebut this presumption. The director may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.]

(H) If a bidder/offeror is proposing SDVE vendor participation, it must provide to the division all documents *[required]* specified by the solicitation including:

1. Complete information as *[required]* specified by the solicitation document including a list of each proposed SDVE vendor, the committed percentage of participation for each SDVE with the corresponding dollar amount of the participation of 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;

2. A copy of the SDVE's certification as a SDVE unless the SDVE is listed with the division on its website as previously certified in which case said documentation is not required; and

3. Written documentation as *[required]* specified in the solicitation from each listed SDVE that it is willing to participate in the contract in the kind and amount of work provided in the bidder/offeror's response.

(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]* is 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, unless another timeframe is approved by the division, until full payment is made a report detailing all payments it made immediately following the reporting period to all SDVEs participating in the contract. The report shall be submitted to the division on a division form.

1. No dollar value of work performed under a contract with a firm after it has ceased to be certified can be counted toward the SDVE overall goal.

2. The participation of an SDVE subcontractor toward a contractor's final compliance with its SDVE obligations on a contract

cannot be counted until the amount being counted has actually been paid to the SDVE.

(L) SDVE participation will be credited by the division only for the value of the work actually performed by the SDVE toward the individual contract percentage, including cost of supplies and materials obtained or leased by the SDVE. The total dollar value of the work awarded to the SDVE by the prime contractor is counted toward the contract goal. When counting SDVE participation, the division may consider the following:

1. A contractor's entire expenditure to be paid to an SDVE supplier or manufacturer for material or services furnished which becomes a permanent part of the contract work. For the purpose 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;

2. By counting the work an SDVE contractor commits to perform with its own labor as well as the work that it commits to perform with SDVE subcontractors and suppliers; and

3. When an SDVE performs as a participant in a joint venture, only the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the SDVE performs with its own forces *[shall]* will count toward SDVE individual contract percentages.

(M) If a contractor is unable to satisfactorily meet its SDVE contractual commitment, 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.

(N) If the contractor's payment to a committed 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]* will be released.

(O) At the time of contract renewal, a contractor must verify it is meeting its participation level and required payment to all SDVEs, or the contractor must submit a statement of when such SDVE participation is scheduled to occur. If the contractor is not meeting said requirements, the contract renewal may not be processed unless and until said requirements are satisfactorily met, a cure plan is approved, the statement is accepted by the division, or a waiver for good cause is obtained from the division.

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

[(13)](16) 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]* will be specified in the solicitation documents. The point assessment assigned to each evaluation criteria *[shall]* will not be changed after the final end date and time for submission of the initial bids/responses has passed. The division *[shall]* will 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)](17) 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]* will contact the bidder/offeror

[and] to request clarification of the intended bid/proposal. *The/ and the* correction *[shall be]* will be incorporated in the notice of award, if applicable. Examples of apparent clerical errors are misplacement of a decimal point and obvious mistake in designation unit.

[(15)](18) 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, or cannot otherwise be met by all bidders/offerors, that to determine non-responsiveness could be considered unreasonable and would not be to the state's advantage.

[(16)](19) 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)](20) 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)](21) Awards *[shall]* are to 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 bid/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)](22) 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]* will obtain any clarifications to a response necessary to make a determination of compliance or non-responsiveness. A proposal which contains nonresponsiveness 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 nonresponsiveness issues are considered nonresponsive 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]* will 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]* will 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) When conducting competitive negotiations, there shall be no disclosure of any information submitted by competing offerors.

[(20)](23) 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 requirements in solicitation documents, close review of requirements for bonding, experience and insurance requirements, contract unbundling, targeted notice of procurement opportunities, utilization of minority and women personnel on evaluation committees, if available, etc.

(A) Percentage Requirements and Compliance. Executive Order 15-06 states that the State of Missouri's Annual Aspirational Program Goals for Minority- and Women- Business Enterprises (M/WBE) are both ten percent (10%) of all state annual procurement funds expended by executive branch agencies. These goals are a benchmark by which M/WBE opportunities to participate in state procurement are monitored and evaluated. These ten percent (10%) goals do not authorize or require the division to set M/WBE individual contract percentages at the ten percent (10%) level, or any other particular level, or to take any special administrative steps if the percentages are above or below ten percent (10%).

1. The division may use individual contract percentages to help meet the State's Annual Aspirational Program Goals. The division may establish individual contract percentages, with support from the Office of Equal Opportunity (OEO). The division may set each contract percentage by reviewing the type of goods or services being procured, elements of work to be performed, time frame, and geographical location, history of M/WBE and non-M/WBE usage, and availability of ready, willing, and able M/WBEs certified by OEO. The percentages will be expressed in the bid document as a percentage of the total contract value. Individual contract percentages may be set higher than the State's Annual Aspirational Program Goals where availability of M/WBEs has been demonstrated to be higher. Likewise, individual contract percentages may be set lower in areas where availability of M/WBEs has been demonstrated to be lower.

2. Bidders/Offerors must, in order to be responsive, make sufficient good faith efforts to meet M/WBE contract percentages. The bidder/offeror can meet the individual contract percentages in either one (1) of two (2) ways. First, the bidder/offeror can meet the percentages through documenting commitments for participation by M/WBEs sufficient to meet the M/WBE contract percentages. Second, the bidder/offeror can document adequate good faith efforts pursuant to subsection *[(20)](23)*(1) by demonstrating the bidder/offeror took all necessary and reasonable steps to achieve the M/WBE contract percentages, but was unable to achieve it.

(B) M/WBE individual contract percentages can be met by a qualified M/WBE vendor and/or through the use of qualified M/WBE subcontractors, suppliers, joint ventures, or other arrangements that afford meaningful opportunities for M/WBE participation. The M/WBE vendor shall be certified by OEO on the opening date of a bid/proposal. If an M/WBE vendor's certification has expired or otherwise ended, but the vendor had submitted its renewal application or other supporting documents 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.

(C) Supplies provided by M/WBE vendors must provide a commercially useful function that provides 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.

[1. An M/WBE performs a commercially useful function when it is responsible for executing a distinct element of the

work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the M/WBE must also be responsible, when applicable, with respect to supplies used on the contract, for negotiating price, determining quality and quantity, ordering the supplies, and installing (where applicable) and paying for the supplies.

2. To determine whether an M/WBE is performing a commercially useful function, the division may evaluate the amount of work subcontracted, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the firm's credit claimed for its performance of the work, and other relevant factors.

3. A firm does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of M/WBE participation. In determining whether a firm is such an extra participant, the division may examine similar transactions, particularly those in which M/WBEs do not participate.

4. If an M/WBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the M/WBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the director will presume that it is not performing a commercially useful function.

5. When an M/WBE is presumed not to be performing a commercially useful function as provided in paragraph (20)(C)4. Of this rule, the M/WBE may present evidence to rebut this presumption. The director may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.]

(D) M/WBE Participation Computed. M/WBE participation will be credited by the division only for the value of the work actually performed by the M/WBE toward the division individual contract percentage, including cost of supplies and materials obtained or leased by the M/WBE. The total dollar value of the work granted to the M/WBE by the prime contractor is counted toward the applicable goal of the entire contract. When counting M/WBE participation, the division may consider the following:

1. A contractor's entire expenditure to be paid to an M/WBE supplier or manufacturer for supplies furnished which becomes a permanent part of the contract work. For the purpose 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 an OEO certified M/WBE;

2. By counting the work an M/WBE contractor commits to perform with its own labor as well as the work that it commits to perform with M/WBE subcontractors and suppliers; and

3. When an M/WBE performs as a participant in a joint venture, only the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the M/WBE performs with its own forces shall count toward M/WBE individual contract percentages.

(E) If a bidder/offeror is proposing M/WBE vendor participation it must provide to the division all documents *[required]* specified by the solicitation, which may include:

1. Bid/proposal forms outlining the name, address, and telephone number of each and the M/WBE commitment percentage with the corresponding dollar amount of the participation of each M/WBE;

2. Bid/proposal forms outlining M/WBE participation and a description of what services or supplies the vendor will supply;

3. M/WBE vendor certification number or copy of certification issued by OEO; and

4. Written documentation as required in the solicitation from each listed M/WBE that it is willing to participate in the contract in

the kind and amount of work provided in the bidder/offeree's response.

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

(G) A bidder/offeree that is certified as both an MBE and WBE can meet both MBE and WBE individual contract percentages as long as the bidder/offeree is performing at least the total of the target MBE and WBE percentage of the contract value.

(H) If the solicitation will not include subjective criteria, the division is not required to address M/WBE contract percentages in the solicitation. If the solicitation will include subjective criteria, the division must include the M/WBE individual contract percentages 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.

(I) Good Faith Waiver. A bidder/offeree is required to make a good faith effort to locate and contract with M/WBEs. If a bidder/offeree has made a good faith effort to secure the required M/WBE participation and has failed, the bidder/offeree may submit with its bid proposal the information requested on forms provided with the bid documents. The division will review the bidder/offeree's actions as set forth in the bidder/offeree's submittal documents and other factors deemed relevant by the division, to determine if a good faith effort has been made to meet the applicable contract percentages. If the bidder/offeree is judged not to have made a good faith effort, the bid *[shall]* will be rejected.

1. Bidders/offerees who demonstrate that they have made a good faith effort to include M/WBE participation will not have their bids/proposals rejected regardless of the percent of M/WBE participation, provided the bids/proposals are otherwise acceptable.

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

A. The efforts to develop and sustain a working relationship with M/WBEs, including attending pre-bid conferences and match-making meetings and events;

B. The bidder's/offeree's efforts and methods to provide M/WBEs with full sets of plans, specifications, or appropriate information in a timely manner to assist the M/WBE in responding to the bidder's/offeree's solicitation. This could include conducting market research to identify M/WBEs, and providing emails or written notices to relevant OEO certified M/WBEs listed in OEO's directory, and which are located in the applicable area or surrounding areas as early in the acquisition process as practicable;

C. The bidder's/offeree's efforts to make initial contact with at least three (3) relevant OEO-certified M/WBEs, its follow-up with the contacted M/WBEs, and whether the bidder/offeree received a proposal from a certified M/WBE for the relevant categories of work;

D. The bidder's/offeree's efforts to assist interested M/WBEs in obtaining bonding, lines of credit, or insurance as required by the division, or the efforts made to assist in obtaining necessary equipment, supplies, materials, or related assistance or services;

E. The extent to which the bidder/offeree divides work into projects suitable for subcontracting to M/WBEs, including, where appropriate, breaking out contract work items into economically feasible units, for example, smaller tasks or quantities to facilitate M/WBE participation, even when the bidder/offeree might otherwise prefer to perform the work with its own forces. Prime contractors are not, however, required to accept higher quotes from M/WBEs if the price difference is excessive or unreasonable, but the fact that there may be some additional costs involved in finding and using M/WBEs is not in itself sufficient reason for a bidder's/offeree's failure to meet the individual contract M/WBE percentages, as long as such costs are reasonable;

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

G. Actual past participation of M/WBEs achieved by the bidder/offeree with contracts established by the division;

H. The reasons provided by the bidder/offeree for the inability to reach the individual contract percentages, and the ability of other bidders/offerees to meet the percentages, if applicable;

I. An insufficient good faith effort is the rejection of an M/WBE because its quotation for the work was not the lowest received. However, as noted above, a bidder/offeree is not required to accept an excessive or unreasonable quote in order to satisfy contract percentages; and

J. When a non-M/WBE subcontractor is selected over an M/WBE subcontractor, the division may require the bidder/offeree to submit copies of each M/WBE and non-M/WBE subcontractor quote to review whether the M/WBE prices were substantially higher; and the division may contact the M/WBE subcontractor to inquire as to whether the firm was contacted by the prime bidder/offeree. Pro forma mailings to M/WBEs requesting bids are not alone sufficient to satisfy good faith efforts.

(J) Once a contract is awarded, a contractor shall submit on or before each fifteenth of the month, unless another timeframe is approved by the division, until full payment is made, a report detailing all payments it made immediately following the reporting period 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. The amounts submitted may be verified by the division, OEO, or the Contract Oversight Office.

1. No dollar value of work performed under a contract with a firm after it has ceased to be certified can be counted toward the M/WBE overall goal.

2. The participation of a M/WBE subcontractor toward a contractor's final compliance with its M/WBE obligations on a contract cannot be counted until the amount being counted has actually been paid to the M/WBE.

(K) The director *[shall]* will maintain records identifying and assessing the contractor's progress in achieving and maintaining M/WBE contract percentages. These records should show—

1. The amount and nature of awards made by the contractor to M/WBE vendors/suppliers/manufacturers; and

2. Monthly reports from the contractor on its progress in meeting M/WBE percentages, unless a different interval for reporting has been approved.

(L) Termination or Substitution of an M/WBE. If an M/WBE is unable to satisfactorily perform its participation level, or if there are other reasons the contractor needs to replace an M/WBE, the contractor for good cause can obtain written approval from the division prior to replacing the entity.

1. Before a contractor transmits to the division its request to terminate and/or substitute an M/WBE, the contractor must give notice in writing to the M/WBE subcontractor, with a copy to OEO and the division, of its intent to request to terminate and/or substitute, and the reason for the request. The contractor must give the M/WBE five (5) business days to respond to the contractor's notice and advise the OEO and the division and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why OEO and the division should not approve the contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), the contractor may reduce or waive the response period as approved by the division.

2. For purposes of this subsection, good cause for approval of a request for termination or substitution for an M/WBE includes, but is not limited to, the following:

A. The listed M/WBE subcontractor fails or refuses to execute a written contract;

B. The listed M/WBE fails or refused to perform the work of its subcontract in a way consistent with normal industry standards, provided, however, that good cause does not exist if the failure or refusal by the M/WBE subcontractor to perform its work on the subcontract resulted from the bad faith or discriminatory action of the prime contractor;

C. The listed M/WBE subcontractor fails or refuses to meet

the prime contractor's reasonable, nondiscriminatory bond requirements;

D. The listed M/WBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;

E. The listed M/WBE subcontractor is ineligible to work on projects because of suspension or debarment proceedings;

F. The listed M/WBE subcontractor is not a responsible contractor as determined by the division;

G. The listed M/WBE subcontractor voluntarily withdraws from the project and provides the prime contractor written notice of its withdrawal, or the withdrawal is otherwise confirmed by the division;

H. The listed M/WBE subcontractor is ineligible to receive M/WBE credit for the type of work required;

I. The listed M/WBE subcontractor owner dies or becomes disabled with the result that a listed M/WBE prime contractor is unable to complete its work on the contract; and

J. Other documented good cause that the division determines compels the termination of an M/WBE subcontractor. But good cause does not exist if the prime contractor seeks to terminate an M/WBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the M/WBE subcontractor was engaged or so that the prime contractor can substitute another M/WBE or non-M/WBE after contract award without good cause.

3. If approved, the contractor must make good faith efforts to meet the contractual commitment to the contract goal. These good faith efforts shall be directed at finding another M/WBE to perform at least the same amount of work under the contract as the M/WBE that was terminated, to the extent needed to meet the contract goal. OEO and 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 good faith 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, after consulting with OEO, may grant an M/WBE waiver for good cause.

4. The good faith efforts shall be documented by the contractor. If the division requests documentation under this subsection, the contractor shall submit the documentation within seven (7) business days, which may be extended for an additional seven (7) business days, if necessary, at the request of the contractor.

5. The division *[shall]* will provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

(M) 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 for a period of six (6) months or longer, up to permanent debarment, 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]* are to be released. Any suspension or debarment based on such non-compliance may be rescinded by the division at its discretion.

1. A contractor may appeal a suspension or debarment to the commissioner by filing a written appeal no later than twenty (20) calendar days from the date on the notice of suspension or debarment issued by the division. The suspension or debarment remains in effect pending the results of the appeal.

(N) At the time of contract renewal, a contractor must verify it is meeting its participation level and required payment to all M/WBE entities, or the contractor must submit a statement of when such M/WBE participation is scheduled to occur. If the contractor is not meeting said requirements, the contract renewal shall not be processed unless and until said requirements are satisfactorily met, a cure plan is approved, the statement is accepted by the division, or an M/WBE waiver for good cause is obtained from the division.

/(21)/(24) For a delegation of authority by the division to a state agency, the delegation *[shall]* will contain any restrictions on the agency's management of the solicitation, including those related to use of weighted criteria, M/WBE participation, and competitive negotiations.

(A) A "department" as defined in section 34.010, RSMo may be delegated general procurement authority. This delegated authority may stipulate dollar limits and other limits for specific types of purchases, and list the procedures to be followed for procurements processed by the "department."

(B) A "department" as defined in section 34.010, RSMo may be delegated authority for special types of procurements on an individual basis for a limited time period, with the written authorization listing the procedures to be followed in making such procurements.

(C) Procurements not delegated to a "department" as defined in section 34.010, RSMo are to be referred to the division for processing.

(D) The Commissioner of Administration has determined that the Department of Mental Health's services for its patients, residents, and clients can best be purchased by the department with funds appropriated for that purpose and waives procedures of Chapter 34, RSMo, related to cost and pricing, so that the department may evaluate competitive proposals on the basis of quality and other variables exclusive of price.

(25) Commercially Useful Function. For a bid or proposal that contains a commitment to use a blind or sheltered workshop, service disabled veteran enterprise, or a minority or women business enterprise, those activities must provide a commercially useful function that offers added value to the contract.

(A) An entity performs a commercially useful function when it is responsible for executing a distinct element of the work of the contract and is carrying out its responsibilities by actually performing, managing, or supervising the work involved. To perform a commercially useful function, the entity must also be responsible, when applicable, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installing (where applicable), and paying for the material itself. Materials and supplies shall be provided exclusive to the performance of a contract, and an entity's obligation outside of a state contract shall not be considered an added value. Services or supplies to be provided by an entity that are outside the usual and customary business of the entity may be considered not to offer added value.

(B) To determine whether an entity is performing a commercially useful function, the division may evaluate the amount of work subcontracted, whether the amount the entity is to be paid under the contract is commensurate with the work it is actually performing and the entity's credit claimed for its performance of the work, and other relevant factors.

(C) An entity does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of participation by the entity. In determining whether an entity is such an extra participant, the division may examine similar transactions, particularly those in which such entities do not participate.

(D) If an entity does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the entity subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the director will presume that it is not performing a commercially useful function.

(E) When an entity is presumed not to be performing a commercially useful function as provided in this rule, the entity may present evidence to rebut this presumption. The director may determine if the entity is performing a commercially useful function

given the type of work involved and normal industry practices.

AUTHORITY: section 34.050, [RSMo 2000, and section] 34.074, and 630.405.5, RSMo [Supp. 2013] 2016. Original rule filed Oct. 15, 1992, effective June 7, 1993. For intervening history, please consult the Code of State Regulations. Amended: Filed Oct. 2, 2018.

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 Karen Boeger, Division of Purchasing, 301 West High Street, Room 630, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

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

PROPOSED RESCISSION

1 CSR 40-1.090 Waiver of Procedures Contained in Chapter 34, RSMo, Related to Cost and Pricing. This rule provided the procedure for waiving Chapter 34, RSMo procedures related to cost and pricing for the purchase of services for patients, residents, and clients.

PURPOSE: This rule is being rescinded and portions of the existing language are included in an amendment to 1 CSR 40-1.050.

AUTHORITY: section 630.405.5, RSMo Supp. 2001. Original rule filed Nov. 26, 2002, effective May 30, 2003. Rescinded: Filed Oct. 2, 2018.

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

PRIVATE COST: This proposed rescission 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 rescission with Karen Boeger, Division of Purchasing, 301 West High Street, Room 630, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 130—State Environmental Improvement and
Energy Resources Authority
Chapter 1—Applications**

PROPOSED AMENDMENT

10 CSR 130-1.010 Definitions. The State Environmental Improvement and Energy Resources Authority is amending sections (1) through (4), (6), (10), (13), (20), and (24); deleting sections (5), (7), (8), (9), (11), (12), (14) through (19), (22), and (23); and

renumbering sections (6), (10), (13), (20), (21), and (24). Proposed amendments will reference state statutes in section (1); delete language that is duplicative with state statutes in sections (5), (7), (8), (9), (11), (12), (14) through (19), (22), and (23); and delete restrictive words in sections (1) through (4), (6), (10), (13), (20), and (24).

PURPOSE: This rule is being amended because it has not been amended since 1986 and contains definitions duplicative with state statute. The proposed amendments to 10 CSR 130-1.010 were identified during the Red Tape Reduction review pursuant to Executive Order 17-03.

(1) Except where the context indicates otherwise, [the following] terms as used in these rules [shall] have the meaning ascribed to them in this rule or the Act.

(2) Act [shall] means sections 260.005 to 260.125, inclusive, [Revised Statutes of Missouri] RSMo and Appendix B(1) thereto.

(3) Air pollution [shall] means the presence in the ambient air of one (1) or more air contaminants in quantities, of characteristics and a duration which directly and proximately cause or contribute to injury to human, plant, or animal life or health or to property or which unreasonably interferes with the enjoyment of life or use of property.

(4) Application fee [shall] means the fee payable upon filing of an application.

[[5] Authority shall mean the State Environmental Improvement and Energy Resources Authority created by the Act.]

[[6]](5) Authorized representative [shall] means, with respect to a corporation, that person designated to act on its behalf by written certificate of authority furnished to the authority containing the specimen signature of the person and signed on behalf of the corporation by its president or any vice president and attested to by its secretary or an assistant secretary.

[[7] Bonds shall mean bonds issued by the authority pursuant to the provisions of the Act.

(8) Cost shall mean the expense of the acquisition of land, rights of way, easements and other interests in real property and the expense of acquiring or construction of buildings, improvements, machinery and equipment relating to any project, including the cost of demolishing or removing any existing structures, interest during the construction of any project and engineering research, legal, accounting, underwriting, consulting and other expenses necessary or incident to determining the feasibility or practicability of any project and in carrying out the same, all of which are to be paid out of the proceeds of the loans, bonds or notes authorized by the Act.

(9) Disposal of solid waste or sewage shall mean the entire process of storage, collection, transportation, processing and disposal of solid waste or sewage.]

[[10]](6) Loans [shall] means loans made by the authority pursuant to the provisions of the Act.

[[11] Notes shall mean notes issued by the authority pursuant to the provisions of the Act.

(12) Pollution shall mean the placing of any noxious substance in the air or waters or on the lands of the state in sufficient

quantity and of amounts, characteristics and duration so as to injure or harm the public health or welfare or animal life or property.]

[(13)](7) Pollution control facility [shall] means any facility, including land, disposal areas, incinerators, buildings, fixtures, machinery, and equipment financed, acquired, or constructed or to be financed, acquired, or constructed by the authority for the purpose of preventing or reducing pollution or providing for the disposal of solid waste or sewage.

[(14) Project shall mean any facility, including land, disposal areas, incinerators, buildings, fixtures, machinery and equipment financed, acquired or constructed or to be financed, acquired or constructed by the authority for the purpose of developing energy resources or preventing or reducing pollution or the disposal of solid waste or sewage or providing water facilities or resource recovery facilities.

(15) Resource recovery shall mean the recovery of material or energy from solid waste.

(16) Resource recovery facility shall mean any facility at which solid waste is processed for the purpose of extracting, converting to energy or otherwise separating and preparing solid waste for reuse.

(17) Resource recovery system shall mean a solid waste management system which provides for collection, separation, recycling and recovery of solid wastes, including disposal of nonrecoverable waste residues.

(18) Sewage shall mean any liquid or gaseous waste resulting from industrial, commercial, agricultural or community activities in amounts, characteristics and duration so as to injure or harm the public health or welfare or animal life or property.

(19) Solid waste shall mean garbage, refuse, discarded materials and undesirable solid and semi-solid residual matter resulting from industrial, commercial, agricultural or community activities in amounts, characteristics and duration so as to injure or harm the public health or welfare or animal life or property.]

[(20)](8) Solid waste or sewage disposal area [shall] means any area used for the disposal of solid waste or sewage from more than one (1) residential premises or one (1) or more commercial, industrial, manufacturing, recreational, or governmental operations.

[(21)](9) Solid waste or sewage processing facility means incinerator, compost plant, transfer station, or any facility where solid wastes or sewage are salvaged.

[(22) Synthetic fuels shall mean any solid, liquid or gas or combination thereof, which can be used as a substitute for petroleum or natural gas (or any derivatives thereof, including chemical feedstocks) and which is produced by chemical or physical transformation (other than washing, coking or desulfurizing) of domestic sources of coal, including lignite and peat, shale, tar, sands, including heavy oils, water as a source of hydrogen only through electrolysis and mixtures of coal and combustible liquids including petroleum.

(23) Water facilities shall mean any facilities for the furnishing of water for industrial, commercial, agricultural or community purposes including, but not limited to, wells, reservoirs, dams, pumping stations, water lines, sewer lines, treat-

ment plants, stabilization ponds, storm sewers, related equipment and machinery.]

[(24)](10) Water pollution [shall] means contamination or other alteration of the physical, chemical, or biological properties, of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters or the discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is reasonably certain to create a nuisance or render the waters harmful, detrimental, or injurious to public health, safety, or welfare or to domestic, industrial, agricultural, recreational, or other legitimate beneficial uses or to wild animals, birds, fish, or other aquatic life.

AUTHORITY: section 260.035.1(23), RSMo [1986] 2016. Original rule filed Sept. 3, 1986, effective Nov. 28, 1986. Amended: Filed Oct. 5, 2018.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Environmental Improvement and Energy Resources Authority, PO Box 744, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 130—State Environmental Improvement and
Energy Resources Authority
Chapter 1—Applications**

PROPOSED AMENDMENT

10 CSR 130-1.020 Application Forms and Fees. The State Environmental Improvement and Energy Resources Authority is amending section (7), subsections (9)(A) and (B), (11)(A) through (C), sections (12) and (13); deleting sections (2) through (6), (10), subsection (11)(E), and section (15); adding new sections (2) and (3); and renumbering sections (7), (8), (9), and (11) through (14). Proposed amendments will delete duplicative language in section (2); delete or update obsolete language in sections (3), (4), (7), and subsection (11)(A); delete unnecessary requirements in sections (5), (6), subsections (9)(A) and (B), section (10), and subsection (11)(E); and delete restrictive language in subsections (11)(B) and (C), sections (12) and (13).

