

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

Entirely new rules are printed without any special symbolology under the heading of 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 If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission.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.

currently found in 1 CSR 30-3.060, which is currently in the process of being rescinded. The information incorporated from 1 CSR 30-3.060 and the remainder of the rule has been revised and reorganized to better reflect FMDC's current practices and to increase the readability of the regulation. Most significantly, this information was revised to recognize the use of standing contracts other than job order contracting and to use the industry term "suspension" rather than "ineligibility" when referring to a decision to bar a contractor from performing work on a state contract for a temporary period of time.

*PURPOSE: This rule sets forth the methods and procedures for selection of project[/] construction **and** management services[, construction management at risk services, job order contracts, design/build contracts, pre-qualification and best value performance based contracts].*

(1) Definitions. As used in this regulation and the remainder of this chapter, the following terms mean:

(A) "Affiliate," a person who directly or indirectly controls, or has the power to control, another person or a person who is subject to the control of another person. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees or a business entity organized following the suspension or debarment of a person that has the same or similar management, ownership or principal employees as the debarred or suspended person;

(B) "Bidder," a person who submits a proposal for a construction contract in accordance with 1 CSR 30-3, or one who offers to or subcontracts to a person who submits a proposal for a construction contract;

(C) "Bid documents," a document or documents by which the division solicits proposals for a contract;

(D) "Commissioner," the Commissioner of the State of Missouri, Office of Administration;

(E) "Competitive bid," a process of advertising for bids in accordance with section 8.250, RSMo or solicitation of bids from a minimum of three (3) contractors in which an award is based on the lowest responsive, responsible bid or other pre-established criteria where cost is a factor;

(F) "Debarment," the exclusion of a contractor from performing work on a state project for an indefinite period of time;

(G) "Design-build," a project for which the design and construction services are furnished under one contract;

(H) "Design-build contract," a contract between the division and a design-builder, to furnish the architecture or engineering and related design services necessary for a given public construction project and to furnish the labor, materials, and other construction services for the same public project;

(I) "Design-builder," any individual, partnership, joint venture, corporation, or other legal entity that furnishes both the architectural or engineering services and construction services for a project, whether itself or through subcontracts;

(J) "Design criteria consultant," a person, corporation, partnership, or other legal entity duly registered and authorized to practice architecture or professional engineering in this state pursuant to Chapter 327, RSMo, and who is employed by contract to the division to provide professional design and administrative services in connection with the preparation of the design criteria package;

(K) "Design criteria package," performance-oriented program, scope and specifications for the public construction project sufficient to permit a design-builder to prepare a response to the division's request for proposals for a design-build project;

(L) "Design services," services that are—

1. Within the practice of professional engineering as defined

Proposed Amendment Text Reminder:

Boldface text indicates new matter.

[Bracketed text indicates matter being deleted.]

**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 30-3.025 *[Methods of Management/Construction] Procurement of Construction and Management Services.* The Division of Facilities Management, Design and Construction is amending the title and purpose statement of this regulation, moving the information found in section (5), deleting sections (7) and (9), renumbering the remaining sections and adding new sections.

PURPOSE: This amendment deletes provisions regarding the use of best value contracting and construction manager at-risk. This amendment also adds information regarding contractor responsibility

in section 327.181, RSMo, or the practice of architecture as defined in section 327.091, RSMo; or

2. Performed by a registered architect or professional engineer in connection with the architect's or professional engineer's employment or practice;

(M) "Director," the director of the Division of Facilities Management, Design and Construction;

(N) "Division," the State of Missouri, Office of Administration, Division of Facilities Management, Design and Construction;

(O) "Evaluation team," a group of people selected by the director to evaluate bidders' qualifications or proposals;

(P) "Job order contract," a standing contract where the prices for work are determined by specifying one (1) or more published construction unit price books and the applicable divisions or line items and/or providing a list of work items and requiring the bidders to bid or propose one (1) or more coefficients or multipliers to be applied to the price book or work items as the price proposal;

(Q) "Person," an individual, corporation, partnership, association, or legal entity;

(R) "Principal," an officer, director, owner, partner, key employee, or other person within an organizational structure having the authority to obligate the bidder in a contractual relationship;

(S) "Proposal," an offer to enter into a contract, including bids submitted in a competitive bidding process;

(T) "Public construction project," the process of designing, constructing, reconstructing, altering, or renovating state owned real property;

(U) "Request for proposals," a document by which the division solicits proposals for a contract;

(V) "Standing Contract," a contract for construction, renovation, maintenance, and/or repair services to be performed during a specified period of time where the delivery times and quantities of work are indefinite, and the cost of orders for work to be performed under the contract is based on predetermined rates;

(W) "Stipend," an amount paid to the unsuccessful proposers to defray the cost of submission of phase II of the design-build proposal;

(X) "Suspension," the exclusion of a contractor from performing work on a state project for a temporary period of time.

(2) Competitive Bidding.

(A) Soliciting Bids. Section 8.250, RSMo requires that bids be solicited for work on public construction projects. 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 is authorized only after review and approval of drawings and specifications have been completed in accordance with 1 CSR 30-3.030.

1. Projects costing more than twenty-five thousand dollars (\$25,000). Projects costing more than twenty-five thousand dollars (\$25,000) will have solicitation advertised in accordance with section 8.250, RSMo. In addition, when appropriate, individual firms will be contacted to determine 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 using standing contracts or individually procured by the agency in accordance with the current policies of the Division of Facilities Management Design and Construction.

3. Emergency projects.

A. Projects for emergency repairs the cost of which exceeds twenty-five thousand dollars (\$25,000) require approval

of the director. Requests should include scope, source of funding and, when appropriate, drawings, specifications and proposal forms.

B. The director 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.

C. For emergency repair projects, firms that are available and competent to perform the necessary 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.

D. 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 incorporated into a separate project for later solicitation.

4. Project related equipment. If it is determined that it is necessary or expedient for project related equipment or materials to be separately procured, the Division of Facilities Management, Design and Construction will prepare the necessary specifications and procure the equipment using appropriate competitive bidding procedures.

(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 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, will 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. 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 bid 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.

(F) Contracts. Approval by the director of a contract for a project costing 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.

1. Award of contracts shall be made to the bidder successfully meeting the requirements of the bid documents within the available appropriations.

2. Intent to Award. An intent to award letter will be issued

to the successful bidder upon approval by the director. The purpose of the intent to award letter is to notify the successful bidder of their selection so they may obtain the insurance, performance bond, and other documentation necessary to allow the notice to proceed to be issued.

3. Contract Documents. Contract documents may 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 will 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. The director has discretion to reject any insurer for bond and insurance tendered. Failure to perform on a prior contract may be cause for rejection of an insurer. Failure to furnish the mandatory contract documents in a reasonable time may be treated by the director as refusal to accept the contract and/or execute the contract.

4. Notice to Proceed. Notice to proceed with work on a project will 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.

(3) Pre-qualification.

[(1)](A) Criteria. The *[D]*division *[of Facilities Management, Design and Construction]* may require pre-qualification of bidders when the construction project to be bid:*—*

- [(A)]1.* Is highly specialized as to the work to be performed;
- [(B)]2.* Requires significant experience in the method of construction specified;
- [(C)]3.* Requires specialized equipment and experience with such equipment;
- [(D)]4.* Requires specific expertise in the installation of sophisticated equipment, systems, or controls;
- [(E)]5.* Requires a minimum level of training or certification from specified equipment manufacturers;
- [(F)]6.* Must be completed within a critical time frame; or
- [(G)]7.* Requires higher than "industry standard" quality control.

[(2)](B) Selection. The director *[shall]* will select those projects for which pre-qualification of bidders is appropriate.

[(3)](C) Procedure. The pre-qualification process *[shall]* will be a one-step process. The division shall prepare a request for qualifications for specific selected project **with a description of the project, the rationale for the decision to pre-qualify bidders, the procedures for submittal and the selection criteria to be used.** Notice of the request for qualifications shall be advertised in accordance with section 8.250, RSMo *[Supp. 2007]*. *[The division shall publish a notice of the request for qualifications with a description of the project, the rationale for the decision to pre-qualify bidders, the procedures for submittal and t]The selection criteria to be used[, which] in the pre-qualification may include:]—*

- [(A)]1.* Experience of the bidder with similar projects;
- [(B)]2.* Experience of key personnel proposed for project;
- [(C)]3.* List of recent projects of similar scope and value;
- [(D)]4.* Bonding capacity;
- [(E)]5.* List of specified equipment available to bidder;
- [(F)]6.* References;
- [(G)]7.* Safety records;

[(H)]8. Previous project completion schedules;

[(I)]9. Previous project contract change rates; and

[(J)]10. Qualifications of subcontractors proposed for specified areas of work.

[(4)](D) Evaluation. An evaluation team consisting of at least three (3) representatives of the division shall be selected by the director to evaluate the qualifications submitted by all potential bidders. *[The team shall consist of at least three (3) representatives of the division.]*

[(A)]1. The evaluation team shall review the submittals of the potential bidders and assign points to each submittal in accordance with the criteria established for the project and as set out in the instructions of the request for qualifications.

[(B)]2. All potential bidders obtaining a pre-determined number of points shall be pre-qualified to submit a bid on the project on a date specified.

[(C)]3. Only bids from pre-qualified bidders will be accepted and opened. Bid evaluation shall be on the basis of the lowest, responsive, responsible bidder.

[(5) Definitions:

(A) "Best value performance based contracting," a project procurement method that allows the division to consider factors in addition to price, such as, past performance, risk assessment and designer/contractor interviews when selecting a designer/contractor. The process uses performance information to select the best value designer/contractor in conjunction with price proposals;

(B) "Competitive bid," a process of advertising for bids in accordance with section 8.250, RSMo or solicitation of bids from a minimum of three (3) contractors in which an award is based on the lowest responsive, responsible bid or other pre-established criteria where cost is a factor;

(C) "Construction manager-at-risk," a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to the Division of Facilities Management, Design and Construction regarding construction during and after the design of the facility;

(D) "Design-build," a project for which the design and construction services are furnished under one contract;

(E) "Design-build contract," a contract between the division and a design-builder, to furnish the architecture or engineering and related design services required for a given public construction project and to furnish the labor, materials, and other construction services for the same public project;

(F) "Design-builder," any individual, partnership, joint venture, corporation, or other legal entity that furnishes the architectural or engineering services and construction services, whether itself or through subcontracts;

(G) "Design criteria consultant," a person, corporation, partnership, or other legal entity duly registered and authorized to practice architecture or professional engineering in this state pursuant to Chapter 327, RSMo, and who is employed by contract to the division to provide professional design and administrative services in connection with the preparation of the design criteria package;

(H) "Design criteria package," performance-oriented program, scope and specifications for the public construction project sufficient to permit a design-builder to prepare a response to the division's request for proposals for a design-build project;

(I) "Design services," services that are:

1. Within the practice of professional engineering as defined in section 327.181, RSMo or the practice of architecture as defined in section 327.091, RSMo; or

2. Performed by a registered architect or professional

engineer in connection with the architect's or professional engineer's employment or practice;

(J) "Director," the director of the Division of Facilities Management, Design and Construction;

(K) "Division," the state Office of Administration, Division of Facilities Management, Design and Construction;

(L) "Evaluation team," a group of people selected by the director to evaluate the proposals of the design-builders. The team shall consist of at least two (2) representatives of the Division of Facilities Management, Design and Construction and two (2) representatives of the using agency. A fifth member shall be selected by the director and shall serve as chairman to facilitate the evaluation process and to vote only in case of a tie;

(M) "Job order contracting (JOC)," is a firm fixed priced competitively bid procurement process with an indefinite quantity for small to medium sized construction and repair projects with the allowable size established by statute;

(N) "Proposal," an offer to enter into a design-build contract;

(O) "Public construction project," the process of designing, constructing, reconstructing, altering or renovating a state owned building;

(P) "Request for proposals," the document by which the division solicits proposals for a design-build contract; and

(Q) "Stipend," an amount paid to the unsuccessful proposers to defray the cost of submission of phase II of the design-build proposal.

(6) *Design-Build.* The director shall select those projects for which the use of the design/bid/build, design-build procurement, job order contracting, project/construction management or construction manager at-risk process is appropriate. In making that determination, the director shall consider:

(A) The likelihood of whether either method of procurement will serve the public interest by providing substantial savings of time or money over the traditional design/bid/build delivery process;

(B) The time available to complete the project and meet the needs of the agency and any need to expedite the delivery process;

(C) The type of project and its suitability of either method;

(D) The size of the project;

(E) The level of agency knowledge and confidence about the project scope and definition;

(F) The availability of the using agency staff to manage the project; and

(G) The availability of the division staff to manage the project.

(7) *Best Value Performance Based Contracting.*

(A) The division may use the best value performance based contracting method for a project when it is determined necessary to have higher than minimum standard performance and quality within a highly defined schedule and budget. In using this method, the division shall follow the procedures prescribed by this chapter.

(B) Best value performance based contracts may be a multi-phased procurement process consisting of the evaluation of proposers based on:

1. Past performance information;

2. Experience;

3. References;

4. Current capacity—

A. Risk assessment plan;

B. Interviews of staff, subconsultants and subcontractors; and

C. Schedule; and

5. Bid proposal (except for consultant selections).

(C) Past performance experience, references may account for twenty to forty percent (20–40%) of the evaluation; current capacity may account for thirty to fifty percent (30–50%) of the evaluation and cost may account for twenty to forty percent (20–40%) of the evaluation, except when consultants are selected and cost is not a factor, in which case, past performance, experience, references, and current capacity will account for one hundred percent (100%) of the evaluation.

(D) A request for proposals shall be prepared for each best value performance based contract containing, at a minimum the following elements:

1. The procedures to be followed for submitted proposals, the criteria for evaluation of proposals and their relative weight and the procedures for making awards;

2. The procedures for obtaining the plans and specifications for the project;

3. A schedule for the planned commencement and completion of the contract;

4. Budget limits of the contract; and

5. Affirmative action and minority or women's business enterprise requirements for the contract.

(E) Notice of requests for proposals shall be advertised in accordance with state statute.

(F) The evaluation team shall review the submittals of the proposers and assign points to each proposal in accordance with the instructions of the request for proposals.

(G) Sealed cost proposals shall be submitted in accordance with the instructions of the request for proposal and publicly opened as set forth in the request for proposal, except for consultant selections.

(H) The division may require offerors to submit additional information related to contract planning and performance after the intent to award notification but prior to award of the contract.

(I) The division may reject an offeror's proposal and rescind the intent to award if the additional information is inadequate or not provided within the time established in the request for proposal.

(J) The division may move to the next highest scoring proposer or reject all proposals and solicit new proposals following the procedures for this method of procurement.]

[(8)](4) Project/Construction Management.

(A) **Project/construction management services may be procured** [A]as provided in sections 8.675 to 8.687, RSMo [Supp. 2007].

[(9) Construction Manager-at-Risk.

(A) The division may use the construction manager-at-risk method for a project. In using that method and in entering into a contract for the services of a construction manager-at-risk, the division shall follow the procedures prescribed by this section.

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

the engineer's or architect's original professional service agreement in accordance with applicable licensing laws.

(C) The division may provide or contract for, independently of the construction manager-at-risk, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the division.

(D) The division shall select the construction manager-at-risk in either a one (1)-step or two (2)-step process. The division shall prepare a request for proposals, in the case of a one (1)-step process, or a request for qualifications, in the case of a two (2)-step process, that includes general information on the project site, project scope, schedule, selection criteria, and the time and place for receipt of proposals or qualifications, as applicable; a statement as to whether the selection process is a one (1)-step or two (2)-step process; and other information that may assist the division in its selection of a construction manager-at-risk. The division shall state the selection criteria in the request for proposals or qualifications, as applicable. The selection criteria may include the offeror's experience, past performance, safety record, proposed personnel and methodology, and other appropriate factors that demonstrate the capability of the construction manager-at-risk. If a one (1)-step process is used, the division may request, as part of the offeror's proposal, proposed fees and prices for fulfilling the general conditions. If a two (2)-step process is used, the division may not request fees or prices in step one. In step two, the division may request that five (5) or fewer offerors, selected solely on the basis of qualifications, provide additional information, including the construction manager-at-risk's proposed fee and its price for fulfilling the general conditions. By either method, past performance, experience, references and capacity shall account for a minimum of sixty percent (60%) of the evaluation. Cost shall account for a maximum of forty percent (40%) of the evaluation.

(E) The division shall publish the request for qualifications in a manner prescribed by the division.

(F) At each step, the division shall receive, publicly open, and read aloud the names of the offerors. Within forty-five (45) days after the date of opening the proposals, the division or its representative shall evaluate and rank each proposal submitted in relation to the criteria set forth in the request for proposals.

(G) The division or its representative shall select the offeror that submits the proposal that offers the best value for the division or using agency based on the published selection criteria and on its ranking evaluation. The division or its representative shall first attempt to negotiate a contract with the selected offeror. If the division or its representative is unable to negotiate a satisfactory contract with the selected offeror, the division or its representative shall, formally and in writing, end negotiations with that offeror and proceed to negotiate with the next offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked offerors end.

(H) A construction manager-at-risk shall publicly advertise, in the manner prescribed by Chapter 8, RSMo 2000, and receive bids or proposals from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in the general conditions. A construction manager-at-risk may seek to perform portions of the work itself if the construction manager-at-risk submits its bid or proposal for those portions of the work in the same manner as all other trade contractors or subcontractors and if the division determines that the construction manager-at-risk's bid or proposal provides the best value for the division or using agency.

(I) The construction manager-at-risk and the division or its representative shall review all trade contractor or subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by the construction manager-at-risk, engineer, architect, or division. All bids or proposals shall be made public after the award of the contract or within seven (7) days after the date of final selection of bids and proposals, whichever is later.

(J) If the construction manager-at-risk reviews, evaluates, and recommends to the division a bid or proposal from a trade contractor or subcontractor but the division requires another bid or proposal to be accepted, the division may compensate the construction manager-at-risk by a change in price, time, or guaranteed maximum cost for any additional cost and risk that the construction manager-at-risk may incur because of the Division of Facilities Management, Design and Construction's requirement that another bid or proposal be accepted.

(K) If a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected in accordance with this section, the construction manager-at-risk may, without advertising, itself fulfill the contract requirements or select a replacement trade contractor or subcontractor to fulfill the contract requirements.

(L) If a fixed contract amount or guaranteed maximum price has not been determined at the time the contract is awarded, the penal sums of the performance and payment bonds delivered to the division must each be in an amount equal to the project budget, as set forth in the request for qualifications. The construction manager-at-risk shall deliver the bonds not later than the tenth day after the date the construction manager-at-risk executes the contract unless the construction manager-at-risk furnishes a bid bond or other financial security acceptable to the division to ensure that the construction manager-at-risk will furnish the required performance and payment bonds when a guaranteed maximum price is established.]

[(10)](5) Design-Build.