PURPOSE: This rule is being amended because it has not been revised since 1986 and is not current with authority policy. The proposed amendments to 10 CSR 130-1.020 were identified during the Red Tape Reduction review pursuant to Executive Order 17-03.

[(2) An application to acquire, construct or finance a project shall consist of the following: the application statement; proposed resolution of official action toward issuance of the authority's bonds and/or notes or the granting of a loan; and the application fee.

(3) Any private person, firm, corporation, public body, political subdivision or municipal corporation is eligible to submit an application with the authority requesting funding for a study or research proposal or a contract for services.

(4) An application to fund a study or research proposal or to enter into a contract to provide services shall consist of the following: the application statement and the application fee.

(5) The application shall be submitted to the authority at least five (5) days prior to any meeting of the authority at which the applicant has requested an appearance.

(6) The completed original application together with five (5) copies shall be filed with the State Environmental Improvement and Energy Resources Authority at its office in Jefferson City and an additional copy of the application shall be delivered, either in person or by mail to the authority's general counsel, or to another person and/or address as the authority may from time-to-time designate by resolution.]

(2) The completed application shall be delivered to the State Environmental Improvement and Energy Resources Authority at its office in Jefferson City and an additional copy delivered to the authority's general counsel, or to another person or address as the authority may from time-to-time designate by resolution.

(3) Applications may be delivered in paper or a computer readable format which may be accessed, read, electronically stored, and printed by the authority.

[[7]](4) The application statement should present a detailed outline of the project [or the study or research proposal or the services to be rendered] for which the authority financing is requested and should be in a form as the authority may from time-to-time require. A copy of the application form may be obtained from the authority at its office in Jefferson City.

[[8]](5) The authority may request additional information from the applicant and additional information so requested must be satisfactory to the authority before it passes its resolution of official action.

[[9]](6) If the project for which the authority is requested to finance is a pollution control project, the applicant, prior to the issuance of the authority's bonds and/or notes or the granting of the loan, shall file with the authority—

(A) A control agency certificate issued by the state or federal agency which is charged with regulating the pollution which the project is designed to control, reduce, or prevent [in a form so as shall be determined by the authority from time-to-time] stating that the pollution control project, as designed, is in furtherance of applicable state or federal standards and regulations; or

(B) An engineering certificate from an engineering firm [acceptable to the authority in a form so as shall be determined by the authority from time-to-time] stating that the pollution control project, as designed, is in furtherance of applicable state or federal standards and regulations. The applicant shall be responsible for applying to the appropriate state or federal agency or engineering firm for the control agency certificate and for submitting to the state or federal agency or engineering firm information as the state or federal agency or engineering firm may require.

[[10]] As a part of the application, the applicant shall prepare and submit a proposed resolution of official action.]

[[11]](7) The following fees are payable by applicant to the authority:

(A) Application Fee. An application fee in an amount as hereinafter provided is due and payable upon filing of the request for financing or refinancing. The application fee is an amount equal to one-tenth (1/10) of one percent (1%) of the amount for which financing is requested [or of the total cost of the study or research proposal or contract to provide services]. Notwithstanding the

foregoing, the applicant fee shall not be less than one hundred dollars (\$100) nor more [that] than two thousand five hundred dollars (\$2,500). The application fee is nonrefundable and is in addition to the issuance fee or refinancing fee [provided for that follows. Payment of the application fee shall be by bank draft, money order or check made payable to the State Environmental Improvement and Energy Resources Authority];

(B) Issuance Fee. For all loans, bonds, or notes issued by the authority, other than loans, bonds, or notes which are being issued to refund or refinance loans, bonds, or notes previously issued by the authority, an issuance fee shall be payable to the authority at the time of the closing of the issuance of the bonds or notes or the granting of the loan [which shall be] and computed in the following manner:

Rate	Amount of Financing
.00625 (5/8 of 1%) on the 1st	\$ 2,500,000;
.005 (1/2 of 1%) on the next	\$ 2,500,000;
.00375 (3/8 of 1%) on the next	\$ 5,000,000;
.0025 (1/4 of 1%) on the next	\$15,000,000;
.00125 (1/8 of 1%) on all over	\$25,000,000;

(C) Refinancing Fee. On all loans, bonds, or notes issued for refinancing or refunding previously issued loans, bonds, or notes, a refinancing fee shall be payable to the authority at the time of the closing of the issuance of the bonds, or notes, or the granting of the loan which [shall be] is calculated as follows: i) within two (2) years after the issuance of the loan, bonds, or notes being refinanced, one-tenth (1/10) of the issuance fee provided in subsection (11)(B); ii) after two (2) years and within five (5) years after the issuance of the loan, bonds, or notes being refinanced, one-fifth (1/5) of the issuance fee provided in subsection (11)(B); iii) after five (5) years and within ten (10) years after the issuance of the loan, bonds, or notes being refinanced, one-third (1/3) of the issuance fee provided in subsection (11)(B); iv) after ten (10) years and within fifteen (15) years after the issuance of the loan, bonds, or notes being refinanced, one-half (1/2) of the issuance fee provided in subsection (11)(B); or v) after fifteen (15) years, same as issuance fee provided in subsection (11)(B); but in no event shall the refinancing fee be less than the lesser of a) ten thousand dollars (\$10,000) or b) the issuance fee provided in subsection (11)(B);

(D) Nature of Fees. The application fee, issuance fee, and refinancing fee are for the support of the authority and its activities. The application fee, issuance fee, and refinancing fee do not provide for bond registration and/or any other issuance or project costs, including, though not by way of limitation, attorneys' fees, printing costs, financial advisor fees, underwriting fees, or trustee fees;

[[E]] Partial Prepayment of Issuance Fee or Refinancing Fee. Upon adoption of the resolution of official action toward issuance of the authority's bonds and/or notes or approval of the loan by the authority, the authority may require an applicant to make partial prepayment of the issuance fee or refinancing fee. The partial prepayment shall not exceed twenty-five percent (25%) of the total issuance fee or refinancing fee, as provided for in subsections (11)(B) or (C).]

[[12]](8) Each applicant [shall] may be required to personally appear at the meeting at which the authority considers the proposed resolution of official action.

[[13]](9) Prior to the issuance of the bonds and/or notes of the authority, the applicant shall either provide the authority with an unqualified opinion of counsel experienced in matters relating to tax exemption of interest on bonds and/or notes of states and their political subdivisions to the effect that the interest payments on the bonds and/or notes to be issued by the authority will be exempt from federal income taxes or [shall] apply for, and obtain in the name of the authority, a determination by the Internal Revenue Service that the

interest payments on the bonds and/or notes to be issued by the authority will be exempt from federal income taxes.

[(14)](10) Upon written request submitted to the authority and upon good cause shown, the authority may waive or modify the strict application of any rule provided for in this rule including the payment of the application fee, issuance fee and refinancing fee, or the amount thereof, if the authority determines that the substance and purpose of any rule provided for in these regulations has been complied with and fulfilled.

[(15) After the issuance of the resolution of official action toward issuance of the authority's bonds and/or notes, and no later than one (1) month prior to the issuance of the bonds or notes, a timetable for all future proceedings, following adoption of the resolution of official action toward issuance of the authority's bonds and/or notes shall be agreed upon between the authority and the applicant. All proceedings thereafter shall be governed by an agreed upon time schedule.]

AUTHORITY: section 260.035.1(23), RSMo [1986] 2016. Original rule filed Sept. 3, 1986, effective Nov. 28, 1986. Amended: Filed Oct. 5, 2018.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Environmental Improvement and Energy Resources Authority, PO Box 744, 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 11—DEPARTMENT OF PUBLIC SAFETY Division 70—Division of Alcohol and Tobacco Control Chapter 1—General Organization

PROPOSED AMENDMENT

11 CSR 70-1.010 Organization and Methods of Operation. The division is amending and/or deleting sections (1) through (6).

PURPOSE: To revise the organization rule to reflect the responsibility for enforcement of youth access to tobacco laws, the elimination of Chapter 312, RSMo, regulating nonintoxicating beer, and to reflect that district office locations are not permanent, and should not be referenced in regulations.

(1) The Department of Liquor Control was established under the Liquor Control Act passed by the Fifty-Seventh General Assembly in extra session, was signed by the governor on January 13, 1934 and became effective on that date. The Omnibus State Reorganization Act of 1974 created the Department of Public Safety and made the Department of Liquor Control a division of that department. The [Intoxicating] Liquor Control Law [and the Nonintoxicating Beer Law are Chapters] is sections 311.010 [and 312], RSMo [1986]. On August 28, 2001, the division gained responsibility for enforcement of youth access to tobacco laws and in 2003, was renamed the Division of Alcohol and Tobacco Control. The division enforces the tobacco laws under sections 407.925 through 407.934, RSMo.

(2) The supervisor of [liquor] Alcohol and Tobacco [c]Control [is nominated by the director of the Department of Public Safety, appointed by the governor, with the advice and consent of the senate. The supervisor] is vested with the exclusive power to issue and to revoke or suspend licenses for the sale of intoxicating liquor [and nonintoxicating beer] and with the power to make rules governing the conduct and method of operation of all licensees set out in section 311.660(10), RSMo [1986].

(A) The supervisor, with the approval of the director of the Department of Public Safety, is authorized to appoint and employ all agents, assistants, deputies, and inspectors as are necessary for the proper enforcement and administration of the Liquor Control Law [and Nonintoxicating Beer Law].

(3) All licenses issued by the Division of [Liquor] Alcohol and Tobacco Control expire on the thirtieth day of June, next following the date that the license was issued. Correct license fees shall be paid before any license is issued.

[(A)] Cities and counties are permitted by law to license and regulate the sale of liquor.

[(B)] Cities are permitted to charge one and one-half (1 1/2) times the license fee charged by the state. Counties are permitted to charge a license fee equal to that charged by the state.]

(4) The supervisor of [liquor] Alcohol and Tobacco [c]Control, agents of the Division of [Liquor] Alcohol and Tobacco Control, prosecuting attorneys, sheriffs, their deputies, and police officers are charged with the duty of enforcing the [Intoxicating] Liquor Control Law [and Nonintoxicating Beer Law. The Division of Liquor Control has no authority to punish or discipline persons not licensed. However, t]The division works closely with other law enforcement agencies and personnel in an effort to [i]ensure compliance with the liquor control laws and youth access to tobacco laws.

(A) [The Division of Liquor Control has found that most licensees attempt to operate their businesses in a proper and lawful manner.] It is the purpose of the division to assist licensees and to eliminate the persistent violator. [This is done by using the supervisor's power to suspend and revoke licenses, and by seeking to grant licenses only to properly qualified persons.

[(B)] The supervisor of [liquor] Alcohol and Tobacco [c]Control has the authority to impose civil penalties and suspend or revoke licenses. [The alleged violator is given notice to appear before the supervisor to answer the charges made in writing against him/her. Any person aggrieved by official action of the supervisor of liquor control affecting the licensed status of a person subject to the jurisdiction of the supervisor of liquor control, including refusal to, grant, the grant, the revocation, the suspension, or the failure to renew a license, may seek a determination by the Administrative Hearing Commission, pursuant to the provisions of section 621.045, RSMo. Notice of appeal must be filed with the Administrative Hearing Commission within thirty (30) days after the decision of the supervisor of liquor control is placed in the United States mail or within thirty (30) days after the decision is delivered, whichever date is earlier.]

[(5) The state has been divided into six (6) liquor control districts with a district supervisor in charge of each division.

(A) Agents and inspectors are divided among the different districts and assigned to certain territories within each district.

(B) All license applications shall be processed through the appropriate district office.

(6) The public may obtain information on all aspects of the liquor law at the district office. The location of six (6) district offices and the counties comprising the district are as follows:

(A) District I—Kansas City, State Office Building, 615 East 13th Street, Room 455—Andrew, Atchison, Bates, Buchanan, Cass, Clay, Clinton, DeKalb, Gentry, Henry, Holt, Jackson, Johnson, Lafayette, Nodaway, Platte, Ray and Worth;

(B) District II—Kirksville, First National Bank Building—Adair, Audrain, Caldwell, Carroll, Chariton, Clark, Daviess, Grundy, Harrison, Knox, Lewis, Linn, Livingston, Macon, Marion, Mercer, Monroe, Pike, Putnam, Ralls, Randolph, Schuyler, Scotland, Shelby and Sullivan;

(C) District III—St. Louis, Wainwright State Office Building, 111 North 7th Street—City of St. Louis and St. Louis County, Lincoln, Jefferson and St. Charles;

(D) District IV—Springfield State Office Complex, 149 Park Central Square—Barry, Barton, Cedar, Christian, Dade, Dallas, Douglas, Greene, Howell, Jasper, Lawrence, McDonald, Newton, Oregon, Ozark, Polk, Shannon, St. Clair, Stone, Taney, Texas, Vernon, Webster and Wright;

(E) District V—Cape Girardeau, 2711 Thomas Drive—Bollinger, Butler, Cape Girardeau, Carter, Dunklin, Iron, Madison, Mississippi, New Madrid, Pemiscot, Perry, Reynolds, Ripley, St. Francois, Ste. Genevieve, Scott, Stoddard, Washington and Wayne; and

(F) District VI and Supervisor of Liquor Control Office—Jefferson City, Harry S Truman State Office Building, 8th Floor, 301 West High Street—Benton, Boone, Callaway, Camden, Cole, Cooper, Crawford, Dent, Franklin, Gasconade, Hickory, Howard, Laclede, Maries, Miller, Montgomery, Moniteau, Morgan, Osage, Pettis, Phelps, Pulaski, Saline and Warren.]

AUTHORITY: section 311.660, RSMo [1994] 2016. Original rule filed Dec. 31, 1975, effective Jan. 10, 1976. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Oct. 10, 2018.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Alcohol and Tobacco Control at 1738 East Elm Street, Lower Level in Jefferson City, MO 65101 or by facsimile at (573) 526-4540, or via email at Karen.dorton@dps.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 70—Division of Alcohol and Tobacco Control
Chapter 2—Rules and Regulations**

PROPOSED AMENDMENT

11 CSR 70-2.010 Definitions. The division is amending sections (1)–(3), deleting sections (4) and (13), amending and renumbering sections (5)–(12) and (14)–(15), and adding a new section (14).

PURPOSE: To revise the definitions rule that defines certain terms pertaining to and commonly used throughout Chapters 311, RSMo and the rules of the supervisor of alcohol and tobacco control in order to reflect elimination of Chapter 312, RSMo, regulating nonintoxicating beer and to change definitions of domestic wine and malt

liquor to reflect statutory definitions. It also changes the definition of original package per statutory changes, and defines entity, partnership, and sole proprietor.

(1) Domestic wine is wine containing not in excess of [fourteen] **eighteen** percent [(14%)] **(18%)** of alcohol by weight and manufactured [exclusively] from grapes, berries, and other fruits and vegetables grown in Missouri **in accordance with section 311.190, RSMo.**

(2) Intoxicating liquor includes alcohol for beverage purposes, alcohol, spirituous, vinous, or fermented, and all preparations or mixtures for beverage purposes containing in excess of one-half of one percent (.5%) of alcohol by volume [except for nonintoxicating beer as defined in section 312.010, RSMo].

(3) Malt liquor is any beverage [manufactured from pure hops or pure barley malt or wholesome grains or cereals and wholesome yeast and pure water, containing alcohol in excess of three and two-tenths percent (3.2%) by weight and not in excess of five percent (5%) by weight.] brewed from malt or a malt substitute, which only includes rice, grain of any kind, bean, glucose, sugar, and molasses. Honey, fruit, fruit juices, fruit concentrate, herbs, spices, and other food materials may be used as adjuncts in fermenting beer. Flavor and other nonbeverage ingredients containing alcohol may be used in producing beer, but may contribute to no more than forty-nine percent (49%) of the overall alcohol content of the finished beer. In the case of beer with an alcohol content of more than six percent (6%) by volume, no more than one and one-half percent (1.5%) of the volume of the beer may consist of alcohol derived from added flavors and other nonbeverage ingredients containing alcohol in accordance with section 311.490(1) and (2), RSMo.

[(4) Nonintoxicating beer is any beer manufactured from pure hops and pure extracts of hops and pure barley malt or other wholesome grains or cereals, and wholesome yeast and pure water and free from all harmful substances, preservatives and adulterants and having an alcoholic content of more than one-half (1/2) of one percent (1%) by volume and not exceeding three and two-tenths percent (3.2%) by weight.]

[(5)](4) Ordinary Commercial Credit.

(A) Malt Beverages. Ordinary commercial credit [as used in the] **for** malt beverages [and nonintoxicating beer industry shall be] is credit [on such terms as shall] **that** requires payment to be made by the retail licensee by the last day of the month for malt beverages [or nonintoxicating beer which is] delivered [to the retail licensee] on or after the first day of the month and up to and including the fifteenth day of the month and by the fifteenth day of the following month [next succeeding] for malt beverages [or nonintoxicating beer which is] delivered to the retail licensee on or after the sixteenth day of the month and up to and including the last day of the month. No brewer or wholesaler [shall] **may** sell or deliver [to any retail licensee any] malt beverages [or nonintoxicating beer] while the retail licensee owes the brewer or wholesaler for [any] malt beverages [or nonintoxicating beer] beyond the period of time as indicated in this subsection.

(B) [Intoxicating liquor other than malt beverage] **Spirituous Liquor and Wine.** Ordinary commercial credit [as used in the intoxicating liquor industry, other than the malt beverage industry, shall be] **for spirituous liquor and/or wine** is credit [on such terms as shall] **that** requires payment to be made by the retail licensee within thirty (30) days after the delivery of [any intoxicating liquor, other than malt beverage,] **spirituous liquor and/or wine** to the retail licensee. No distiller, wholesaler, or wine maker [shall] **may** sell or deliver [to any retail licensee any intoxicating liquor, other than malt beverage,] **spirituous liquor and/or**

wine while the licensee owes the distiller, wholesaler, or wine maker for [any intoxicating liquor, other than malt beverage,] **spirituous liquor and/or wine** beyond the period of time as indicated in this subsection.

[(6)](5) Original package refers to any package containing [three (3)] **one (1)** or more standard bottles, **pouches**, or cans of malt liquor [or nonintoxicating beer], [to] fifty (50) milliliters (1.7 ounces) or more of spirituous liquors and one hundred (100) milliliters (3.4 ounces) or more of [vinous liquors] **wine** in the manufacturer's original container. A standard bottle is any bottle, **pouch**, or can containing twelve (12) ounces or less of malt liquor [or nonintoxicating beer].

[(7)](6) The words permit and license, whenever used as nouns in Chapter[s] 311 [and 312], RSMo and in these regulations[, shall have the same meaning] **are synonymous**.

[(8)](7) The words permittee and licensee, whenever used as nouns in Chapter[s] 311 [and 312], RSMo and in these regulations[, shall have the same meaning] **are synonymous**.

[(9)](8) Person is any individual, association, joint stock company, syndicate, copartnership, corporation, receiver, conservator, or other officer appointed by any state or federal court. Clubs are also included within the meaning of the term.

[(10)](9) Premises is the place where intoxicating liquor [or nonintoxicating beer] is sold and it may be one (1) room, a building comprising several rooms, or a building with adjacent or surrounding land such as a lot or garden.

[(11)](10) Retailer is a person holding a license to sell or to offer to sell intoxicating liquor [or nonintoxicating beer] to consumer only.

[(12)](11) Spirituous liquor includes brandy, rum, whiskey, gin, and all other preparations or mixtures for beverage purposes of a like character and excludes all vinous, fermented, or malt liquors.

[(13)] Wholesaler is a person holding a license to sell intoxicating liquor or nonintoxicating beer to wholesalers or to retailers.

[(14)](12) **Wholesaler and/or [W]wholesale-solicitor** is a person holding a license to sell intoxicating liquor [or nonintoxicating beer] to wholesalers or to retailers.

[(15)](13) Wine is a vinous liquor produced by fermentation of juices of grapes, berries or other fruits, or a preparation of certain vegetables by fermentation, and containing alcohol not in excess of twenty-two percent (22%) by volume.

(14) **Applicant refers to the sole proprietor, partnership, or entity applying for a liquor license.**

(A) **Entity refers to any association, corporation, limited liability company, limited partnership, or other business structure not in conformance with a sole proprietor or partnership structure as defined herein.**

(B) **Partnership refers to two (2) or more persons who share management and profits.**

(C) **Sole Proprietor refers to a business that legally has no separate existence from its owner and is not considered a legal entity. Income and losses are taxed on the individual's personal income tax return.**

AUTHORITY: section 311.660, RSMo [1994] 2016. This version of rule filed Feb. 8, 1973, effective Feb. 18, 1973. For intervening history, please consult the Code of State Regulations. Amended: Filed

Oct. 10, 2018.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Alcohol and Tobacco Control at 1738 East Elm Street, Lower Level in Jefferson City, MO 65101 or by facsimile at (573) 526-4540, or via email at Karen.Dorton@dps.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 11—DEPARTMENT OF PUBLIC SAFETY Division 70—Division of Alcohol and Tobacco Control Chapter 2—Rules and Regulations

PROPOSED AMENDMENT

11 CSR 70-2.020 Application for License. The division is amending all sections.

PURPOSE: To revise this rule that prescribes forms and applications and establishes procedures for the issuance of all intoxicating liquor licenses to reflect the elimination of Chapter 312, RSMo, regarding nonintoxicating beer. In addition, the division's name will be changed to Division of Alcohol and Tobacco Control in all applicable sections. The requirement that every applicant must present the application to the agent in charge of the territory where the applicant does business has been removed due to increases in size of agents' territories and possible changes to be made as a result of such. Language is updated where needed to reflect changes in standard operating procedures.

(1) Applications for licenses [must be addressed to the Supervisor of Alcohol and Tobacco Control, Jefferson City, MO 65101. A bank draft, United States or express money order, certified check or cashier's check made payable to the director of revenue of Missouri for the correct amount of the license fee shall accompany the application. Remittance for renewal of licenses filed on or before the first day of May of each year may be made by personal or business check. If such check is returned for insufficient funds, the division will notify the licensee, by regular mail to the licensee's address listed on the renewal application, of the return, and the licensee shall replace such check within fourteen (14) days from the date the division mails said notice, by remitting payment by certified check, cashier's check or other form of guaranteed funds.] including payment for the correct amount of the license fee are to be submitted to the supervisor of Alcohol and Tobacco Control at the Central Office in Jefferson City, or any operational Alcohol and Tobacco Control field office within the state. If payment is rejected for insufficient funds and the licensee has not replaced such [check] payment within [said] fourteen (14) days of notification with sufficient funds, then beginning with the fifteenth day, if such licensee's renewed license has been issued, such renewed license shall be suspended until the day following the day the licensee makes restitution for the insufficient funds [check] payment, or if such licensee's renewed license has not been issued, the renewed license shall not be issued until on or after the day following the day the licensee makes restitution for the insufficient funds [check] payment.

(2) Application *[must]* is to be made on the forms prescribed *[and provided]* by the supervisor.

[(3) Every applicant for a license must present his/her application to the agent in charge of the territory where the applicant wishes to do business.

(4) Licenses will be granted in the order in which the applications are received at the office of the supervisor in Jefferson City.]

[(5)](3) No agent [has any right or authority to] may authorize any applicant to exercise the privileges of the license applied for pending its issuance.

[(6) Every applicant for a license to sell intoxicating liquor or nonintoxicating beer shall set out in his/her application a description of each and every federal tax stamp, designating the applicant or his/her premises as the person or place for dealing in intoxicating liquor or malt liquor in his/her possession or on the premises for which s/he seeks a license.]

[(7)](4) If application is made by a partnership, the application [shall] should set out the names and residences of all the partners, whether they be active or silent partners. All partners shall qualify under the laws of Missouri for the license. All partners [shall] are to sign the application.

(5) If application is made by an entity, the application should set out the names and residences of any officers and all members or shareholders, whether they be active or silent investors. All members or shareholders shall qualify under the laws of Missouri for the license.

[(8)](6) No license [shall] may be granted to an applicant unless s/he makes full, true, and complete answers to all questions in the application. [If any applicant shall make a]Any false answer to any question in the application or [make any] false statement of a material matter in his/her application, [it shall] may be cause for suspension or revocation of any license issued pursuant to the application.

[(9)](7) Violation of any oath taken by a licensee in connection with his/her application for a license [shall be deemed] is cause for suspension or revocation of the license where an oath is [required] necessary, by any statute of Missouri or any regulation of the [S]Supervisor of [liquor] Alcohol and Tobacco [c]Control, to be taken.

[(10)](8) If the [S]supervisor of Alcohol and Tobacco Control has reason to believe that an applicant has a criminal record and is not a person of good moral character, the supervisor may [require] request that the applicant submit to being fingerprinted and fingerprints forwarded to the Department of Justice to ascertain if the applicant has been convicted of any crime.

[(11)](9) The surety on the bond of any licensee at any time may notify the [S]supervisor of Alcohol and Tobacco Control and the licensee that s/he desires after a date named, which [shall be] is at least thirty (30) days after the receipt of notification by the licensee and the supervisor, to be relieved of liability on the bond. Upon receipt, the privileges of the principal under the license as is supported by the bond [shall] may be terminated and cancelled on the date specified, unless supported by other sufficient bond(s), and the surety [shall] can be relieved of liability on the bond for any default of the principal accruing on and after the date named.

[(12)](10) Every applicant for a liquor license [to sell intoxicating

liquor or nonintoxicating beer at retail or for a license to permit consumption of liquor must] of any kind will present [the following with his/her application:] all applicable items listed on the checklist of requirements that corresponds to the application form as prescribed by the supervisor of Alcohol and Tobacco Control.

[(A) There must be attached securely to the application in the space designated, a recent photograph or clear snapshot of the individual(s) signing the application;

(B) If application is being made for an original package license an affidavit by the individual owner, all of the partners, if a partnership, or the managing officer of a corporation, if a corporation, must be submitted, stating the type of business applicant is engaged in and in connection with which the license is to be used and stating that the applicant has and at all times keeps in his/her store a stock of goods having a value according to invoices of at least one thousand dollars (\$1,000), exclusive of fixtures and intoxicating liquors. A stock inventory shall accompany the application;

(C) Every applicant for a three and two tenths percent (3.2%) beer license shall take and subscribe the oath required by section 312.070, RSMo and it shall be attached to and accompany the application;

(D) A recent photograph approximately the size of an ordinary postcard of the exterior of the premises sought to be licensed shall be attached to the application;

(E) Every applicant shall submit a copy of his/her tax receipt, for the year immediately preceding the date of the application, of the county, town, city or village where s/he resides in Missouri, or, if the applicant is a corporation, a copy of the tax receipt for the year immediately preceding the date of the application of the managing officer of the corporation of the county, town, city or village in Missouri where the managing officer resides or, in lieu of the tax receipt, an affidavit of the county or city assessor where the applicant resides, or, if applicant is a corporation where the managing officer of the corporation resides, stating that applicant or the managing officer of the corporation, if a corporation, owns property for which s/he is legally subject and liable to taxation in the county, town, city or village where applicant or, if a corporation, the managing officer of the applicant, resides in Missouri;

(F) The Supervisor of Alcohol and Tobacco Control shall accept either personal or corporate bonds.

1. If the bond is a personal bond, there must be attached to it an affidavit and certificate signed by either an abstract company or a title insurance company in the following form:

Affidavit and Certificate

I, _____ being duly sworn upon my oath, state and certify that I have examined the records pertaining to the property described as (give legal description as it appears on affidavit of sureties on bond) _____ that the present recorded owner (owners) is (are) _____ that the mortgage encumbrances against said property are _____ (give name of mortgagor and mortgagee, and amount of mortgage and where recorded) _____ that the assessed value for taxation of said property is that all taxes due and owing on said property are paid; that there are no unsatisfied judgments recorded against the above named owner (owners) of said property and that there are no pending bankruptcy proceedings in any of the divisions of the District Court of the United States for any district in Missouri, against or by any of the owners of said property.

*Abstract Company or Title
Insurance Company*

By: _____
Subscribed and sworn to before me this ___ day of
_____ 20 _____

Notary Public

My commission expires: _____

2. If the bond is a personal bond, there also must be attached to it an affidavit by the surety (or sureties) in the following form:

I, _____ being duly sworn upon my oath, state that the following are all of the bonds, notes and other instruments of potential liability upon which I am or may become liable, (List in detail.) _____

(Surety or sureties, name)

Subscribed and sworn to before me this ___ day of
_____ 20 _____

Notary Public

My commission expires: _____;

(G) Each applicant for a retail license to sell intoxicating liquor and nonintoxicating beer shall submit, with his/her application for a license, a copy of his/her retail sales license issued by the director of revenue and before any license is issued or renewed under the provisions of Chapter 311 or 312, RSMo, each applicant shall submit with his/her application a certificate of no sales or use tax due from the director of revenue; and

(H) If application is being made by a corporation, applicant shall present a copy of its franchise tax receipt, provided the corporation has been in existence for a period of sufficient length to have incurred liability for the tax.

(13) All applications for wholesale, licenses must be made on blanks furnished by the Division of Alcohol and Tobacco Control and all information and data set out as required on the blanks must be furnished at the time the application is submitted.

[[14]](11) No license [will] may be issued to the spouse, child(ren), step-child(ren), parent(s), stepparent(s), son-in-law or daughter-in-law, employee, or other person having any interest in the business of a licensee whose license has been revoked, for the privilege of doing business at the same location or in close proximity to the location of the establishment whose license was revoked **until a period of five (5) years after the date of the revocation of the license, and then at the discretion of the supervisor of Alcohol and Tobacco Control.**

[[15]](12) The [S]/supervisor of Alcohol and Tobacco Control, at his [or]/her discretion and for good cause, may issue a temporary license for up to ten days. A completed application with all required current documents and payment of license fees and any late charges must be in receipt of the Division of Alcohol and Tobacco Control before a temporary license [will] may be considered by the [S]/supervisor of Alcohol and Tobacco Control. [An original signature of the Supervisor of Alcohol and Tobacco Control or his or her designee is required for this temporary license to be effective.]

AUTHORITY: section 311.660, RSMo [2000] 2016. This version of rule filed Feb. 8, 1973, effective Feb. 18, 1973. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Oct. 10, 2018.

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.

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Title 11—DEPARTMENT OF PUBLIC SAFETY Division 70—Division of Alcohol and Tobacco Control Chapter 2—Rules and Regulations

PROPOSED AMENDMENT

11 CSR 70-2.030 Change of Facts, Posting, Transfer and Lost Licenses—Executors—Administrators. The division is amending all sections.

PURPOSE: To revise this rule that establishes procedure for reporting changes in status of license, transfer, death of licensee, or managing officer, loss of, etc.; to reflect the elimination of Chapter 312, RSMo, regarding nonintoxicating beer. The division's name will be changed to Division of Alcohol and Tobacco Control in all applicable sections.

(1) [If during the period for which a license is granted there be any change of facts or information differing from that set forth in the original or in any renewal application on file with the supervisor of liquor control, w/Written notice [shall be given him/her within ten (10) days after the change] is to be provided to the supervisor of Alcohol and Tobacco Control if any factor or information changes from what is set forth on an application during a period of licensure.

(2) [Before commencing or doing any business for the time for which a Missouri state license has been granted, the license shall be posted and at all times during the term of the license, kept] **A license issued pursuant to this chapter is to be displayed in a conspicuous place on the premises where the business is carried on, [so that all persons visiting the premises may readily see the license] as well as any city license designating the premises as a place to sell intoxicating liquor.**

[(A) No licensee shall post the license or allow the license to be posted upon premises other than the] **A license may only be posted at the premises [licensed or upon premises] where traffic in intoxicating liquor [or nonintoxicating beer] is being carried on by any person other than the licensee [or]. A license may not be knowingly defaced, destroyed, or altered [any the license in any respect].**

[(B) Every licensee, licensed by Missouri to sell intoxicating liquor or nonintoxicating beer, also shall keep displayed prominently at all times while his/her Missouri license is in effect, on his/her licensed premises, all federal tax stamps issued to him/her or to any other person designating him/her or the licensed premises as a person or place authorized by the federal government to deal in intoxicating liquors, and s/he shall submit all federal tax stamps to the supervisor of liquor control or any agent of the Division of Liquor Control, for examination, at any time s/he is requested by the supervisor or the

agent to do so and permit the supervisor or agent to take a copy of the tax stamps. Every licensee also shall keep displayed prominently at all times on his/her licensed premises any city license designating him/her or his/her premises as a place licensed by the city to sell intoxicating liquors or non-intoxicating beer.]

(3) [A license, in the discretion of t]The supervisor of [liquor] Alcohol and Tobacco [c]Control[,] may allow a license to be transferred to any other premises or to any other part of the building containing the licensed premises, provided the premises sought to be licensed meets the requirements of the law. The supervisor first must approve **in writing** the transfer and the application for permission to transfer [shall be in writing and set forth] **including—**

(A) Name and address of licensee;

(B) Address and legal description of premises to which removal is sought, together with name and address of landlord;

(C) An affidavit by the licensee that s/he has not violated any provisions of the Liquor Control Act [or Nonintoxicating Beer Law] or any rule of the supervisor; and

(D) [In addition, the licensee must file with the supervisor a]A consent of surety(ies), [which consent if the bond was signed by private individuals, must be] signed [by those individuals], and **witnessed by private individuals** in the same manner in which the signatures appear on the bond itself [and their signatures there to must be witnessed]. If the bond was signed by a surety company, the consent [must] **needs to** be signed by a duly authorized officer or attorney-in-fact of the company whose authority or power of attorney is on file in the Division of [Liquor] Alcohol and Tobacco Control. [The consent shall be so drawn that the surety(ies) remain liable on the bond of the licensee at the new location. Forms of the consent required by the regulation will be supplied by the supervisor upon request.]

(4) Whenever a license [shall be] is lost or destroyed without fault on the part of the licensee or his/her agents or employees, a duplicate license in lieu of the lost or destroyed license [will] **may** be issued by the supervisor of [liquor] Alcohol and Tobacco [c]Control without cost to the licensee. [Application for a duplicate license shall be by affidavit of the licensee which shall be set forth—]

[A] Date upon which license was lost or destroyed;

[B] Circumstances under which license was lost or destroyed; and

[C] Request that duplicate license be issued.]

(5) Unless licensed by the supervisor of [liquor] Alcohol and Tobacco [c]Control as such, no receiver, assignee, trustee, guardian, administrator, or executor may sell any intoxicating liquor [or non-intoxicating beer] belonging to the estate over which s/he has control, except to a licensed wholesaler or retailer [and s/he must first procure] **except with** the consent of the supervisor of [liquor] Alcohol and Tobacco [c]Control to sell the **intoxicating** liquor [or beer]. [Consent will not be given unless t]The supervisor [has been provided with] **may consent after receiving** the following documents and information:

(A) A copy of the order of the court having jurisdiction over the estate authorizing the sale; and

(B) A joint affidavit signed by the receiver, assignee, trustee, guardian, administrator, or executor and the purchaser, setting out an inventory of the stock, the price for which it is to be sold, the date of the contract of sale, and the license number of the purchaser.

(6) In the event that a licensee's license has been lost, stolen, destroyed, or a transfer to another place of business is desired, an agent or inspector, with the approval of the supervisor, may issue a special certificate which will allow the licensee to continue his/her business. In no event [shall] **may** the special certificate continue in effect for more than ten (10) days from the date of issuance.

(7) Corporations licensed under the provisions of section/s/ 311.060 [and 312.040], RSMo [must], **are to** have a managing officer/. In order to qualify, the managing officer must be] **who is** a person in the corporation's employ, either as an officer or an employee [who is vested] with the general control and superintendence [of a whole, or a particular part of, the corporation's business at a particular place].

(A) [In the event] **If a vacancy occurs** in the office of the managing officer [of a corporation becomes vacant, it will be necessary for the corporation to secure a managing officer], **a replacement qualified, pursuant to section 311.060, RSMo, shall be named** within fifteen (15) days [after] of the vacancy [occurs, with a managing officer being qualified under the provisions of sections 311.060 and 312.040, RSMo].

AUTHORITY: section 311.660, RSMo [Supp. 1989] 2016. This version of rule filed Feb. 8, 1973, effective Feb. 18, 1973. Amended: Filed Oct. 10, 2018.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Alcohol and Tobacco Control at 1738 East Elm Street, Lower Level in Jefferson City, MO 65101 or by facsimile at (573) 526-4540, or via email at Karen.Dorton@dps.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 11—DEPARTMENT OF PUBLIC SAFETY Division 70—Division of Alcohol and Tobacco Control Chapter 2—Rules and Regulations

PROPOSED AMENDMENT

11 CSR 70-2.040 Manufacturers, Wholesalers and Distributors.
The division is amending all sections.

PURPOSE: To revise this rule that defines ordinary commercial credit and advertising items that are allowed to be provided to retailers by manufacturers, wholesalers, and distributors; to reflect the elimination of Chapter 312, RSMo, regarding nonintoxicating beer. The division's name will be changed to Division of Alcohol and Tobacco Control in all applicable sections.

(1) Except as provided in section 311.070, RSMo, no retail licensee, directly or indirectly, [shall] **may** accept any loans, equipment, money, credit, or property of any kind, except ordinary commercial credit. Except as provided in section 311.070, RSMo, no [person licensed to sell intoxicating liquor, or nonintoxicating beer at retail, shall] **retail licensee may** permit any distiller, wholesaler, wine maker, **solicitor**, brewer or [his/her or their] employees, officers, or agents, under any circumstances[, directly or indirectly,] to have any **direct or indirect** financial interest in his/her retail business for the sale of intoxicating liquor [or nonintoxicating beer], and s/he shall not accept, directly or indirectly, from a distiller, wholesaler, wine maker, **solicitor**, brewer or its employees, officers, or agents any loan, gift, equipment, money, credit, or property of any kind except ordinary commercial credit for intoxicating liquor [and nonintoxicating beer] sold to the retailer[, except that]. **A retailer may accept**, to properly preserve and serve draught beer

[only and to facilitate the delivery to the retailer s/he may accept, and brewers and wholesalers may lend, give, rent or sell and they may install or repair any of the following items or render to retail licensees any of the following services: beer coils and coil cleaning, sleeves and wrappings, box couplings and draft arms, beer faucets and tap markers, beer and air hose, taps, vents and washers, gauges and regulators, beer and air distributors, beer line insulation, coil flush hose, couplings and bucket pumps; portable coil boxes, air pumps, blankets or other coverings for temporary wrappings of barrels, coil box overflow pipes, tilting platforms, bumper boards, skids, cellar ladders and ramps, angle irons, ice box grates, floor runways; and damage caused by any beer delivery excluding normal wear and tear and a complete record of equipment furnished and installed and repairs and service made or rendered must be kept by the brewer or wholesalers furnishing, making or rendering same for a period of not less than one (1) year, and except, that] and to properly preserve and serve draught wine, [wine tapping accessories, such as standards, faucets, rods, vents, taps, tap standards, hoses, washers, coupling, gas gauges, vent tongues, shanks and check valves may be sold to a retailer and installed in the retailer's establishment if the tapping accessories are sold at a price not less than the cost to the distiller, wine maker, brewer or wholesaler who initially purchased them and if the price is collected within thirty (30) days of the date of sale. Coil cleaning service may be furnished, given or sold to a retailer of wine or malt beverages] only equipment and services as allowed in section 311.070, RSMo.

(A) A sale by a licensed wholesaler to a licensed retailer of intoxicating liquor *[or nonintoxicating beer]* at a price which is less than the cost of the intoxicating liquor to the licensed wholesaler making the sale is presumed (subject to rebuttal as set out in this rule) to constitute a gift of money or property to the licensed retailer in violation of this regulation and sections 311.060 and 311.070, RSMo.

(B) The word cost as used in this regulation *[shall]* mean the actual invoice charge for the merchandise *[in question]* by the supplier of the merchandise to the wholesaler, **manufacturer, brewer, or solicitor**, plus the cost of transportation *[of the merchandise]* to the wholesaler and all federal and Missouri excise taxes and custom duties allocable to the merchandise.

(C) The presumption may be rebutted by reasonable proof that the fair wholesale market value of the intoxicating liquor *[or nonintoxicating beer]* in question is less than the cost of intoxicating liquor *[or nonintoxicating beer]* to the wholesaler selling the same, **and has been designated as close-out merchandise pursuant to section 311.335.3, RSMo and 11 CSR 70-2.190(2)(D). A licensed wholesaler may not use close-out pricing as an inducement for retailers to purchase other intoxicating liquors.**

(2) No distiller, wholesaler, wine maker, **solicitor**, brewer or *[his/her or their]* employees, officers, or agents of **same may**, directly or indirectly, *[shall]* pay any fee rental or other consideration to any retail licensee for the use of any part of the licensed retail premises for advertising any brand name of distilled spirits, wine, or malt liquor *[or nonintoxicating beer]*, or for the purpose of advertising the name, trademark, or trade name of any marker of the trademark, *provided, however, that nothing in this rule shall be construed as abrogating or altering in any manner or preventing the renewal of any existing contract or rental, whether oral or written, entered into before, for any part of any licensed retail premises].*

(3) Except as provided in section 311.070, RSMo, no distiller, solicitor, wholesaler, wine maker, brewer or their employees, officers, or agents, directly or indirectly, *[shall]* **may** give or offer to give any financial assistance, gratuity, or make or offer to make any gift of their products to any retail licensee.

AUTHORITY: section 311.660, RSMo [1994] 2016. This version of rule filed Feb. 8, 1973, effective Feb. 18, 1973. For intervening history, please consult the Code of State Regulations. Amended: Filed Oct. 10, 2018.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Alcohol and Tobacco Control at 1738 East Elm Street, Lower Level in Jefferson City, MO 65101 or by facsimile at (573) 526-4540, or via email at Karen.dorton@dps.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 11—DEPARTMENT OF PUBLIC SAFETY Division 70—Division of Alcohol and Tobacco Control Chapter 2—Rules and Regulations

PROPOSED AMENDMENT

11 CSR 70-2.050 Wholesalers' Conduct of Business. The division is amending all sections.

PURPOSE: To revise this rule that establishes guidelines for wholesalers regarding purchases, deliveries, sales, and storage of products, to reflect the elimination of Chapter 312, RSMo, regarding non-intoxicating beer. The division's name will be changed to Division of Alcohol and Tobacco Control in all applicable sections.

(1) No wholesaler *[shall]* **may** buy, obtain, or accept any intoxicating liquors, *or wine or nonintoxicating beer]* from any person *[not holding] who does not hold* a Missouri permit as a manufacturer or solicitor, provided that the wholesaler owning warehouse receipts may obtain the written permission from the supervisor of **[liquor] Alcohol and Tobacco [c]Control** to receive intoxicating liquor from federal customs bonded warehouses or federal internal revenue bonded warehouses, *as the case may be].*

(2) No wholesale licensee *[shall]* **may** deliver or cause any intoxicating liquors *[or nonintoxicating beer]* to be delivered to any licensee while the licensee is under suspension by the supervisor **[liquor] of Alcohol and Tobacco [c]Control.**

(3) All wholesale licensees *[must]* **are to** keep and maintain a place for storage of merchandise, which *[must be]* **is** designated in the license and *[must be]* separate and apart from any storage place used by others and with a separate entrance and street address.

(4) No wholesaler licensee *[shall]* **may** deliver or cause intoxicating liquors, *wine or nonintoxicating beer]* to be delivered to any premises unless there *[shall be]* **is a license** displayed prominently *[in the premises a license]* issued by the supervisor of **[liquor] Alcohol and Tobacco [c]Control** to the person purchasing the liquor, wine or beer, designating the purchaser as a person, licensed to sell on the premises the kind of liquor, **wine**, or beer s/he is about to deliver.

(5) Wholesalers licensed to sell intoxicating liquor *[or nonintoxicating beer shall]* **are to** make and keep *[duplicate]* invoices for all sales or deliveries of intoxicating liquor *[and nonintoxicating*

beer] and the Missouri license number of every person to whom intoxicating liquor [and nonintoxicating beer] is sold or delivered by the licensees [shall] is to be written or stamped upon the [duplicate] invoices.

(6) Shipments by wholesalers or solicitors [shall] may be made only to licensed dealers of this or other states. A bill of lading [shall] is to be secured from the carrier and kept on file for a period of two (2) years[,] so that shipments [can] may be traced by the division's auditors or [inspectors] agents.

(7) No manufacturer who has acquired knowledge or been given notice that a wholesaler has been suspended [shall] may make sales or deliver merchandise to the wholesaler during the period of time that the licensee is under suspension.

AUTHORITY: section 311.660, RSMo [Supp. 1989] 2016. This version of rule filed Feb. 8, 1973, effective Feb. 18, 1973. Amended: Filed April 23, 1981, effective Aug. 13, 1981. Amended: Filed Oct. 10, 2018.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Alcohol and Tobacco Control at 1738 East Elm Street, Lower Level in Jefferson City, MO 65101 or by facsimile at (573) 526-4540, or via email at Karen.dorton@dps.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 70—Division of Alcohol and Tobacco Control
Chapter 2—Rules and Regulations**

PROPOSED AMENDMENT

11 CSR 70-2.060 Manufacturers. The division is deleting section (2) and amending sections (1) and (3) through (7).

PURPOSE: To revise this rule that establishes procedures for labeling, bottling, and delivery of products, to reflect the elimination of Chapter 312, RSMo, regarding nonintoxicating beer and to eliminate the alcohol content labeling requirements for nonintoxicating beer. The division's name will be changed to Division of Alcohol and Tobacco Control and the US Treasury Department, Bureau of Alcohol, Tobacco and Firearms to Alcohol and Tobacco Tax and Trade Bureau in all applicable sections.

(1) Regulations announced [by] pursuant to the Federal Alcohol Administration Act relating to labeling of distilled spirits, wine, and malt beverages, packaged for shipment in interstate commerce, are made a part of this regulation as though fully set forth and are promulgated with respect to Missouri; these regulations [shall] apply to distilled spirits, wine, and malt beverages packaged purely for interstate shipment insofar as the regulations are not contrary to or inconsistent with the laws of Missouri. In addition to the regulations, the label of every container of spirituous liquor, wine, or malt liquor [or nonintoxicating beer], unless already required by the regulations, shall set forth the name and address of the manufacturer, brewer, distiller, rectifier, or producer of the spirituous liquor, wine, or malt

liquor [or nonintoxicating beer] as the case may be; provided that if the name of the brewer or manufacturer of malt liquor which appears on the label is not the owner of the facility where the malt liquor was brewed or manufactured, then the name, owner, and address of the facility shall also be set forth on the label.

[(2) Every manufacturer or brewer manufacturing or brewing any nonintoxicating beer in this state and every manufacturer, brewer or wholesaler outside of the state, shipping any intoxicating beer into this state, shall cause to be printed upon the large label around and upon the body of each bottle of nonintoxicating beer, one of the following inscriptions: "Alcoholic content not in excess of three and two-tenths percent (3.2%) by weight," or "Alcoholic content not in excess of four percent (4%) by volume," or in lieu of those inscriptions, shall cause the inscription to be printed on the crown of the bottle and in addition to those inscriptions on a separate label from the manufacturer's label previously described, which label shall be placed around the neck or body of the bottle in a secure manner so that it will adhere to the bottle after being iced so that it shall be on the bottle when the beer is served to the consumer. There shall be printed, stamped or embossed upon every can containing nonintoxicating beer, the statement, "Three and two-tenths percent (3.2%) by weight" or "Alcoholic content not in excess of three and two-tenths percent (3.2%) by weight."

[(3)](2) All licensees engaged in bottling intoxicating liquor and alcoholic beverages, before filling any bottle, shall cause the same to be sterilized by one (1) of the following methods:

(A) All new bottles, unless sterile, [shall] are to be sterilized or cleaned by thoroughly rinsing with clean sterile water or by blowing or vacuuming with proper machines for sterilization or cleansing[.]; and

(B) All used bottles [shall] are to be sterilized by soaking in a hot caustic solution which [shall] contains not less than three percent (3%) caustic or alkali expressed in terms of sodium hydrate. The period of time in the solution [shall] is to be governed by the temperature and strength of the solution. [Then t]The bottles [must] are then to be rinsed thoroughly in clean sterile water until free from alkali or sodium hydrate.

[(4)](3) All manufacturers and wholesalers [at all times shall] are to keep their premises and equipment in a clean and sanitary condition.

[(5)](4) [No m]Malt liquor [or nonintoxicating beer] in bottles, cans [or], jugs [shall], barrels, or kegs may be brought in or transported within this state for the purpose of sale to any licensee or be sold to any licensee in [other than] cases, barrels, or kegs the sizes of which have been approved by the [Bureau of Alcohol, Tobacco and Firearms] US Treasury Department, Alcohol and Tobacco Tax and Trade Bureau.

[(6) Malt liquor and nonintoxicating beer may be brought in or transported into this state for the purpose of sale to any licensee or be sold to any licensee also in barrels or kegs the sizes of which have been approved by the Bureau of Alcohol, Tobacco and Firearms.]

[(7)](5) For the purpose of the regulation the following definitions apply:

(A) A "facility which brews or manufactures malt liquor" is defined as a brewery or manufacturing plant premises licensed by either, or both, the state within which it is located and/or the [United States Federal Alcohol Administration] US Treasury Department, Alcohol and Tobacco Tax and Trade Bureau; and

(B) An "owner" of a facility which brews or manufacturers malt

liquor is defined as *[a person, corporation, limited liability company, partnership or other legal business]* an entity, who holds the entire facility in fee simple, or has a leasehold interest for a term of years in that entire facility, and is the person or business entity licensed for that entire facility by either or both, the state within which the facility is located and/or the *[United States Federal Alcohol Administration]* US Treasury Department, Alcohol and Tobacco Tax and Trade Bureau.

AUTHORITY: section 311.660, RSMo [1994] 2016. This version of rule filed Feb. 8, 1973, effective Feb. 18, 1973. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Oct. 10, 2018.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Alcohol and Tobacco Control at 1738 East Elm Street, Lower Level in Jefferson City, MO 65101 or by facsimile at (573) 526-4540, or via email at Karen.Dorton@dps.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 70—Division of Alcohol and Tobacco Control
Chapter 2—Rules and Regulations**

PROPOSED AMENDMENT

11 CSR 70-2.070 Tax on Spirituous Liquor and Wine. The division is amending all sections.

PURPOSE: To revise this rule that establishes tax amounts on various container sizes of wine and spirituous liquor, defines contraband, and prohibits possession of untaxed liquor or wine, to reflect the division's name change to Division of Alcohol and Tobacco Control and the Bureau of Alcohol, Tobacco and Firearms to Alcohol and Tobacco Tax and Trade Bureau in all applicable sections. The tax on wine will be changed to reflect the change to forty-two cents (\$.42) per gallon by statute.

(1) No wine or spirituous liquor *[shall]* **may** be brought in or transported within this state for the purpose of sale to any licensee or be sold to any licensee in other than containers, the sizes of which have been approved by the *[Bureau of Alcohol, Tobacco and Firearms]* US Treasury Department, Alcohol and Tobacco Tax and Trade Bureau.

(2) The tax on spirituous liquor *[shall be]* is two dollars (\$2) per gallon and the tax on wine *[shall be thirty-six]* is **forty-two cents [(\$.36)] (\$.42)** per gallon.