(A) **Criteria.** The director will select those projects for which the use of design-build procurement is appropriate. In making that determination, the director should consider—

1. The likelihood of whether either method of procurement will serve the public interest by providing substantial savings of time or money over the traditional design/bid/build delivery process;
2. The time available to complete the project and meet the needs of the agency and any need to expedite the delivery process;
3. The type of project and its suitability of either method;
4. The size of the project;
5. The level of agency knowledge and confidence about the project scope and definition;
6. The availability of the using agency staff to manage the project; and

[(A)]7. **The availability of the division staff to manage the project.** If a design-build process is selected, the director [shall] will determine the scope and level of detail [required] necessary to permit qualified persons to submit proposals in accordance with the request for proposals given the nature of the project.

(B) **Procedure.** A design criteria consultant may be employed or retained by the division director to assist in preparation of the request for proposal, perform periodic site visits, prepare progress reports, review, and approve progress and final pay applications of the design-builder, review shop drawings and submittals, decide disputes, interpret the construction documents, perform inspections upon substantial and final completion, assist in warranty inspections, and to provide

any other professional service where the director deems it to be in the public interest to have an independent design professional assisting with the project administration. The consultant *[shall]* will be selected and its contract negotiated in compliance with sections 8.285 to 8.291, RSMo *[Supp. 2007]*.

[(C)]1. Notice of requests for proposals shall be advertised in accordance with section 8.250, RSMo *[Supp. 2007]*. The division shall publish a notice of a request for proposal with a description of the project, the rationale for the decision to use the design-build method of procurement, the procedures for submittal, and the selection criteria to be used.

[(D)]2. The director shall establish in the request for proposal a time, place, and other specific instructions for the receipt of proposal. Proposals not submitted in strict accordance with those instructions shall be subject to rejection.

[(E)]3. A request for proposals shall be prepared for each design-build contract containing at minimum the following elements:

[1.]A. The procedures to be followed for submitting proposals, the criteria for evaluation of proposals, and their relative weight and the procedures for making awards;

[2.]B. The proposed terms and conditions for the design-build contract;

[3.]C. The design criteria package;

[4.]D. A description of the drawings, specifications, or other information to be submitted with the proposal, with guidance as to the form and level of completeness of the drawings, specifications, or other information that will be acceptable;

[5.]E. A schedule for planned commencement and completion of the design-build contract;

[6.]F. Budget limits for the design-build contract, if any;

[7.]G. Affirmative action and minority or women business enterprise requirements for the design-build contract, if any;

[8.]H. Requirements including any available ratings for performance bonds, payment bonds, and insurance; and

[9.]I. Any other information that the division in its discretion chooses to supply, including, without limitation, surveys, soil reports, drawings of existing structures, environmental studies, photographs, or references to public records, or affirmative action and minority business enterprise requirements consistent with state and federal law.

[(F)]4. The director *[shall]* will solicit proposals in a three (3)-stage process. Phase I *[shall]* will be the solicitation of qualifications of the design-build team. Phase II *[shall]* will be the solicitation of a technical proposal including conceptual design for the project, and *[p/Phase III]* *[shall]* will be the proposal of the construction cost.

[(G)]5. The evaluation team shall consist of at least two (2) representatives of the division, two (2) representatives of the using agency, and a fifth member selected by the director who shall serve as chairman to facilitate the evaluation process and vote only in case of a tie. The evaluation team shall review the submittals of the proposers and assign points to each proposal in accordance with this *[document]* regulation and *[as set out in the instructions of]* the request for proposal.

[(H)]6. In Phase I *[shall require]* all proposers *[to]* shall submit a statement of qualification *[which shall]* that includes, but is not *[be]* limited to:*—*

[1.]A. Demonstrated ability to perform projects comparable in design, scope, and complexity;

[2.]B. References of owners for whom design-build projects have been performed;

[3.]C. Qualifications of personnel who will manage the design and construction aspects of the project; and

[4.]D. The names and qualifications of the primary design consultants and the contractors with whom the design-builder proposes to subcontract. The design-builder may *[not]* only replace an identified subcontractor or subconsultant with~~*[out]*~~ the written approval of the director.

[(J)] The evaluation team shall evaluate the qualifications of

all proposers in accordance with the instructions of the request for proposal.]

7. Architectural and engineering services on the project shall be evaluated in accordance with the requirements of sections 8.285 *[and]* to 8.291, RSMo. Qualified proposers selected by the evaluation team may proceed to *[p/Phase II]* of the selection process. Proposers lacking the necessary qualifications to perform the work shall be disqualified and *[shall]* not **allowed** to proceed to *[p/Phase II]* of the process. Under no circumstances shall price or fee be a part of the prequalification criteria. Points assigned in the *[p/Phase I]* evaluation process *[shall]* will not carry forward to *[p/Phase II]* of the process. All qualified proposers shall be ranked on points given in *[p/Phases II and III]* only.

[(K)]8. The director *[shall have]* has discretion to disqualify any proposer, which in the director's opinion, lacks the minimal qualifications *[required]* **necessary** to perform the work.

[(L)]9. Once a sufficient number of qualified proposers have been selected, the proposers *[shall have]* will be given a specified amount of time with which to assemble *[p/Phase II]* and *[p/Phase III]* proposals.

[(M)]10. Phase II of the process shall be conducted as follows:

[1.]A. The director *[shall]* will invite the top qualified proposers to participate in *[p/Phase II]* of the process;

[2.] Proposers must submit their design for the project to the level of detail required in the request for proposal.]

B. The design proposal should demonstrate compliance with the requirements set out in the request for proposal, **including the level of detail requested for the design;**

[3.]C. The ability of the proposer to meet the schedule for completing a project as specified by the owner may be considered as an element of evaluation in *[p/Phase II]*;

[4.]D. Up to twenty percent (20%) of the points awarded to each proposer in *[p/Phase II]* may be based on each proposer's qualifications and ability to design, contract, and deliver the project on time and within budget of the Office of Administration;

[5.]E. Under no circumstances should the design proposal contain any reference to the cost of the proposal; and

[6.]F. The design submittals will be evaluated and assigned points in accordance with the requirements of the request for proposal. Phase II shall account for no less than forty percent (40%) of the total point score as specified in the request for proposal.

[(N)]11. Phase III shall be conducted as follows:

[1.]A. The *[p/Phase III]* proposal must provide a firm, fixed cost of construction. *The proposal must* and be accompanied by bid security and any other *[required]* submittals **mandated by the request for proposals**, such as statements of minority participation *[as required by the request for proposal]*;

[2.]B. Cost proposals must be submitted in accordance with the *[instructions of the]* request for proposal. The director shall reject any proposal that is not submitted on time. Phase III shall account for not less than forty percent (40%) of the total point score as specified in the request for proposal;

[3.]C. Proposals for *[p/Phase II]* and *[p/Phase III]* shall be submitted concurrently at the time and place specified in the request for proposal. The *[p/Phase III]* cost proposals shall be opened only after the *[p/Phase II]* design proposals have been evaluated and assigned points;

[4.]D. Cost proposals will be opened and read aloud at the time and place specified in the request for proposal. At the same time and place, the evaluation team will make public its scoring of *[p/Phase II]*. Cost proposals will be evaluated in accordance with the requirements of the request for proposal. In evaluating the cost proposals, the low bidder shall be awarded the total number of points assigned to be awarded in *[p/Phase III]*. For all other bidders, cost points will be calculated by reducing the maximum points available in *[p/Phase III]* by two percent (2%) or more for each percentage point of the low bid by which the bidder exceeds the low bid and the points assigned will be added to the points assigned for *[p/Phase II]*

for each proposer;

[5.]E. If the director determines that it is not in the best interest of the state to proceed with the project pursuant to the proposal offered by the proposer with the highest total number of points, the director *[shall]* **may** reject all proposals. In such event, all qualified proposers with lower point totals shall receive a stipend and the proposer with the highest total number of points shall receive an amount equal to two (2) times such stipend. If the director determines to award the project, the responsive proposer with the highest number of points shall be awarded the contract; and

[6.]F. If all proposals are rejected, the director may solicit new proposals using different design criteria, budget constraints, or qualifications.

[(O)]12. As an inducement to qualified proposers, the division may pay a reasonable stipend, the amount of which shall be established in the request for proposal, to each prequalified design-builder whose proposal is responsive but not accepted. Upon payment of the stipend to any unsuccessful design-build proposer, the state shall acquire a nonexclusive right to use the design submitted by the proposer, and the proposer shall have no further liability for its use by the state in any manner. If the design-build proposer desires to retain all rights and interest in the design proposed, the proposer shall forfeit the stipend.

[(11) Job Order Contracting.

(A) *The division may award JOC for the maintenance, construction, repair, rehabilitation, renovation or alteration of a facility if the work is of a recurring nature but the delivery times are indefinite and indefinite quantities and orders are awarded substantially on the basis of pre-described and pre-priced tasks.*

(B) *The division may establish contractual unit prices for a JOC by:*

1. *Specifying one (1) or more published construction unit price books and the applicable divisions or line items; or*
2. *Providing a list of work items and requiring the offerors to bid or propose one (1) or more coefficients or multipliers to be applied to the price book or work items as the price proposal.]*

(6) Standing Contracts.

(A) **The minimum and maximum amounts of work to be performed under a standing contract shall be stated in the bid documents issued by the division. Once work reaches the maximum amount, no further work may be performed under the contract.**

(B) **The amount of each order for a job or project issued under a standing contract shall not exceed the amounts set forth in section 8.255, RSMo.**

(C) **The division shall advertise for, receive, and publicly open sealed proposals for [JOC] standing contracts in accordance with the competitive bidding standards established by Chapter 8, RSMo and these regulations.**

(D) **The division may require [offerors] bidders on standing contracts to submit additional information besides rates, including experience, past performance, and proposed personnel and methodology.**

(E) **The division may award [JOC] standing contracts to one (1) or more contractors in connection with each solicitation of bids or proposals.**

(F) **An order for a job or project under [the JOC] a standing contract must be signed by the division's representative and the contractor. The order may be a fixed price, lump-sum contract based substantially on contractual unit pricing applied to estimated quantities, or may be a unit price order based on the quantities and line items delivered.**

(G) **The contractor shall provide payment and performance bonds[, if required by law, based on the amount or estimated amount of any order] as set forth in bid documents issued by the**

division.

(H) **The base term of a [JOC is] standing contract is for the initial period and [with] any renewal options that the division sets forth in the bid documents. The base term may not exceed two (2) years and is not renewable without further advertisement and solicitation of proposals.**

(I) **If a [JOC] standing contract or an order issued under the contract requires [engineering or architectural] services that constitute the practice of engineering or the practice of architecture, those services shall be provided in accordance with applicable law.**

(7) Contractor Responsibility. The director has the authority to declare a contractor not responsible, and to either suspend or debar the contractor from performing work on any state project.

(A) Initial Decision.

1. **Notice of the director's decision to suspend or debar a contractor shall be sent to the contractor by certified mail, return receipt requested. The notice should contain a statement as to the factual basis for the contractor's suspension or debarment, the length of the suspension, and an explanation of what the contractor must do to be found eligible to again submit bids on contracts.**

2. **Upon receipt of notice of suspension or debarment, the contractor may request a hearing in front of the director or his/her appointed designee. The hearing will be informally conducted and provide the contractor or affiliates an opportunity to present any facts that may tend to show that the contractor is in fact responsible.**

3. **Any request for a hearing must be postmarked within ten (10) consecutive calendar days of the date of receipt of the notice, as evidenced by the return receipt.**

4. **The director shall render a determination within sixty (60) consecutive calendar days of the hearing. The determination shall be sent to all parties by certified mail, return receipt requested. The determination shall set forth the basis for the suspension or debarment, the length of ineligibility, and the showing required for the contractor to once again be determined eligible to bid on contracts. The determination may affirm, reverse, or modify the preliminary determination.**

(B) Appeal. **The contractor may request that the director's determination be reviewed by the commissioner of administration or his/her appointed designee.**

1. **Any request for review must be in writing and be filed with the commissioner within fourteen (14) consecutive calendar days of the date of receipt of the director's final determination, as evidenced by the return receipt. The request must set forth specific reasons why relief should be granted.**

2. **A review under this section will be based solely on the documentation submitted by both the contractor and the director. No new hearing will be provided. The commissioner may set aside a determination only if it is found to be an abuse of discretion.**

3. **The commissioner's determination shall be issued within sixty (60) consecutive calendar days of the date of the request for review and shall be mailed to all parties.**

4. **The decision of the director or the commissioner to suspend or debar a contractor is not a "contested case" as defined in Chapter 536, RSMo.**

(C) Effect of Suspension or Debarment. **During the period of suspension or debarment, a suspended or debarred contractor will not be eligible to receive invitations for bids or requests for proposals or to be awarded any contract by the division. A suspended or debarred contractor may also not participate in any contract with the division. This restriction includes being a sub-contractor, consultant, sub-consultant or supplier to any eligible contractor, as well as submitting a bid as part of a partnership or joint venture.**

1. **If a contractor enters into any contract to perform work**

on a state project during a period of suspension or debarment, the director may issue a determination extending the time of suspension, changing a suspension to a debarment, or changing the showing that the contractor must make to be determined eligible to perform work on future contracts.

2. Any eligible contractor who knowingly contracts with a suspended or debarred contractor to provide labor or materials on a contract with the division may be suspended or debarred.

3. A suspension or debarment may extend to any affiliate of the contractor who had actual or constructive knowledge of the preliminary determination of suspension or debarment.

4. The director may suspend a contractor for a period not to exceed one year or debar a contractor indefinitely. After the stated period of suspension has expired or more than two (2) years has passed since the finding of debarment, the contractor may apply to the director to be declared eligible. The contractor must show that the contractor has complied with the terms set forth in the final determination of suspension or debarment. If the contractor applies for reinstatement but is unable to demonstrate responsibility to the director, the contractor shall continue to be ineligible until the required information is provided.

(D) Cause for Suspension or Debarment. The director may suspend or debar a company or firm and their named principals for any or a combination of the following reasons:

1. Commission of a criminal offense related to obtaining or performing a government contract;

2. Violation of antitrust statutes;

3. Commission of fraud, embezzlement, theft, forgery, making false statements, or tax evasion;

4. Commission of any other offense or action indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of the contractor;

5. Debarment of the contractor by another state, the federal government, another entity of the state of Missouri, or by a political subdivision of the state of Missouri; or

6. Violations of material contract provisions, which include, but are not limited to failure to, perform or negligent performance of any term or standard of one or more contracts. The failure to perform caused by acts beyond the control of the contractor, or a subcontractor, or material supplier, shall not be considered a basis for suspension or debarment.

AUTHORITY: sections 8.250, 8.255, 8.310, and 8.320, RSMo [Supp. 2007] 2016. Original rule filed Nov. 5, 2007, effective June 30, 2008. Amended: Filed Nov. 30, 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 RESCISSION

1 CSR 30-3.060 Determination of Contractor Responsibility. This rule established the procedure for determining contractor responsibility and eligibility for state contracts.

PURPOSE: This rule is being rescinded and the content is being moved to 1 CSR 30-3.025 where bidding processes and procedures are discussed.

AUTHORITY: section 8.320, RSMo 2000. Original rule filed July 14, 1989, effective Oct. 16, 1989. Rescinded and readopted: Filed Nov. 5, 2007, effective June 30, 2008. Rescinded: Filed Nov. 30, 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 30—Division of Facilities Management,
Design and Construction
Chapter 4—Facility Maintenance and Operation**

PROPOSED AMENDMENT

1 CSR 30-4.020 Facility Management. The Division of Facilities Management, Design and Construction is deleting sections (1), (2), and (4), amending existing sections (2) and (5), renumbering and adding new sections (3)–(5) to this regulation.

PURPOSE: This amendment deletes requirements relating to space management and energy conservation program development, amends information related to facility records, and incorporates information formerly found in other regulations in this chapter that are concurrently being rescinded. The information incorporated from other regulations in this chapter has been revised and reorganized to better reflect FMDC's current practices and to increase the readability of the regulation. Information regarding coordination with the State Emergency Management Agency and the use of video surveillance, metal detectors, and security guards has also been added.

PURPOSE: This rule establishes standards and procedures for management of buildings or facilities under the operational direction of the Division of Facilities Management, Design and Construction.

[(1) General. The purpose of these rules is to provide direction and guidance for facilities operators within state government for asset management of state facilities, including space management and utilization, maintenance, energy conservation, safety and security, and facility records. The rules also include guidance on the operational diagnostics and performance tracking.

(2) Space Management. Each department shall have enough assigned space to perform their mission. The director shall develop a space management plan in conjunction with the department's space master plan. The plan shall include space standards for employees based on job function. The director shall be responsible for making recommendation to

the Office of Administration (OA) commissioner and the department for filling vacant space and acquiring new or additional space based on the forecast included in the space master plan.]

[(3)](1) Energy Conservation.

(A) General. Under the direction of the Division of Facilities Management, Design and Construction, each facility *[shall]* **should** implement energy conservation programs and initiatives *[which]* **that** have the goal of more efficient use of energy and utilities. The program *[shall]* **should** include active management, supervision, and tracking in order to assure that energy conservation goals are achieved. Revisions of operational practices and procedures *[shall]* **should** be incorporated to obtain revised goals and/or projects as conditions change or new requirements develop.

(B) Program Development.

1. New construction or alterations. New construction or alterations to existing facilities shall require that all major elements and systems which consume energy or utilities be evaluated to economically minimize energy use. Requirements shall be established for designers of new facilities or alterations to existing facilities to provide (at a minimum) a summary of the examination and conclusions which established the annual energy consumption, selection of each utility system, and each major item of energy consuming equipment. The energy conservation standards and criteria established by the director or the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE) in the most current edition or Federal Energy Management Program (FEMP) standards whichever is more stringent and has been established as the energy standards and criteria for Missouri facilities. These standards and criteria shall be utilized in designing and selecting systems and equipment which consume utilities or energy.

2. Existing facilities.

A. Energy audit. The Division of Facilities Management, Design and Construction should maintain energy information allowing for audits and benchmarking of each facility to determine where and how energy is used. The process should identify if energy usage can be reduced by changes in operating practices, equipment, or building systems or physical conditions.

B. Implementation. Those changes which can be made within current appropriations should be made immediately. Changes which require additional funding, for example, purchase of new equipment, energy saving capital improvements, should be implemented as soon as funds are available. Energy conservation measures shall be implemented which generate cumulative savings equal to their cost within the number of years considered by industry standards to be cost effective.

[(4) Emergencies.

(A) *Preplanned Response.* Preplanned response to emergencies is essential for the safety of personnel and for minimizing property damage. Evacuation plans shall be prepared and posted in prominent locations throughout the facility. A line drawing floor plan of a minimum eight and one-half inches by eleven inches (8 1/2" × 11") size paper shall be prepared for each floor to show evacuation routes. These floor plans, suitably protected, shall be posted in prominent locations throughout the facility. All exits and assembly areas shall be clearly marked.

(B) *Coordination with Local Agencies.* Local agencies for fire and police protection and for disaster planning shall be consulted in the development of evacuation or shelter planning. The local agencies will be consulted for their recommended responses for those emergencies. State facilities may be used for shelter in cases of disasters. The use of state facilities for shelter will be coordinated and preplanned in the event other suitable local facilities are not available. Periodic emergency drills (annual at a minimum) shall be held

to familiarize personnel with the evacuation procedures. Each drill shall be evaluated by the agency to determine effectiveness and to make improvements as required.