(3) Any spirituous liquor or wine shipped into, sold, or offered for sale in this state without payment of the proper amount of taxes due *[shall be deemed to be]* is contraband and **may be seized and disposed of** by the supervisor or his/her agents *[shall be seized and disposed of as contraband]*.

(4) No person other than a licensed distiller, rectifier, or wine manufacturer *[shall]* **may** possess in this state any spirituous liquor or

wines without the proper amount of taxes having been paid, except as provided in section 311.580, RSMo.

AUTHORITY: section 311.660, RSMo [1994] 2016. This version of rule filed Feb. 8, 1973, effective Feb. 18, 1973. Amended: Filed Sept. 30, 1976, effective Feb. 11, 1977. Amended: Filed Feb. 27, 1998, effective Aug. 30, 1998. Amended: Filed Oct. 10, 2018.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Alcohol and Tobacco Control at 1738 East Elm Street, Lower Level in Jefferson City, MO 65101 or by facsimile at (573) 526-4540, or via email at Karen.Dorton@dps.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 70—Division of Alcohol and Tobacco Control
Chapter 2—Rules and Regulations**

PROPOSED AMENDMENT

11 CSR 70-2.080 Malt Liquor [and Nonintoxicating Beer] Tax. The division is amending all sections.

PURPOSE: To revise this rule that establishes tax amounts on various container sizes of malt beverages, defines contraband, and prohibits possession of untaxed malt beverages, to reflect the elimination of Chapter 312, RSMo regarding nonintoxicating beer.

(1) The tax on malt liquor *[and nonintoxicating beer shall be]* is one dollar eighty-six cents (\$1.86) per barrel or six cents (\$.06) per gallon.

(2) No sale or delivery of malt liquor *[or nonintoxicating beer shall]* **may** be made in this state without the proper amount of Missouri tax being paid.

(3) Any malt liquor *[or nonintoxicating beer]* shipped into, sold, or offered for sale in this state without pay[ing]ment of the proper amount of taxes, *[shall be deemed to be]* **due** is contraband and *[shall]* **may be**, seized and disposed of *[as contraband]* by the supervisor or his/her agents.

AUTHORITY: section 311.660, RSMo [1994] 2016. This version of rule filed Feb. 8, 1973, effective Feb. 18, 1973. Amended: Filed Feb. 27, 1998, effective Aug. 30, 1998. Amended: Filed Oct. 10, 2018.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Alcohol and Tobacco Control at 1738 East Elm Street, Lower Level in Jefferson City, MO 65101 or by facsimile at (573) 526-4540, or via email at Karen.Dorton@dps.mo.gov. To be considered,

comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 70—Division of Alcohol and Tobacco Control
Chapter 2—Rules and Regulations

PROPOSED AMENDMENT

11 CSR 70-2.090 Reporting Distillers, [Rectifiers] Solicitors, Wine Manufacturers, and Wholesalers. The division is amending all sections. The division is deleting the forms that follow the rule in the *Code of State Regulations*.

PURPOSE: To revise this rule that establishes format for reports of shipment and payment of taxes on malt beverages, to reflect the elimination of Chapter 312, RSMo, regarding nonintoxicating beer. The division's name will be changed to Division of Alcohol and Tobacco Control in all applicable sections. The word *rectifier* will be replaced by *solicitor* as the term *rectifier* is not commonly used. Forms are being deleted from the regulations because they are out of date. In the future, forms will be available from the division.

(1) Every distiller, [rectifier] **solicitor**, and wine manufacturer licensed to sell spirituous liquor and wine in this state [shall] **needs to** file with the supervisor of [liquor] **Alcohol and Tobacco [c/]Control** a report listing all Missouri wholesale licensees with whom it transacts business and attach to the report a copy of any contract or agreement between the distiller, [rectifier] **solicitor**, or wine manufacturer and wholesale licensee. Any change in the listing [shall] **is to** be reported in writing within ten (10) days of the effective date of the change. A copy of any change in an existing contract or agreement and a copy of any new contract or agreement [shall] **is to** be submitted at the time of execution thereof. If there is no contract or agreement with respect to any wholesaler, the distiller, [rectifier] **solicitor**, or wine manufacturer [shall] **should** so indicate in its report. [These contracts or agreements are for the information of the supervisor only and are not matters of public record.]

(2) **On or before the 15th of each month** [E]very distiller, [rectifier] **solicitor**, wine manufacturer, and wholesaler authorized to ship spirituous liquor and wine in this state whether for sale in this state or to be shipped outside the state[, on or before the fifteenth day of each month,] shall [make] **certify in** a report under oath to the supervisor of [liquor] **Alcohol and Tobacco [c/]Control** setting out all sales of spirituous liquor and wine in this state **for the preceding month**.

(A) The reports, when made by a licensee who has shipped spirituous liquor and wine into this state, [shall] **should** show the amount of spirituous liquor and wine shipped or sold to each wholesaler in this state **for the previous month**, designating separately the amount of spirituous liquor and the amount of wine. [In addition, every distiller, manufacturer, distributor and wholesaler, authorized to sell and ship spirituous and vinous liquor into this state, whether for sale in this state or to be shipped outside this state, at the time of making monthly reports, shall send to the supervisor of liquor control of Missouri true copies of invoices of the sales of liquor in Missouri. Each invoice shall show, as a separate charge, the amount of the tax due on the spirituous liquor and wine contained in each invoice.]

(B) Reports made by distillers, [rectifiers] **solicitor**, and wine manufacturers in this state shall show the amount of spirituous liquor and wine distilled or manufactured, amount bottled, [in] **and** the amount of spirituous liquor or wine sold in this state, designating separately the amount of spirituous liquor and wine; the amount of

spirituous liquor or wine sold outside this state, designating separately the amount of spirituous liquor and wine and the amount of spirituous liquor and wine on hand at the end of each month. They also shall show the amount of spirituous liquor or wine sold or shipped to each wholesale licensee in this state; setting out the date of sale, name and address of licensee, and amount of spirituous liquor or wine sold **for the previous month**.

(C) Reports made by spirituous liquor and wine wholesalers in this state[, among other things, shall] **are to** show the amount of spirituous liquor and wine received from other distillers, [rectifiers] **solicitors**, wine manufacturers, and wholesalers; **and** the amount of liquor and wine sold to other wholesale licensees; **and the amount sold to retail licensees. They shall set out the name of each licensee, his/her address, the amount of spirituous liquor or wine sold and the date of sale] for the previous month**.

(D) Forms for the reports required by this regulation [shall be supplied by] **are available from** the supervisor.

AUTHORITY: section 311.660, RSMo [Supp. 1989] 2016. This version of rule filed Feb. 8, 1973, effective Feb. 18, 1973. Amended: Filed Oct. 10, 2018.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Alcohol and Tobacco Control at 1738 East Elm Street, Lower Level in Jefferson City, MO 65101 or by facsimile at (573) 526-4540, or via email at Karen.dorton@dps.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 70—Division of Alcohol and Tobacco Control
Chapter 2—Rules and Regulations

PROPOSED AMENDMENT

11 CSR 70-2.100 Report of Brewers and Beer Wholesalers. The division is amending sections (1), (2), and (3). The division is deleting the forms that follow the rule in the *Code of State Regulations*.

PURPOSE: To revise this rule that establishes format for reports of shipment and payment of taxes on malt beverages, to reflect the elimination of Chapter 312, RSMo regarding nonintoxicating beer. The division's name will be changed to Division of Alcohol and Tobacco Control in all applicable sections. Forms are being deleted from the regulations because they are out of date. In the future, forms will be available from the division.

(1) **On or before the 15th of each month** [E]very manufacturer, brewer, and bottler authorized to ship malt liquor [or nonintoxicating beer] into this state and every manufacturer, brewer, or bottler in this state, whether for sale in this state or to be shipped outside this state[, shall on or before the fifteenth day of each month, make,] **shall certify in** a report under oath, [for the preceding month,] to the supervisor of [liquor] **Alcohol and Tobacco [c/]Control**, setting out all sales of malt liquor [and nonintoxicating beer] **for the preceding month**.

(A) The reports, when made by a licensee who has shipped malt liquor [and nonintoxicating beer] into this state, [shall] **are to**

show the amount of malt liquor *[and nonintoxicating beer]* shipped or sold to each wholesaler in this state, *designating separately the amount of malt liquor and the amount of nonintoxicating beer and designating further what part of them was draught malt liquor and what part of them was bottled or canned malt liquor and designating further what part of them was draught nonintoxicating beer and what part of them was bottled or canned nonintoxicating beer.* In addition, every brewer, manufacturer and wholesaler authorized to sell and ship malt liquor and nonintoxicating beer into this state, whether for sale in this state or to be shipped outside this state, at the time of making monthly reports, shall send to the supervisor of liquor control true copies of invoices of the sales of malt liquor and nonintoxicating beer contained in each invoice for the previous month.

(2) Reports made by manufacturers, brewers, and bottlers in this state *[shall show] should include* the quantity of malt liquor *[or nonintoxicating beer]* on hand at the beginning of the month, the quantity produced during the month, and the quantity sold or shipped out of the state during the month and the quantity on hand at the end of the month, *designating separately the amount of malt liquor and the amount of nonintoxicating beer.* The report also *[shall show] should include* the amount of malt liquor *[and nonintoxicating beer]* shipped or sold to each licensee in this state, *designating separately the amount of malt liquor and nonintoxicating beer, and what part was draught and what part was bottled or canned, designating separately the amount of malt liquor and nonintoxicating beer* for the previous month.

(3) It *[shall be]* is the duty of each holder of a license authorizing the sale of malt liquor *[or nonintoxicating beer]* at wholesale to file in the office of the supervisor of *[liquor] Alcohol and Tobacco [c]Control* on or before the fifteenth day of the month a sworn statement showing the amount of malt liquor *[or nonintoxicating beer]* purchased during the preceding month, and from whom purchased *[and designating what part of the amount was draught malt liquor and designating further what part was draught nonintoxicating beer and what part of the amount was bottled or canned nonintoxicating beer].*

(A) Forms for the reports required by this regulation *[shall be supplied by] are available from* the supervisor.

AUTHORITY: section 311.660, RSMo [Supp. 1989] 2016. This version of rule filed Feb. 8, 1973, effective Feb. 18, 1973. Amended: Filed Oct. 10, 2018.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Alcohol and Tobacco Control at 1738 East Elm Street, Lower Level in Jefferson City, MO 65101 or by facsimile at (573) 526-4540, or via email at Karen.dorton@dps.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 70—Division of Alcohol and Tobacco Control
Chapter 2—Rules and Regulations**

PROPOSED AMENDMENT

11 CSR 70-2.120 Retail Licensees. The division is amending sections (1) and (2), deleting sections (3) and (9), renumbering and amending sections (4)–(10), and adding new section (8).

PURPOSE: To revise this rule that establishes conditions of licensing and operation of premises, to reflect the elimination of Chapter 312, RSMo, regarding nonintoxicating beer. The division's name will be changed to Division of Alcohol and Tobacco Control in all applicable sections. Legislative changes regarding the opening time changed to 9:00 a.m. (2003 in section 311.097, RSMo) and the number of retail by drink licenses that can be held by one (1) licensee was changed to five (2009 in section 311.260, RSMo).

(1) All retail intoxicating liquor *[and nonintoxicating beer]* licensees *[shall] are to* keep their licensed premises clean and sanitary and meeting minimum standards of the Missouri Department of Health, *as prescribed in 19 CSR 20-1.010] and Senior Services* and local sanitation laws and ordinances where applicable.

(2) If any *[retail licensee holds more than one (1) kind of] premises has multiple* licenses for separate businesses in the same building, then the building shall be partitioned in a manner that the partitions *[shall]* run from the front of the building to the rear of the building, from the ceiling to the floor, and be permanently affixed to the ceiling, floor, front, and rear of the building in a manner as to make two (2) separate and distinct premises. *[There shall be a separate entrance in front of each of the premises and each of the premises shall have a different street address] Each premises shall have a separate entrance in front and different street addresses*, so as to indicate sufficiently that the businesses are run separately and distinct from each other *[and not in conjunction with each other]*. In addition, the business maintained on each of the premises *[must] shall* be manned and serviced by an entirely separate and distinct group of employees and there *[shall] may* be no buzzers, bells, or other wiring or speaking system connecting one (1) business with the other. Separate files, records, and accounts pertaining to the businesses *[must] are to* be maintained.

[(3) Hotels holding licenses in their names authorizing the retail sale of intoxicating liquor by the drink for consumption on the premises where sold may maintain as many bars as they like on the licensed premises, provided that the places at which it is sold by the drink, in all respects, shall comply with the provisions of section 311.330, RSMo, that is to say, they shall be easily visible from some hallway, lobby or mezzanine or other part of the hotel; provided further that hotels may dispense intoxicating liquors throughout the whole of the hotel.]

[(4)](3) Hotels and [M]unicipal or county airports or terminals or their lessees or concessionaires, leasing or having concession rights for the whole or a particular part of the facility, holding licenses authorizing the retail sale of intoxicating liquor by the drink for consumption on the premises where sold may maintain as many bars as they like on the licensed premises, provided that the places at which it is sold by the drink, in all respects, [shall] comply/ies with the provisions of section 311.330, RSMo. [They shall be easily visible from some hallway, lobby or mezzanine or other part of the airport or terminal to or through which the public is invited. Provided further, that the applicant, at the time license is applied for, shall advise the supervisor of liquor control in writing of the number of bars to be operated and their locations.]

[(5)](4) No [R]etailer[s shall not] may place or permit the placing of any object on or within the windows of premises covered by licenses which *[shall]* impedes or obstructs vision from the exterior into the interior. *[This prohibition shall include illuminated signs, floral decorations, posters, placards, paintings or writings*

and all other similar devices or designs. In case venetian blinds are used in windows, slats shall be removed entirely across the blind so as to make a visible space beginning at four feet (4') from the sidewalk, and extending six feet (6') above the sidewalk, if the venetian blinds are kept closed. If the venetian blinds are kept open, it shall not be necessary to remove slats provided the slats at all times shall be adjusted horizontally so that the flat surfaces of the seats are parallel with the floor of the licensed premises. If curtains are used, they must be drawn apart so as to permit a clear view into the interior of the premises.]

[(6)](5) No holder of a retail license [shall] may use illuminated brand signs exclusively for illuminating purposes. Sufficient light must be maintained at all times to [i]ensure clear visibility into the interior and within the interior of the premises.

[(7)](6) No licensee [shall] may operate, play, or permit the operation of any public speaking system transmitter, sound amplification device, or any other type of device, mechanical, or electronic, to emit or direct music, spoken words, sounds or noise of any kind exceeding eighty-six (86) decibels on an A-weighted scale when measured across a residential property line fifty feet (50') or more from the source of the noise between the hours of 11:00 pm and 11:00 am. This regulation does not supersede any state or local laws or ordinances regulating noise in the area.

[(8)](7) Licenses authorizing the retail sale of intoxicating liquor by the drink on Sunday between the hours of [11:00] 9:00 a.m. and midnight may be issued to all qualified applicants [for restaurant-bars] as defined in section [311.097] 311.293, RSMo.

(A) An applicant for a restaurant-bar license [first shall] is to obtain a license authorizing the retail sale of intoxicating liquor by the drink as provided in either section 311.085, 311.090, or 311.095, RSMo.

(B) Premises for which a [restaurant-bar] Sunday license is sought and the description at the premises on each license shall be exactly the same as those premises covered by an existing retail sale of intoxicating liquor by the drink license [and the description of the premises on each license shall be identical].

[(C) Applicants for a restaurant-bar license shall furnish with the application a certified statement signed by the applicant showing that at least fifty percent (50%) of the gross income of the restaurant-bar for the past one (1) year immediately preceding the application was derived from the sale of prepared meals or food consumed on the premises or a certified statement signed by the applicant showing an annual gross income of at least two hundred thousand dollars (\$200,000) from the sale of prepared meals or food consumed on the premises. Applicants who have not been in business one (1) year shall have been in business at least ninety (90) days immediately preceding application for a restaurant-bar license and shall furnish a certified statement signed by the applicant showing that at least fifty percent (50%) of gross income of the restaurant-bar during the total period of time that it has been in business was derived from the sale of prepared meals or food consumed on the premises or a certified statement signed by the applicant showing that a projected experience based upon its sale of food during the preceding ninety (90) days would exceed not less than two hundred thousand dollars (\$200,000) per year.

(D) Each application for renewal of a restaurant-bar license shall be accompanied by a certified statement signed by the licensee showing that at least fifty percent (50%) of the gross income of the restaurant-bar for the past one (1) year immediately preceding the date of the renewal application or past calendar year immediately preceding the date of the renewal application was derived from the sale of prepared meals or food consumed on the premises or a certified state-

ment signed by the applicant showing that the restaurant establishment's annual gross food sales for the past year immediately preceding the date of the renewal application or past calendar year immediately preceding the date of the renewal application shall not have been less than two hundred thousand dollars (\$200,000) per year. Applicants not in business one (1) year shall show projected experience based on total period of time in business.

(E) Applicants for a restaurant-bar license shall prepare and maintain the following records in order to substantiate the sales figures as presented in the certified statement, including, but not limited to: prenumbered guest checks, cash register tapes, bank statements and cancelled checks, and invoices for food and intoxicating liquor purchases.

(9) In order to qualify for the exemption to the limitation of three (3) licenses to sell intoxicating liquor at retail by drink for consumption on the premises, as provided in section 311.260, RSMo, licensees, at the time of seeking exemption, shall be required to—

(A) Make application to the supervisor for the exemption;
(B) Furnish with the application a certified statement signed by the licensee showing that at least fifty percent (50%) of the gross income of the restaurant-bar for which exemption is sought, for the past one (1) year immediately preceding the date of the application or past calendar year immediately preceding the date of the application was derived from the sale of prepared meals or food consumed on premises where sold or which has an annual gross income of at least two hundred thousand dollars (\$200,000) from the sale of prepared meals or food consumed on premises where sold. Applicants who have not been in the restaurant-bar business one (1) year shall have been in business at least ninety (90) days immediately preceding application for the license and shall furnish a certified statement signed by the applicant showing that at least fifty percent (50%) of the gross income of the restaurant-bar for which exemption is sought, during the ninety (90)-day period was derived from the sale of prepared meals or food consumed on premises where sold or which has an annual gross income of at least two hundred thousand dollars (\$200,000) from the sale of prepared meals or food consumed on premises where sold; and

(C) Furnish with each application for renewal of any license which has been exempted from the limitation, a certified statement signed by the licensee showing that at least fifty percent (50%) of the gross income of the business for the past one (1) year immediately preceding the date of renewal application or past calendar year immediately preceding the date of the renewal application was derived from the sale of prepared meals or food consumed on the premises where sold or which has an annual gross income of at least two hundred thousand dollars (\$200,000) from the sale of prepared meals or food consumed on premises where sold.]

(8) Licensees may apply to the supervisor for an exemption to the limitation of five (5) licenses to sell intoxicating liquor at retail by drink for consumption on the premises.

[(10)](9) Resorts. Licenses authorizing the retail sale of liquor by the drink may be issued to qualified applicants for resorts as defined in section 311.095, RSMo.

[(A) An applicant qualifying as a resort shall furnish with the application, a certified statement signed by the applicant showing that the establishment has at least thirty (30) rooms for the overnight accommodation of transient guests, having a restaurant or similar facility on the premises at least sixty percent (60%) of the gross income of which is derived

from the sale of prepared meals or food.

(B) Each application for renewal of a resort license shall be accompanied by a certified statement signed by the applicant showing that at least sixty percent (60%) of the gross income from restaurant or similar facility for the past year immediately preceding the date of the renewal application or past calendar year immediately preceding the date of the renewal application was derived from the sale of prepared meals or food.

(C) Applicants qualifying for a resort license as a restaurant shall furnish with the application a certified statement signed by the applicant showing that the restaurant establishment's annual gross receipts immediately preceding its application for a license shall not have been less than seventy-five thousand dollars (\$75,000) per year with at least fifty thousand dollars (\$50,000) of such gross receipts from nonalcoholic sales. Applicants who have not been in business one (1) year shall have been in business at least ninety (90) days immediately preceding the application for a license and shall furnish a certified statement signed by the applicant, showing that a projected annual experience based upon its gross receipts during the ninety (90)-day period immediately preceding the date of application would exceed not less than seventy-five thousand dollars (\$75,000) per year with at least fifty thousand dollars (\$50,000) of such gross receipts from nonalcoholic sales.

(D) Each application for renewal of a resort license as a restaurant shall be accompanied by a certified statement signed by the applicant showing that the restaurant establishment's annual gross receipts immediately preceding the date of the renewal application shall not have been less than seventy-five thousand dollars (\$75,000) per year with at least fifty thousand dollars (\$50,000) of such gross receipts from nonalcoholic sales. Applicants for renewal who have not been in business one (1) year immediately preceding application for renewal shall furnish a certified statement signed by the applicant showing that a projected annual experience, based upon its gross receipts during the ninety (90)-day period immediately preceding the date of application, would exceed not less than seventy-five thousand dollars (\$75,000) per year with at least fifty thousand dollars (\$50,000) of such receipts from nonalcoholic sales.

(E) Applicants for a resort license shall prepare and maintain [the following] records in order to substantiate the sales figures as presented in the certified statement, including, but not limited to: prenumbered guest checks, cash register tapes, bank statements [and], cancelled checks, and invoices for food and intoxicating liquor purchases.

AUTHORITY: section 311.660, RSMo [2000] 2016. This version of rule filed Feb. 8, 1973, effective Feb. 18, 1973. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Oct. 10, 2018.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Alcohol and Tobacco Control at 1738 East Elm Street, Lower Level in Jefferson City, MO 65101 or by facsimile at (573) 526-4540, or via email at Karen.Dorton@dps.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 70—Division of Alcohol and Tobacco Control
Chapter 2—Rules and Regulations

PROPOSED AMENDMENT

11 CSR 70-2.130 Retailer's Conduct of Business. The division is amending sections (1)–(5) and (9)–(15), deleting section (8), and renumbering as necessary.

PURPOSE: To revise this rule that establishes general rules of conduct for retail establishments to reflect the elimination of Chapter 312, RSMo, regarding nonintoxicating beer. The division's name will be changed to Division of Alcohol and Tobacco Control in all applicable sections. Also, section (8) disallowing a licensee to have a trade name of liquor store is being eliminated.

(1) No licensee who [shall have] has had his/her license suspended by order of the supervisor of [liquor] alcohol and tobacco control [shall] may sell, give away, or permit the consumption of any intoxicating liquor [or nonintoxicating beer], nor [shall] may s/he order or accept delivery of any intoxicating liquor [or nonintoxicating beer] during the period of time the order of suspension is in effect. Any licensee desiring to keep his/her premises open for the sale of food or merchandise during the period of suspension [shall] should display the order of suspension issued by the supervisor of [liquor] alcohol and tobacco control in a conspicuous place on the premises so that all persons visiting the premises may readily see the order of suspension.

(2) No person holding a license for the retail sale of malt liquor by the drink [or for the sale of nonintoxicating beer by the drink] may knowingly [shall] sell, give away, or serve upon the premises described in the license any glass, ice, water, soda water, phosphates, or any other kind of liquids to be used for the purpose of mixing intoxicating drinks and commonly referred to as set-ups; nor [shall] may any licensee allow any person while in or upon the premises covered by the license to possess or consume any intoxicating liquor other than malt liquor, [if the license is to sell malt liquor containing more than three and two-tenths percent (3.2%) alcohol by weight or any kind of intoxicating liquor if the license is to sell nonintoxicating beer] or to pour into, mix with or add intoxicating liquor other than malt liquor, to water, soda water, ginger ale, seltzer, or other liquid.

(3) The holder of a license authorizing the retail sale of intoxicating liquor by the drink may sell liquor in any quantity, not for resale, but [shall] may not possess any spirituous liquor in any container having a capacity of more than one (1) gallon or any wine in any container having a capacity of more than fifteen and one-half (15 1/2) gallons.

(4) No person holding a license authorizing the retail sale of intoxicating liquor [or nonintoxicating beer shall] may sell or deliver any liquor to any person with knowledge or with reasonable cause to believe, that the person to whom the liquor is sold or delivered has acquired the liquor for the purpose of peddling or reselling it.

(5) No licensee [shall] may sell, give away, or possess any spirituous liquor from or in any container when the intoxicating liquor is not that set out on the manufacturer's label on the container or does not have alcoholic content shown on the manufacturer's label.

(6) No retail licensee may bottle any intoxicating liquor from any barrel or other container nor may s/he refill any bottle or add to the contents of the bottle from any barrel or other container.

(7) A licensee selling intoxicating liquor by the drink, when requested to serve a particular brand or type of spirituous liquor or beer,

[shall] may not substitute another brand or type of spirituous liquor or beer.

[(8) No person holding a license authorizing the sale of intoxicating liquor in the original package shall have the trade name using the words liquor store nor shall s/he advertise his/her place of business as or doing business as a liquor store.]

[(9)](8) No retail licensee [shall] may allow or cause any sign or advertisement pertaining to intoxicating liquor or malt beverages to be carried or transported upon any sidewalk or street of any municipality or upon any highway of the state. This provision [shall not apply] is inapplicable to any legal sign or advertisement placed on a vehicle being used to deliver intoxicating liquor or malt beverages.

[(10)](9) Whenever hours of time are set forth in the Liquor Control Act, they [shall] are to be interpreted to mean clock time which shall be either Central Standard Time or Central Daylight Time, whichever one is then being observed.

[(11)](10) No person holding a license authorizing the retail sale of intoxicating liquor [or nonintoxicating beer shall] may possess any intoxicating liquor [or nonintoxicating beer] which has not been purchased from, by, or through duly licensed wholesalers.

[(12)](11) No holder of a license to sell intoxicating liquor[, five percent (5%) beer or nonintoxicating beer] by the drink [shall] may give to, sell, or permit to be given to or sold to any on duty employee of the establishment operated by the licensee any intoxicating liquor [or nonintoxicating beer], in any quantity, nor [shall] may s/he permit any patron of the establishment operated by him/her to give to any on duty employee any intoxicating liquor [or nonintoxicating beer], in any quantity, or to purchase it for or drink it with any on duty employee, in the establishment or on premises of the licensee. This provision [shall not apply] is inapplicable when the establishment is closed to the public, so long as the licensee is allowed to be open at that time pursuant to section 311.290, RSMo, or any other provisions of Chapter[s] 311 [or 312] relating to opening and closing.

[(13)](12) Improper Acts.

(A) At no time, under any circumstances, [shall] may any licensee or his/her employees immediately fail to prevent or suppress any violent quarrel, disorder, brawl, fight, or other improper or unlawful conduct of any person upon the licensed premises, nor [shall] may any licensee or his/her employees allow any indecent, profane, or obscene [language, song, entertainment,] literature or advertising material upon the licensed premises.

(B) In the event that a licensee or his/her employee knows or should have known, that an illegal or violent act has been committed on or about the licensed premises, they are obligated to immediately [shall] report the occurrence to law enforcement authorities and [shall] cooperate with law enforcement authorities and agents of the Division of [Liquor] Alcohol and Tobacco Control during the course of any investigation into an occurrence.

[(14)](13) Lewdness. No retail licensee or his/her employee [shall] may permit in or upon his/her licensed premises—

(A) The performance of acts, or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts which are prohibited by law;

(B) The displaying of any portion of the areola of the female breast;

(C) The actual or simulated touching, caressing, or fondling of the breast, buttocks, anus, or genitals;

(D) The actual or simulated displaying of the pubic hair, anus, vulva, or genitals;

(E) The permitting by a licensee of any person to remain in or upon the licensed premises who exposes to public view any portion of his/her genitals or anus; and

(F) The displaying of films, video programs, or pictures depicting acts, the live performances of which are prohibited by this regulation or by any other law.

[(15)](14) In the event the premises of any licensee is declared to be off-limits by the military authorities, the licensee [shall] may not permit any member of the armed forces to be in or upon the premises covered by his/her license. Provided, this [shall not apply unless] is only effective after the licensee is notified of the order by the supervisor of [liquor] alcohol and tobacco control [nor shall it apply to]. [m]Members of the Military Police or Shore Patrol are exempt from this provision.

AUTHORITY: section 311.660, RSMo [1994] 2016. This version of rule filed Feb. 8, 1973, effective Feb. 18, 1973. For intervening history, please consult the Code of State Regulations. Amended: Filed Oct. 10, 2018.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Alcohol and Tobacco Control at 1738 East Elm Street, Lower Level in Jefferson City, Mo 65101 or by facsimile at (573) 526-4540, or via email at Karen.Dorton@dps.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 11—DEPARTMENT OF PUBLIC SAFETY Division 70—Division of Alcohol and Tobacco Control Chapter 2—Rules and Regulations

PROPOSED AMENDMENT

11 CSR 70-2.150 Refunds. The division is amending all sections.

PURPOSE: To revise this rule that establishes procedures for refund of tax on intoxicating liquor, to reflect the elimination of Chapter 312, RSMo, regarding nonintoxicating beer. The Division's name will be changed to Division of Alcohol and Tobacco Control in all applicable sections. Also, section (3) will be removed that requires final approval of refunds to rest with the Governor, and general assembly, as refunds are processed through the division without individual approval from those entities.

(1) Every licensee who claims a refund for Missouri tax on intoxicating liquor or a refund for Missouri tax on malt liquor [or nonintoxicating beer] shall present claims to the supervisor of [liquor] alcohol and tobacco control and [shall] attach to the claim a complete statement, under oath, as to the facts supporting the claim.

(2) After the claim is accepted for audit by the supervisor and the claimant has been notified of the acceptance, then an inspection [shall] can be made by the supervisor or his/her agents. The agents shall make an affidavit that they inspected the intoxicating liquors[,] and/or malt liquors [or nonintoxicating beer] denoting in the affidavit the brand, [name and serial] number of the containers or cases, and the disposition to be made of the spirituous liquor, wine,

or malt liquor [or nonintoxicating beer].

[(3)](3) The claims, when accepted by the supervisor for audit, shall be presented to the appropriations committee of the general assembly. The final approval of all the claims rests with the general assembly and the governor and the supervisor does not guarantee any payment on any claim.]

[(4)](3) Under no circumstances shall refund claims be accepted by the supervisor if the sole reason for their presentation to him/her is because the claimant has purchased beyond his/her capacity to sell.

[(5)](4) The supervisor shall not accept claims for refunds for unused portions of permits.

[(6)](5) The supervisor reserves the right to refuse to accept for audit any or all claims presented.

AUTHORITY: section 311.660, RSMo [Supp. 1989] 2016. This version of rule filed Feb. 8, 1973, effective Feb. 18, 1973. Amended: Filed Oct. 10, 2018.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Alcohol and Tobacco Control at 1738 East Elm Street, Lower Level in Jefferson City, MO 65101 or by facsimile at (573) 526-4540, or via email at Karen.Dorton@dps.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

Title 11—DEPARTMENT OF PUBLIC SAFETY Division 70—Division of Alcohol and Tobacco Control Chapter 2—Rules and Regulations

PROPOSED AMENDMENT

11 CSR 70-2.170 Warehouse Receipts for Storage of Intoxicating Liquor. The division is amending sections (1) through (4).

PURPOSE: To revise this rule that defines warehouse receipts and establish rules governing their use in business practices, to reflect the division's name change to Division of Alcohol and Tobacco Control in all applicable sections.

(1) [Section 311.380, RSMo makes it a misdemeanor for any person to sell, offer for sale or give away any warehouse receipt(s) of intoxicating liquor without first securing the permission of the supervisor of liquor control to do so.] The term warehouse receipt, as used in section 311.380, RSMo, is defined to mean any warehouse receipt issued for the storage of intoxicating liquor which can be negotiated and any nonnegotiable warehouse receipt which can be assigned, transferred, or sold.

(2) Any person[, firm or corporation] or entity licensed by the supervisor of [liquor] alcohol and tobacco control [of Missouri] to sell intoxicating liquor may pledge any warehouse receipt(s) owned by him/her to secure the payment of any debt to any [firm,] person or [corporation] entity in Missouri. Any Missouri state bank or trust company which is a member of the Federal Reserve System and

any national bank with its principal office in Missouri may repledge with a federal reserve bank any warehouse receipts of which it is the pledgee.

(A) In case of default in the terms of the pledge agreement, the pledgee or the assignee of the pledge agreement may not negotiate, assign, transfer, or sell any warehouse receipt(s) without first obtaining the permission of the supervisor of [liquor] alcohol and tobacco control to do so.

(B) Request for permission [shall be made] can be submitted by the pledgee to the supervisor of [liquor] alcohol and tobacco control in writing and [in the request the pledgee shall state] include the name of the proposed purchaser and [shall state] whether or not the proposed purchaser intends to take possession of the liquor under the receipt(s). Under no circumstances [shall] may permission be given to the pledgee to sell any of the warehouse receipt(s) to any person[, firm or corporation] or entity which intends to take possession of intoxicating liquor described in the receipt(s) unless the proposed purchaser is duly licensed as a wholesaler or manufacturer by the supervisor of [liquor] alcohol and tobacco control in Missouri.

(C) The pledgee seeking the permission to sell the warehouse receipt(s) [shall] should accompany the request by a [photostatic] copy of the pledge agreement and a [photostatic] copy of the warehouse receipt(s) which s/he desires to sell, together with an inventory of the liquor covered by the receipts, unless the inventory is contained in the receipts.

(3) Under no circumstances [shall] may any person[, firm or corporation] or entity licensed by the supervisor of [liquor] alcohol and tobacco control import or cause to be imported or transport or cause to be transported into the state any intoxicating liquor which has been sold out of the state to satisfy the payment of any debt contracted outside of the state.

(4) No person[, firm or corporation shall] or entity may be granted permission to sell warehouse receipts and no licensee of the supervisor of [liquor] alcohol and tobacco control [shall] may be given permission to purchase any warehouse receipt(s) unless the person[, firm or corporation] or entity seeking permission, either to sell or to buy, [shall] agrees as a condition precedent to the granting of any permission that s/he shall make regular monthly reports for each calendar month by the fifteenth of the following month in accordance with forms designated by the supervisor of [liquor] alcohol and tobacco control [and unless the reports are made,]. [a]Any permission given will be promptly revoked unless the reports are made.

AUTHORITY: section 311.660, RSMo [Supp. 1989] 2016. This version of rule filed Feb. 8, 1973, effective Feb. 18, 1973. Amended: Filed Oct. 10, 2018.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Alcohol and Tobacco Control at 1738 East Elm Street, Lower Level in Jefferson City, MO 65101 or by facsimile at (573) 526-4540, or via email at Karen.Dorton@dps.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 70—Division of Alcohol and Tobacco Control
Chapter 2—Rules and Regulations**

PROPOSED AMENDMENT

11 CSR 70-2.180 Ceded Areas. The division is amending sections (1) and (2).

PURPOSE: To revise this rule that exempts from tax and license fees in areas ceded to the federal government for military installations, to reflect the elimination of Chapter 312, RSMo, regarding nonintoxicating beer. The division's name will be changed to Division of Alcohol and Tobacco Control in all applicable sections.

(1) Licenses are *[not required]* unnecessary for the retail sale of intoxicating liquor *[and nonintoxicating beer]* for establishments located on lands within the state ceded to the federal government for military purposes and upon which military installations exist or for United States military federal instrumentalities.

(2) No excise nor inspection fees *[shall]* may be imposed on any intoxicating liquor *[or nonintoxicating beer]* sold or offered for sale by establishments located on lands within the state ceded to the federal government and upon which military installations exist.

AUTHORITY: section 311.660, RSMo [Supp. 1989] 2016. This version of rule filed Feb. 8, 1973, effective Feb. 18, 1973. Amended: Filed Dec. 14, 1987, effective March 11, 1988. Amended: Filed Oct. 10, 2018.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Alcohol and Tobacco Control at 1738 East Elm Street, Lower Level in Jefferson City, MO 65101 or by facsimile at (573) 526-4540, or via email at Karen.Dorton@dps.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 70—Division of Alcohol and Tobacco Control
Chapter 2—Rules and Regulations**

PROPOSED AMENDMENT

11 CSR 70-2.190 Unlawful Discrimination and Price Scheduling. The division is amending sections (1) and (2).

PURPOSE: To revise this rule, which establishes procedures for price posting, deliveries, return of merchandise and discounts, to reflect the elimination of Chapter 312, RSMo, regarding nonintoxicating beer. The division's name will be changed to Division of Alcohol and Tobacco Control in all applicable sections. In addition, legislation passed in 2009 restructuring the price posting laws will be reflected in these changes. Renumbering will occur to make the regulation easier to follow.

[(1) Mechanized Product Price Register.

(A) The Mechanized Product Price Register is a system designed to accept pricing information from wholesalers in a machine readable format at various set times of the month for varying processing cycles. Those transactions are processed into a master file of prices by brand and wholesaler number. Wholesaler transactions shall be submitted on either IBM eighty (80) column cards or a magnetic tape (nine (9) tract, sixteen hundred (1600) bits per inch) which are acceptable to the IBM/370 Mod 145 computer system or a computer system that the supervisor may order. A six (6)-digit brand number for all liquors and wines from the Universal Numeric Coding System for Alcoholic Beverages shall be used to identify all products posted in the Mechanized Product Price Register. Unique wholesaler numbers shall be assigned by the supervisor for individual identification in the register. The Mechanized Product Price Register or commonly known as Master Price Schedule, of all brands of intoxicating liquor and wine containing alcohol in excess of five percent (5%) by weight shall be maintained by the supervisor. This master file shall contain the following information by wholesalers: six (6)-digit brand number and check digit brand name, vendor number, class and type, age, proof and/or percent of alcoholic content by weight, bottle and case prices, discount code and wholesaler posting brand.

(B) The following reports from the Mechanized Product Price Register will be made available to all interested parties on a periodic basis:

1. Master Price Schedule. The master schedule provides a detailed listing of all prices charged for all items sold by each wholesaler;

2. Cumulative Change Report. The Cumulative Change Report lists all changes to the master file from the last master schedule printing to the present;

3. Change Report. The Change Report lists all changes to master schedules during a given change cycle;

4. Amendments Report. The Amendments Report lists all amendments to master schedule items during a given amendment cycle;

5. Wholesaler Transaction and Report. This report lists all transactions, by wholesaler, for a given processing cycle; and

6. Wholesaler/Vendor Report. This report lists by wholesaler, all vendors and corresponding brands sold by all wholesalers or by certain selected wholesalers, along with pricing information for each item.

(2) Pricing Rules to Prohibit Discrimination.

(A) Supplemental Posting. When a new product is added by a wholesaler, a supplemental posting must be made to the supervisor. New product prices must meet the following criteria:

1. All wholesalers posting prices for a new brand must first be authorized for that brand by the supervisor. A wholesaler may post his/her prices for a new product at any time during the month, after all brand registration requirements have been met. The supervisor will then issue a letter of approval on which the wholesaler will be required to post the following information: full brand name, vendor name and number, brand number and check digit, class and type, age, proof and/or percent of alcoholic content by weight, bottle price, case price, bottles per case. After the letter is returned to the supervisor by the wholesaler with this information it will be stamped APPROVED or DISAPPROVED and dated. Seven (7) days after this letter has been stamped APPROVED and dated by the supervisor, the product may be sold;

2. Any new items in the state, including new products, new sizes or new proofs being posted on supplemental schedules may be posted at any price the wholesaler desires. This category of new items must be posted within

the same calendar month. However, a new item on a supplemental schedule that previously has been posted by another wholesaler may not be posted at a price lower than the price currently established by schedules in effect; and

3. The price posted in the supplemental schedule shall remain in effect and shall not be subject to change before the first of the month when a regularly filed schedule shall become effective.

(B) Monthly Price Changes.

1. All wholesalers shall file their monthly price changes in machine readable form with the supervisor or in a form s/he designates on or before the tenth calendar day of each month unless otherwise ordered by him/her. When the tenth day of the month falls on a Sunday or legal holiday, the schedule shall be filed on the next regular business day. These price changes shall be coded to designate that they are changes to existing prices on the master file. In addition, wholesalers may file prices for new products and new sizes which will be coded to designate that they are additions to the master file. Where an item previously has been posted by another wholesaler, a wholesaler may not post a price lower than the price currently established by schedules in effect.

(C) Amendments.

1. Within three (3) days, excluding Sundays and holidays and on a date to be fixed by the supervisor when s/he makes available for inspection the Master Price Schedule or the Cumulative Change Report, a wholesaler may amend his/her filed schedule for sales to a retailer or purchase for a retailer or by a retailer through a wholesaler, in order to meet lower competing prices and discounts for intoxicating liquor or wine of the same brand, trade name, age and proof.

2. All price changes must be only downward. No price changes shall be made upward in amendment processing. Any transaction attempting to lower a price below the lowest scheduled price will be flagged as an error and will be totally rejected.]

(1) This regulation applies to spirituous liquor and wine products containing alcohol in excess of five percent (5%) by weight sold by a duly licensed wholesaler to a duly licensed retailer.

(2) Product Pricing Information.

(A) The product pricing information is to be made available to retailers five (5) days prior to the last day of the month and include the brand number, brand or trade name, capacity of individual packages, nature of contents, age and proof, the per bottle and per case price, the number of bottles contained in each case, and the size thereof.

(B) Supplemental pricing information is to be made available to retailers when a new product, new size, or new proof is added by a wholesaler during the month and not subject to change before the first of the month when regularly filed product pricing information is effective. A wholesaler is allowed to sell such items to retailers immediately upon production of such supplemental information. Supplemental pricing information includes the brand number, brand or trade name, capacity of individual packages, nature of contents, age and proof, the per bottle and per case price, the number of bottles contained in each case, and the size thereof.

(C) The wholesaler may sell at any price for any item as long as it is sold above their cost and they sell at the same price to all retailers as indicated on their product pricing information.

(D) Close out items should be identified as such on the product pricing information that is made available to retailers at prices which may be below the wholesaler's costs for not less than six (6) consecutive months during which time the wholesaler may not purchase further inventory. The wholesaler should not use close out pricing as an inducement for retailers to purchase other intoxicating liquors.

[(D)](3) Discounts.

1.](A) [The granting of any discount is optional with the seller, but when given must not exceed] **The wholesaler may grant any discount up to** one (1) per centum for quantity of liquor and wine and one (1) per centum for payment on or before a certain date.

2.](B) Quantity discounts. A quantity discount may be granted only for quantities of two (2) or more. If a price is listed for bottles only, then a quantity discount may be allowed on quantities of two (2) or more bottles. If a price is listed for both bottles and cases, then a quantity discount may be allowed only on quantities of two (2) or more unbroken cases. Quantity discounts may be graduated but [may] not exceed the maximum one percent (1%).

3.](C) Discounts for time of payment. A discount for time of payment may be granted only for 1) payment for time of delivery, 2) payment on or before ten (10) days from the date of delivery, or 3) payment on or before fifteen (15) days from the date of delivery. [Only one (1) discount may be granted during any one (1) month, except that a wholesaler may amend his/her schedule to meet competing discounts for time of payment.]

4.](D) The combination of discounts [which shall] to be posted on the [Mechanized Price Register] **product pricing information** are as follows: No discount, one percent (1%) for time of payment, one percent (1%) for quantity discounts, **or** one percent (1%) for time of payment and one percent (1%) for quantity.

5.](E) No person licensed to sell intoxicating liquor and wine at retail may accept any discount, rebate, free goods, allowances, or other inducement from any wholesalers except the discount for payment and quantity discount on or before a certain date.

[(E)](4) Case Size. For the purpose of this regulation, a case of intoxicating liquor or a case of wine is declared to be a cardboard, wooden, or other container, containing bottles of equal size filled with intoxicating liquor or wine of the same brand, age, and proof. The following table depicts the number of bottles considered to be a case of various bottle sizes for both the English and metric systems of measure, for pricing [scheduling] purposes:

Size of Bottle	Number of Bottles per Case
Less than 6.3 oz	48, 60, 96, 120, 144, 192 or 240
8 oz up to, but not including, 10 oz	48
10 oz up to, but not including, 21 oz	24
21 oz up to, but not including, 43 oz	12
43 oz up to, but not including, 85 oz	6
85 oz up to and including 128 oz	3, 4 or 6

1.](A) The Universal Coding of Alcoholic Beverages for Products by container size [shall] **is to** be used to code the bottle size. An item is declared to be either a bottle or a case of intoxicating liquor or wine scheduled as required./;

2.](B) All sizes less than one-half (1/2) pint or eight (8) ounces under the English system of measure [shall be] are defined as miniatures [to be sold to airlines and railroads]. Under the metric system of measure, miniatures [to be sold to airlines and railroads] are defined as fifty (50) milliliters (1.7 ounces) for spirituous liquors and one hundred (100) milliliters (3.4 ounces) for vinous liquors. **Acceptable [C]case sizes for miniatures [shall be] are 240, 192, 144, 120, 96, 60, and 48 bottles. Miniatures [shall] may be sold in only one (1) case size for each bottle size sold./; and**

3.](C) If an intoxicating liquor or wine product is packaged by the manufacturer in a bottle quantity for that bottle size exceeding one (1) but either more or less than the case quantity for the bottle size listed in [sub]section [(2)](E) (4), a wholesaler may sell that package for a total price that reflects the same per bottle price as the per bottle price in the posted case price, if the wholesaler's invoice specifies the quantity in the package.

[(F)](5) The price to retailers, except retailers operating railroad cars, **[shall] should** include federal custom duties, internal revenue taxes, state excise tax, bottling and handling charges, and the cost of delivery to the retailer. The price to retailers operating railroad cars may be scheduled at a price “ex state excise tax,” but shall include all other taxes and costs computed in prices to other retailers. No charge(s) **[shall] may** be made in addition to the price except that on past due accounts there may be imposed a finance (interest) charge in accord with that permitted by law. Provided, however, that if a wholesaler elects to impose a finance (interest) charge on past due account the charge shall be of uniform rate to all retailers and **[shall be]** imposed on all retailers who have past due accounts.

[(G)](6) Delivery. Any brand of liquor or wine sold to a retailer **[must] is to** be shipped to and received by the retailer **[in the amount for which the scheduled price set forth on the invoice is in effect. No wholesaler may take an order for delivery in a subsequent month, except that on and after the date on which amended schedules are filed, orders may be taken for delivery in the following month at the price in effect for that month. Orders may not be shipped before the first day of the following month] at the price in effect for that calendar month in which the delivery occurs. Delayed shipment orders may be taken the last five (5) days of the month and delivered in the first five (5) days of the following month.**

[(H)](7) Returns. Merchandise returns exceeding seven (7) days from delivery date **[shall] may** not be accepted for return from a retailer, except pursuant to a court order or with prior approval from the supervisor for any of the following reasons:

1.](A) The merchandise delivered does not conform to the merchandise ordered, whether an error was made at the time the order was taken or when the merchandise was delivered. Requests to return merchandise delivered in error **[must] should** be submitted to the supervisor within thirty (30) days of the original invoice; or

2.](B) The retailer is abandoning the retail liquor business.

[(I)](8) Breakage, Samples, Expenses. As part of its regular books and records, each wholesaler licensed to sell intoxicating liquor or wine **[shall] is required to** keep a monthly record of all allowances for breakage containing the name, address, and license number of the customer, the amount of breakage allowance, **and** the date and number of the invoice of sale **[and the federal strip stamp numbers of each broken bottle]** for which allowance is given. No allowance for breakage **[shall] may** be given unless the broken bottle is returned to the seller within seventy-two (72) hours after delivery **[and where the container is required to have a federal strip stamp affixed to the container, the stamp must be intact at the time of return].** Broken bottles **[shall] are to** be kept available on the wholesaler’s licensed premises for inspection by representatives of the supervisor and may not be removed from the licensed premises or destroyed **[without] only with** permission from the supervisor.

[(J)](9) Posting of Contraband Liquors and Wines Purchased From Supervisor. Bottles or cases of liquor or wine as described in **[sub]section [(2)](E) (4)** which have been declared contraband and purchased by a wholesaler from the supervisor or the officer who seized the same under the provisions of sections 311.820 and 311.840, RSMo or by a wholesaler from a wholesaler who so purchased the same, may be **[scheduled] posted** by the wholesaler at prices less than other liquors and wines of the same brand, age, and proof. When the liquors and wines are so **[scheduled] posted**, the **[schedule shall] pricing is to** be accompanied by a writing on which the liquors and wines are exactly described and the quantity(ies) available for purchase set forth and upon sale of all or any part of the quantity a copy of the invoice shall be sent to the supervisor upon the day it is prepared. Only liquors and wines so purchased by a wholesaler may be sold at the posted prices.

[(K)](10) Discriminatory Agreements.

1.](A) No person holding a license as a manufacturer- solicitor or out-/state solicitor of spirituous liquor or wine **[shall] may** enter into or participate in any combination or agreement with any person holding a license as a wholesaler **[or wholesale-solicitor]** for the sale of spirituous liquor or wine which restrict the customers to whom the wholesaler **[or wholesale-solicitor]** may sell merchandise which s/he owns.

2.](B) No person holding a license as the wholesaler **[or wholesale-solicitor]** for the sale of spirituous liquor or wine **[shall] may** enter into or participate in any combination or agreement with any person holding a license as a manufacturer-solicitor or outstate solicitor of spirituous liquor or wine, which restricts the customers to whom the wholesaler **[or wholesale-solicitor]** may sell merchandise which s/he owns.

[(L)](11) Universal Numeric Codes on Invoices.

1.] The Universal Numeric Code for Alcoholic Beverages **[shall be used to code all liquors]** and Missouri’s **[six (6)-digit wine code shall] brand number is to** be used to code all wines on all invoices written by any manufacturer, vintner, solicitor, and/or wholesaler licensed by the Division of **[Liquor] Alcohol and Tobacco** Control of Missouri; this **[shall]** includes invoices written by wholesalers to retail licensee. **[The brand number to be used concurrent with other descriptive data by Missouri licensed manufacturers, vintners and solicitors is the six (6)-digit number developed by the Distilled Spirits Council of the United States, Inc. and Missouri’s six (6)-digit wine code.]** In addition, the descriptive data for liquors and wines **[shall]** includes the age or vintage, proof or percent of alcohol by weight, class and type, and brand name. Missouri wholesalers **[shall] are to** include brand name, age, and proof for spirituous liquors and vintage for wines on all invoices to retailers when the vintage creates a cost differential for the same type of wine. Any failure of any person, firm, or corporation licensed under any provisions of Chapter[s] 311 **[and 312]**, RSMo to comply in all respects with the rules and any violation by any licensee of these rules **[shall] may** be deemed to be cause for the revocation or suspension of the license of the offending licensee.

AUTHORITY: section 311.660, RSMo [1994] 2016. This version of rule filed Dec. 22, 1975, effective Jan. 1, 1976. For intervening history, please consult the Code of State Regulations. Amended: Filed Oct. 10, 2018.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Alcohol and Tobacco Control at 1738 East Elm Street, Lower Level in Jefferson City, Mo 65101 or by facsimile at (573) 526-4540, or via email at Karen.Dorton@dps.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 70—Division of Alcohol and Tobacco Control
Chapter 2—Rules and Regulations**

PROPOSED AMENDMENT

11 CSR 70-2.230 Multiple Store Retailers. The division is amending sections (1), (2), (3), and (4).

PURPOSE: To revise this section, which establishes procedures for storage and transfer from a central warehouse by multiple licensed intoxicating liquor licensees, to reflect the elimination of Chapter 312, RSMo, regulating nonintoxicating beer. The division's name will be changed to Division of Alcohol and Tobacco Control in all applicable sections.

(1) This regulation applies to all persons[, firms or corporations] or entities who own and operate more than one (1) premises licensed to sell intoxicating liquor [containing alcohol in excess of five percent (5%) by weight] at retail.