(C) *Damage Control.* Preplanned responses for each type of emergency shall include designation of knowledgeable personnel to coordinate actions to minimize or control potential damage. The designated emergency personnel shall closely coordinate with local agencies to develop and provide instructions, directions, and plans to satisfy each emergency condition response.]

[(5)](2) Facility Records.

(A) General. Each facility *[shall]* **should** maintain **the following records** at the site *[complete up-to-date as-built drawings, manuals for equipment, warranty information, and service and repair records for each major piece of equipment.]:*

[(B)]1. [Drawings.] As-built drawings *[shall be maintained to]* reflecting current status, including significant changes resulting from construction or maintenance and repair work. *[Specifications for drawings shall also be maintained.]*

[(C)]2. [Equipment Manuals and Records.] Equipment manuals and manufacturers' literature *[shall be maintained]*, along with *[appropriate]* operational and maintenance logs.

[(D)]3. [Control Diagrams.] Each separate control system shall have a) **A control diagram for each separate control system** identifying the equipment and sequence of operation.

[(E)]4. [Warranties.] All warranties issued *[shall]*, **which should be [recorded, filed and]** periodically reviewed by the facility operations personnel. *[A follow-up procedure shall be developed to review each item covered under warranty after approximately eighty percent (80%) of the warranty period. This inspection is used to determine the condition and performance of the warranted item. Any noted deficiencies shall be reported to the guarantor for correction. Newly completed capital improvement and maintenance project deficiencies shall be reported through the Division of Facilities Management, Design and Construction for correction. A final warranty inspection shall be scheduled immediately prior to expiration of the warranty period and any noted deficiencies shall be reported for correction.]*

[(F) Safety Inspections.] Fire systems, elevators, backflow preventers, emergency lighting, fire extinguishers, public address systems, as well as other life safety systems are required to be inspected according to all applicable local and state codes and ordinances.]

(3) Maintenance Programs and Standards.

(A) **Facility systems.** The Division of Facilities Management, Design and Construction is responsible for maintaining assets and assisting state entities in meeting their facility needs for the benefit of the public through preventive maintenance and repair of the facility systems. The mission is to provide a superior workplace environment to assure health and safety for state occupants and their visitors and protect the state's investments in property assets.

(B) **Planned Maintenance Program.** An effective planned maintenance program provides for maintaining facilities and equipment in a safe and acceptable condition, promotes effective use of facility maintenance personnel, establishes a basis for determining budget requirements and long-range planning, and provides a means of evaluating the maintenance effort. The program includes inspections and/or evaluation of conditions or requirements, establishment of priorities, scheduling, servicing and operation of facility equipment, corrective work, and supervisory evaluation of the maintenance effort.

1. **Inspection.** Regular periodic condition assessment inspections of all facility elements and systems are essential for discovery of deficiencies before they deteriorate into major repair

requirements. These assessments are to occur annually. Reports of deficiencies from facility occupants, or from preventative maintenance inspections, require verification and technically qualified examination to determine the cause and extent of the deficiency. Additional information may be necessary to determine corrective action or work, as well as to estimate the cost of materials, equipment, and labor for that action or work.

(C) Preventative Maintenance. Preventative maintenance will be accomplished on a regular schedule in order to substantially reduce the scope and cost of corrective maintenance/repair, emergency repairs, downtime, and overtime.

1. Inspection. Scheduled preventative maintenance for a facility element, system or equipment item should include inspection of the items as often as necessary to meet or exceed manufacturers' recommendations. The inspection may include, but is not limited to, conditions and appearance of materials, fastenings, seals, drive systems, lubrication, or other elements. Deficiencies should be noted each time an item is serviced. A work order system will be utilized to record necessary work, accomplished work or conditions, or both, noted for each element. The work order also serves to assure that no element is inadvertently omitted. Remarks should be included on the work order providing specific information concerning noted problems or deficiencies.

2. Minor Repairs. Normally, repair work is not a part of the regular scheduled service. However, when the individual performing the servicing has the supplies and tools available, and the repair can be accomplished quickly, minor repairs can be performed during the scheduled servicing. This repair work should not be undertaken if it prevents completion of the servicing schedule. A condition requiring maintenance/repair discovered during scheduled servicing should be reported, so that needed work can be evaluated and performed as an emergency repair, if necessary, or as a programmed maintenance item.

(D) Emergency Repair. Emergency work may include some items previously programmed, but only to the extent necessary to restore service, correct imminent hazards, or prevent breakdowns. Because of the expense of emergency work, the scope of emergency work will be limited to the items that are necessary to correct the emergency condition. In many instances, this will limit the work to temporary repairs until a permanent solution can be achieved. Completion of any remaining corrective work will be programmed to provide the most cost-effective procedure.

(E) Repair versus Replacement. When repairs are estimated to cost more than fifty percent (50%) of the replacement cost of an item or system, the decision for repair or replacement should be supported by an analysis of the total cost of ownership. The total cost of ownership includes installed cost, operational cost, maintenance cost, salvage value, and life cycle considerations. The most economical method (repair or replacement) should be selected for programmed repairs.

(F) Equipment. Each item of facility equipment has a requirement for inspection and servicing after a specific interval of operation. The goal of inspecting and servicing equipment will be to maintain peak equipment efficiency during its expected life cycle to minimize downtime and equipment failure. Equipment preventative maintenance will be scheduled and tracked through the appropriate software system.

(G) Backlog of Maintenance/Repair. Facility managers are responsible for minimizing the maintenance/repair backlog through preventative maintenance, conservation, and effective use of available resources.

1. Operations Budget Items. Minor items in the backlog of maintenance/repair work that can be accomplished by in-house forces or with standing maintenance contracts should be specifically identified and included in the written justification for operations budget.

2. Capital Improvement Items. Major items in the backlog

of maintenance/repair work should be specifically identified and included in the Capital Improvement Budget.

(H) Plans and Specifications. All work that involves the structural integrity of the facility, life safety modifications, or major revisions or major additions of elements in the utility systems shall have plans and specifications prepared under the supervision of a registered architect or registered professional engineer. The professional is required to affix a professional seal to those plans. These plans and specifications shall comply with the requirements, codes and standards listed in 1 CSR 30-3.030. This requirement applies to work performed by in-house personnel, as well as by contract. Emergency work that involves the facility structure, or major revisions or additions of elements or controls in the utility systems, when time will not permit preparation of plans and specifications, shall be performed under the supervision of a registered architect or registered professional engineer. Emergency work shall be documented and maintained as a part of the as-built drawings for the facility.

(I) Contracts. Maintenance and/or repair may be accomplished through the use of in-house personnel, through the use of individual contracts, or through the use of standing contracts. Services, materials, equipment and supplies for maintenance and/or repair will be procured in accordance with the provisions of Chapter 8 or Chapter 34, RSMo, as amended. Personnel are not authorized to procure services, materials, equipment, or supplies exceeding twenty-five thousand dollars (\$25,000) in value unless specific authority has been delegated to the employee for such procurement. Contracts exceeding twenty-five thousand dollars (\$25,000) in value will be handled by Division of Facilities Management, Design and Construction contracts staff or by the Division of Purchasing, as appropriate.

(J) The Division of Facilities Management, Design and Construction uses software programs to track the maintenance and repairs needed and performed at facilities statewide, including to plan preventative maintenance activities/functions, to create, track, maintain, and schedule work orders for maintenance personnel to perform facility repairs, and to track maintenance inventory. Facility managers are responsible for familiarizing themselves with the software systems utilized by the Division of Facilities Management, Design and Construction and utilizing such systems as directed.

(4) Facility Safety.

(A) Safety Inspections. Fire systems, elevators, backflow preventers, emergency lighting, fire extinguishers, public address systems, as well as other life safety systems will be inspected according to all applicable local and state codes and ordinances, and as set forth herein.

(B) Emergency Planning. Preplanned response to emergencies is essential for the safety of personnel and for minimizing property damage. Therefore, plans for action in the event of emergencies will be prepared and include the following:

1. Actions and procedures to promote protection and safety of personnel and to minimize potential damage to property.

2. A listing of all current staff that are Federal Emergency Management Agency/State Emergency Management Agency (FEMA/SEMA) certified staff members.

3. Designation of knowledgeable personnel to coordinate actions to minimize or control potential damage.

4. Actions to be taken in the event of fires or other emergencies in adjacent facilities or areas. Liaison to allow notification to or from occupants in adjacent facilities will be established.

5. Actions for appropriate operation of electrical controls. This planning shall be coordinated with local emergency agencies to assure their awareness of these actions for their own operations in an emergency.

(C) Evacuation Plans. Evacuation plans will be established for each facility, and include clearly marked routes, exits, and assembly

areas for occupants, one (1) designated employee to ensure evacuation of the area, designation of fire lanes in drives adjacent to the facility, and actions to assure that these lanes remain clear. Evacuation plans will be posted in prominent locations throughout the facility. A line drawing floor plan of a minimum eight and one-half inches by eleven inches (8 1/2" × 11") size paper will be prepared for each floor to show evacuation routes, and posted in prominent locations on the corresponding floor.

(D) **Coordination with Local Agencies and SEMA.** All emergency and evacuation plans will be coordinated with local agencies for fire and police protection and for disaster planning to assure organized efforts by all parties when action is necessary. Local agencies will be consulted in the development of emergency plans for their recommended responses. State facilities may be used for shelter in cases of disasters. The use of state facilities for shelter will be coordinated and preplanned in the event other suitable local facilities are not available. The Continuity of Operations (COOP) and Continuity of Government (COG) emergency preparedness plan processes will be coordinated with the State Emergency Management Agency (SEMA) for all state entities to provide emergency contact information in the event of an emergency declaration.

(E) **Emergency Drills.**

1. **Fire Drills.** At least once annually, in addition to regular alarm system tests, a fire drill will be held. All personnel shall evacuate the facility by designated routes to designated assembly areas. One (1) or more employees, as appropriate, will be designated to assure that fire lanes have been cleared. After each fire drill, the facility manager will obtain a report of actions and observations from each person assigned a fire emergency task. Reports may be formal or informal and will be considered in reviewing the effectiveness of the fire drill. After reviewing actions and results of fire drills, the facility manager will take action and/or make recommendations, as appropriate, to incorporate improvements into the plan.

2. **Tornado Drills.** Tornado drills will be held periodically to familiarize personnel with appropriate procedures. Each tornado drill will be evaluated by the agency to determine effectiveness and to make improvements.

(F) **Fire Prevention and Protection.**

1. **Coordination with local fire department.** Facility managers for each site will establish a liaison with the local fire department and invite the local fire personnel to make informal inspections and recommendations for fire prevention and protection. The visits by fire department also provide the opportunity for them to be familiar with the facility and contents, which will enhance the effectiveness of their operation if a fire occurs. The coordination will also address emergency actions that are appropriate for state employees at the facility, including limitations on actions by these employees.

2. **Inspections by the Facilities Management Design and Construction.** Facility managers will designate one (1) or more persons to make regular scheduled fire prevention inspections, including fire extinguishers. The number of persons designated will depend on the area, the items to be inspected, and the interval between inspections. Each extinguisher will have a tag to record date and initials for each inspection. In some locations, these inspections can be incorporated into preventative maintenance schedules. A report of deficiencies noted will be made to the facility manager, and corrective action will be initiated.

3. **Installed alarm systems.** Installed alarm systems will be included in preventative inspection and maintenance schedules and tested periodically on a regular schedule. The date and results of each test will be entered into the system maintenance file record. Failure of an alarm system to function properly in a test is considered an emergency condition, and corrective action will be taken immediately.

4. **Grounds maintenance** should incorporate measures to

minimize potential for trash, grass, or brush fires.

(G) **Electrical System Safety.**

1. Applicable code requirements will be met for all wiring and electrical equipment on maintenance or repair projects.

2. **Inspections.** Preventative inspection and maintenance schedules will include inspection (and servicing as appropriate) of electric wiring and equipment. Deficiencies noted in capacity or condition of electric wiring or equipment will be evaluated immediately to determine the potential as imminent hazards. Deficiencies determined to be imminent hazards will be scheduled for immediate correction. Other noted deficiencies will be scheduled by priority.

3. **Repairs.** Repairs to electrical wiring and equipment will be accomplished only by experienced personnel following procedures to assure minimum potential hazards. Repairs to electrical wiring or electrical equipment will be accomplished by using a lockout/tagout procedure with a team of two (2) or more persons. Materials and equipment installed during the electrical repairs will be in accordance with current International Building Code (IBC) electrical codes.

(H) **Lighting.** Safety and/or emergency lighting will provide minimum lighting levels to assure safe movement of personnel. Emergency lighting, including exit lights, will be included in preventative inspection and maintenance programs, to assure proper functioning in accordance with current IBC electrical codes. Night lighting will be adequate to provide minimum essential light levels in all corridors or aisles.

(I) **Floor loads.** Floors are designed to carry specific loads. Normally these loads are expressed in terms of concentrated loads (such as file cabinets) on a small area or uniform loads (such as desks) spread over a wider area. Facility managers will become familiar with the design floor loads and ensure that equipment and/or rows of file cabinets or similar heavy loadings do not exceed the designed capacity. When expertise is not available in the department/agency, requests for assistance in establishing floor load capacities may be directed to the Project Management Unit of the Division of Facilities Management, Design and Construction.

(J) **Floor and stair finishes.** Floor and stair finishes will be maintained in a safe condition. Selection of floor waxes should include consideration for skid resistance and stairs should have nonskid surfaces or strips. Tiles on floors or stairs, stair nosing, nonskid surfaces, or strips will be maintained in a secure uniform surface. In corridors, aisles or stairs, loose, broken, or missing tile, stair nosing, or nonskid materials will be considered as imminent health and safety hazards and scheduled for immediate correction.

(K) **Equipment, controls and moving elements.** Equipment with exposed moving elements or drives will be in enclosed and/or locked spaces to prevent accidental contact by personnel. High voltage, high amperage, and high temperature equipment or controls will be in locked cabinets and/or spaces with access limited to authorized personnel. Main electrical control equipment, main valves, and other utility or equipment controls will be in locked spaces with access limited to authorized personnel.

(L) **Storage of flammable materials and gases.** Storage for flammable materials and gases will be limited to the minimum quantities, consistent with usage rates and available delivery schedules. Since these materials are especially hazardous to health, safety, and property, they will be stored and handled accordingly. Ventilated, secured storage accessible only to authorized personnel will comply with current codes, standards, and Missouri Emergency Response Commission (MERC) reporting requirements. The access to and storage or use of these materials will be carefully controlled in accordance with current codes and standards.

(5) **Security.**

(A) **General.** Security standards indicated in this section are minimal and apply to physical security of facilities. These standards do not address requirements for security personnel or security requirements for functions or activities of the facility occupants, since these are operational responsibilities of the various department/agencies.

(B) **Locks and Access Control.** The security of locks within a facility will be commensurate with the level of need for security of the area or element being secured. All access devices made for locking facilities or facility equipment will be numbered and identified (in records) with the locking device. Each access device for a facility locking mechanism will be issued by number to a specific individual, and the issue of all access devices will be recorded in a control register. All personnel leaving employment at the facility shall return all access devices issued for facility locking devices and the returns will be recorded in the register. A periodic inquiry will be made to determine the location of all access devices for facility locking devices. If an access device is missing, a determination of need for changing the locks and issuing new keys will be made.

(C) **After Hours Access.** After hours access to every facility shall be limited to an absolute minimum, consistent with requirements for accomplishing assigned functions or tasks. This access shall be documented.

(D) **Security Lighting.** Security lighting will be designed and used with consideration for minimum effective light levels and energy conservation. Controls for automatic turn-on and turn-off should be considered in all security lighting.

(E) **Coordination with Local Law Enforcement.** Coordination will be established with local law enforcement agencies to enhance the security of all state facilities. Coordination will include providing names of persons to be notified in case of emergency or breach of physical security and a request for surveillance and/or patrols of the area. Local law enforcement authorities will be notified of the presence and/or location of items needing a high degree of security and items that may be likely targets for theft and vandalism. Posted signs for notification in case of emergency will list only the telephone number of the local law enforcement or security office. The local law enforcement or security office can then notify personnel who should respond for an emergency. This notification system avoids the danger of an employee being forced to provide entry for unauthorized persons.

(F) **Video Surveillance.** The Division of Facilities Management, Design and Construction and/or the Capitol Police currently use video surveillance in some state facilities as a security measure, including the Capitol Building, and may use video surveillance in other facilities, as determined to be necessary.

(G) **Metal detector and/or security guards.** The Division of Facilities Management, Design and Construction and/or the Capitol Police currently use metal detectors and security guards in some facilities for added security. Metal detectors and/or security guards may be placed in additional facilities, as determined to be necessary.

AUTHORITY: sections 8.320 and 8.360, RSMo [2000] 2016 and subsections 6 and 7 of section 15, 1974 Reorganization Act. Original rule filed July 9, 1982, effective Nov. 15, 1982. Amended: Filed Nov. 30, 1993, effective July 10, 1994. Rescinded and readopted: Filed Nov. 5, 2007, effective June 30, 2008. Amended: Filed Nov. 30, 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 4—Facility Maintenance and Operation**

PROPOSED RESCISSION

1 CSR 30-4.030 Maintenance Program Standards and Procedures. This rule established standards and procedures to be used in planning maintenance programs.

PURPOSE: This rule is being rescinded and combined with 1 CSR 30-4.020 and 1 CSR 30-4.040.

AUTHORITY: sections 8.320 and 8.360, RSMo 2000 and subsections 6 and 7 of section 15, 1974 Reorganization Act. Original rule filed July 9, 1982, effective Nov. 15, 1982. Amended: Filed Nov. 30, 1993, effective July 10, 1994. Rescinded and readopted: Filed Nov. 5, 2007, effective June 30, 2008. Rescinded Filed: Nov. 30, 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 30—Division of Facilities Management,
Design and Construction
Chapter 4—Facility Maintenance and Operation**

PROPOSED RESCISSION

1 CSR 30-4.040 Facility Safety and Security. This rule established standards for safety and physical security of state-controlled facilities.

PURPOSE: This rule is being rescinded and combined with 1 CSR 30-4.020 and 1 CSR 30-4.030.

AUTHORITY: sections 8.320 and 8.360, RSMo 2000. Original rule filed July 9, 1982, effective Nov. 15, 1982. Rescinded and readopted: Filed Nov. 5, 2007, effective June 30, 2008. Rescinded: Filed Nov. 30, 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 35—Division of Facilities Management
Chapter 2—Leasing**

PROPOSED RESCISSION

1 CSR 35-2.010 Rule Objectives. This rule stated the objectives of the rules of the Office of Administration pertaining to the procedures for procuring and managing property leased from others, and for leasing excess property to others.

PURPOSE: This rule is being rescinded and combined with other established rules 1 CSR 35-2.020, 1 CSR 35-2.030, 1 CSR 35-2.040, and 1 CSR 35-2.050.

AUTHORITY: section 34.030, RSMo 1994. Original rule filed April 15, 1998, effective Nov. 30, 1998. Rescinded: Filed Nov. 30, 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 35—Division of Facilities Management
Chapter 2—Leasing**

PROPOSED RESCISSION

1 CSR 35-2.020 Definitions. This rule defined terms as used in rules 1 CSR 35-2.010 through 1 CSR 35-2.050 for procuring and managing leased real property.