(2) Any person[, firm or corporation defined] or entity set forth in section (1), with the permission of the supervisor of [liquor] alcohol and tobacco control, may designate one (1) or more places as a central warehouse to which intoxicating liquors ordered and purchased by a person[, firm or corporation] or entity from licensed wholesalers may be delivered by licensed wholesalers and at which intoxicating liquors so owned by a person[, firm or corporation] or entity may be stored.

(3) Any person[, firm or corporation defined] or entity set forth in section (1) owning and storing intoxicating liquors in a central warehouse as provided in section (1) may transfer all or any part of the intoxicating liquors so stored from the central warehouse to any premises licensed to sell intoxicating liquors at retail which is owned and operated by the same person[, firm or corporation] or entity and which is located in the same county in which the central warehouse is located, or is located in a county adjoining and contiguous to the county in which the central warehouse is located, but not otherwise; except that private brands of intoxicating liquor owned and sold exclusively by only one (1) person[, firm or corporation] or entity as set forth in section (1), and brands not privately owned but sold exclusively by only one (1) person[, firm or corporation] or entity may be transferred from the warehouse to any licensed premises in the state owned by a person[, firm or corporation] or entity, who is the exclusive retail dealer of the brand; provided, however, that [no] malt liquor [shall be] is not transferred from the central warehouse to another licensed premises unless the licensed premises is located in the same designated geographic area of the wholesaler from whom the malt liquor was purchased. The City of St. Louis [shall be] is deemed to be a county for the purposes of this regulation.

(4) Any person[, firm or corporation defined] or entity set forth in section (1) desiring to transfer intoxicating liquor from a premises licensed to sell intoxicating liquors at retail-owned and controlled by a person[, firm or corporation] or entity to another premises so licensed and owned and controlled by the same person[, firm or corporation] or entity, [shall] should first notify the supervisor of [liquor] alcohol and tobacco control in writing describing the type, brand, size containers, and amount of intoxicating liquors to be so transferred, the license numbers of the premises from which and to which the transfer is to be made, and the true reason for the transfer and [shall not make the] no transfer may be made until the supervisor of [liquor] alcohol and tobacco control [shall have] has assented to the transfer or until three (3) full days (not counting Saturdays, Sundays, and holidays) [shall have] has elapsed after the receipt of the notice by the supervisor of [liquor] alcohol and tobacco control during which time the supervisor [of liquor control shall not have refused to allow] did not refuse the transfer.

AUTHORITY: section 311.660, RSMo Supp. [1989] 2018. This version of rule filed Feb. 8, 1973, effective Feb. 18, 1973. Amended: Filed May 15, 1987, effective Aug. 13, 1987. Amended: Filed Oct. 10, 2018.

PUBLIC COST: This proposed amendment will not cost state agen-

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Alcohol and Tobacco Control at 1738 East Elm Street, Lower Level in Jefferson City, MO 65101 or by facsimile at (573) 526-4540, or via email at Karen.Dorton@dps.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 11—DEPARTMENT OF PUBLIC SAFETY Division 70—Division of Alcohol and Tobacco Control Chapter 2—Rules and Regulations

PROPOSED AMENDMENT

11 CSR 70-2.250 Salvaged Alcoholic Beverages. The division is amending sections (1), (2), and (3).

PURPOSE: To revise this section, which establishes licensing and procedure for disposal of salvaged intoxicating liquors, to reflect the elimination of Chapter 312, RSMo, regulating nonintoxicating beer. The division's name will be changed to Division of Alcohol and Tobacco Control in all applicable sections.

(1) [Alcoholic beverages] **Intoxicating liquors** which are damaged in this state as a result of flood, wreck, fire, or similar occurrence may be sold for salvage.

(2) [Alcoholic beverages] **Intoxicating liquors** so salvaged may be sold to a Missouri licensee, upon the approval of the supervisor under the following terms and conditions:

(A) Application shall be made to the supervisor for authority to sell distressed merchandise in Missouri. The application shall contain including the name of the person desiring to sell the merchandise, the nature of the damage, a description of the merchandise, and whether the contemplated sale is to be to a Missouri licensee;

(B) The distressed merchandise [shall] is to be examined at the scene of the occurrence, as soon as practicable, by a representative of the Department of Health and Senior Services and the sale [shall] is not to be approved by the supervisor until notified by the representative that the merchandise is fit for human consumption;

(C) Written approval and release for the sale of distressed merchandise [shall] cannot be issued until an inspection of the distressed merchandise is made by an agent of the Division of [Liquor] Alcohol and Tobacco Control who will determine whether the merchandise is within the meaning of this regulation and that all Missouri taxes have been paid; and

(D) No merchandise [shall] may be sold under this regulation where the original packages have been so damaged so as to render the label on the package not within the requirements under 11 CSR 70-2.060(1); and.

[(E) Anyone seeking to sell distressed merchandise shall obtain a permit from the supervisor.]

(3) [Alcoholic beverages] **Intoxicating liquors** so salvaged [shall be] are referred to as distressed merchandise.

(A) Each container of [alcoholic beverage] **intoxicating liquors** sold pursuant to this regulation shall bear a label, to be provided by the Division of [Liquor] Alcohol and Tobacco Control, certifying the merchandise as distressed merchandise.

AUTHORITY: section 311.660, RSMo Supp. [1989] 2018. This version of rule filed Feb. 8, 1973, effective Feb. 18, 1973. Amended: Filed Oct. 10, 2018.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Alcohol and Tobacco Control at 1738 East Elm Street, Lower Level in Jefferson City, MO 65101 or by facsimile at (573) 526-4540, or via email at Karen.Dorton@dps.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 70—Division of Alcohol and Tobacco Control
Chapter 2—Rules and Regulations**

PROPOSED AMENDMENT

11 CSR 70-2.260 State of Emergency. The division is amending section (1).

PURPOSE: To revise this section, which establishes authority for the supervisor of alcohol and tobacco control when a state of emergency is declared, to reflect the elimination of Chapter 312, RSMo, regulating nonintoxicating beer. The division's name will be changed to Division of Alcohol and Tobacco Control in all applicable sections.

(1) Whenever, pursuant to the Constitution and laws of Missouri, the governor or acting governor of this state *[shall]* declares a state of emergency, calls out the organized militia or any portion or individual of the militia to execute or *[i]n*sure obedience to law or declare a state of martial law in any section of this state, all persons, partnerships, *[associations of persons or corporations]* or entities licensed under the laws of Missouri to sell, dispense, or otherwise deal with intoxicating liquor *[or nonintoxicating beer]*, upon notice from the supervisor of *[liquor]* alcohol and tobacco control, announced publicly or delivered personally, *[shall be required]* are to suspend further business under the licenses issued to the persons, partnerships, *[associations of persons or corporations]* or entities until the time as the supervisor *[shall]* determines and so informs the licensees that the proclamation of emergency or crisis as issued by the governor or acting governor has been terminated, provided that the supervisor of *[liquor]* alcohol and tobacco control *[shall]* may specify the geographical limit within the state within which area the licenses shall be suspended.

AUTHORITY: section 311.660, RSMo Supp. [1989] 2018. This version of rule filed Feb. 8, 1973, effective Feb. 18, 1973. Amended: Filed Oct. 10, 2018.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the

Division of Alcohol and Tobacco Control at 1738 East Elm Street, Lower Level in Jefferson City, MO 65101 or by facsimile at (573) 526-4540, or via email at Karen.dorton@dps.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 70—Division of Alcohol and Tobacco Control
Chapter 2—Rules and Regulations**

PROPOSED AMENDMENT

11 CSR 70-2.270 Transfer and Registration of Lines or Brands of Spirituous Liquor and Wine. The division is amending sections (1)–(5).

PURPOSE: This rule provides procedures for a supplier of spirituous liquor and wine to remove and/or create any additional distributor or any line or brand of product. The division's name will be changed to Division of Alcohol and Tobacco Control in all applicable sections. Corporations and LLC's will be changed to entities as earlier defined in 11 CSR 70-2.010 definitions. Also, the reference to alcohol content will be changed to spirituous liquor so that it is clear this does not apply to malt liquor.

(1) The term supplier, as used in this regulation, *[shall]* means any person, partnership, *[corporation or other form of business enterprise]* or entity licensed as a manufacturer, distiller, vintner, rectifier, solicitor (or any employee or agent of the solicitor) which distributes wine or *[intoxicating liquor containing alcohol in excess of five percent (5%) by weight]* spirituous liquor to duly licensed wholesalers in this state.

(2) The term wholesaler, as used in this regulation, *[shall]* means any person, partnership, *[corporation or other form of business enterprise]* or entity (or any employee or agent of the enterprise) licensed to sell wine or *[intoxicating liquor containing alcohol in excess of five percent (5%) by weight]* spirituous liquor to duly licensed retailers in this state.

(3) No supplier *[shall]* may encourage, solicit, cause, or conspire with a wholesaler to evade or disobey any laws or regulations of the state of Missouri relating to intoxicating liquor. No supplier may, directly or indirectly, *[shall]* threaten to remove or remove a line or brand from a wholesaler because of the refusal or failure of the wholesaler to evade or disobey any laws or regulations of Missouri relating to intoxicating liquor. Nor *[shall]* may any supplier, directly or indirectly, threaten to or create an additional distributorship in retaliation against a wholesaler who refuses to evade or disobey any laws or regulations of Missouri relating to intoxicating liquor.

(4) All wholesalers *[shall]* are to register with the supervisor of liquor control, the lines, brands, or both of alcoholic beverages which they handle and distribute in this state. No wholesaler *[shall]* may add an additional line or brand without first filing a statement under oath with the supervisor and with every other wholesaler affected. The statement shall contain the following:

(A) The name of each line or brand of *[intoxicating]* spirituous liquor or wine which they will handle and distribute in this state and the anticipated date upon which the distribution of the line or brand is to begin;

(5) Prior to removing a line or brand from one (1) wholesaler and/or prior to creating an additional distributorship on a line or brand, *[every supplier shall]* suppliers are to file with the supervisor a statement under oath containing the following:

(A) The name and address of each wholesaler to whom a line, brand, or both is being transferred or added;

(C) The name of each line or brand to be removed, transferred, or added; and

(D) A certification that this removal, transfer, or creation of an additional distributorship is not in retaliation against any wholesaler who refuses to evade or disobey any existing laws or regulations of Missouri relating to intoxicating liquor.

AUTHORITY: section 311.660, RSMo Supp. [1989] 2018. This version of rule filed April 16, 1975, effective April 26, 1975. Amended: Filed Oct. 10, 2018.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Alcohol and Tobacco Control at 1738 East Elm Street, Lower Level in Jefferson City, MO 65101 or by facsimile at (573) 526-4540, or via email at Karen.Dorton@dps.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 70—Division of Alcohol and Tobacco Control
Chapter 2—Rules and Regulations**

PROPOSED AMENDMENT

11 CSR 70-2.280 Guidelines for Using Minors in Intoxicating Liquor [or Nonintoxicating Beer] Investigations. The division is amending section (1) and removing all forms.

PURPOSE: To revise this section, which establishes guidelines for the use of minors in intoxicating liquor investigations by a state, county, municipal, or other local law enforcement authority, to reflect the elimination of Chapter 312, RSMo, regulating nonintoxicating beer. In addition, the time requirements for contacting the clerk who sold alcohol to a minor and the manager of the licensed premises are being removed. The requirement to retrieve the currency used in a compliance check is also being removed. These requirements are being removed as they provide no enhancements to the successful prosecution of the violations.

(1) The following *[shall constitute]* **are** guidelines for the use of minors in intoxicating liquor *[or nonintoxicating beer]* investigations by a state, county, municipal, or other local law enforcement authority:

(A) The minor *[shall]* be eighteen (18) or nineteen (19) years of age;

(B) The minor *[shall]* have a youthful appearance and the minor, if a male, *[shall]* not have facial hair or a receding hairline; if a female, *[shall]* not wear excessive makeup or excessive jewelry. The minor, male or female, *[shall]* not wear headgear that will obstruct a clear view of the face or hairline;

(C) The minor *[shall]* carry his or her own identification showing the minor's correct date of birth and *[shall]*, upon request, produce such identification to the seller of the intoxicating liquor *[or nonintoxicating beer]* at the licensed establishment; and the state, county, municipal, or other local law enforcement agency shall search the minor prior to the operation to ensure that the minor is not in pos-

session of any other valid or fictitious identification;

(D) The minor shall answer truthfully any questions about his or her age and *[shall]* not remain silent when asked questions regarding his or her age, nor misrepresent anything in order to induce a sale of intoxicating liquor *[or nonintoxicating beer]*;

(E) The state, county, municipal, or other local law enforcement agency *[shall]* **are to** make a *[photo]*copy of the minor's valid identification showing the minor's correct date of birth;

(F) Any attempt by such minor to purchase intoxicating liquor *[or nonintoxicating beer]* products *[shall]* be videotaped or audiotaped with equipment sufficient to record all statements made by the minor and the seller of the intoxicating liquor *[or nonintoxicating beer]* product;

(G) The minor *[shall]* **is** not *[be]* employed by the state, county, municipal, or other local law enforcement agency on an incentive or quota basis;

(H) If a violation occurs, the state, county, municipal, or other local law enforcement agency *[shall, within two (2) hours,]* makes reasonable efforts to confront the seller, *if practical, and further, in a timely manner, and* within forty-eight (48) hours, contact or take all reasonable steps to contact the owner or manager of the establishment;

(I) The state, county, municipal, or other local law enforcement agency *[shall]* maintains records of each visit to an establishment where a minor is used by the state, county, municipal, or other local law enforcement agency for a period of at least one (1) year following the incident, regardless of whether a violation occurs at each visit, and such records shall, at a minimum, include the following information:

1. A photograph of the minor taken immediately prior to the operation;

2. A *[photo]*copy of the minor's valid identification, showing the minor's correct date of birth;

3. An Information and Consent document, *[included herein,]* completed by the minor in advance of the operation *[in the following form:]*.

[Minor Information and Consent

State of Missouri)
COUNTY of _____)

Before me, the undersigned authority, on this _____ day of _____, 20____, personally appeared _____, who by me is known and who after being by me first duly sworn did depose and state:

1. I am _____, a minor, and was born on the _____ day of _____, 19____.
My address is _____.
My driver's license number is _____ in the State of _____.
My Social Security number is _____.
My parents'/legal guardians' names are _____.
My home telephone number is _____.

2. I do hereby agree to assist the _____ in the investigation of offenses involving the unlawful sale of intoxicating liquor or nonintoxicating beer products in this state. I understand that I will be entering locations, in which intoxicating liquor or nonintoxicating beer products are sold and that I will attempt to purchase intoxicating liquor or nonintoxicating beer products, but only under the direction and supervision of agents of the _____.

3. I understand that I may wear an audio recording or transmitting device, which will record or transmit oral conversations, while I am attempting the purchase of intoxicating liquor or nonintoxicating beer products, and I consent to wearing such. I also consent to the video recording of my activities during these attempts.

4. I understand and agree that I may be required to appear and testify in court and/or in an administrative proceeding concerning the purchase of intoxicating liquor or nonintoxicating beer products or other criminal or administrative violations and that said appearance and testimony may be required in Jefferson City or another location in this state.

Signature

Print Name

Sworn to and subscribed before me this _____ day of _____, 20____.

Notary Public]

- 4. The name of each establishment visited by the minor, and the date and time of each visit; **and**
- 5. The audiotape or videotape specified in subsection (1)(F) above; and
- 6. A written Minor Report *[in the following form:]*.

<i>[Minor Report</i>	
<i>Date of Purchase:</i> _____	<i>Time of Purchase:</i> _____ a.m./p.m.
<i>Name of Establishment:</i> _____	
<i>Address: (street and city)</i> _____ <i>(County)</i> _____	
<i>Approximate Age of Seller:</i> _____	<i>Sex of Seller:</i> _____
<i>Hair Color of Seller:</i> _____	<i>Clothing of Seller:</i> _____
<i>Seller's Actions (did or did not ask for I.D.):</i> _____	
<i>Description of Product and Brand Purchased:</i> _____	
<i>Quantity:</i> _____	<i>Price:</i> _____
<i>Conversation with Seller:</i> _____	

<i>Other Details:</i> _____	

<i>Minor's Signature]</i>	

(J) The state, county, municipal, or other local law enforcement agency *[must]* provide *[pre-recorded]* currency to the minor, to be used in the operation[, and, if a violation occurs, must make all reasonable efforts to retrieve the pre-recorded currency]. If a violation occurs, said agency *[shall]* **should** further secure and inventory any intoxicating liquor *[or nonintoxicating beer]* products purchased; and

(K) The state, county, municipal, or other local law enforcement agency *[must]*, in advance of the operation, train the minor who will be used in the operation[, which]. *[t]*Training *[shall]*, at a minimum, includes:

*[i]*1. *[i]*Instruction to enter the designated establishment and to proceed immediately to attempt to purchase intoxicating liquor *[or nonintoxicating beer]* products;

*[ii]*2. *[i]*Instruction to provide the minor's valid identification upon a request for identification by the seller;

*[iii]*3. *[i]*Instruction to answer truthfully all questions about age;

*[iv]*4. *[i]*Instruction not to lie to the seller to induce a sale of intoxicating liquor *[or nonintoxicating beer]* products;

*[v]*5. *[i]*Instruction on the use of *[pre-recorded]* currency; and

*[vi]*6. *[i]*Instruction on the other matters set out in this regulation.

AUTHORITY: section 311.722, RSMo Supp. [2005] 2018. Original rule filed Jan. 13, 2006, effective Aug. 30, 2006. Amended: Filed Oct. 10, 2018.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Alcohol and Tobacco Control at 1738 East Elm Street, Lower Level in Jefferson City, MO 65101 or by facsimile at (573) 526-4540, or via email at Karen.Dorton@dps.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 70—Division of Alcohol and Tobacco Control
Chapter 3—Tobacco Regulations**

PROPOSED AMENDMENT

11 CSR 70-3.010 Retailer Employee Tobacco Training Criteria.
The division is amending all sections.

PURPOSE: This rule establishes training criteria for retailers and employees selling tobacco products, alternative nicotine products, or vapor products. The law was changed in 2014, HB841, to define what an alternative nicotine product is and restrict the sale of these products to minors in the same manner as tobacco products are currently restricted.

(1) Minimum retailer employee tobacco training, as referenced in section 407.931.6, RSMo, *[shall]* **is not to** exceed a total of ninety (90) minutes in length and *[shall]* covers the following criteria:

(B) Federal regulations pertaining to retail sales of tobacco products, **alternative nicotine products, or vapor products**, set out in 21 CFR *[Part 897]* **1140.1 et seq.**;

(E) The refusal and denial of the sale of tobacco products, **alternative nicotine products, or vapor products** to a minor or to someone without proper identification.

(2) An owner of an establishment where tobacco products, **alternative nicotine products, or vapor products** are available for sale may claim the exemption of section 407.931.6, RSMo if said owner had in place an in-house or other tobacco compliance employee training program meeting the criteria in section (1) above, and the training was attended by all employees who sell tobacco products, **alternative nicotine products, or vapor products** to the general public.

(3) Each employee attending the training *[shall]* **is to** sign and date a certification upon completion of the training stating that the employee has been trained and understands the state laws and federal regulations regarding the sale of tobacco products, **alternative nicotine products, or vapor products**. This certification *[shall]* **is to** be presented to the supervisor of *[liquor]* **alcohol and tobacco** control upon request.

AUTHORITY: section 407.931.6(3), RSMo Supp. [2001] 2018. Original rule filed Sept. 27, 2001, effective March 30, 2002.

Amended: Filed Oct. 10, 2018.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Alcohol and Tobacco Control at 1738 East Elm Street, Lower Level in Jefferson City, MO 65101 or by facsimile at (573) 526-4540, or via email at Karen.Dorton@dps.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 2—Income Tax**

PROPOSED AMENDMENT

12 CSR 10-2.010 Capital [Gain [Loss]] Allocation Between Spouses. The division is amending the title of the rule, the purpose, sections (1) and (2), and deleting sections (3) and (4).

PURPOSE: The amendment reflects the changes in federal rules on capital gains and losses. The treatment of losses is simplified. The rules on gains are no longer necessary and they are deleted.

PURPOSE: This rule sets forth the method to be used by married persons filing joint federal income tax returns in allocating capital [gains and] losses between the spouses for Missouri income tax purposes.

(1) The following general rules have been issued by the Missouri Department of Revenue and should be used in arriving at Missouri adjusted gross income (MAGI) of each spouse in situations involving [gains or] losses from sale or exchange of capital assets, but only if the [husband and the wife] spouses file a joint federal income tax return for the year. [The rules presume the applicability of the Missouri Income Tax Law of 1973 (Senate Bill 549).]

(2) Losses: General Rule. If the losses from the sale or exchange of capital assets exceed the net gains from the sales, so [that line 14, Schedule D, Form 1040 is] a loss is reported on Form 1040, then, subject to the limitation provided for in Internal Revenue Code (IRC) Section 1211, allocate the excess to the spouse responsible for the excess. (For examples 1-3 below, the Section 1211 limitation is \$3,000.) If both spouses are responsible for the excess, then allocate the excess, subject to IRC Section 1211 limitation, between the spouses on a pro rata basis. [Allocate excess short-term capital losses before allocating excess long-term capital losses.]

(A) Example No. 1: Assume the following facts on the joint federal income tax return for [1973] 2017:

	[Husband]	Wife	Total
Wages	\$10,000	\$5000	\$15,000
Short-Term Gain (Loss)	0	0	
Long-Term Gain (Loss)	(\$2000)	(\$3000)	(\$5000)
FAGI			*\$14,000

*Section 1211 Limitation of (\$1000).]

	Spouse 1	Spouse 2	Total
Wages	\$10,000	\$5,000	\$15,000
Gain (loss)	(\$2,000)	(\$3,000)	(\$5,000)
Section 1211 limitation			(\$3,000)
Federal adjusted gross income (FAGI)			\$12,000

Missouri Answer: The amount of the excess is [(5000)] \$5,000 but, because of the limitation of IRC Section 1211, the deductibility of the loss is limited to [(1000)] \$3,000. Since both spouses are responsible for the excess, then allocate the [(1000)] \$3,000 on a pro rata basis, that is—[husband] Spouse 1 (2/5 x [1000] 3,000) and [wife] Spouse 2 (3/5 x [1000] 3,000).

MAGI is therefore—

	[Husband]	Wife	Total
Wages	\$10,000	\$5000	
Less Section 1211 Deduction	(\$400)	(\$600)	
MAGI	\$9600	\$4400	\$14,000]

	Spouse 1	Spouse 2	Total
Wages	\$10,000	\$5,000	
Section 1211 deduction	(\$1,200)	(\$1,800)	
MAGI	\$8,800	\$3,200	\$12,000

(B) Example No. 2: Assume the following facts on the joint federal income tax return for [1973] 2017:

	[Husband]	Wife	Total
Wages	\$10,000	\$5000	\$15,000
Short-Term Gain (Loss)	(\$200)	(\$300)	(\$500)
Long-Term Gain (Loss)	(\$8000)	(\$3000)	(\$5000)
FAGI			*\$14,000

*Section 1211 Limitation of (\$1000).]

	Spouse 1	Spouse 2	Total
Wages	\$10,000	\$5,000	\$15,000
Short-term Gain (loss)	(\$200)	(\$300)	(\$500)
Long-term Gain (loss)	(\$8,000)	\$3,000	(\$5,000)
Section 1211 limitation			(\$3,000)
Federal adjusted gross income			\$12,000

Missouri Answer: [The Section 1211 limitation of (1000) should be allocated as follows: a) Allocate excess short-term losses of (500) first and, since both spouses are responsible for the excess, it should be allocated on a pro rata basis, that is husband (2/5 x 500) and wife (3/5 x 500); b) Allocate the remaining (500) of the limitation from excess long-term losses and, since the husband is responsible for the excess, the remaining (500) should be allocated entirely to him. Note that husband must use \$2 of net long-term loss to offset \$1 of ordinary income.] The amount of the excess is \$5,500 but, because of the limitation of IRC Section 1211, the deductibility of the loss is limited to \$3,000. The \$5,500 excess includes \$5,200 for Spouse 1 and \$300 for Spouse 2. Since both spouses are responsible for the excess, then allocate the \$3,000 on a pro rata basis, that is, Spouse 1 (5,200/5,500 x 3,000) and Spouse 2 (300/5,500 x 3,000).

MAGI is therefore

	[Husband]	Wife	Total
Wages	\$10,000	\$5000	

<i>Less</i>			
<i>Section 1211</i>			
<i>Deduction</i>	<i>(\$700) i.e.</i>	<i>(\$300) i.e.</i>	
	<i>S.T. (\$200)</i>	<i>S.T. (\$300)</i>	
x	+	+	
	<i>L.T. (\$500)</i>	<i>0</i>	
<i>MAGI</i>	<i>\$9300</i>	<i>\$4700</i>	<i>\$14,000]</i>
	Spouse 1	Spouse 2	Total
Wages	\$10,000	\$5,000	
Section 1211 deduction	(\$2,850)	(\$150)	
MAGI	\$7,150	\$4,850	\$12,000

(C) Example No. 3: Assume the following facts on the joint federal income tax return for [1973] 2017:

	<i>[Husband</i>	<i>Wife</i>	<i>Total</i>
<i>Wages</i>	<i>\$10,000</i>	<i>\$5000</i>	<i>\$15,000</i>
<i>Short-Term Gain (Loss)</i>	<i>(\$1000)</i>	<i>(\$1000)</i>	<i>(0)</i>
<i>Long-Term Gain (Loss)</i>	<i>(\$8000)</i>	<i>(\$3000)</i>	<i>(\$5000)</i>
<i>FAGI</i>			<i>*\$14,000</i>

*Section 1211 Limitations of (\$1000)].

	Spouse 1	Spouse 2	Total
Wages	\$10,000	\$5,000	\$15,000
Short-term Gain (loss)	\$1,000	(\$1,000)	\$0
Long-term Gain (loss)	(\$8,000)	\$3,000	(\$5,000)
Section 1211 limitation			(\$3,000)
FAGI			\$12,000

Missouri Answer: Since there are no net short-term losses, all of the IRC Section 1211 limitation of [(1000)] \$3,000 should be allocated from excess long-term losses. Since [the husband] Spouse 1 is responsible for the excess, the entire amount of the limitation is allocated to [him] Spouse 1.

MAGI is therefore:

	<i>[Husband</i>	<i>Wife</i>	<i>Total</i>
<i>Wages</i>	<i>\$10,000</i>	<i>\$5000</i>	
<i>Less</i>			
<i>Section 1211</i>			
<i>Deduction</i>	<i>(\$1000)</i>	<i>0</i>	
<i>MAGI</i>	<i>\$9,000</i>	<i>\$5,000</i>	<i>\$14,000]</i>

	Spouse 1	Spouse 2	Total
Wages	\$10,000	\$5,000	
Section 1211 deduction	(\$3,000)	\$0	
MAGI	\$7,000	\$5,000	\$12,000

[(3) Gains: General Rule. If net gains from the sale or exchange of capital assets exceed net losses from the sales, so that line 14, Schedule D, Form 1040 is a gain, then allocate the excess short-term capital gain to the spouse(s) responsible for the gains, and allocate the excess long-term capital gain to the spouse(s) responsible for the gain and allocate the IRC Section 1202 deduction in the same manner and to the same spouse(s) to whom excess long-term gains are allocated. If both spouses are responsible for the excess short-term (long-term) gain, then allocate the excess of short-term (long-term) gain on a pro rata basis.

(A) Example No. 4: Assume the following facts on the joint federal income tax return for 1973:

	<i>Husband</i>	<i>Wife</i>	<i>Total</i>
<i>Wages</i>	<i>\$10,000</i>	<i>\$5,000</i>	<i>\$15,000</i>
<i>Short-Term Gain (Loss)</i>	<i>0</i>	<i>0</i>	
<i>Long-Term Gain (Loss)</i>	<i>(\$3,000)</i>	<i>(\$8,000)</i>	<i>(\$5,000)</i>
<i>FAGI</i>			<i>*\$17,500</i>

*\$5000 net long-term gain less IRC Section 1202 deduction of \$2500.

Missouri Answer: Since the excess gains are all net long-term gains and since the wife is responsible for the excess, then allocate the entire amount of the excess to the wife and also allocate the entire IRC Section 1202 deduction to the wife.

MAGI is therefore

	<i>Husband</i>	<i>Wife</i>	<i>Total</i>
<i>Wages</i>	<i>\$10,000</i>	<i>\$5000</i>	
<i>Plus</i>			
<i>Excess Gains</i>	<i>0</i>	<i>\$5000</i>	<i>(L.T.)</i>
<i>Less</i>			
<i>Section 1202</i>			
<i>Deduction</i>	<i>0</i>	<i>\$2500</i>	
<i>MAGI</i>	<i>\$10,000</i>	<i>\$7500</i>	<i>\$17,500</i>

(B) Example No. 5: Assume the following facts on the joint federal income tax return for 1973:

	<i>Husband</i>	<i>Wife</i>	<i>Total</i>
<i>Wages</i>	<i>\$10,000</i>	<i>\$5000</i>	<i>\$15,000</i>
<i>Short-Term Gain (Loss)</i>	<i>(\$8000)</i>	<i>(\$3000)</i>	<i>(\$5000)</i>
<i>Long-Term Gain (Loss)</i>	<i>(\$3000)</i>	<i>(\$8000)</i>	<i>(\$5000)</i>
<i>FAGI</i>			<i>*\$22,500</i>

*IRC Section 1202 deduction of \$2,500.

Missouri Answer: Since the husband is responsible for the entire amount of excess short-term gains, the excess is allocated to the husband. Since the wife is responsible for the entire amount of excess long-term gains, the excess, as well as the IRC Section 1202 deduction, should be allocated to her.

Missouri AGI is therefore:

	<i>Husband</i>	<i>Wife</i>	<i>Total</i>
<i>Wages</i>	<i>\$10,000</i>	<i>\$5000</i>	
<i>Plus</i>			
<i>Excess Gains</i>	<i>\$5000</i>	<i>\$5000</i>	<i>(S.T.) (L.T.)</i>
<i>Less</i>			
<i>Section 1202</i>			
<i>Deduction</i>	<i>0</i>	<i>\$2500</i>	
<i>MAGI</i>	<i>\$15,000</i>	<i>\$7500</i>	<i>\$22,500</i>

loss is \$5000.

Missouri Answer: Since net short-term capital gains exceed net long-term capital loss, the \$5000 figure reported on line 14, Schedule D, Form 1040 is an excess short-term gain. Since the husband is responsible for the entire amount of excess short-term gain, the excess is allocated to the husband.

MAGI is therefore

	Husband	Wife	Total
Wages	\$10,000	\$5000	
Plus Excess Gains	\$5000 (S. T.)	0	
Less Section 1202 Deduction	0	0	
MAGI	\$15,000	\$5000	\$20,000

AUTHORITY: section 143.961, RSMo [1986] 2016. This rule was previously filed as Income Tax Release 73-II, Jan. 29, 1974, effective Feb. 8, 1974. Amended: Filed Oct. 2, 2018.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Revenue, General Counsel's Office, PO Box 475, Jefferson City, MO 65105-0475. 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 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter [3] 103—[State Sales Tax]
Sales/Use Tax—Imposition of Tax

PROPOSED AMENDMENT

12 CSR 10-[3]/103.017 Ticket Sales. The division is moving the rule, amending the purpose, adding new sections (1) and (2), amending and relettering sections (1) and (5).

PURPOSE: The purpose of this amendment is to update the regulation so that it conforms with The St. Louis Rams LLC, f/k/a The St. Louis Rams Partnership v. Director of Revenue, 526 S.W.3d 124 (Mo. banc 2017).

PURPOSE: This rule clarifies what sales tax is required to be paid and collected on the sale of tickets. Applicable sales taxes are enumerated and the method of determining the tax due is specified. This rule interprets and applies sections 144.010.1[(3)],(4) and 144.020 [and 144.080.5.], RSMo.

(1) In general, all tickets sold to permit admission to any theater, sporting event, exhibit, or any other event is subject to sales tax

and should be collected by the seller.

(2) Basic Application of Tax.

[(1)](A) All tickets sold to permit admission to any theater, sporting event, exhibit, or any other event where sales tax is required to be paid and collected must contain a statement on the face of the ticket "This ticket is subject to a [four percent (4%)] sales tax," as provided in section 144.020.2., RSMo.

[(2)](B) All tickets stating a single amount as the price for the ticket and containing the statement set forth in section (1) shall be subject to the sales tax on the single amount so stated and the tax rate shall be applied against that amount.

[(3)](C) If the total selling price of a ticket is intended to include [state and local] sales tax, the vendor must advise the purchaser of the cost of admission and the amount of tax by printing these amounts on the ticket, by posting a prominently displayed sign stating that amount, or by giving other written notice.

[(A)]1. The ticket or notice must contain the following language:

Cost of admission	\$(amount)
Sales tax	\$(amount)
Ticket price	\$(amount)

[(B)]2. Otherwise, the vendor shall be subject to sales tax on all receipts and the total price of the tickets shall be considered receipts.

*[(4)](D) All ticket sales are also subject to all applicable local sales taxes and all special purpose state sales taxes, which may now be or become applicable to these sales. The seller may include an additional statement that the ticket is subject to all applicable sales taxes, both state and local. **Any local license fees must be included in the gross receipts of the sale of the ticket and sales tax must be collected and remitted on that amount.***

[(5)](E) If the cost of admission and the applicable sales tax is not separately stated to the purchaser, as set out in section (3), the vendor shall be subject to sales tax on all receipts and the total price of the tickets shall be considered taxable receipts.

AUTHORITY: section 144.270, RSMo [1994] 2016. Original rule filed Dec. 5, 1983, effective March 11, 1984. Amended: Filed Oct. 15, 1984, effective Feb. 11, 1985. Amended: Filed Oct. 2, 2018.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Revenue, General Counsel's Office, PO Box 475, Jefferson City, MO 65105-0475. 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 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter [3] 103—[State Sales Tax]
Sales/Use Tax—Imposition of Tax

PROPOSED AMENDMENT

12 CSR 10-[3]/103.876 Taxation of Sod Businesses. The division is moving the rule, adding a new section (1), and amending and renumbering sections (2)–(11).

PURPOSE: The purpose of the amendment is to move the regulation

to a more appropriate chapter and clarify certain details.

(1) In general, the retail sale of sod is a taxable sale of tangible personal property.

[(1)](2) Definition[s] of Terms.

(A) Harvester—any person who severs growing grass from the earth for resale or otherwise as sod.

(B) Installer—any person engaged in the business of purchasing sod from either a sod producer or harvester for resale or use in a contract to improve real property.

(C) Integrated sod producer—any person who grows, harvests, and installs sod under contracts for improvements to real property.

(D) Sod producer—any person engaged in the business of planting and cultivating grass for resale or otherwise as sod.

[(2)](3) [Transactions Subject to] Basic Application of Tax. [Sellers of sod are sellers for purposes of the sales and use tax laws in Chapter 144, RSMo and are subject to the rules applicable to sellers.]

(A) Sod producers not acting as contractors are *[subject to] making sales at retail and must collect and remit sales tax [on their sales of sod to any purchaser] unless the [sod producers receive from the] purchaser provides an exemption certificate for resale or otherwise.*

(B) Harvesters who purchase sod for resale from sod producers are subject to sales tax on their sales of sod to any purchaser unless the *[harvester receives from the] purchaser provides an exemption certificate for resale or otherwise.*

(C) Installers who purchase sod to improve real property in their capacity as contractors $[,]$ or subcontractors *[or the like are subject to] must pay sales or use tax on their purchases of sod. [Under the sales tax law, the person who] A contractor incorporat[es]ing tangible personal property into real property as part of an improvement to real property is deemed to be the final user and consumer and must pay tax on [his/her] its purchases.*

(D) Installers who purchase sod for resale and not in their capacity as contractors, subcontractors, or the like are subject to sales tax on their sales of sod to consumers. Any separately stated charges by the installer for labor to install the sod are *[not] subject to tax if [title to the sod passes prior to] the installation charges are part of the sale of the sod.* The installer should furnish a certificate of exemption for resale to his/her sod supplier for these transactions.

[(3)](4) Amounts Subject to Tax. Sales of sod by sod producers, harvesters, or other retail sellers are subject to tax upon total gross receipts. If the sale of the sod includes delivery and handling charges, the delivery charges are *[taxable if title to the sod passes at the destination point. If title passes at shipping point, the delivery and handling charges are not taxable if they are separately stated to the purchaser (see 12 CSR 10-3.066).] not subject to tax if they are usual and customary. Charges for installation are subject to tax if the sod is being sold at retail and the installation is part of the sale of the sod.*

[(4)](5) Related Exemptions to Sales Tax.

(A) *[Retail sales to o]Organizations exempt pursuant to section 144.030.2(19), (20) and (22), RSMo, including governmental agencies, are exempt from tax [if] and the [purchases are billed to and paid by the exempt entity and not by the contractor.] exempt entity may issue a project exemption certificate to its contractor pursuant to section 144.062, RSMo. If such a certificate is issued, the contractor may present this certificate upon purchase of the sod.*

(B) Seed, lime, and fertilizer purchased by sod producers are exempt from sales tax if the sod is ultimately sold at retail.

(C) Purchases of machinery and equipment by sod producers are exempt if the sod is grown to be sold ultimately at retail **and the machinery and equipment is exclusively used for agricultural purposes.**

(D) Purchases of seed, fertilizer, and limestone are not exempt if the sod is grown for use by an integrated producer in its capacity as a contractor.

[(5)](6) Examples:

(A) The sod producer grows, harvests, and sells sod to installers. Terms are free on board (FOB) the farm and delivery charges to installers' worksites are separately stated. Producer invoices installer for two thousand (2000) yards of sod at fifty-five cents (55¢) per square yard and separately charges fifty dollars (\$50) for delivery. Sales tax is due at the appropriate rate on receipts of one thousand one hundred dollars (\$1,100) $(2000 \times 55¢)[];$

[(6)](B) *[Example:]* The sod producer sells sod to a harvester who harvests sod and resells the sod to installers. Harvester furnishes sod producer an Exemption for Resale Certificate. Sod producer does not collect sales tax from harvester. Harvester charges sales tax on gross amount of the sales price to this customer. If harvester purchases two thousand (2000) square yards of sod from sod producer at thirty cents (30¢) per square yard and sells it to installers for sixty cents (60¢) per square yard, sales tax is due on the one thousand two hundred dollars (\$1,200) $(2,000 \times 60¢)$ of receipts. Delivery charges, if *[separately stated] usual and customary,* are not taxable $[];$

[(7)](C) *[Example:]* Installer purchases two thousand (2,000) square yards of sod *[FOB] for the farm* from sod producer. Installer has agreed with its customer to sell customer sod for fifty-five cents (55¢) per square yard and *[separately], as part of the same transaction,* agreed to install the sod for fifteen cents (15¢) per square yard. **The title to the sod passes prior to installation.** Installer should provide sod producer with a Certificate of Exemption for Resale and charge sales tax to its customer on one thousand *[one] four hundred dollars (\$1,1400)* at the appropriate rate $[];$

[(8)](D) *[Example:]* Installer purchases two thousand (2,000) square yards of sod as personal property from producer for thirty cents (30¢) per square yard. Installer contracts separately with a harvester for cutting and delivery of sod for twenty cents (20¢) per square yard. Installer contracts with his/her customer for installation of sod at eighty cents (80¢) per square yard. Producer should collect sales tax from installer at the appropriate rate on six hundred dollars (\$600) $(2,000 \times 30¢)$ of receipts $[];$

[(9)](E) *[Example:]* An integrated sod producer grows, harvests, and installs two thousand (2,000) square yards of sod as part of a contract to improve real property. The contract calls for a price of one dollar (\$1) per square yard of sod installed. The sod grower needs only to pay tax on the seed, fertilizer, and limestone. The two thousand dollar (\$2,000) receipts from the installation contract are not taxable $[];$

[(10)](F) *[Example:]* An integrated sod producer who normally acts as a contractor occasionally sells sod at retail to homeowners. In these retail sales cases, the integrated operator should charge tax on the gross receipts of the sale to the homeowner and purchase the seed, fertilizer, and limestone tax exempt pursuant to section 144.030.2(1), RSMo $[];$ **and**

[(11)](G) *[Example:]* An integrated sod producer acting as a contractor is able to have two (2) cuttings of sod with each seeding. The first cutting results from the seeding and the second cutting results from regrowth. The integrated sod producer has no taxable event on those cuttings which are produced from regrowth.

AUTHORITY: section 144.270, RSMo [1994] 2016. Original rule filed July 2, 1990, effective Dec. 31, 1990. Amended: Filed Oct. 2, 2018.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Revenue, General Counsel's Office, PO Box 475, Jefferson City, MO 65105-0475. 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 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter [3] 110—[State Sales Tax]
Sales/Use Tax—Exemptions**

PROPOSED AMENDMENT

12 CSR 10-[3]110.858 Purchases by State Senators or Representatives. The division is moving the rule and amending sections (1) and (2).

PURPOSE: The purpose of the amendment is to move the regulation to the proper chapter.

(1) **In general, [P]**purchases of tangible personal property made by or on behalf of a Missouri state senator or representative are exempt from all taxes imposed by Chapters 66, 67, 92, 94, and 144, RSMo and Article IV, sections 43A and 47A of the Missouri Constitution providing these purchases are made from funds in the senator's or representative's state expense account.

(2) **Basic Application of Rule.** Exempt items include:

(A) Purchases of meals, lodging, and other travel expenses itemized on the state senator's or state representative's monthly expenses account (form C-12); and

(B) Purchases or rental of office furniture, supplies, and equipment which are itemized to the house or senate accounting office for reimbursement.

AUTHORITY: section 144.270, RSMo [1994] 2016. Original rule filed Jan. 26, 1989, effective May 11, 1989. Moved and amended: Filed Oct. 2, 2018.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Revenue, General Counsel's Office, PO Box 475, Jefferson City, MO 65105-0475. 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 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter [4] 113—[State Use Tax]
Sales/Use Tax—Use Tax**

PROPOSED AMENDMENT

12 CSR 10-[4]113.320 Sales Tax Rules Apply. The division is moving the rule and amending the text of the rule.

PURPOSE: The purpose of the amendment is to move the regulation to the proper chapter.

*[(1)] In general, [A]*all sales tax rules pertaining to the state sales tax sections 144.170, 144.220, and 144.230, RSMo apply to the use tax.

AUTHORITY: section 144.705, RSMo [1994] 2016. U.T. regulation 720-1 originally filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Oct. 2, 2018.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Revenue, General Counsel's Office, PO Box 475, Jefferson City, MO 65105-0475. 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 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 10—Financial Institutions**

PROPOSED AMENDMENT

12 CSR 10-10.120 Delinquent Interest Rate for Insurance Premium and Retaliatory Taxes. The division is amending sections (1) and (2).

PURPOSE: This amendment reflects the repeal of section 148.461.1, RSMo, pertaining to the calculation of the interest rate applicable to delinquent insurance premium and retaliatory taxes and clarifies the application of the interest rate imposed in section 148.375, RSMo.

(1) The delinquent interest computations for all quarterly payments [and returns] which are due under sections 148.310-148.46/O/1, RSMo will be calculated at a rate determined by section 32.065, RSMo as provided by section 148.375, RSMo and set out in 12 CSR 10-41.010. The delinquent rate will be computed for each month the [return] payment is late, or fraction of a month, until the time the tax liability is paid in full.

[(2)] Insurance companies which have paid delinquent interest, underpayment penalties for taxes due under sections 148.310-148.460, RSMo, or both, as required by section 148.461(1) RSMo, are entitled to a credit, refund, or both, for the difference in the higher rate charged under section 148.461(1), RSMo versus section 32.065, RSMo.

(A) Annual Delinquent Interest Rate.

Year	148.640	32.065	Refundable Difference
1985	18%	13%	5%
1984	18%	12%	6%
1983	18%	14%	4%

Note: Rates quoted are annual; to obtain monthly rates, divide the applicable percentage by 12.]

[(3)](2) Claims for refunds must be filed within two (2) years from

the date of payment in accordance with section 136.035, RSMo (refund statute) on forms prescribed by the director of revenue.

AUTHORITY: section 136.120, RSMo [1986] 2016. Emergency rule filed Oct. 17, 1985, effective Oct. 27, 1985, expired Feb. 24, 1986. Original rule filed Oct. 17, 1985, effective Jan. 26, 1986. Amended: Filed Oct. 2, 2018.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Revenue, General Counsel's Office, PO Box 475, Jefferson City, MO 65105-0475. 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 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 101—Sales/Use Tax—Nature of Tax**

PROPOSED AMENDMENT

12 CSR 10-101.500 Burden of Proof. The division is amending sections (3) and (4).

PURPOSE: The purpose of the amendment is to clarify and add examples.

(3) Basic Application of Burden of Proof.

(A) The [department] director always has the burden of proof regarding—

1. Whether the taxpayer has been guilty of fraud with attempt to evade tax; and
2. Whether the taxpayer is liable as the transferee of property of another taxpayer.

(B) The taxpayer always has the burden of proof on any issue with respect to the applicability of any tax [exemption or] credit.

(C) The taxpayer has the burden of proof on all other issues unless—

1. The taxpayer has produced **sufficient** evidence establishing there is a reasonable dispute with respect to the issue;
2. The taxpayer has adequate records of its transactions and provides the Department of Revenue reasonable access to these records; **and**

[3. In the case of a partnership, corporation or trust, the net worth of the taxpayer does not exceed seven (7) million dollars and the taxpayer does not have more than five hundred (500) employees at the time the final decision of the director of the Department of Revenue is issued; and]

[4.]3. If [all three (3)] both conditions are met, the [department] director has the burden of proof with respect to any factual issue relevant to ascertaining the liability of a taxpayer.

(D) A taxpayer can generally meet its burden of proof **that a sale of tangible personal property, services, substances, or things was not a taxable sale at retail** by obtaining and maintaining an exemption certificate/s signed by the purchaser or its agent. An exemption certificate that is not obtained in good faith, however, will not satisfy the burden of proof. Even when a taxpayer does not have a valid exemption certificate, it may prove that the transaction is exempt from sales and use tax by proof admissible under the applicable rules of evidence.

(4) Examples.

(A) The [department] director alleges that a taxpayer **fraudulently** fabricated exemption certificates in order to evade sales tax. The [department] director has the burden of proof.

(B) **A person is a donee, heir, legatee, devisee, or distributee of a taxpayer that owes sales tax. The director issues assessments to this person as a transferee. The director has the burden of proof to show the person is a transferee of the delinquent taxpayer.**

[(B)](C) [The] An audited taxpayer [sells tangible personal property and claims that the sale was exempt from tax. The taxpayer always has the burden of proof.] is assessed unpaid sales tax on unreported sales of meals it provided to customers. The taxpayer has the burden of proof to supply the applicable documentation that it correctly collected and remitted sales tax on the meals provided to its customers. If the taxpayer had adequate records and provided those to the department during the audit, and later produces evidence establishing that the unreported sales of meals were to non-profit customers that presented exemption certificates to the taxpayer at the time of sale, the burden of proof then shifts to the director provided the exemption certificates were received in good faith.

(D) An out-of-state vendor registered to collect use tax is assessed use tax on the sale of a computer to a Missouri customer. The vendor has the burden of proof to supply the applicable documentation that it correctly collected and remitted use tax on the sales of tangible personal property. If the vendor had adequate records and provided those to the department, the burden of proof then shifts to the director.

(E) A taxpayer is assessed use tax on its purchase of a wood lathe that it purchased out-of-state. The taxpayer has the burden of proof to supply the applicable documentation that it purchased tangible personal property that was exempt from sales or use tax. If the taxpayer has adequate records which it made available to the department and produces evidence that the lathe is used to manufacture furniture later sold for ultimate use or consumption, the burden of proof then shifts to the director.

[(C)](F) [The] A taxpayer sells tangible personal property and claims that it was a sale for resale. The taxpayer presents a valid resale exemption certificate that was accepted in good faith. The taxpayer has met its burden of proof.

[(D)](G) A jeweler sells an expensive diamond ring to his neighbor, known to the taxpayer not to be in the jewelry business. The neighbor presents an exemption certificate claiming that the ring was purchased for resale and therefore exempt from tax. The jeweler may not accept the exemption certificate without further inquiry.

[(E)](H) A jeweler sells an expensive diamond ring to a purchaser unknown to the jeweler but does not receive an exemption certificate. [On a claim that this was an exempt sale for resale,] If the jeweler fails to collect and remit tax, upon assessment by the director the jeweler has the burden of proof and may prove that the sale was exempt through testimony and documents admissible under the rules of evidence.

[(F)](I) A jeweler sells an expensive diamond ring to a purchaser unknown to the jeweler but does not receive an exemption certificate. The jeweler presents to the department an invoice for the diamond ring showing it was sold to a wholesale jeweler. The burden of proof shifts to the [department, unless the jeweler is a partnership, corporation or trust with a net worth of more than seven (7) million dollars or with more than five (500) hundred employees] director.

AUTHORITY: section 144.270, RSMo [1994] 2016. Original rule filed Nov. 18, 1999, effective June 30, 2000. Amended: Filed Oct. 2, 2018.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Revenue, General Counsel's Office, PO Box 475, Jefferson City, MO 65105-0475. 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 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 103—Sales/Use Tax—Imposition of Tax**

PROPOSED AMENDMENT

12 CSR 10-103.395 Physicians, Dentists, and Optometrists. The division is amending the purpose.

PURPOSE: The purpose of the amendment is to update the regulation and add examples.

PURPOSE: Sections 144.010.1(1)[0]3 and 144.020.1(1), RSMo, tax the retail sale of tangible personal property. This rule interprets the tax laws as they apply to physicians, dentists, and optometrists.

(1) In general, physicians, dentists and optometrists are rendering services not subject to tax. Tangible personal property purchased by physicians, dentists, and optometrists and used or consumed in the practice of their professions is subject to tax when purchased. Tangible personal property purchased by physicians, dentists, and optometrists and not used or consumed in the practice of their professions is subject to tax when resold by them.

(3) Basic Application of Tax.

(A) Physicians, dentists, and optometrists must pay tax on the purchase of items used or consumed in the practice of their profession. Such items include, but are not limited to, medical instruments, bandages, splints, x-ray film, medical equipment, **toothpaste, floss, eye-glasses, frames, and lenses.**

(B) Physicians, dentists, and optometrists that sell items that are not used in the practice of their profession are responsible for collecting and remitting the tax on the gross receipts derived from these sales.

(C) Sales by persons other than physicians or optometrists of eye-glasses, frames, and lenses are subject to tax. **The person must collect and remit tax on their gross receipts from these sales.**

(4) Examples.

(A) A physician purchases diagnostic equipment, surgical tools, and supplies for use in providing care to his/her patients. These purchases are subject to tax.

(B) A dentist purchases dental chairs from an out-of-state supplier. The chairs are shipped to the dentist's location in Missouri. The supplier does not charge tax on the invoice for the chairs. The dentist must accrue and remit use tax on this purchase.

[(B)](C) An optometrist purchases eyeglasses, frames, and lenses and uses these items in the diagnosis, treatment, and correction of conditions of the human eye. The optometrist charges the patient a separate amount for the frame and lenses. The optometrist should pay tax on these items because they are consumed in the practice of his/her profession. The amount charged the patient for the frame and lenses is not a sale at retail and is not subject to tax.