PURPOSE: This rule is being rescinded and streamlined with other related rules 1 CSR 35-2.010, 1 CSR 35-2.030, 1 CSR 35-2.040, and 1 CSR 35-2.050.

AUTHORITY: section 34.030, RSMo 1994. Original rule filed April 15, 1998, effective Nov. 30, 1998. Rescinded: Filed Nov. 30, 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 con-

sidered, 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 2—Leasing**

PROPOSED AMENDMENT

1 CSR 35-2.030 [Administration of the Leasing Process/ Procurement and Management of Leased Real Property.] The Division of Facilities Management, Design and Construction is amending the title, amending the purpose statement, amending existing sections (1)–(3), deleting section (4), adding new sections (1) and (5)–(18), and renumbering.

PURPOSE: This amendment deletes the exceptions in section (4) regarding the carrying of weapons in leased facilities and, in its place, enacts a new section (18) that incorporates the exceptions in 1 CSR 35-1.050(5), “Weapons Capable of Lethal Use Prohibited; Exceptions.” This amendment also adds language currently found in other regulations in this chapter, which are in the process of being rescinded.

PURPOSE: This rule establishes the Office of Administration as the agency of authority and responsibility for procuring and managing leased real property, and establishes uniform procedures for procuring and managing leased real property.

(1) As used in this regulation—

(A) “Agency” means any organizational unit of state government, with the exception of the General Assembly, elected officials, the judiciary, Missouri Department of Conservation, Missouri Department of Transportation, institutions of higher education, and bodies corporate and politic;

(B) “Leased premises” means the property being or to be leased;

(C) “Lessor” means the landlord, owner, or agent of the owner of the leased premises;

(D) “Lessee” means the state of Missouri;

(E) “Tenant/using agency” means the organizational unit of state government which occupies the leased premises;

(F) “Premises” means all land, buildings, and equipment furnished as part of the property leased to the state;

(G) “Request for Proposal (RFP)” means a document describing the particular specifications the facility must comply with and the terms and conditions of the contract; and

(H) “Lease” means the documents formalizing and binding the lessor and the lessee. Contract documents include the signed request for proposal, any amendments thereto, and the counter-signed award page.

[(1)](2) The [c]Commissioner of [a]Administration is the exclusive representative of the state of Missouri in all real estate leasing transactions except as otherwise provided in this chapter. Neither the tenant/using agency nor any individual, organization or group, other than the [c]Commissioner of [a]Administration, shall have authority to obligate the state of Missouri in real estate leasing transactions in any form.

[(2)](3) The tenant/using agency [shall have] has primary responsibility for managing the day-to-day operation of the leased premises, but [shall have] has no authority to waive or modify provisions of the bid specifications or the terms and conditions of the lease. The tenant/using agency shall provide the [c]Commissioner of [a]Administration with written documentation of any problems,

complaints, or concerns that are contrary to the terms and conditions of the lease.

[(3)](4) The [c]/Commissioner of [a]/Administration may establish and maintain written guidelines to implement these regulations governing the leasing of real property. The guidelines may include, but not be limited to:

(A) Procedures and documents for identifying the amount and type of real property needed;

(B) Procedures and documents for procuring leased premises; and

(C) Procedures and documents for administering the contracts.

[(4) All leases entered into by the Office of Administration shall prohibit carrying a firearm or other weapon readily capable of lethal use into the leased premises. This prohibition shall not apply to 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, persons vested with judicial authority by the state or federal court, and members of the state General Assembly, acting in their official capacity. 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 employers of such persons must supply in writing to the state facilities operations manager the names, addresses and photographs of their employees authorized to service such ATMs at least five (5) business days before such persons start servicing the ATMs, and the employers must immediately advise in writing to the state facilities operations manager when any such employee is no longer working for said employer. 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 so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises.]

(5) All acquisitions of leased property, including both newly executed leases and the extensions of existing leases after all renewal options have expired, will be procured through competitive proposals, unless the Commissioner of Administration deems it to be in the best interest of the state to negotiate a particular procurement.

(6) For each lease, the Commissioner of Administration, in conjunction with the tenant/using agency, may develop a Request for Proposal (RFP) for the property to be acquired.

(7) The Commissioner of Administration may suspend from bidding on state leases any individual or organization who—

(A) Materially fails to comply with the provisions of an award from the state or a lease agreement with the state;

(B) Submits false or misleading information in response to an RFP;

(C) Takes actions that are intended to inhibit or prevent the operation of an open, competitive bid or proposal process; or

(D) Acts in a manner contrary to sound or ethical business practice, or in a manner deemed by the Commissioner of Administration to be detrimental to state leasing practice.

(8) The Commissioner of Administration may require any bidder/lessor to submit a surety document payable to the state of Missouri to insure compliance with the RFP and/or lease.

(9) The Commissioner of Administration will conduct an evalua-

tion of all proposals in accordance with the RFP, if applicable.

(10) The decision to award a lease to a lessor will be based upon the lowest and best proposal received in accordance with the terms of the RFP, if applicable.

(A) No individual, agency, or organization other than the Commissioner of Administration may obligate the state of Missouri in the procurement of leased real property.

(B) The Commissioner of Administration reserves the right to reject any and all proposals, and may waive any minor informality or irregularity in a proposal.

(C) The lessor will be required to comply with all terms and conditions stipulated in the proposal as accepted.

(11) The Commissioner of Administration may require the successful bidder/lessor to submit specified documents detailing any renovation and/or construction that is to occur on the premises to insure compliance with the proposal.

(12) The Commissioner of Administration may signify that the documents for major construction projects or renovations have been reviewed and accepted by issuing a notice to proceed to the successful bidder/lessor.

(13) In order for any lease of real property to obligate the state of Missouri, the lease must be signed by the Commissioner of Administration or the director of the Division of Facilities Management, Design and Construction, or one of their designees.

(14) The rights and obligations of the lessor and the lessee will be as specified in the lease.

(15) The tenant/using agency will be responsible for the day-to-day operations of the rental facility.

(16) The Commissioner of Administration has the authority to make a one- (1-) time lump-sum payment to a lessor for improvements to a leased facility under the following conditions:

(A) The improvements would provide a direct benefit to the operations of the state's programs but are not covered by the lease, such as maintenance, upkeep, or repair of the facility;

(B) The amount paid by the Commissioner of Administration for the construction of the improvements is no more than the reasonable cost to construct the improvements; and

(C) The remaining term of the lease, including the lessee's options to renew, exceeds twelve (12) months. A one (1)-time payment may only be made in the last one- (1-) year renewal period of a lease if necessary to meet unforeseen changes in program requirements.

(17) Monies to fund all payments due under lease agreements are appropriated annually by the Missouri General Assembly for one (1) fiscal year beginning July 1. No lease shall be binding on the lessee unless and until appropriations have been made by the Missouri General Assembly and, if applicable, funds have been received from the United States government for any payment therefor. This limitation applies to any fiscal year during the initial period and all renewal periods.

(18) All leases entered into by the Office of Administration will prohibit carrying a firearm or other weapon readily capable of lethal use into the leased premises, subject to the exceptions set forth in 1 CSR 35-1.050.

AUTHORITY: sections 8.110[,] and 8.320, RSMo 2016, and sections 34.030[,] and 37.005, [and 536.025, RSMo 2000 and 536.023.3,] RSMo Supp. [2005] 2017. Original rule filed April

15, 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 Nov. 30, 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 2—Leasing**

PROPOSED RESCISSION

1 CSR 35-2.040 Lease Acquisition. This rule established a uniform procedure for procuring leased real property.

PURPOSE: This rule is being rescinded and combined with other established rules, 1 CSR 35-2.010; 1 CSR 35-2.020; 1 CSR 35-2.030; CSR 35-2.050.

AUTHORITY: section 34.030, RSMo 1994. Original rule filed April 15, 1998, effective Nov. 30, 1998. Rescinded: Filed Nov. 30, 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 35—Division of Facilities Management
Chapter 2—Leasing**

PROPOSED RESCISSION

1 CSR 35-2.050 Management of Leased Real Property. This rule established a uniform procedure for managing leased real property.

PURPOSE: This rule is being rescinded and combined with other established rules, 1 CSR 35-2.010; 1 CSR 35-2.020; 1 CSR 35-2.030; 1 CSR 35-2.040.

AUTHORITY: section 34.030, RSMo 1994. Original rule filed April 15, 1998, effective Nov. 30, 1998. Rescinded: Filed Nov. 30, 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 2—DEPARTMENT OF AGRICULTURE
Division 70—Plant Industries
Chapter 17—Industrial Hemp**

PROPOSED RULE

2 CSR 70-17.010 Definitions

PURPOSE: This rule lists definitions for Chapter 17.

The terms defined in sections 195.010 and 195.740, RSMo in addition to other relative terms pertaining to the industrial hemp agricultural pilot program will be applied for use in 2 CSR 70-17.010 to 2 CSR 70-17.120.

(1) Agricultural Hemp Seed Production Permit – permit issued by the Missouri Department of Agriculture to registered growers and handlers engaged in the production of agricultural hemp seed that:

- (A) Is sold or intended to be sold to registered growers for planting; or
- (B) Remains capable of germination.

(2) Applicant – a person, joint venture, or cooperative who submits an application for registration as a grower and/or handler.

(3) CBD – cannabidiol.

(4) Certificate of analysis – a certificate from an independent testing laboratory describing the results of the laboratory's testing of a sample.

(5) Certified agricultural hemp seed – seed for which a certificate or any other instrument has been issued by an agency authorized under the laws of any country, state, territory, or possession of the United States to officially certify seed and that has standards and procedures approved by the Association of Official Seed Certifying Agencies (AOSCA) to assure the genetic purity and identity of the seed certified.

(6) Cooperative – organization that is owned and run jointly by its members, who share the profits or benefits.

(7) Delta-9 THC – delta-9 tetrahydrocannabinol.

(8) Department – The Director of the Department of Agriculture and all department employees.

(9) Destroy/destruction – rendered unusable by burning or incorporating with other materials in a manner approved by the Missouri State Highway Patrol.

(10) Grower registration – registration issued by the Missouri Department of Agriculture to applicants for production and cultivation of industrial hemp.

(11) Handler registration - registration issued by the Missouri Department of Agriculture to applicants for processing industrial hemp into publicly marketable hemp products.

(12) Harvest - the termination of the cultivation process, including taking cuttings.

(13) Hemp extract - an extract from a cannabis sativa L. plant or a mixture or preparation containing cannabis sativa L. plant material that is composed of no more than three-tenths of one percent (0.3%) delta-9 THC on a dry weight basis.

(14) Independent testing laboratory - a laboratory:

(A) With respect to which no person having a direct or indirect interest in the laboratory also has a direct or indirect interest in a business that:

1. Cultivates, processes, dispenses, or sells industrial hemp or marijuana;

2. Processes or sells hemp extract, CBD, or other similar substance in another state or jurisdiction; and

(B) That is accredited as a testing laboratory to International Organization for Standardization (ISO) 17025 by a third party accrediting body such as the American Association for Laboratory Accreditation (A2LA) or Assured Calibration and Laboratory Accreditation Select Services (ACLASS).

(15) Industrial Hemp - as defined in section 195.010 (24), RSMo.

(16) Joint venture - a commercial enterprise undertaken jointly by two (2) or more persons that otherwise retain their distinct identities.

(17) Legal age - eighteen (18) years of age or older.

(18) Person - includes, but is not limited to, a natural person, sole proprietorship, partnership, limited liability corporation, limited liability partnership, company, corporation, association, government agency or governmental subdivision, business, or non-profit organization.

(19) Plot of Land - means a contiguous parcel of land registered with the department on which a registrant plans to cultivate industrial hemp.

(20) Publicly marketable hemp product - any industrial hemp product that does not include any living hemp plants, viable seeds, viable roots, leaf materials, or floral materials, and contains no material with a delta-9 THC concentration exceeding three-tenths of one percent (0.3%) on a dry weight basis.

AUTHORITY: section 195.773, RSMo Supp. 2018. Original rule filed Nov. 20, 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 not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Agriculture, ATTN: John Brunnert, PO Box 630, 1616 Missouri Boulevard, Jefferson City, MO 65102, or online at Agriculture.Mo.Gov/proposed-rules/. 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 2—DEPARTMENT OF AGRICULTURE
Division 70—Plant Industries
Chapter 17—Industrial Hemp**

PROPOSED RULE

2 CSR 70-17.020 Industrial Hemp Pilot Program Registration Application (Grower and Handler Application Requirements, Selection Process, Application Period, and Fees)

PURPOSE: This rule explains the grower and handler application requirements, selection process, application period, and fees.

(1) Each applicant for an Industrial Hemp Agricultural Pilot Program Grower and/or Handler Registration must complete and submit an application for registration on a form provided by the department. Applications must be postmarked by the deadline for closing the application period. Notice of the open application period will be posted on the department's website.

(2) Growers engaged in the production and cultivation of agricultural hemp seed shall obtain an agricultural hemp seed production permit.

(3) Handlers engaged in the processing and/or distribution of agricultural hemp seed to registered growers shall obtain an agricultural hemp seed production permit.

(4) Growers and/or handlers must apply for separate registrations for each plot of land, location, facility, or establishment where industrial hemp will be grown or handled.

(5) Completed applications must provide the following information:
(A) The complete legal name, mailing address, email, and phone number of the applicant;

(B) The applicant's state of residence or state in which the entity is domiciled;

(C) Type of business entity: person, cooperative, or joint venture;

(D) Type of registration: grower or handler;

(E) Request for Agricultural Hemp Seed Production Permit, if applicable;

(F) Legal description, street address, and Global Positioning System (GPS) coordinates for the plot of land used for cultivating industrial hemp and the industrial hemp storage facility location, if applicable;

(G) Legal description, street address, and Global Positioning System (GPS) coordinates for the industrial hemp processing facility and industrial hemp storage facility location, if applicable;

(H) Global Positioning System (GPS) coordinates for each variety of industrial hemp planted;

(I) An industrial hemp production, research, and marketing plan;

(J) The application for a grower registration must include submission of:

1. Any evidence of farming experience for the department's consideration, such as a copy of an IRS Schedule F federal tax form for at least one (1) of the past three (3) years, the applicant's farm serial number (FSN) issued by the United States Department of Agriculture-Farm Service Agency, or evidence of agricultural education;

2. A detailed map of the plot of land on which the applicant plans to grow industrial hemp, showing the boundaries and dimensions of the growing area in acres and the location of different varieties within the growing area;

3. Requested number of acres for production and cultivation of industrial hemp;

4. Variety of certified agricultural hemp seed to be planted and the number of acres of each variety. In subsequent renewal years, the variety of certified agricultural hemp seed to be planted and the number of acres of each variety must be provided at the time of renewal;

5. A statement of verification and supporting documentation that the registered grower has reasonable grounds to believe that the certified agricultural hemp seed to be planted is of a type and variety that will produce a delta-9 THC concentration of not more than three-tenths of one percent (0.3%) on a dry weight basis;

6. Documentation verifying any non-certified agricultural hemp seed to be planted is enrolled in the Missouri Crop Improvement Association's certification or heritage program.

(6) No applicant younger than the legal age will be issued a grower or handler registration.

(7) Applications must be submitted along with a nonrefundable application fee of one hundred dollars (\$100) per type of registration, made payable to the Missouri Department of Agriculture. Institutions of higher education are exempt from the application fee.

(8) The department shall notify applicants by letter or email whether the application has been denied or conditionally approved. A person, cooperative, or joint venture shall not be a participant in the department's pilot program until the applicant has executed a grower registration agreement, paid all registration fees, and received from the department an issued registration.

(9) The department will select applicants for a grower registration by scoring the following factors:

- (A) Application for registration;
- (B) Applicant's farming experience;
- (C) Detailed map of the plot of land on which industrial hemp will be cultivated; and
- (D) Applicant's industrial hemp production, research, and marketing plan.

In the event there is a tie between applicants for a grower registration, the department will select the applicant that received the highest score on farming experience. If a tie score still remains, the department will select the applicant that received the highest score on the industrial hemp production, research, and marketing plan.

AUTHORITY: section 195.773, RSMo Supp. 2018. Original rule filed Nov. 20, 2018.

PUBLIC COST: This proposed rule will annually cost public entities thirty-five thousand nine hundred fifty-nine dollars (\$35,959) in the aggregate.

PRIVATE COST: This proposed rule will annually cost private entities eight thousand dollars (\$8,000) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Agriculture, ATTN: John Brunnert, PO Box 630, 1616 Missouri Boulevard, Jefferson City, MO 65102, or online at Agriculture.Mo.Gov/proposed-rules/. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

**FISCAL NOTE
 PUBLIC COST**

- I. Department Title: 2 - Agriculture**
- Division Title: 70 – Plant Industries**
- Chapter Title: 17 – Industrial Hemp**

Rule Number and Name:	2 CSR 70-17.020 Industrial Hemp Pilot Program Registration Application (Grower and Handler Application Requirements, Selection Process, Application Period and Fees)
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Missouri Department of Agriculture	\$35,959 annually

III. WORKSHEET

The estimated FY 21 expenses for PS, EE, and Fringe total \$143,837. Approximately 25% of the annual total expense will go toward the requirements in this rule.

IV. ASSUMPTIONS

Assuming 200 growers and 40 handlers apply.

**FISCAL NOTE
PRIVATE COST**

- I. Department Title: 2 - Agriculture**
- Division Title: 70 – Plant Industries**
- Chapter Title: 17 – Industrial Hemp**

Rule Number and Title:	2 CSR 70-17.020 Industrial Hemp Pilot Program Registration Application (Grower and Handler Application Requirements, Selection Process, Application Period and Fees)
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
240	Grower and handler applicants	\$8,000 annually

- III. WORKSHEET**
240 applicants x \$100 / 3 years = \$8,000 annually.

- IV. ASSUMPTIONS**
An estimated 240 growers and handlers will pay the \$100 application fee in the first three years of the program.

**Title 2—DEPARTMENT OF AGRICULTURE
Division 70—Plant Industries
Chapter 17—Industrial Hemp**

PROPOSED RULE

**2 CSR 70-17.030 State and Federal Criminal History
Background Check (When Required, Process, and Fees)**

PURPOSE: This rule explains the state and federal criminal history background check requirements.

- (1) Each applicant for a grower and/or handler registration must complete and pay for a state and federal criminal background check for initial registration and renewal.
- (2) All required state and federal criminal background checks shall be delivered to the department with the application for registration.
- (3) All required state and federal criminal background checks must be submitted along with the application for registration renewal.
- (4) Failure to submit all required state and federal criminal background checks with the application or the request to renew the registration shall be grounds for denial of registration.

AUTHORITY: section 195.773, RSMo Supp. 2018. Original rule filed Nov. 20, 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 annually cost private entities four thousand dollars (\$4,000) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Agriculture, ATTN: John Brunnert, PO Box 630, 1616 Missouri Boulevard, Jefferson City, MO 65102, or online at Agriculture.Mo.Gov/proposed-rules/. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

**FISCAL NOTE
PRIVATE COST**

- I. Department Title: 2 - Agriculture**
- Division Title: 70 – Plant Industries**
- Chapter Title: 17 – Industrial Hemp**

Rule Number and Title:	2 CSR 70-17.030 State and Federal Criminal History Background Check (When Required, Process, and Fees)
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
240	Grower and handler applicants	\$4,000 annually

III. WORKSHEET

240 applicants x estimated \$50 per criminal history background check / 3 years – \$4,000 annually.

IV. ASSUMPTIONS

An estimated 240 growers and handlers will pay the criminal history background check in the first 3 years of the program.

**Title 2—DEPARTMENT OF AGRICULTURE
Division 70—Plant Industries
Chapter 17—Industrial Hemp**

PROPOSED RULE

2 CSR 70-17.040 Industrial Hemp Pilot Program Grower and Handler Registration Agreement

PURPOSE: This rule explains the grower and handler registration agreement requirements.

(1) The following terms, conditions, and requirements shall be included in the registration agreement and will be provided to the selected applicants for signature. Applicants shall acknowledge and agree:

(A) The department is implementing an industrial hemp agricultural pilot program to study the growth, cultivation, processing, feeding, and marketing of industrial hemp;

(B) They are the legal authorized representative responsible for representing the person, joint venture, or cooperative;

(C) To comply with applicable laws and regulations;

(D) They have the legal right to plant, grow, cultivate, produce, handle, process, and store industrial hemp on the plot of land;

(E) No plot of land may contain industrial hemp plants or parts thereof that the registered grower and handler knows or has reason to know are of a variety that will produce a plant that when submitted for laboratory analysis will test above three-tenths of one percent (0.3%) delta-9 THC concentration on a dry weight basis. No registered grower or handler shall use any such variety for any purpose associated with the department's industrial hemp agricultural pilot program;

(F) All agricultural hemp seed must be planted on all acres for which the application is approved and must be—

1. Certified agricultural hemp seed;

2. Agricultural hemp seed retained from the registered grower's previous year's crop; or

3. Non-certified seed enrolled in the Missouri Crop Improvement Association's certification or heritage seed programs provided by Section 195.770, RSMo;

(G) All application, registration, permit, and inspection fees are nonrefundable;

(H) The grower registration, handler registration, and/or agricultural hemp seed permit is valid for a three (3) year term, subject to applicable annual renewal fees;

(I) To pay all fees as established in the applicable laws and regulations;

(J) To pay within thirty (30) days of the date of the invoice any inspection and laboratory analysis costs that the department deems necessary;

(K) To allow entry to all land and structures for the purpose of inspection, investigation, and sampling of industrial hemp plants by the department and law enforcement agencies, with or without cause, for compliance and enforcement of the applicable laws and regulations;

(L) To destroy without compensation:

1. Any material found to have a measured delta-9 THC content in excess of three-tenths of one percent (0.3%) on a dry weight basis;

2. Industrial hemp plants located in an area that is not identified on the application for registration;

(M) To adhere to the terms of the application for registration as approved by the department, including conducting the applicant's activities, such as growing or handling, at only the locations listed on the application and approved by the department;

(N) Not to plant industrial hemp within any other crop without written permission from the department;

(O) To hold the department harmless, release the department from liability, and waive the right to sue the department for any claims

arising from industrial hemp or associated activities;

(P) That any time industrial hemp is in transit, the transporter shall have in their possession a copy of the grower registration, handler registration, and/or agricultural hemp seed permit for inspection upon the request of the department or a law enforcement agency;

(Q) To notify the department of any interaction with law enforcement regarding requirements of the applicable laws and regulations. Notification must be made within forty-eight (48) hours by phone and in writing within five (5) calendar days of the occurrence;

(R) To notify the department and law enforcement of any theft of industrial hemp. Notification must be made within forty-eight (48) hours upon discovery by phone call and in writing within five (5) calendar days of discovery.

(2) Failure to sign the grower and handler registration agreement shall terminate conditional approval of the application.

AUTHORITY: section 195.773, RSMo Supp. 2018. Original rule filed Nov. 20, 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 not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Agriculture, ATTN: John Brunnert, PO Box 630, 1616 Missouri Boulevard, Jefferson City, MO 65102, or online at Agriculture.Mo.Gov/proposed-rules/. 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 2—DEPARTMENT OF AGRICULTURE
Division 70—Plant Industries
Chapter 17—Industrial Hemp**

PROPOSED RULE

2 CSR 70-17.050 Stipulations for Registered Growers and Handlers

PURPOSE: This rule explains stipulations for registered growers and handlers.

(1) Planting, cultivating, storing, and/or handling industrial hemp shall not occur within two thousand (2,000) feet of any school, preschool, or daycare. Institutions of higher learning are exempt from this section.

(2) No application or site modification request shall include any plot of land that is not owned or rented by the applicant, registered grower, or registered handler.

(3) Registered growers and registered handlers must also obtain an agricultural hemp seed permit to sell agricultural hemp seed.

AUTHORITY: section 195.773, RSMo Supp. 2018. Original rule filed Nov. 20, 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 not cost private entities

more than five hundred dollars (\$500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Agriculture, ATTN: John Brunnert, PO Box 630, 1616 Missouri Boulevard, Jefferson City, MO 65102, or online at Agriculture.Mo.Gov/proposed-rules/. 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 2—DEPARTMENT OF AGRICULTURE
Division 70—Plant Industries
Chapter 17—Industrial Hemp**

PROPOSED RULE

2 CSR 70-17.060 Modification of Grower and Handler Applications and Fees

PURPOSE: This rule explains the process of modifying grower and handler applications and the associated fees.

(1) Any applicant, grower, and/or handler requesting to alter the information on the application for registration must submit a new application reflecting the new information.

(2) Any registered grower requesting to change the plot of land location or decrease the total number of acres to be planted must submit a revised application and a nonrefundable fee of two hundred fifty dollars (\$250). Institutions of higher education are exempt from this fee.

(3) Any registered grower requesting to alter the application or registration for the purpose of increasing the number of acres to be planted must submit a revised application and a nonrefundable fee of two hundred fifty dollars (\$250), plus two hundred dollars (\$200) per additional acre. Institutions of higher education are exempt from these fees.

(4) Written approval or registration from the department must be received prior to purchasing, planting, handling, storing, offering for sale, or selling any industrial hemp or agricultural hemp seed at the new location.

(5) Any request to alter industrial hemp production and cultivation, handling, processing, or storage sites must comply with the stipulations found in 2 CSR 70-17.050.

AUTHORITY: section 195.773, RSMo Supp. 2018. Original rule filed Nov. 20, 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 annually cost private entities four thousand two hundred fifty dollars (\$4,250) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Agriculture, ATTN: John Brunnert, PO Box 630, 1616 Missouri Boulevard, Jefferson City, MO 65102, or online at Agriculture.Mo.Gov/proposed-rules/. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

**FISCAL NOTE
 PRIVATE COST**

- I. Department Title: 2 - Agriculture**
Division Title: 70 – Plant Industries
Chapter Title: 17 – Industrial Hemp

Rule Number and Title:	2 CSR 70-17.060 Modification of Grower and Handler Applications and Fees
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
17	Grower and handlers	\$4,250

III. WORKSHEET

17 growers or handlers x \$250 = \$4,250

IV. ASSUMPTIONS

An estimated 10 % of the 170 registered growers and handlers will modify their application.

Title 2—DEPARTMENT OF AGRICULTURE
Division 70—Plant Industries
Chapter 17—Industrial Hemp

PROPOSED RULE

2 CSR 70-17.070 Industrial Hemp Registration Fees (Renewal of Registrations) and Other Fees

PURPOSE: This rule explains registration and other related fees.

(1) Upon the department's selection of the application, the applicant will be provided an Industrial Hemp Pilot Program Grower and Handler Registration Agreement to be signed and submitted along with the applicable registration fees. Institutions of higher education are exempt from these fees.

(A) Grower registration fee: five hundred dollars (\$500) plus—

1. Forty-five dollars (\$45) per acre to be planted.

(B) Handler registration fee: five hundred dollars (\$500) plus—

1. For processing the grain component of industrial hemp: five hundred dollars (\$500);

2. For processing the fiber component of industrial hemp: five hundred dollars (\$500);

3. For processing the leaf and/or floral material component of industrial hemp (hemp extract and/or CBD): three thousand dollars (\$3,000); or

4. If processing more than one (1) component, the handler shall pay the fee associated with each component.

(C) Agricultural Hemp Seed Production Permit fee: five hundred dollars (\$500).

(2) Registered growers must pay an annual renewal fee of forty-five dollars (\$45) per acre for the second and third year of registration.

(3) Registered handlers must pay an annual renewal fee equal to the applicable processing fees listed in this section in (1)(B)1. through 4. for the second and third year of registration.

(4) Registrations are effective on the date originally issued by the department and will expire three (3) years after the date of issuance.

(5) Applications for registration renewal must be received no more than one hundred twenty (120) days and no less than thirty (30) days prior to the expiration of the three- (3-) year registration. Registered growers and handlers shall be required to satisfy all requirements for registration as if never before registered, including completion of an acceptable state and federal criminal background check. Registered growers will be considered first for subsequent three- (3-) year registration renewals.

(6) If unaccounted acres are available for production and cultivation, the department will announce an open application period on the department's website. During this period, the department will consider new applications and registration modifications for the acreage.

(7) When destruction is required, the department will assess to the registered grower an appropriate destruction certification fee. Such fee will be commensurate with the Missouri Highway Patrol or local law enforcement agencies' costs for certifying crop destruction. Such fee shall be paid within thirty (30) days of receiving an invoice.

AUTHORITY: section 195.773, RSMo Supp. 2018. Original rule filed Nov. 20, 2018.

PUBLIC COST: This proposed rule will annually cost public entities thirty-five thousand nine hundred fifty-nine dollars (\$35,959) in the aggregate.

PRIVATE COST: This proposed rule will annually cost private entities one hundred seventy-nine thousand four hundred sixteen dollars (\$179,416) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Agriculture, ATTN: John Brunnert, PO Box 630, 1616 Missouri Boulevard, Jefferson City, MO 65102, or online at Agriculture.Mo.Gov/proposed-rules/. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.

**FISCAL NOTE
PUBLIC COST**

- I. Department Title: 2 - Agriculture**
- Division Title: 70 – Plant Industries**
- Chapter Title: 17 – Industrial Hemp**

Rule Number and Name:	2 CSR 70-17.070 Industrial Hemp Registration Fees (Renewal of Registrations) and Other Fees
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Missouri Department of Agriculture	\$35,959 annually

III. WORKSHEET

The estimated FY 21 expenses for PS, EE, and Fringe total \$143,837. Approximately 25% of the annual total expense will go toward the requirements in this rule.

IV. ASSUMPTIONS

Assuming 170 growers and 40 handlers are registered.

**FISCAL NOTE
PRIVATE COST**

- I. Department Title: 2 - Agriculture**
- Division Title: 70 – Plant Industries**
- Chapter Title: 17 – Industrial Hemp**

Rule Number and Title:	2 CSR 70-17.070 Industrial Hemp Registration Fees (Renewal of Registrations) and Other Fees
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
170	Growers and handlers	\$179,416

III. WORKSHEET

150 growers x \$500 registration fee every 3 years = \$25,000 annually.
 2000 acres x \$45 = \$90,000 annually.
 25% of growers x \$500 ag hemp seed permit every 3 years = \$6,250 annually.

20 handlers x \$500 registration fee every 3 years = \$3,333
 35% of handlers x \$500 grain processing fee = \$3,500
 25% of handlers x \$500 fiber processing fee = \$2,500
 80% of handlers x \$3,000 floral processing fee = \$48,000
 25% of handlers x \$500 ag hemp seed permit every 3 years = \$833

Total annual grower and handler fees required in this rule = \$179,416.

IV. ASSUMPTIONS

Estimates for the number of growers and handlers requesting the various registrations are based on industrial hemp program participation values in Kentucky.

**Title 2—DEPARTMENT OF AGRICULTURE
Division 70—Plant Industries
Chapter 17—Industrial Hemp**

PROPOSED RULE

2 CSR 70-17.080 Site Access for Missouri Department of Agriculture (MDA) and Law Enforcement Inspection and Sampling

PURPOSE: This rule explains the site access requirements.

(1) The department will provide information to the Missouri Highway Patrol about the registered grower and handler operation as it relates to the growing, cultivation, processing, and storage of industrial hemp at locations as indicated on the application for registration.

(2) Registered growers and handlers shall have no reasonable expectation of privacy from the department or law enforcement, with respect to the plot of land where agricultural hemp seeds, industrial hemp plants, or industrial hemp plant materials are located as indicated on the application for registration.

(3) A registered grower and handler, whether present or not, must permit the department or a representative of any law enforcement agency to enter the plot of land, with or without cause, where agricultural hemp seeds, industrial hemp plants, or industrial hemp plant materials are located or cultivated and any land or structure where agricultural hemp seeds, industrial hemp plants, or industrial hemp plant materials are processed, stored, or held for sale, with or without cause.

AUTHORITY: section 195.773, RSMo Supp. 2018. Original rule filed Nov. 20, 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 not cost private entities more than five hundred dollars (\$500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Agriculture, ATTN: John Brunnert, PO Box 630, 1616 Missouri Boulevard, Jefferson City, MO 65102, or online at Agriculture.Mo.Gov/proposed-rules/. 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.*

(1) All registered growers and handlers are subject to inspection, investigation, and sampling to verify compliance with the applicable laws and regulations.

(2) Registered growers and handlers shall reimburse the department for all related inspection, investigation, and sampling costs including mileage charged at the federal mileage rate, within thirty (30) days of the invoice.

(3) If the department collects samples for testing, registered growers and handlers shall reimburse the department for all related laboratory analysis costs within thirty (30) days of the date of the invoice.

AUTHORITY: section 195.773, RSMo Supp. 2018. Original rule filed Nov. 20, 2018.

PUBLIC COST: This proposed rule will annually cost public entities seventy-one thousand nine hundred nineteen dollars (\$71,919) in the aggregate.

PRIVATE COST: This proposed rule will annually cost private entities five thousand six hundred twenty-five dollars (\$5,625) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Agriculture, ATTN: John Brunnert, PO Box 630, 1616 Missouri Boulevard, Jefferson City, MO 65102, or online at Agriculture.Mo.Gov/proposed-rules/. 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 2—DEPARTMENT OF AGRICULTURE
Division 70—Plant Industries
Chapter 17—Industrial Hemp**

PROPOSED RULE

2 CSR 70-17.090 Inspection of Site, Crop, and Sampling Requirements for Laboratory Analysis (Responsibilities of Registered Grower and Handler)

PURPOSE: This rule explains site inspections, crop inspections, and sampling requirements.

**FISCAL NOTE
PUBLIC COST**

- I. Department Title: 2 - Agriculture**
Division Title: 70 – Plant Industries
Chapter Title: 17 – Industrial Hemp

Rule Number and Name:	2 CSR 70-17.090 Inspection of Site, Crop, and Sampling Requirements for Laboratory Analysis (Responsibilities of Registered Grower and Handler)
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Missouri Department of Agriculture	\$71,919

III. WORKSHEET

The estimated FY 21 expenses for PS, EE, and Fringe total \$143,837. Approximately 50% of the annual total expense will go toward the requirements in this rule.

IV. ASSUMPTIONS

Assuming 170 growers and handlers are registered.

**FISCAL NOTE
PRIVATE COST**

- I. Department Title: 2 - Agriculture**
Division Title: 70 - Plant Industries
Chapter Title: 17 - Industrial Hemp

Rule Number and Title:	2 CSR 70-17.090 Inspection of Site, Crop, and Sampling Requirements for Laboratory Analysis (Responsibilities of Registered Grower and Handler)
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
50	Growers and handlers	\$5,625

III. WORKSHEET

MDA will inspect 50 sites per year. Each inspection will take 4 hours (@ \$25 per hour) and \$12.50 travel expenses.

$$50 \times \$112.50 = \$5,625$$

IV. ASSUMPTIONS

Inspection time and travel expense.

Title 2—DEPARTMENT OF AGRICULTURE
Division 70—Plant Industries
Chapter 17—Industrial Hemp

PROPOSED RULE

2 CSR 70-17.100 Sampling Requirements

PURPOSE: This rule explains the sampling requirements for the program.

(1) All industrial hemp varieties planted and cultivated within a plot of land must be sampled to ensure compliance with the applicable laws and regulations.

(2) Registered growers must collect samples in accordance with the department's sampling protocol within fifteen (15) days prior to harvest.

(3) Each variety of industrial hemp must be sampled and analyzed by an independent testing laboratory for analysis for delta-9 THC concentration on a dry weight basis.

(4) Sampled plant material from multiple varieties shall not be commingled.

(5) One (1) duplicate composite sample of each variety of industrial hemp must be collected and retained by the registered grower in accordance with established department protocols, to be analyzed if the original composite sample certificate of analysis reports greater than three-tenths of one percent (0.3%) delta-9 THC concentration on a dry weight basis.

(6) Registered growers must maintain a copy of each certificate of analysis as part of the Industrial Hemp Plant Monitoring System for a period of three (3) years from date of analysis.

(A) Registered growers must provide to a registered handler or processor a copy of each certificate of analysis for each variety of industrial hemp distributed or sold.

(B) Registered growers must submit to the department, within three (3) business days of receipt, copies of all certificates of analysis showing a delta-9 THC concentration on a dry weight basis greater than three-tenths of one percent (0.3%) as evidence that the industrial hemp variety is not in compliance with applicable laws and regulations. Upon receipt of each certificate of analysis showing noncompliance, the registered grower will submit the retained duplicate composite sample for that variety from the same plot of land to be immediately delivered to the independent testing laboratory for analysis.

(C) Registered growers must submit to the department, within three (3) business days of receipt, each duplicate composite certificate of analysis. The department will issue to the registered grower an order for destruction for the specific industrial hemp variety testing out of compliance. Destruction must be completed by the registered grower within ten (10) days of receipt of the department's order for destruction.

1. The registered grower must maintain a destruction report.

2. The registered grower must submit a copy of the destruction report to the department within three (3) days of crop destruction and the department will notify the Missouri Highway Patrol and local law enforcement of crop destruction.

(7) Registered growers are financially responsible for all costs associated with contracting laboratory services, sample collection, delivery of samples to the independent testing laboratory, and laboratory analysis.

AUTHORITY: section 195.773, RSMo Supp. 2018. Original rule filed Nov. 20, 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 annually cost private entities thirty thousand dollars (\$30,000) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Agriculture, ATTN: John Brunnert, PO Box 630, 1616 Missouri Boulevard, Jefferson City, MO 65102, or online at Agriculture.Mo.Gov/proposed-rules/. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.

**FISCAL NOTE
PRIVATE COST**

- I. Department Title: 2 - Agriculture**
Division Title: 70 – Plant Industries
Chapter Title: 17 – Industrial Hemp

Rule Number and Title:	2 CSR 70-17.100 Sampling Requirements
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
150	Growers	\$30,000

III. WORKSHEET

150 growers x 2 samples per year x \$100 = \$30,000 annually.

IV. ASSUMPTIONS

An estimated 150 growers will average 2 varieties of industrial hemp. Cost per sample based on Kentucky data.

Title 2—DEPARTMENT OF AGRICULTURE
Division 70—Plant Industries
Chapter 17—Industrial Hemp

PROPOSED RULE

2 CSR 70-17.110 Industrial Hemp Plant Monitoring System (Records, Reports, and Data Maintained for Cultivating, Sampling, Certificates of Analysis, Storing, Processing, Destruction, and Sale or Distribution of Industrial Hemp)

PURPOSE: This rule explains the industrial hemp plant monitoring system requirements.

(1) All registered growers and handlers must keep and maintain an Industrial Hemp Monitoring System for all records, reports, data, and certificates of analysis relating to the planting, cultivation, harvest, sampling, processing, storage, destruction, sale, or distribution of industrial hemp. All records, reports, data, and certificates of analysis must be kept for a period of three (3) years from the date of each activity.

(2) All hemp monitoring system data shall be available for inspection and auditing at a reasonable time during regular business hours, or upon request in writing. The department shall be furnished complete copies of these records within ten (10) business days of receipt of request.

(3) Contents of an Industrial Hemp Plant Monitoring System include:

(A) Planting Reports—

1. Registered growers must record, within ten (10) days of planting, a planting report, including the replanting of seeds or propagules on a plot of land. For each industrial hemp variety planted, the planting report shall contain:

- A. GPS coordinates for the plot of land;
- B. The number of acres of each variety planted;
- C. The GPS coordinates for each variety planted; and
- D. The seed bag label or tag, bulk seed certificate, and/or complete variety name of propagule(s).

(B) Sample Analysis Reports—

1. Certificates of analysis must be kept and maintained for all industrial hemp varieties sampled and tested by an independent testing laboratory. Certificates of analysis must be kept and maintained for a period of three (3) years from date of analysis.

2. Documentation of the registered grower notification to the department for all certificates of analysis showing a delta-9 THC concentration in excess of three-tenths of one percent (0.3%) on a dry weight basis.

3. Documentation verifying that copies of certificates of analysis were provided for each industrial hemp variety distributed or sold to a registered handler or processor.

(C) Destruction Reports—

1. Within three (3) days of crop destruction the registered grower must produce a destruction report, including:

- A. Copy of the department's order of destruction or a written statement justifying the destruction of an industrial hemp crop;
- B. Number of acres of each variety destroyed;
- C. Date of destruction; and
- D. Method of destruction.

(D) Harvest Reports—

1. Within ten (10) days of harvest, the registered grower must produce for each industrial hemp variety harvested, a harvest report including:

- A. Date of harvest for each variety;
- B. Number of acres of each variety harvested;
- C. Amount of each industrial hemp variety harvested;
- D. Location of storage;
- E. Date and amount of industrial hemp transferred to each

registered handler or processor; and

F. Name of registered handler or processor, handler registration number and registration expiration date, and processing facility location address.

(E) Handling Reports—

1. Within ten (10) days of purchase, storage, disposal, or processing, the registered handler must produce:

A. Copies of industrial hemp purchasing agreements with registered growers;

B. Copies of all certificates of analysis for all industrial hemp varieties obtained from registered growers;

C. Weekly inventory reports of each variety of industrial hemp being stored and processed, including:

- (I) Date of inventory;
- (II) Location of stored inventory;
- (III) Total amount of industrial hemp and seed of each variety;

(IV) Total amount of unusable industrial hemp and seed of each variety; and

(V) Name, signature, and title of the employee performing inventory.

D. Disposal records for all unusable industrial hemp and seed, including the following:

- (I) Date of disposal;
- (II) Amount of industrial hemp disposed;
- (III) Disposal or destruction method;
- (IV) Location of disposal or destruction;
- (V) Complete variety name; and
- (VI) Name, signature, and title of employee responsible for disposal or destruction.

E. Processing records, including the following:

- (I) List of products produced from industrial hemp;
- (II) Address or location of processing facility;
- (III) List of buyers including:
 - (a) Name, address, and phone number of buyer;
 - (b) Products purchased;
 - (c) Quantity of each product purchased; and
- F. Date of distribution.

(F) Seed Reports—

1. Within ten (10) days of storing, distributing, or selling agricultural hemp seed, a registered grower or handler with an agricultural hemp seed production permit must produce:

A. Amount of each variety of agricultural hemp seed the registered grower is retaining from the current season's crop for next year's planting;

B. Amount of each variety of industrial hemp in the registered handler's inventory and documentation verifying the origin of the agricultural hemp seed;

C. Distribution and Sales records—

(I) Name, address, phone number, registration number, and registration expiration date of the registered grower distributing or selling agricultural hemp seed;

- (II) Date of transaction, sale, or distribution;
- (III) Complete variety name;
- (IV) Amount of each variety sold or distributed; and
- (V) Name, address, registration number, registration expiration date, and phone number of registered grower to whom the agricultural hemp seed was distributed or sold.

AUTHORITY: section 195.773, RSMo Supp. 2018. Original rule filed Nov. 20, 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 not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Agriculture, ATTN: John Brunnert, PO Box 630, 1616 Missouri Boulevard, Jefferson City, MO 65102, or online at Agriculture.Mo.Gov/proposed-rules/. 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 2—DEPARTMENT OF AGRICULTURE
Division 70—Plant Industries
Chapter 17—Industrial Hemp**

PROPOSED RULE

2 CSR 70-17.120 Revocation of Registration

PURPOSE: This rule explains registration revocations.

(1) The department may immediately revoke a registration or permit if the registered grower, registered handler, and/or signing authority pleads guilty to, pleads *nolo contendere* to, or is convicted of, any felony or drug-related misdemeanor.

(2) The department may immediately revoke a registration or permit if the registered grower, registered handler, and/or signing authority admits or is found by the department to have:

(A) Violated any provision of sections 195.203 to 195.773, RSMo or any regulation promulgated thereunder;

(B) Made any false statement to the department, the Missouri Highway Patrol, or any law enforcement agency;

(C) Failed to comply with any order from the department, the Missouri Highway Patrol, or any law enforcement agency; or

(D) Violated the registration agreement required in 2 CSR 70-17.040.

(3) Any registered grower or handler whose registration or permit has been revoked shall not harvest, process, store, distribute, sell, or remove industrial hemp from any location except as authorized in writing by the department.

(4) The department may schedule a registration revocation hearing after the notification of revocation has been issued.

AUTHORITY: section 195.773, RSMo Supp. 2018. Original rule filed Nov. 20, 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 not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Agriculture, ATTN: John Brunnert, PO Box 630, 1616 Missouri Boulevard, Jefferson City, MO 65102, or online at Agriculture.Mo.Gov/proposed-rules/. 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 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 240—Public Service Commission
Chapter 3—Filing and Reporting Requirements**

PROPOSED RESCISSION

4 CSR 240-3.235 Filing Requirements for Gas Utility General Rate Increase Requests. This rule prescribed information which

must be filed by all gas utilities when filing for a general company-wide increase in rates. As noted in the rule, additional provisions pertaining to the filing requirements for general rate increase requests are found at 4 CSR 240-3.030.

PURPOSE: This rule is being consolidated and streamlined into Chapter 40.

AUTHORITY: section 386.250, RSMo 2000. Original rule filed Aug. 16, 2002, effective April 30, 2003. Rescinded: Filed Nov. 28, 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 OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to the proposed rescission with the Missouri Public Service Commission, Morris L. Woodruff, Secretary of the Commission, 200 Madison Street, PO Box 360, Jefferson City, MO 65102-0360. To be considered, comments must be received at the commission's offices on or before February 1, 2019, and should include a reference to Commission Case No. GX-2018-0390. Comments may also be submitted via a filing using the commission's electronic filing and information system at <http://www.psc.mo.gov/efis.asp>. A public hearing is scheduled for February 6, 2019 at 11:00 a.m., in Room 310 of the Governor Office Building, 200 Madison St., Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rescission, and may be asked to respond to commission questions.

SPECIAL NEEDS: Any persons with special needs, as addressed by the Americans with Disabilities Act, should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or TDD Hotline 1-800-829-7541.

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

PROPOSED RESCISSION

4 CSR 240-3.260 Filing Requirements for Gas Utility Rate Schedules. This rule prescribed the forms and procedures for filing and publishing schedules of rates of all gas utilities under the jurisdiction of the Public Service Commission.

PURPOSE: This rule is being replaced with an updated rule in Chapter 40.

AUTHORITY: sections 386.250 and 393.140, RSMo 2000. Original rule filed Aug. 16, 2002, effective April 30, 2003. Rescinded: Filed Nov. 28, 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 OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to the proposed rescission with the Missouri Public Service Commission, Morris L. Woodruff, Secretary of the Commission, 200 Madison Street, PO Box 360, Jefferson City, MO 65102-0360. To be considered, comments must be received at the commission's offices on or before February 1, 2019, and should include a reference to Commission Case No. GX-2018-0390. Comments may also be submitted via a filing using the commission's electronic filing and information system at <http://www.psc.mo.gov/efis.asp>. A public hearing is scheduled for February 6, 2019 at 11:00 a.m., in Room 310 of the Governor Office Building, 200 Madison St., Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rescission, and may be asked to respond to commission questions.

SPECIAL NEEDS: Any persons with special needs, as addressed by the Americans with Disabilities Act, should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or TDD Hotline 1-800-829-7541.

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

PROPOSED RESCISSION

4 CSR 240-3.275 Submission Requirements for Gas Utility Depreciation Studies. This rule set forth the requirements regarding the submission of depreciation studies by gas utilities.

PURPOSE: This rule will be consolidated and streamlined into a new rule in Chapter 40.

AUTHORITY: section 386.250, RSMo 2000. Original rule filed Aug. 16, 2002, effective April 30, 2003. Rescinded: Filed Nov. 28, 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 OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to the proposed rescission with the Missouri Public Service Commission, Morris L. Woodruff, Secretary of the Commission, 200 Madison Street, PO Box 360, Jefferson City, MO 65102-0360. To be considered, comments must be received at the commission's offices on or before February 1, 2019, and should include a reference to Commission Case No. GX-2018-0390. Comments may also be submitted via a filing using the commission's electronic filing and information system at <http://www.psc.mo.gov/efis.asp>. A public hearing is scheduled for February 6, 2019 at 11:00 a.m., in Room 310 of the Governor Office Building, 200 Madison St., Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rescission, and may be asked to respond to commission questions.

SPECIAL NEEDS: Any persons with special needs, as addressed by the Americans with Disabilities Act, should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing

at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or TDD Hotline 1-800-829-7541.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 240—Public Service Commission
Chapter 40—Gas Utilities and Gas Safety Standards**

PROPOSED RULE

4 CSR 240-40.085 Filing Requirements for Gas Utility Rate Schedules

PURPOSE: This rule streamlines provisions formerly in Chapter 3.

(1) Every gas corporation engaged in the manufacture, furnishing, or distribution of gas of any nature whatsoever for light, heat, or power, within the state of Missouri, is directed to have on file with this commission and keep open for public inspection, schedules showing all rates and charges in connection with such service of whatever nature made by the gas corporations for each and every kind of service which it renders together with proper supplements covering all changes in the rate schedules authorized by this commission if any.

(2) Rate schedules shall be drawn up substantially in accordance with Form No. 14 and shall be plainly printed or typewritten on good quality paper of size eight and one-half inches by eleven inches (8 1/2" × 11") in book, sheet, or pamphlet form. A loose-leaf plan may be used so changes can be made by reprinting and inserting a single leaf. When the loose-leaf plan is used, all sheets, except the title page sheet, must show in the marginal space at the top of the page—the name of the gas corporation issuing, the Public Service Commission (PSC) number of schedule, and the number of the page. In the marginal space at the bottom of sheet should be shown—the date of issue, the effective date, and the name, title and address of the officer by whom the schedule is issued. All schedules shall bear a number with the prefix PSC Mo. _____. Schedules shall be numbered in consecutive serial order beginning with number 1 for each gas corporation. If a schedule or part of a schedule is cancelled, a new schedule or part thereof (sheet(s) if loose-leaf) will refer to the schedule canceled by its PSC number; thus: PSC Mo. No. _____ canceling PSC Mo. No. _____.

(3) Each schedule shall be accompanied by a letter of transmittal, in duplicate if receipt is desired, which shall be prepared consistent with the format designated by the commission.

(4) All proposed changes in rates, charges, or rentals or in rules that affect rates, charges, or rentals filed with the commission shall be accompanied by a brief summary, approximately one hundred (100) words or less of the effect of the change on the company's customers. A copy of any proposed change and summary shall also be served on the public counsel and be available for public inspection and reproduction during regular office hours at the general business office of the utility.

(5) Thirty (30) days' notice to the commission is required as to every publication relating to gas rates or service except where publications are made effective on less than statutory notice by permission, rule, or requirement of the commission.

(6) Except as is otherwise provided, no schedule or supplement will be accepted for filing unless it is delivered to the commission free from all charges or claims for postage, the full thirty (30) days required by law before the date upon which the schedule or supplement is stated to be effective. No consideration will be given to or for the time during which a schedule or supplement may be held by

the post office authorities because of insufficient postage. When a schedule or a supplement is issued and as to which the commission is not given the statutory notice, it is as if it had not been issued and a full statutory notice must be given of any reissuance. No consideration will be given to telegraphic notices in computing the thirty (30) days' notice required. In those cases the schedule will be returned to the sender and correction of the neglect or omission cannot be made which takes into account any time elapsing between the date upon which the schedule or supplement was received and the date of the attempted correction. For rate schedules and supplements issued on short notice under special permission of the commission, literal compliance with the requirements for notice named in any order, rule, or permission granted by the commission will be exacted.

AUTHORITY: sections 386.250 and 393.140, RSMo 2016. Original rule filed Nov. 28, 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 not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to the proposed rule with the Missouri Public Service Commission, Morris L. Woodruff, Secretary of the Commission, 200 Madison Street, PO Box 360, Jefferson City, MO 65102-0360. To be considered, comments must be received at the commission's offices on or before February 1, 2019, and should include a reference to Commission Case No. GX-2018-0390. Comments may also be submitted via a filing using the commission's electronic filing and information system at <http://www.psc.mo.gov/efis.asp>. A public hearing is scheduled for February 6, 2019 at 11:00 a.m., in Room 310 of the Governor Office Building, 200 Madison St., Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rule, and may be asked to respond to commission questions.

SPECIAL NEEDS: Any persons with special needs, as addressed by the Americans with Disabilities Act, should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or TDD Hotline 1-800-829-7541.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 40—Gas Utilities and Gas Safety Standards

PROPOSED RULE

4 CSR 240-40.090 Submission Requirements for Gas Utility Depreciation Studies

PURPOSE: This rule streamlines provisions from rules formerly in Chapter 3.

(1) Each gas utility subject to the commission's jurisdiction shall submit a depreciation study, database and property unit catalog to the manager of the commission's engineering analysis unit and to the Office of the Public Counsel, as required by the terms of subsection (1)(B).

(A) The depreciation study, database and property unit catalog shall be compiled as follows:

1. The study shall reflect the average life and remaining life of

each primary plant account or subaccount;

2. The database shall consist of dollar amounts, by plant account or subaccount, representing—

A. Annual dollar additions and dollar retirements by vintage year and year retired, beginning with the earliest year of available data;

B. Reserve for depreciation;

C. Surviving plant balance as of the study date; and

D. Estimated date of final retirement and surviving dollar investment for each warehouse, propane/air production facility, liquefied natural gas facility, underground natural gas storage facility, general office building, or other large structure; and

3. The property unit catalog shall contain a description of each retirement unit used by the utility.

(B) A gas utility shall submit its depreciation study, database, and property unit catalog on the following occasions:

1. On or before the date adjoining the first letter of the name under which the corporation does business, excluding the word the, as indicated by the tariffs on file with the commission.

A. The alphabetical categories and submission due dates are as follows:

(I) A, B, C, D: January 1, 1994;

(II) E, F, G, H: July 1, 1994;

(III) I, J, K, L: January 1, 1995;

(IV) M, N, O, P: July 1, 1995;

(V) Q, R, S, T: January 1, 1996; and

(VI) U, V, W, X, Y, Z: July 1, 1996.

B. However—

(I) A gas utility need not submit a depreciation study, database or property unit catalog to the extent that the commission's staff received these items from the utility during the three (3) years prior to the due dates listed in subparagraph (1)(B)1.A.; and

(II) A utility with simultaneous due dates under subparagraph (1)(B)1.A. above and 4 CSR 240-3.175(1)(B)1. may postpone its due date with respect to one (1) of these rules by six (6) months. To exercise this option, the utility must give written notice of its intent to postpone compliance to the manager of the commission's engineering analysis unit, and to the Office of the Public Counsel, before the utility's first due date;

2. Before five (5) years have elapsed since the last time the commission's staff received a depreciation study, database, and property unit catalog from the utility;

3. Upon submission of a general rate increase request. However, a gas utility need not submit a depreciation study, database, or property unit catalog to the extent that the commission's staff received these items from the utility during the three (3) years prior to the utility filing for a general rate increase or before five (5) years have elapsed since the last time the commission's staff received a depreciation study, database, and property unit catalog from the utility.

AUTHORITY: section 386.250, RSMo 2016. Original rule filed Nov. 28, 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 not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to the proposed rule with the Missouri Public Service Commission, Morris L. Woodruff, Secretary of the Commission, 200 Madison Street, PO Box 360, Jefferson City, MO 65102-0360. To be considered, comments must be received at the commission's offices on or before February 1, 2019, and should include a reference to Commission Case No. GX-2018-0390. Comments may also be submitted via a filing using the commission's electronic filing and information system at

http://www.psc.mo.gov/efis.asp. A public hearing is scheduled for February 6, 2019 at 11:00 a.m., in Room 310 of the Governor Office Building, 200 Madison St., Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rule, and may be asked to respond to commission questions.

SPECIAL NEEDS: Any persons with special needs, as addressed by the Americans with Disabilities Act, should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or TDD Hotline 1-800-829-7541.

**Title 5—DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 20—Division of Learning Services
Chapter 100—Office of Quality Schools**

PROPOSED AMENDMENT

5 CSR 20-100.260 Standards for Charter Sponsorship. The State Board of Education is amending sections (1) and (2), deleting sections (3)–(8), and adding new sections (3)–(6).

PURPOSE: This amendment is necessary to update the sponsorship standards to current best practice and national authorizing standards.

(1) Standard 1—Sponsor Commitment and Capacity. The sponsor *[recognizes]* believes that chartering is a means to *[foster excellent]* provide children with access to quality public schools that meet identified needs[.]. The sponsor creates organizational systems and structures to *[facilitate meeting these needs,]* fulfill its sponsorship duties and commits human and financial resources necessary to conduct its sponsoring duties effectively and efficiently. The sponsor shall *[implement steps to closely monitor the following:]*—

[(A) Provides capacity to serve as a sponsor by employing, contracting for services, or seeking expertise in other ways to ensure capacity to carry out all sponsoring activities essential to charter school oversight (including, but not limited to, education leadership, curriculum, instruction, assessment, special education, federal programs, performance accountability, law, finance, and nonprofit governance);

(B) Retains records showing that all individuals working in a sponsor's office and/or in the capacity of sponsor who have any contact with students complete a criminal background check and Missouri's Family Care Safety Registry (FCSR) check as outlined in section 168.133.1, RSMo;

(C) Provides capacity within their organization to review all data for charter schools in the Missouri Comprehensive Data System (MCDS) as outlined in section 160.400.11(5), RSMo;

(D) Ensures development of policies and procedures as outlined by section 160.400.16(1)–(6), RSMo;

(E) Provides an annual report showing that ninety percent (90%) of state funds received for sponsoring are used to support charter school operations and compliance as outlined in section 160.400.11, RSMo; and

(F) Maintains capacity for intervention purposes when charter sponsors have two (2) or more persistently low achieving charter schools, as verified by their Annual Performance Report (APR), before expanding their charter portfolio.]

(A) Ensure that all sponsorship staff and members of the sponsor's decision-making body understand and are committed to

supporting and advancing the purposes of Missouri's charter school law and quality sponsorship practices;

(B) Engage in the sponsorship of charter schools according to the provisions and stipulations of section 160.400.2–5, RSMo, which address the types of entities that may sponsor charter schools and under what conditions;

(C) Employ, contract for, or otherwise provide personnel at a staffing level appropriate and sufficient to carry out its sponsorship duties, which require expertise that includes, but is not limited to, education leadership, curriculum, instruction, assessment, special education, federal programs, performance accountability, data analysis, law, finance, and nonprofit governance;

(D) Provide or provide access to professional development opportunities for staff to achieve and maintain high standards of professional sponsoring practice and to promote continuous improvement;

(E) Retain records showing that all individuals conducting sponsorship work, including any individual who has contact with students, complete a criminal background check and Missouri's Family Care Safety Registry (FCSR) check as outlined in section 168.133.1, RSMo;

(F) Ensure that sponsor staff and members of the sponsor's decision-making body comply with the charter school office's or the sponsor's conflict of interest policy with respect to the charter schools it sponsors;

(G) Regularly evaluate its work against Missouri's charter school law and these standards, and develop and implement timely plans for improvement when it falls short;

(H) Provide an annual report to the joint committee on education, as outlined in section 160.400.12, RSMo, that includes sufficient data and information to demonstrate that the sponsor is in material compliance with sections 160.400 to 160.425, RSMo, and section 167.349, RSMo; and

(I) Annually submit, on the form provided by the Department of Elementary and Secondary Education (department), documentation showing that ninety percent (90%) of state funds expended during said fiscal year, are expended for sponsoring in support of the sponsor's charter school sponsorship program or as a direct investment in the sponsored schools, in accordance with section 160.400.11, RSMo.

(2) Standard 2—Application Process and Decision Making. The sponsor *[shall]* implements *[steps to closely monitor the application]* a comprehensive application process that includes clear application materials and guidance; follows fair, transparent procedures, timelines, and rigorous evaluation criteria; and *[grants only those charter applications that demonstrate a strong capacity to establish and operate a quality charter school.]* approves only those charter applications that demonstrate a strong capacity to establish and operate quality charter schools. To the extent the sponsor is accepting charter applications, *[T]*the sponsor shall *[implement the following:]*—

[(A) Produces a thorough charter application process as outlined in section 160.400.11(2), RSMo, including the items as stated in section 160.405.1(1)–(17), RSMo;

(B) Maintains consistent criteria for accepting, approving, and denying charter applications and does so in accordance with a clearly established timeline;

(C) Requires the charter applicant to provide evidence of accountability regarding stable fiscal and organizational performance included in the charter application process, including:

- 1. Budget assumptions with balanced budgets; and*
- 2. Positive cash flow reserve funds;*

(D) Advises charter applicants of the meaning of local education agency (LEA) status as it concerns the operation of the charter school as permitted in section 160.415.4, RSMo;

(E) Includes additional contractual provisions that verify rigorous, independent contract oversight by the charter governing board and the school's financial independence from the external provider (for any school contracting with a third-party provider for education design and operation or management);

(F) Meets the Missouri Department of Elementary and Secondary Education's (department) timelines by submitting to the State Board of Education (board) any new charter applications before November 30 prior to the school year of the proposed opening date of the charter school. Renewal applications must be submitted before January 1 of the year that the charter is scheduled to be renewed; and

(G) Submit an electronic copy of the approved charter for department files.]

(A) Implement a thorough charter application process as outlined in section 160.400.11(2), RSMo, and according to the timeline outlined in section 160.405.2(1)-(4), RSMo, without requiring any fee from the applicant in accordance with section 160.400.6, RSMo;

(B) Develop and make readily available a charter application that—

1. Includes comprehensive questions to elicit the information needed for a rigorous evaluation of the applicant's plans and capacity in accordance with the requirements stated in section 160.405.1(1)-(17), RSMo;

2. Clearly articulates any chartering priorities the sponsor may have established, including the priority to serve high-risk students in accordance with section 160.405.2(5), RSMo; and

3. Includes clear criteria for the evaluation of charter applications;

(C) Differentiate or supplement application requirements and corresponding evaluation criteria for applicants who currently oversee or manage charter schools in Missouri or other states;

(D) For applicants that are existing school operators, ensure that the application requires—

1. Specific information about the existing operator's prior academic achievement, particularly if the applicant has operated or is operating schools in Missouri, and successful management of nonacademic school functions, including financial and organizational performance, in accordance with section 160.415.7, RSMo;

2. An explanation of any never-opened, terminated, or non-renewed charter schools (including terminated or non-renewed third-party contracts to operate charter schools) within the last five (5) years and other such requirements as outlined in section 160.415.7, RSMo;

3. A description of the existing school operator's proposed growth plan; and

4. The operator's most recent financial audits;

(E) For applicants that intend to contract with an education service provider for substantial educational or charter school management services, ensure that the application requires—

1. A draft of the proposed management services agreement that sets forth proposed key terms, including roles and responsibilities of the charter school governing board, the charter school staff, and the service provider; the services to be provided; the measures by which the charter school governing board will evaluate the service provider; a detailed explanation of compensation to be paid to the service provider; financial controls and oversight; methods of contract oversight and enforcement; and conditions for contract renewal and termination; and

2. A disclosure and explanation of any existing or potential conflicts of interest between the charter school governing board and proposed service provider or any affiliated business entities;

(F) Engage teams of qualified application evaluators with relevant educational, organizational (governance and management), financial, and legal expertise to review and evaluate the charter application according to the established evaluation criteria;

(G) Provide orientation or training to application evaluators to ensure consistency in the application of the approval criteria;

(H) Conduct an in-person interview with each qualified applicant to examine the applicant's experience and capacity, and conduct due diligence to examine the applicant's experience, capacity, and track record of performance;

(I) Advise charter applicants of the meaning of local education agency (LEA) status as it concerns the operation of the charter school as outlined in section 160.415.4, RSMo;

(J) Grant charters only to applicants that have demonstrated competence and capacity to succeed in all aspects of the school, with particular consideration to any available information about schools previously operated in Missouri, if applicable, and consistent with the published application evaluation criteria, in accordance with sections 160.400.11(2) and 160.405.2(2), RSMo;

(K) Promptly notify applicants of approval or denial and, if the charter is denied, notify the applicant in writing explaining the factors that determined the decision in accordance with section 160.405.2(3), RSMo; and

(L) Submit an electronic copy of each approved charter, accompanied by a statement finding that the application meets the statutory requirements and the monitoring plan under which the sponsor will evaluate the academic performance of the charter school, to the department for review by November 10th (or the following Monday if November 10th falls on a Saturday or Sunday) of the year prior to the proposed opening date of the charter school as outlined in and in accordance with section 160.405.3, RSMo.

[(3) Standard 3—Board Support. The sponsor shall implement steps to offer ongoing support, including but not limited to: training, organization, ethical conduct, knowledge, commitment, compliance, leadership oversight, contract management, accountability, transparency, and the interpretation of the Missouri public charter school statutes/rules for charter school board(s). The sponsor shall—

(A) Ensure charter board members have adequate training to fulfill their position;

(B) Place charter schools on probation and/or revoke or non-renew a school's charter for poor governance if the charter school board does not follow statutory requirements, correct violations of statutory requirements, or continues to repeat the same violations, including, but not limited to, the following:

1. The charter board retains status as a Missouri non-profit corporation as outlined in section 160.400.7, RSMo;

2. Charter board members submit ethics commission paperwork annually as outlined in sections 105.483 and 105.492, RSMo;

3. Charter boards have policies in place to prevent conflict of interests with the charter school as outlined in section 160.400.15, RSMo; and

4. All charter board members have criminal background and FCSR checks as outlined in section 160.400.14, RSMo;

(C) Demonstrate oversight of charter boards in a variety of ways, including, but not limited to, reviewing board minutes, attending board meetings, and verifying reporting processes; and

(D) Monitor whether charter school board and committee business is conducted as outlined in the Missouri Sunshine Laws, sections 610.010–610.030, RSMo.

(4) Standard 4—Academic Performance. The sponsor shall take steps to closely monitor state performance standards, as defined by the department, are included in the sponsor/charter contract. The sponsor—

(A) Ensures that performance contracts are aligned to the pupil academic standards adopted by the State Board of Education as outlined in section 160.405.4(6)(a), RSMo;

(B) Mandates intervention based on performance deficiencies as outlined in section 160.405.8(1)(a), RSMo;

(C) Establishes clear procedures and consequences for failure to meet requirements and outcomes set in the sponsor/charter contract; and

(D) Does not approve additional sites or expansion of grade levels for a charter school identified as persistently low achieving, as verified by its APR.

(5) **Standard 5—Fiscal Management.** The sponsor shall implement steps to closely monitor the charter school performance management and financial actions that support a solvent fiscal status, including:

(A) A charter school identified as financially stressed develops a budget and education plan as outlined in section 160.417.3, RSMo. The department may withhold any payment of financial aid due to the charter school until such time as the charter school and sponsor have fully complied as outlined in section 160.417.5, RSMo;

(B) Charter schools that have been notified that expenditures for the preceding fiscal year exceed receipts, must take action to examine whether this has occurred due to recurring costs. If this is the case then the sponsor ensures that a budget and financial plan will be developed by the charter as outlined in section 160.417.3, RSMo;

(C) Reviews annual financial audits of schools, conducted by a qualified independent auditor as stated in section 160.405.4(4), RSMo;

(D) Ensures that adequate financial controls are in place to assure that revenue received for operation of the charter school are expended for expenses related to the operation of the charter school—

1. A requirement that a monthly check register is reviewed and approved by the local board prior to issuing payment for amounts in excess of one thousand dollars (\$1,000); and

2. The bank account where state funds are deposited must be established and under the control of the charter board. If a management company is contracted, personnel associated with the company shall not have direct access;

(E) Closely monitors that charter schools show fiscal management of federal grant programs in accordance with terms outlined in Fiscal Guidance for Federal Grant Programs;

(F) Closely monitors that charter schools have a procurement process in place as required by the Code of Federal Regulations 34 CFR 80.36;

(G) Closely monitors that the Annual Secretary of the Board Report (ASBR) and the annual audit are submitted to the department in the time frame outlined by Missouri statutes and that these documents are not compiled by the same auditing service. The department may withhold any payment of financial aid due to the charter school until such time as the charter school and sponsor have fully complied as outlined in section 160.415.5, RSMo;

(H) Closely monitors that the annual audit summary is published as outlined in section 165.121.5, RSMo; and

(I) Closely monitors that charter schools utilize the coding procedures prescribed in the Missouri Financial Accounting Manual as outlined in section 160.405.1(10), RSMo.

(6) **Standard 6—Reporting.** The sponsor shall implement steps to closely monitor all reports/data required by Missouri and federal law are completed and submitted in a timely manner for the department and/or legislature. The sponsor shall closely monitor the following:

(A) Timely, accurate, and complete submission of all data required as outlined in section 160.400.17(1), RSMo;

(B) Charter schools locally maintain student records that can be transferred electronically for state and federal pro-

gram reporting requirements;

(C) Charter schools retain necessary records as required by the general record retention schedule and the public school record retention schedule as authorized by section 109.255, RSMo;

(D) That an annual report per charter school is submitted to the joint committee on education as outlined in section 160.400.12, RSMo;

(E) Sponsor ensures charter schools adopt policies consistent with the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act (HIPAA) guidelines to the extent they are applicable;

(F) Appropriate charter personnel have access to the Missouri Student Information System (MOSIS) and core data; and

(G) That approved changes to a charter throughout the term of the charter will be submitted within thirty (30) days of approval and an electronic copy will be submitted to the department reflecting approved changes.

(7) **Standard 7—Oversight and Evaluation.** The sponsor conducts oversight and evaluates performance for both federal and state compliance. The sponsor shall implement steps to closely monitor the following:

(A) Non-discrimination as required by federal and state laws;

(B) The charter board has a policy to promptly address parent, student, and community concerns at the local level;

(C) Monitors data related to certification and background checks and has policy/intervention plans to address when schools are not in compliance;

(D) The compliance with all state and federal statutes and guidelines, including, but not limited to: special education; all title programs; vocational/career education; food service; and services for foster, homeless, migrant, and English language learner students;

(E) All eligible students participate in the Missouri MAP; and

(F) Charter schools enrolling eligible students under the urban voluntary transfer program (St. Louis metropolitan area) are reported accurately as outlined in section 160.410.1(2), RSMo.

(8) **Standard 8—Intervention, Renewal, Revocation, and Closure Decision Making.** The sponsor shall implement steps to closely monitor transparent and rigorous processes that use comprehensive academic, financial, and operational management data to make decisions about intervention, renewal, revocation, and closure. The sponsor shall implement the following:

(A) Develops and maintains policies that have been adopted for the following areas:

1. Establishes and makes known to schools at the outset an intervention policy stating the general conditions that may trigger intervention and the types of actions and consequences that may ensue;

2. Bases the renewal process and renewal decisions on thorough analyses of a comprehensive body of objective evidence defined by the performance framework in the charter contract. Sponsors grant renewal only to schools that have achieved the standards and targets stated in the charter contract, are organizationally and fiscally viable, and have been diligent to the terms of the contract and applicable law;

3. Revokes a charter during the charter term if there is clear evidence of extreme underperformance or violation of law or the public trust that imperils students or public funds; and

4. *In the event of a school closure, oversees and works with the school governing board and leadership in carrying out a detailed closure protocol that ensures timely notification to parents; orderly transition of students and student records to new schools; and disposition of school funds, property, and assets in accordance with law as outlined in section 160.400.17(1), RSMo.*

(3) **Standard 3 - Charter Contract.** In accordance with section 160.400.11(3), RSMo, the sponsor executes a charter contract with each charter school that articulates the rights and responsibilities of each party regarding school autonomy, funding, administration and oversight, outcomes, the measures for evaluating success or failure, performance consequences, and other material terms. The sponsor shall—

(A) Execute a charter contract with each approved charter school, which must be organized as a Missouri nonprofit corporation, for an initial term of five (5) years, which may be renewed, in accordance with section 160.405.1(9), RSMo. The charter contract shall define—

1. The standards for intervention, probation, renewal, non-renewal, and revocation while also establishing the consequences for not meeting those standards, in accordance with sections 160.405.8 and 160.405.9(2)–(3) RSMo;

2. A set of reasonable pre-opening requirements or conditions for a new charter school to open to ensure that it meets all health, safety, and other legal requirements prior to opening; and

3. A process that charter schools and sponsors must follow, in accordance with section 160.405.6, RSMo, to amend charter contracts and the types of material modifications that require sponsor approval. The sponsor shall submit any such approved amendments to the department within thirty (30) days of approval;

(B) Include in said charter contract or incorporate by reference clearly defined performance expectations for the term of the contract, the sources of data to evaluate charter school performance against these expectations, and the targets that the charter school must meet to earn renewal in the following areas:

1. Pupil academic standards for all students and significant student subgroups within each charter school, aligned to standards adopted by the State Board of Education, as outlined in and in accordance with sections 160.405.1(7), 160.405.4(6), and 160.405.9(2)(a), RSMo;

2. Financial performance expectations, which measure both near-term and long-term financial health, including, but not limited to, those outlined in section 160.405.9(2)(b), RSMo; and

3. Organizational performance expectations, including, but not limited to, compliance with all governance-related laws, the fulfillment of all state and federal requirements regarding fair and appropriate service to students with disabilities, and the maintenance of a safe and operationally sound facility, as outlined in sections 160.405.4 and 160.405.11–14, RSMo;

(C) If a charter school is planning to contract with an education service provider for substantial educational or school management services, ensure that the charter contract clearly establishes the primacy of the charter contract over the management services contract; and

(D) To the extent the sponsor, outside of the charter school office, is providing any fee-based services to its charter schools, clearly state in writing, in the charter contract or elsewhere, that such services are not, nor ever will be, a condition of sponsorship.

(4) **Standard 4 - Ongoing Oversight and Evaluation.** The sponsor conducts charter school oversight that evaluates charter school performance; monitors charter school compliance with both federal and state statutes and regulations; ensures charter school autonomy; protects student rights; informs charter school intervention, probation, revocation, and renewal decisions; and pro-

vides annual public reports on charter school performance. The sponsor shall—

(A) Implement a comprehensive performance accountability and compliance monitoring system that—

1. Is defined in the charter contract;

2. Provides the sponsor with the information necessary to make thorough and evidence-based intervention, probation, renewal, non-renewal, and revocation decisions; and

3. Effectively streamlines federal, state, and local performance expectations and compliance requirements while protecting charter school autonomy and minimizing charter school administrative and reporting burdens;

(B) Define and communicate this performance accountability and compliance monitoring system to charter schools, including the process, methods, and timing of gathering and reporting charter school performance and compliance data;

(C) Visit each charter school as appropriate and necessary for collecting data that cannot otherwise be obtained and in accordance with the contract, while ensuring that the frequency, purposes, and methods of such visits respect charter school autonomy and avoids operational interference;

(D) Communicate regularly with charter schools, as needed, including both school leaders and governing boards, and provide timely notice of contract violations, performance deficiencies, and mandated interventions, including probationary status, as outlined in section 160.405.8, RSMo;

(E) In accordance with section 160.405.7, RSMo, evaluate and publish on the sponsor's website an annual performance report for each charter school, which shall include an analysis of each charter school's performance and progress toward meeting the expectations and targets stated in the charter contract, including subgroup performance and essential compliance requirements, and clearly communicate evaluation results to the charter school's governing board and leadership;

(F) Refrain from directing charter school decisions or choices that are appropriately within a school's purview under the charter law or contract;

(G) Monitor compliance with all state and federal requirements and guidelines regarding services to students, including, but not limited to, special education; all title programs; career and technical education; food service; and services for foster, homeless, immigrant, and English language learner students;

(H) Monitor compliance with specific state public education requirements that apply to charter schools, including, but not limited to—

1. Requirements relating to student discipline as outlined in sections 160.261, 167.161, 167.164, and 167.171, RSMo;

2. Notification of criminal conduct to law enforcement authorities as outlined in sections 167.115–117, RSMo;

3. Academic assessment of pupils, including that all eligible students participate in the Missouri Assessment Program (MAP), as outlined in section 160.518, RSMo;

4. Transmittal of charter school records to a requesting school official as outlined in section 167.020, RSMo;

5. Provision of the minimum amount of school time required as outlined in section 171.031, RSMo;

6. For charter school employees and board members, timely completion of criminal history background checks and the family care safety registry checks as outlined in section 168.133, RSMo;

7. Maintenance of policies consistent with the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act (HIPAA) guidelines to the extent they are applicable;

8. Certification of staff and participation in the appropriate employee retirement system as outlined in section 160.420, RSMo; and

9. Provision of education and services to students with disabilities, as outlined in sections 162.670 and 162.710, RSMo, the Individuals with Disabilities Education Act (20 U.S.C. Section

1400) and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794) or successor legislation;

(I) Verify that charter schools admit students through a non-discriminatory process that grants admission to resident and non-resident students eligible to attend through an urban voluntary transfer program or from an unaccredited school district, as outlined in sections 160.410.1 and 160.410.3, RSMo;

(J) Monitor the admission process of any charter school where capacity is insufficient to enroll all students who submit a timely application, to ensure that the process complies with the terms outlined in section 160.410.2, RSMo;

(K) Monitor the charter school board's compliance with various governance-related laws, including, but not limited to—

1. Retention of necessary board records as required by the general record retention schedule and the public school record retention schedule as outlined in section 109.255, RSMo;

2. Submission of ethics commission paperwork annually as outlined in sections 105.483, 105.485, and 105.492, RSMo;

3. Maintenance of conflict of interest policies and procedures to address prohibited conflicts as outlined in section 160.400.15, RSMo;

4. Maintenance of a policy to promptly address parent or guardian grievances, as outlined in section 160.405.1(13), RSMo; and

5. Conduct of board and committee business in a manner outlined in the Missouri Sunshine Laws, sections 610.010-610.030, RSMo; and

(L) Ensure that charter school board members are aware of and have access to professional development or training opportunities to perform and fulfill the duties of a charter school board member.

(5) Standard 5 - Fiscal Oversight. The sponsor monitors the charter school's financial performance and compliance with fiduciary provisions in statute. The sponsor shall—

(A) Collect and review annual financial audits of charter schools, conducted by a qualified independent auditor as outlined in section 160.405.4(4), and verify that the annual audit summary is published as outlined in section 165.121.5, RSMo;

(B) Monitor that charter schools' utilization of the coding procedures prescribed in the Missouri Financial Accounting Manual as outlined in section 160.405.1(10), RSMo;

(C) Monitor that the charter's governing board has adopted adequate financial controls to assure that revenues received for operation of the charter school are expended for expenses related to the operation of the charter school, including, but not limited to—

1. Procedures for the charter board to review the monthly check register, as needed, and clarify what level of expenditure necessitates board review and signature on a specific check;

2. Establishment of a bank account, in which state funds are deposited, that is under the control of the charter board; and

3. If the charter contracts with an education service provider for substantial educational or school management services, establishment of a process to ensure that payments to the service provider receive prior approval of the governing board or its designee, as outlined in section 160.415.7(6), RSMo;

(D) Evaluate each charter school's financial performance against the expectations and targets stated in the charter contract and, by October 1st of each year, identify any charter schools that are financially stressed, as outlined in section 160.417.1, RSMo, and as defined by section 160.417.2, RSMo;

(E) By November 1st of each year, notify the governing board of any charter school that is identified as financially stressed, and review and approve a budget and education plan developed by the charter school, within forty-five (45) calendar days of such notification, on forms provided by the sponsor. In addition to the requirements outlined in section 160.417.3, RSMo, the budget and education plan must clearly outline the basis for such iden-

tification, the steps the charter school will take to remedy the financial stress, responsible individuals, corresponding deadlines and timeframes, the outcomes that the charter school must achieve to exit this designation, and the steps that the sponsor may take, including revocation, if the charter school does not appropriately remedy the financial stress by March 1st of the current school year. The sponsor may also place any school identified as financially stressed on probation in accordance with section 160.405.8, RSMo. The department may withhold any payment of financial aid due to the charter school until the charter school and sponsor have fully complied with this requirement, as outlined in section 160.417.5, RSMo;

(F) To the extent necessary, cooperate with the department in its monitoring of charter schools' fiscal management of federal grant programs, and consider any findings by the department with respect to said fiscal management in sponsor's decision making; and

(G) Ensure that charter schools submit the Annual Secretary of the Board Report (ASBR) and an annual independent financial audit to the department in the time frame outlined by Missouri statute and verify that no conflict of interest exists between the financial auditor and the person or persons who prepared the ASBR.

(6) Standard 6 - Renewal, Replication, Expansion, Revocation, and Closure Decision Making. The sponsor implements a transparent and rigorous process that uses comprehensive academic, financial, and organizational performance data to make decisions about renewal, replication, expansion, revocation, and closure. The sponsor shall—

(A) Base the renewal process and renewal decisions on thorough analyses of a comprehensive body of objective evidence defined by the charter contract consistent with section 160.405.9(2)-(3), RSMo;

(B) Provide each charter school, in advance of the renewal decision, a cumulative performance report that summarizes the charter school's performance record over the charter term in accordance with the performance expectations set forth in the charter contract, and states the sponsor's summative findings concerning charter school performance and its prospects for renewal;

(C) Grant renewal to charter schools that have achieved the performance expectations and corresponding targets stated in the charter contract, are organizationally and fiscally viable, and have been diligent to the terms of the contract and applicable law, consistent with sections 160.400.11(5) and 160.405.9(2)-(3), RSMo;

(D) To the extent the charter school qualifies for an expedited renewal process, as defined by section 160.405.9(2)(d), the sponsor shall implement a streamlined renewal process, which decreases the burden on the charter school (i.e., fewer application requirements, a more targeted document request, or a shorter renewal site visit) and the amount of time between submission of the renewal application and the sponsor's decision;

(E) Promptly notify in writing each charter school of the sponsor's renewal or non-renewal decision, including explanation of the reasons for the decision;

(F) In accordance with section 160.408, RSMo, provide "high-quality charter schools," as defined by section 160.408, RSMo, with opportunities for expedited replication and expansion;

(G) Base decisions to approve additional charter school sites or to expand grade levels on thorough analyses of a comprehensive body of objective evidence defined by the charter contract;

(H) Revoke a charter during the charter term if there is clear evidence of underperformance or violation of law or the public trust that imperils students or public funds as outlined in section 160.405.8, RSMo;

(I) In the event of a revocation, provide charter schools written notice at least sixty (60) days prior to revoking the charter, as

outlined in section 160.405.8(3), RSMo, and establish clear procedures to conduct an administrative hearing regarding the potential charter revocation, as outlined in section 160.405.8(4), RSMo; and

(J) Maintain and implement a clear charter school closure process, including, but not limited to, clear procedures to ensure orderly transition of student records, archival of business operation, transfer of personnel records, submission of financial reports, resolution of financial obligations, disposition of charter school assets, and a notification plan to inform parents or guardians, among other stakeholders, of the closure action within thirty (30) days of the decision to close, as outlined in section 160.405.1(15), RSMo.

AUTHORITY: sections 160.400–160.425 and 161.092, RSMo 2016. Original rule filed Dec. 3, 2012, effective June 30, 2013 Amended: Filed Dec. 8, 2016, effective July 30, 2017. Amended: Filed Nov. 29, 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 Department of Elementary and Secondary Education, ATTN: John Robertson, Coordinator, Educational Support Services, PO Box 480, Jefferson City, MO 65102-0480 or by email at webreplyimprcharter@dese.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 20—Division of Learning Services
[Chapter 600—Office of Early and Extended Learning]
Chapter 100—Office of Quality Schools

PROPOSED AMENDMENT

5 CSR 20-[600.110]100.330 General Provisions Governing Programs Authorized Under the Early Childhood Development Act. The State Board of Education is proposing to amend subsection (1)(A), delete subsection (1)(B) and is transferring this rule from the Division of Learning Services, Office of Early and Extended Learning to Division of Learning Services, Office of Quality Schools.

PURPOSE: This amendment is to enumerate standards for which Parents as Teachers programs will be evaluated for approval.

(1) All programs and projects carried out by school districts under the Early Childhood Development Act (ECDA) shall be conducted in conformity with—

(A) The school district’s annual application for district program approval under the ECDA, pursuant to applicable state laws and regulations[;] and the following:

1. The school district must designate a supervisor who will be responsible for the oversight and delivery of the Parents as Teachers (PAT) program;
2. The school district must establish a Community Advisory Committee;
3. The school district must use parent educators that meet

the minimum requirements established by the Department of Elementary and Secondary Education (department) and renew curriculum subscription(s) annually through Parents as Teachers National Center;

4. The school district must provide a PAT program that promotes early learning, knowledge and understanding of child development, partnerships between families and schools, and access to community resources for a minimum of nine (9) months during the program year;

5. The PAT program must be implemented to provide family personal visits using the department approved curriculum, developmental screenings for age eligible children using a department approved screening instrument, group connections, and access to a resource network;

6. The school district must annually gather and summarize feedback from families regarding the services received and use the results for program improvement;

7. The school district must maintain documentation to verify services that maintains confidentiality of participating families; and

8. The school district must collect and report all data requested by the department.

[(B) The state Early Childhood Development Act Administrative Manual, revised August 2015, which is incorporated by reference and made a part of this rule as published by the Department of Elementary and Secondary Education (department) and is available at the Early Learning Section, 205 Jefferson Street, PO Box 480, Jefferson City, MO 65102-0480 or on the department’s website. This rule does not incorporate any subsequent amendments or additions. The Early Childhood Development Act Administrative Manual interprets state statutory requirements for the programs and establishes program management procedures consistent with state law and practice.]

AUTHORITY: sections 161.092, and 178.691–178.699, [RSMo 2000 and Supp. 2013, and section 161.092,] RSMo [Supp. 2014] 2016. This rule previously filed as 5 CSR 50-270.010. Original rule filed April 4, 1985, effective Sept. 3, 1985. For intervening history, please consult the Code of State Regulations. Amended: Filed Nov. 29, 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 Department of Elementary and Secondary Education, ATTN: Jo Anne Ralston, Coordinator, Early Learning, PO Box 480, Jefferson City, MO 65102-0480 or by email at eel@dese.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 30—Division of Financial and Administrative Services
Chapter 261—[School] Pupil Transportation

PROPOSED AMENDMENT

5 CSR 30-261.010 Requirements for the Operation of School Buses. The State Board of Education (board) is proposing to amend

sections (1)–(3).

PURPOSE: The amendment is to update the Requirements for the Operation of School Buses to align with section 162.064, RSMo Supp 2018.

(1) General Requirements for Approval of School Bus Transportation.

(D) There shall be on file in the appropriate school district office copies of current contracts, bonds, driver's physical examination certificates, [school bus permits] **driver's license with applicable endorsements**, and maps of school bus routes. Public school district boards of education shall require operators of school buses to conduct and prepare a record of the daily pretrip inspection for each school bus.

(2) School Bus Driver Qualifications.

(A) All school bus drivers shall be duly licensed in accordance with Missouri statutes and public school district board policy./ and—

1. Be in good physical and mental health;
2. Undergo a **biennial** physical examination [annually no more than ninety (90) days before the beginning of the school year] by a medical examiner who is licensed, certified, and/or registered, in accordance with applicable Missouri laws and regulations, to perform physical examinations to determine whether they meet the requirements of section 302.272, RSMo, and present a signed physical examination certificate that they, in the medical examiner's judgment, meet or exceed those requirements to the employer. The term medical examiner includes, but is not limited to, doctors of medicine, doctors of osteopathy, physician assistants, advanced practice nurses, and doctors of chiropractic. **For new drivers, such statement shall be on file prior to the driver's initial operation of a school bus.** A school bus driver whose ability to safely operate a school bus has been impaired by a physical or mental injury or disease, as determined by the public school district board of education, must submit a release by the attending physician prior to resuming school bus operation; and
3. Undergo testing for drug and alcohol use/abuse, in compliance with laws.

(3) Driver Operation.

(A) A school bus driver shall:

1. Observe carefully all signs, signals, and rules of the road as provided by the Missouri Motor Vehicle Laws;
2. Follow these loading and unloading procedures:
 - A. If school bus is equipped with a master switch, make sure the master switch is in the "on" position;
 - B. Activate prewarning amber flashing lights at least five hundred feet (500') before a designated stop;
 - C. When stopping for a designated stop, apply brakes hard enough to light up the brake lights so that vehicles behind the school bus will know it is slowing down;
 - D. Pull as far to the right as practicable on the traveled portion of the roadway and at a location so that the school bus is visible for at least three hundred feet (300') in both directions or five hundred feet (500') if the speed limit is greater than sixty (60) miles per hour. Check all mirrors to see that traffic is clear and it is safe to stop;
 - E. Approach waiting students with extreme care, paying attention to the surface on which the school bus will stop (dry, slippery, slopes right, rough ground, and the like). Bring the school bus to a complete stop so that the closest part of the school bus is not less than six feet (6') and not more than ten feet (10') from the closest student;
 - F. Place the transmission in neutral and set the parking brake as needed;
 - G. Deactivate the prewarning amber flashing lights and activate the red flashing warning lights and the stop arm when opening

the service door after stopping;

H. Check traffic in front and rear of the school bus before you give the students a hand signal that it is okay to cross the road. Drivers should train students not to approach the school bus until given a signal and to check traffic before crossing the roadway;

I. Require students who must cross the roadway after leaving the bus or before boarding the bus to cross a minimum of ten feet (10') in front of the bus and only upon a signal given by the driver, monitor, or bus patrol when organized bus patrols are used; and

J. Have students go directly to their seats. When students are seated, check traffic and close the front door to deactivate the red flashing warning lights and stop arm;

3. Perform and prepare written documentation of the daily pretrip inspection which is to be submitted to the transportation administrator. Pretrip inspection of vehicle shall include brakes, steering components, lights, signaling devices, emergency door, tires, and safety equipment, as a minimum. Any defects or deficiencies that may affect the safety of vehicle operation or result in mechanical breakdown shall be reported immediately in writing and driver shall not operate school bus until the defect or deficiency has been corrected;

4. Activate the prewarning amber flashing lights if a school bus stop must be made in close proximity to the crest of a hill or on curves with limited sight distance, approximately one hundred feet (100') before passing the crest so that vehicles following to the rear shall be made aware the bus is preparing to stop for the purpose of loading or unloading pupils;

5. Assume control of all children while they are being transported requiring respectable and orderly behavior from them. Particular attention should be given to the care and protection of the younger pupils. Any continued disorderly conduct should be reported to the proper school authorities;

6. Not back school bus on school grounds unless rear is guarded by school patrol or adult and driver is advised that the way is clear. Backing the bus at any time shall be avoided if at all possible;

7. Follow these procedures when a school bus is disabled:

- A. Stop the bus as far to the right as possible (on the shoulder, if available);
- B. Secure the bus, activate hazard/warning lights, and set parking brake;
- C. Keep children in bus. If location of the bus is unsafe, remove the children to a safer location;
- D. Place triangular reflectors a minimum of one hundred feet (100') in both the front and rear of the bus;
- E. Telephone, radio, or send capable student to call authorities, giving bus location and description of breakdown; and
- F. See that all pupils are delivered to their destinations;
8. Keep inside of vehicle clean and comfortable at all times;
9. Keep lettering and lights on front and rear of bus clean so that all markings are clearly visible;
10. Keep service door closed at all times when bus is in motion;
11. Not leave a loaded bus while motor is running;
12. Fill the fuel tank only when there are no children in the bus;
13. Not allow animals on the school bus except for seeing eye dogs or other specially trained animals necessary to furnish [ing] special education services for [handicapped children] **students with disabilities** to comply with applicable state law and regulations;
14. Not allow weapons or explosive material on the school bus;
15. Not allow items on the school bus to protrude into or block the aisle or be left in the driver or emergency exit areas;
16. Make and promptly file all daily, weekly, and monthly reports which may be required;
17. Use seat belt whenever the bus is in motion;
18. Not drive any school bus for more than:
 - A. Eight (8) consecutive hours. Hours will be consecutive unless the individual ceases operation of the vehicle for at least sixty (60) minutes; or
 - B. An aggregate of twelve (12) hours in a twenty-four- (24-)/[-]

hour period;

19. Illuminate headlights whenever students are being transported;

20. Not use tobacco products at any time in the school bus; and

21. Not operate a school bus while under the influence of intoxicants, narcotics, or drugs.

AUTHORITY: sections 161.092, [RSMo Supp. 2003,] and 163.161, RSMo 2016 and sections 304.060 and 162.064, RSMo [2000] Supp 2018. This rule was previously filed as 5 CSR 40-261.010. Original rule filed June 15, 1951, effective July 1, 1951. For intervening history, please consult the Code of State Regulations. Amended: Filed Nov. 29, 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 Department of Elementary and Secondary Education, ATTN: Student Transportation Manager, Division of Financial and Administrative Services, PO Box 480, Jefferson City, MO 65102-0480. 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 8—DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
Division 30—Division of Labor Standards
Chapter 3—Prevailing Wage Law Rules

PROPOSED AMENDMENT

8 CSR 30-3.010 [Prevailing] Applicable Wage Rates for Public Works Projects. The division proposes to amend sections (1), (2), (4), and (5); renumber a portion of section (4) as section (5) and amend the section; and renumber the remaining sections.

PURPOSE: This amendment implements statutory changes to the Missouri Prevailing Wage Law enacted by the passage of HB1729 (2018).

PURPOSE: This rule sets forth [prevailing] applicable wage requirements relative to work performed by workers on public funded projects.

(1) All public bodies of Missouri contemplating construction work must obtain from the department an annual wage order which sets forth the [prevailing] applicable hourly rate of wages (the prevailing wage or the public works contracting minimum wage as provided in section 290.257, RSMo) in the locality. The rates so determined shall be incorporated in the contract specifications and made a part of those specifications, except that construction contracts of the State Highway and Transportation Commission need not list specific wage rates to apply, but may refer to the wage rates contained in the appropriate General Wage Orders issued by the department, as applicable.

(2) Request for annual wage orders shall be initiated at least ten (10) calendar days before advertisement of the specifications for the contract for which the determination is sought. An exception from this provision will be made by the department only upon a proper show-

ing of extenuating circumstances. The department has prepared and printed Form No. PW-3 for use in making a request. The form may be secured by writing Division of Labor Standards, PO Box 449, Jefferson City, MO 65102 or by visiting the following website: https://labor.mo.gov/sites/labor/files/pubs_forms/PW-3-AI.pdf.

(4) The annual wage order issued by the department contains the current applicable wage rates [prevailing] in the locality at the time the annual wage order is issued. Hours worked during the calendar year are used to set the prevailing wage rates in the annual wage order issued in March of the following year. The department will consider hours submitted for use in its initial determination of the prevailing wage rates to be included in a particular year's wage order only if those hours are received [by it] from a contractor, by either paper submission on a form provided by the department or in electronic format, no later than January 31 of that year. Handwritten submissions will not be accepted. For purposes of submitting reportable hours, the term "contractor" shall include a "subcontractor." The department will not include the following hours in the calculation of the annual wage order:

(A) Hours not readily identifiable as being submitted by a contractor;

(B) Hours submitted for construction of public works for which either the engineer's estimate or the bid accepted by the public body for the total project cost is in the amount of seventy-five thousand dollars (\$75,000) or less;

(C) Hours worked by federally-registered apprentices or entry-level workers;

(D) Hours worked on residential construction projects.

(5) Section 290.262.[9/8, RSMo, provides that the annual wage order for a