[(C)](D) A retailer of prescription eyeglasses, lenses, and frames advertises that an optometrist is available to examine customers. The optometrist performs eye examinations for customers of the retailer, but the retailer owns the inventory held for sale. Sales of the eye-

glasses, lenses, and frames are subject to tax because they are not sales by the optometrist.

[(D)](E) An optician makes and sells eyeglasses to fill a patient's prescription. These sales are subject to tax.

[(E)](F) A dentist sells accessories such as travel kits, mirrors, and other items not related to the practice of the profession. These sales are subject to tax.

(G) A dentist provides small tubes of toothpaste, floss, and mouthwash to each patient following a visit. Providing the items is not a sale at retail and are not subject to tax. The dentist should pay tax on these items because they are consumed in the practice.

AUTHORITY: section [144.010 and] 144.020, RSMo [Supp. 2001] 2016, and section 144.010, RSMo Supp. 2018. Original rule filed April 1, 2002, effective Oct. 30, 2002. Amended: Filed Oct. 2, 2018.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Revenue, General Counsel's Office, PO Box 475, Jefferson City, MO 65105-0475. 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 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 103—Sales/Use Tax—Imposition of Tax**

PROPOSED AMENDMENT

12 CSR 10-103.700 Packaging and Shipping Materials. The division is amending the purpose and sections (2)–(4).

PURPOSE: The purpose of the amendment is to update the statutory reference and fix grammatical errors and word usage.

PURPOSE: Section 144.010.1(10)[8.1, RSMo excludes from tax purchases [that are] intended to be resold as tangible personal property. Section 144.030.2(2), RSMo exempts materials that become a component part of new personal property. Section 144.011.1(10), RSMo excludes from tax certain items of a non-reusable nature purchased by eating or food service establishments. This rule explains when purchases of packaging and shipping materials are not subject to tax.

(2) Definition of Terms.

(A) Packaging and shipping materials—containers, pallets, drums, and other items used to ship merchandise to customers. It also includes supplies used in shipping, such as tape, strapping, plastic peanuts, foam, cardboard pads, packaging slips, etc. Finally, packaging encompasses integral parts of the finished product such as display cartons and packaging containing the product, e.g., cereal box, and shipping containers.

(3) Basic Application of Tax.

(A) The purchase of packaging and shipping materials are taxable if:—

1. The packaging is used solely “in house” by the seller and is not subsequently transferred to a purchaser;

2. The packaging material must be returned to the seller and the customer does not acquire title to, ownership of, or the right to use the packaging material;

3. The packaging is transferred incidental to the rendering of a non-taxable service, such as with the sale of custom software or color separations; or

4. The packaging is used to ship items that are being transferred, **such** as gifts or free samples.

(B) Purchases of items of a non-reusable nature by persons operating eating or food service establishments making retail sales are not subject to tax if the item is furnished with or in conjunction with the retail sale. Such items include, but are not limited to, wrapping and packaging items[; *and*], non-reusable paper, wood, plastic, and aluminum articles including containers, trays, napkins, dishes, silverware, cups, bags, boxes, straws, and toothpicks.

(4) Examples.

(D) A taxpayer purchases or leases pallets that will be used to ship merchandise to its customers. The customer is required to return the pallet and never acquires title to, ownership of, or the right to use them. The purchase or lease of the pallets is taxable.

(F) A dry cleaner purchases plastic bags used to protect clothes after cleaning. Because the dry cleaning is not a *[sale at retail]* **taxable service**, the dry cleaner must pay tax on the purchase of the bags.

AUTHORITY: section 144.270, RSMo [1994] 2016. Original rule filed Aug. 21, 2000, effective March 30, 2001. Amended: Filed Oct. 2, 2018.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Revenue, General Counsel's Office, PO Box 475, Jefferson City, MO 65105-0475. 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 13—DEPARTMENT OF SOCIAL SERVICES
Division 110—Division of Youth Services
Chapter 3—Aftercare Responsibilities**

PROPOSED RESCISSION

13 CSR 110-3.050 Instructions for the Implementation of Revocation Procedure. The purpose of this rule was to provide guidelines for the implementation of procedures to be followed in the revocation of aftercare supervision and return of the youth to an institution or a facility.

PURPOSE: The division is rescinding this rule because the procedures are adequately addressed in 13 CSR 110-3.040.

AUTHORITY: sections 219.036 and 219.051, RSMo 1994. Original rule filed Dec. 30, 1975, effective Jan. 9, 1976. Amended: Filed Feb. 10, 2000, effective Aug. 30, 2000. Rescinded: Filed Oct. 11, 2018.

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

PRIVATE COST: This proposed rescission 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 rescission with the Department of Social Services, Legal Services Division—Rulemaking, PO Box 1527, Jefferson City, MO 65102-1527, or by email to Rules.Comment@dss.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

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

**Division 2070—State Board of Chiropractic Examiners
Chapter 4—Chiropractic Insurance Consultant**

PROPOSED RESCISSION

20 CSR 2070-4.010 Chiropractic Insurance Consultant. This rule set out procedures for chiropractic physicians to become certified as chiropractic insurance consultants to perform third-party reviews, compensation for third-party reviews, and biennially reporting and renewal of the certification.

PURPOSE: This rule is being rescinded and re-promulgated to reorganize and consolidate language on continuing education and maintaining certification.

AUTHORITY: sections 331.060 and 376.423, RSMo 2000 and sections 331.050 and 331.100.2, RSMo Supp. 2008. This rule originally filed as 4 CSR 70-4.010. Emergency rule filed Dec. 21, 1990, effective Dec. 31, 1990, expired April 29, 1991. Original rule filed Oct. 16, 1990, effective April 29, 1991. Amended: Filed Dec. 15, 2003, effective June 30, 2004. Moved to 20 CSR 2070-4.010, effective Aug. 28, 2006. Rescinded and readopted: Filed Aug. 27, 2009, effective Feb. 28, 2010. Rescinded: Filed Oct. 4, 2018.

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

PRIVATE COST: This proposed rescission 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 rescission with the State Board of Chiropractic Examiners, PO Box 672, Jefferson City, MO 65102-0672, by facsimile at (573) 751-0735, or via email at chiropractic@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

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

**Division 2070—State Board of Chiropractic Examiners
Chapter 4—Chiropractic Insurance Consultant**

PROPOSED RULE

20 CSR 2070-4.010 Chiropractic Insurance Consultant

PURPOSE: This rule sets out procedures for chiropractic physicians

to become certified as chiropractic insurance consultants to perform third-party reviews, compensation for third-party reviews, and biennially reporting and renewal of the certification.

(1) Any licensee reviewing chiropractic billing and treatment records for the purpose of determining the adequacy or sufficiency of chiropractic treatment(s) provided to a patient, or the clinical indication for the quantity or type of such treatment(s), must first be certified by the board to do so if the purpose for such review is to assist any health insurance entity, managed care entity, or any third party payor in making a determination regarding coverage or benefits. Any licensee engaging in such practice shall be deemed an insurance consultant and shall be subject to the provision of this rule. The requirements contained herein must be met prior to engaging in insurance consulting or acting as an insurance consultant for any health insurance entity, managed care entity, or other third party payor.

(A) Application shall be made on a form provided by the board and accompanied by the required fee pursuant to 20 CSR 2070-2.090.

(B) Prior to obtaining the certification, the applicant shall submit satisfactory proof of meeting the requirements of section 376.423, RSMo.

(C) Upon approval of the application for certification, the licensee shall keep copies of records reviewed proving compliance with section 376.423, RSMo for two (2) years following review and shall submit copies of the records to the board upon request.

(2) No licensee may receive compensation from a third party payer based in whole or in part upon the amount of fees the licensee recommends to be reduced or denied when the licensee is performing services as an insurance consultant pursuant to this rule.

(3) In order to maintain a valid certification in insurance consulting, the licensee shall maintain a current Missouri license and document completion of a minimum of twelve (12) hours of formal continuing education in insurance consulting, approved by the board, for each biennial licensure cycle. Failure of the licensee to receive the renewal form shall not relieve the licensee of the duty to renew the certification. To renew the certification the licensee shall—

(A) Provide the number of claim reviews conducted during the biennial renewal cycle, the percent of their income derived from claims review when compared to total income, and the percent of income derived from the clinical practice of chiropractic; and

(B) Complete the continuing education required for the renewal of the insurance consultant certification. The continuing education hours shall apply to the required formal continuing education hours for licensure renewal.

(4) A certification in insurance consulting may be reinstated upon submitting an application provided by the board, paying the required fee pursuant to 20 CSR 2070-2.090 and documenting completion of the twelve (12) hours of formal continuing education programs, seminars, and/or workshops approved by the board for insurance consulting.

(5) A licensee applying for reinstatement may submit other topics of formal continuing education to the board accompanied by a request that those hours be counted toward attainment of the twelve (12) hours of continuing education required for reinstatement of the certification. The licensee shall be responsible for providing all documentation requested by the board and shall have the burden of demonstrating the topics contribute to the licensee's knowledge of insurance consulting. The application of such hours toward reinstatement of a certification insurance consulting shall be at the discretion of the board.

rule filed Dec. 21, 1990, effective Dec. 31, 1990, expired April 29, 1991. Original rule filed Oct. 16, 1990, effective April 29, 1991. Amended: Filed Dec. 15, 2003, effective June 30, 2004. Moved to 20 CSR 2070-4.010, effective Aug. 28, 2006. Rescinded and readopted: Filed Aug. 27, 2009, effective Feb. 28, 2010. Rescinded and readopted: Filed Oct. 4, 2018.

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

PRIVATE COST: This proposed rule will cost private entities approximately one hundred forty-five dollars and ninety-eight cents (\$145.98) biennially for the life of the rule. It is anticipated that the costs will recur for the life of the rule, may vary with inflation, and are expected to increase at the rate projected by the Legislative Oversight Committee.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the State Board of Chiropractic Examiners, PO Box 672, Jefferson City, MO 65102-0672, by facsimile at (573) 751-0735, or via email at chiropractic@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

AUTHORITY: sections 331.050, 331.060, 331.100.2, and 376.423, RSMo 2016. This rule originally filed as 4 CSR 70-4.010. Emergency

PRIVATE FISCAL NOTE

I. RULE NUMBER

Title 20 -Department of Insurance, Financial Institutions and Professional Registration
Division 2070 - State Board of Chiropractic Examiners
Chapter 4 - Chiropractic Insurance Consultant
Proposed Rule 20 CSR 2070-4.010 Chiropractic Insurance Consultant

II. SUMMARY OF FISCAL IMPACT

Estimate the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by type of the business entities which would likely be affected:	Estimated cost of compliance with the rule by affected entities:
1	Application for Certification (Application Fee @ \$100)	\$100.00
1	Application for Reactivation of License (Reactivation Fee @ \$25)	\$25.00
2	Postgraduate Education (Transcript @ \$10)	\$20.00
1	Application for Certification (Postage @ \$0.49)	\$0.49
1	Application for Reactivation of License (Postage @ \$0.49)	\$0.49
Estimated Biennial Cost of Compliance for the Life of the Rule		\$145.98

III. WORKSHEET

See table above.

IV. ASSUMPTION

1. The board anticipates that approximately 2 applicants for certification in insurance consultant will apply biennially. The board estimates that approximately 2 applicants for certification in insurance consultant will apply for reactivation biennially.
2. It is anticipated that the total cost will recur biennially for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2110—Missouri Dental Board
Chapter 2—General Rules**

PROPOSED RULE

20 CSR 2110-2.075 Nonresident Military Spouse Licensure by Credentials

PURPOSE: This rule states the requirements and procedures for a nonresident spouse of an active duty member of the military who is transferred to this state in the course of the member's military duty to obtain a license to practice.

(1) For the purpose of this rule, "nonresident military spouse" means a nonresident spouse of an active duty member of the Armed Forces of the United States who has been transferred or is scheduled to be transferred to the state of Missouri, is domiciled in the state of Missouri, or has moved to the state of Missouri on a permanent change-of-station basis.

(2) The board may issue a license to practice dentistry to any nonresident military spouse as defined in section (1) of this rule who has held a valid, current, dental license in another state, district, territory, or combination of states, districts, or territories for five (5) years immediately preceding application if the board determines the licensing requirements at the time the applicant was licensed in the other state, district, or territory were substantially equivalent to the current licensing requirements in Missouri.

(3) The board may issue a license to practice dental hygiene to any nonresident military spouse as defined in section (1) of this rule who has held a valid, current, dental hygiene license in another state, district, territory, or combination of states, districts, or territories for two (2) years immediately preceding application if the board determines the licensing requirements at the time the applicant was licensed in the other state, district, or territory were substantially equivalent to the current licensing requirements in Missouri.

(4) For the purpose of this rule, substantially equivalent licensing requirements means that the applicant has—

(A) Graduated from a Commission on Dental Accreditation of the American Dental Association (CODA) accredited dental or dental hygiene school as defined in section 332.011, RSMo;

(B) Passed the National Board Examination in accordance with the criteria established by the sponsoring body; and

(C) Passed a state or regional entry level clinical competency examination.

(5) To apply for a license as a nonresident military spouse, an applicant shall provide the following documentation to the board:

(A) A completed application form;

(B) Evidence of meeting the criteria of a nonresident military spouse as defined in section (1) of this rule;

(C) Verification sent directly to the board from each state, district, or territory of the United States in which s/he has ever been licensed verifying that the applicant is or was in good standing and has never had his/her license to practice in any state, district, or territory of the United States disciplined in any manner, and that the applicant is not the subject of any pending complaints or disciplinary proceedings;

(D) Verification sent directly to the board from the state, district, or territory of the United States where the applicant is licensed showing that the applicant met the licensing requirements outlined in section (4) of this rule at the time of licensure in that state, district, or territory;

(E) Proof that the applicant has satisfactorily completed a written

examination on Missouri dental laws and rules (hereinafter referred to as the jurisprudence examination) with a score of eighty percent (80%) or greater; and

(F) A copy of his/her current certification in basic life support (BLS) or advanced cardiac life support (ACLS).

(6) The board shall, within sixty (60) days of receiving a completed application and the supporting documentation listed in section (5) above, issue the appropriate dental or dental hygiene license to the nonresident military spouse upon determining that the state, district, or territory of the United States where s/he is licensed has licensing requirements equivalent to the licensure requirements in Missouri.

(7) Nothing in this rule prohibits the board from denying a license to an applicant under this section for any reason described in section 332.321, RSMo.

(8) The board shall not charge any initial fee for licensure or application to a nonresident military spouse.

AUTHORITY: section 332.031, RSMo 2016. Original rule filed Oct. 4, 2018.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions approximately three thousand dollars (\$3,000) annually for the life of the rule. It is anticipated that the costs will recur for the life of the rule, may vary with inflation, and are expected to increase at the rate projected by the Legislative Oversight Committee.

PRIVATE COST: This proposed rule will save private entities approximately three thousand dollars (\$3,000) annually for the life of the rule. It is anticipated that the costs will recur for the life of the rule, may vary with inflation, and are expected to increase at the rate projected by the Legislative Oversight Committee.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Dental Board, PO Box 1367, Jefferson City, MO 65102, by facsimile at 573-751-8216 or via email at dental@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

PUBLIC FISCAL NOTE

I. RULE NUMBER

**Title 20 -Department of Insurance, Financial Institutions and Professional Registration
Division 2110 - Missouri Dental Board
Chapter 2 - General Rules
Proposed Amendment to 20 CSR 2110-2.075 - Nonresident Military Spouse Licensure by Credentials**

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Loss of Revenue	
Missouri Dental Board	\$3,000	
	Estimated Decreased Revenue Beginning in FY19 and Continuing Annually for the Life of the Rule	\$3,000

III. WORKSHEET

See Private Entity Fiscal Note

IV. ASSUMPTION

1. The total loss of revenue is based on the cost savings to private entities reflected in the Private Fiscal Note filed with this rule.
2. The board utilizes a rolling five-year financial analysis process to evaluate its fund balance, establish fee structure, and assess budgetary needs. The five-year analysis is based on the projected revenue, expenses, and number of licensees. Based on the board's recent five-year analysis, the board voted on a reduction in individual biennial renewal fees for dentist, dental specialist and dental hygienist.

PRIVATE FISCAL NOTE

I. RULE NUMBER

Title 20 -Department of Insurance, Financial Institutions and Professional Registration
 Division 2110 - Missouri Dental Board
 Chapter 2 - General Rules
 Proposed Amendment to 20 CSR 2110-2.075 - Nonresident Military Spouse Licensure by Credentials

II. SUMMARY OF FISCAL IMPACT

Estimate the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by type of the business entities which would likely be affected:	Estimated savings for the life of the rule by affected entities:
8	Dentist Application Fee (Fee Waiver @ \$150)	\$1,200
2	Dental Specialist Application Fee (Fee Waiver @ \$150)	\$300
15	Dental Hygienist Application Fee (Fee Waiver @ \$100)	\$1,500
	Estimated Cost of Compliance Beginning in FY19 and Continuing Annually for the Life of the Rule:	\$3,000

III. WORKSHEET

See Table Above

IV. ASSUMPTION

1. The above figures are based on FY 2019 projections.
2. Fee amounts used in the fiscal note are based upon recently filed fee reductions that go into effect in early 2019. The reduced fees will be effective when this rule becomes effective.
2. It is anticipated that the total fiscal costs will occur beginning in FY2019, may vary with inflation, and is expected to increase at the rate projected by the Legislative Oversight Committee.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2110—Missouri Dental Board
Chapter 4—Sedation**

PROPOSED AMENDMENT

20 CSR 2110-4.020 Moderate Sedation. The board is amending sections (4), (8)–(11), (15), and (17)–(19).

PURPOSE: This amendment updates the qualifications for providing moderate sedation.

(4) No dentist shall administer moderate sedation to a pediatric patient, as defined in 20 CSR 2110-4.010, unless the dentist possesses a pediatric moderate sedation permit. A dentist possessing a pediatric moderate sedation permit may administer moderate sedation using either enteral or parenteral techniques; however, techniques utilizing intravenous administration are restricted to qualified deep sedation/general anesthesia providers as defined in 20 CSR 2110-4.040. Moderate sedation services provided to pediatric patients shall be done in accordance with *[the] current American Academy of Pediatric Dentistry [2006] Guidelines for Monitoring and Management of Pediatric Patients Before, During, and After Sedation for Diagnostic and Therapeutic Procedures.*

(8) To qualify for a permit to administer enteral moderate sedation, a dentist shall—

(A) Document satisfactory completion of—

1. An enteral moderate sedation training course consistent with the *American Dental Association Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students [as adopted by the October 2007 American Dental Association (ADA) House of Delegates]*; or

2. An ADA-accredited post-doctoral training program that affords training necessary to administer enteral moderate sedation; or

3. An enteral moderate sedation course approved by the Missouri Dental Board; and

(9) To qualify for a permit to administer parenteral moderate sedation, a dentist shall—

(A) Document satisfactory completion of a *[postgraduate] parenteral moderate sedation training* program that *[is a minimum of twelve (12) continuous months in length and is approved or accredited to teach postgraduate dental or medical education by the ADA, the Accreditation Council for Graduate Medical Education of the American Medical Association (AMA), or the Education Committee of the American Osteopathic Association (AOA). This program shall]* includes:

1. Sixty (60) hours of didactic training in pain and anxiety control and related subjects in accordance with *[the] current* guidelines of the ADA *[adopted by the October 2007 ADA House of Delegates] for teaching pain control and sedation to dentists and dental students*;

2. Successful management of parenteral moderate sedation in twenty (20) dental patients. Management of parenteral moderate sedation *[shall be]* defined as performing and **being** responsible for all aspects of the sedation procedure from patient selection to patient discharge post sedation for each of the twenty (20) dental patients;

3. General anesthesia training in a **hospital accredited by The Joint Commission** in which there is four (4) weeks documented operating room clinical experience in airway management;

4. Certification of competency by the course director in airway management; and

5. Certification of competency by the course director in parenteral moderate sedation;

(10) To qualify for a permit to administer pediatric moderate sedation, a dentist shall—

(A) Document satisfactory completion of an ADA-accredited post-doctoral training program that is a minimum of twelve (12) continuous months in length and which affords comprehensive and appropriate training necessary to administer and manage moderate sedation in pediatric patients. This program shall include:

1. A minimum of sixty (60) hours of didactic training in pain and anxiety control in pediatric patients;

2. Successful management of moderate sedation in twenty (20) pediatric dental patients. Management *[shall be]* defined as responsible for all aspects of the sedation procedure from patient selection to patient discharge post sedation;

3. General anesthesia training in which there is four (4) weeks documented clinical experience in airway management;

4. Certification of competency by the course director in airway management; and

5. Certification of competency by the course director in pediatric moderate sedation;

(11) To qualify for a moderate sedation site certificate—

(A) The dentist-in-charge of the dental office shall document that—

1. The primary administrator of enteral, parenteral, or pediatric moderate sedation is a qualified sedation provider as set forth in 20 CSR 2110-4.010(1)(CC);

2. All moderate sedation team members (two (2) minimum) and the dentist~~/,~~ possess and maintain current certification in the American Heart Association's Basic Life Support for the Healthcare Provider (BLS)~~/,~~ or an equivalent certification approved by the Missouri Dental Board. Board-approved courses *[shall] are those that* meet the American Heart Association guidelines for cardiopulmonary resuscitation (CPR) and emergency cardiovascular care (ECC) and provide written and manikin testing on the course material by an instructor who is physically present with the students. Online only courses will not be accepted to satisfy the BLS requirement or ACLS;

3. All moderate sedation team members, including the dentist, **if s/he does not possess an active moderate sedation permit**, have completed a board-approved course in monitoring sedated patients during the past five (5) years;

4. The dental office is properly maintained and equipped as set forth in 20 CSR 2110-4.030; and

5. The dental office has written protocols for sedation of dental patients as set forth in 20 CSR 2110-4.030, including but not limited to, the following:

A. Preoperative patient evaluation and selection prior to enteral, parenteral, or pediatric moderate sedation;

B. Informed consent procedures;

C. Sedation monitoring procedures;

D. Maintaining appropriate records during sedation procedures;

E. Patient discharge assessment; and

F. Responding to emergencies incident to the administration of enteral, parenteral, or pediatric moderate sedation; and

(15) To renew a moderate sedation site certificate the dentist-in-charge shall, at least ninety (90) days prior to the expiration of the current site certificate—

(D) Document that the sedation team, as well as the permitted dentist, possess and maintain current certification in the American Heart Association's Basic Life Support for the Healthcare Provider (BLS) or an equivalent certification approved by the Missouri Dental Board. Board-approved courses *[shall] are those that* meet the American Heart Association guidelines for cardiopulmonary resuscitation (CPR) and emergency cardiovascular care (ECC) and provide written and manikin testing on the course material by an instructor who is physically present with the students. Online only courses will not be accepted to satisfy the BLS requirement, or the American Red

Cross recognized equivalent certification, or ACLS;

(E) Document that all moderate sedation team members, including the operating dentist, **if s/he does not possess an active moderate sedation permit**, have completed a board-approved course in monitoring sedated patients during the past five (5) years; and

(17) A dentist holding a current enteral conscious sedation permit on or before the effective date of this rule *[shall be]* is authorized to perform all means of enteral moderate sedation set forth in 20 CSR 2110-4.010(1)(L) and, upon renewal, *[shall]* will receive a permit to administer enteral moderate sedation upon compliance with the renewal requirements set forth in section (13) of this rule.

(18) A dentist holding a current parenteral conscious sedation permit on or before the effective date of this rule *[shall be]* is authorized to perform all means of parenteral moderate sedation set forth in 20 CSR 2110-4.010(1)(Y) and, upon renewal, *[shall]* will receive a permit to administer parenteral moderate sedation upon compliance with the renewal requirements set forth in section (13) of this rule.

(19) A dental office holding a current conscious sedation site certificate on or before the effective date of this rule *[shall be]* is authorized to be the site for the administration of enteral, parenteral, or pediatric moderate sedation and, upon renewal, *[shall]* will receive a moderate sedation site certificate.

AUTHORITY: sections 332.031 [and], 332.071, and 332.361, RSMo [2000, and section 332.071, RSMo Supp. 2012] 2016. This rule originally filed as 4 CSR 110-4.020. Original rule filed Sept. 15, 2004, effective April 30, 2005. Moved to 20 CSR 2110-4.020, effective Aug. 28, 2006. Rescinded and readopted: Filed July 26, 2012, effective Feb. 28, 2013. Amended: Filed Oct. 4, 2018.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Dental Board, PO Box 1367, Jefferson City, MO 65102, by facsimile at (573) 751-8216, or via email at dental@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

(B) Be accredited by the Higher Learning Commission of the North Central Association, *another regional accreditor recognized by the U.S. Department of Education, or provide evidence of active participation in a regional state authorization reciprocity agreement administered through the National Council of State Reciprocity Agreements (NC-SARA)];*

AUTHORITY: sections [335.036,] 335.200[,], and 335.203, RSMo 2016, and section 335.036, RSMo Supp. 2018. This rule originally filed as 6 CSR 10-11.010. Emergency rule filed Sept. 23, 2011, effective Oct. 3, 2011, expired March 30, 2012. Original rule filed July 12, 2011, effective Jan. 30, 2012. Moved to 20 CSR 2200-7.010 and amended: Filed Nov. 21, 2016, effective June 30, 2017. Amended: Filed Oct. 15, 2018.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Board of Nursing, Lori Scheidt, Executive Director, PO Box 656, Jefferson City, MO 65102, by fax at (573) 751-0075, or via email at nursing@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2200—State Board of Nursing
Chapter 7—Nursing Education Incentive Program**

PROPOSED AMENDMENT

20 CSR 2200-7.010 Nursing Education Incentive Program. The board is amending subsection (2)(B).

PURPOSE: This amendment is proposed to better align accreditation requirements for institutions of higher education with section 335.203, RSMo.

(2) Institutional Criteria for Grant Awards. To be eligible to receive a Nursing Education Incentive Grant, the applicant must meet the following eligibility criteria: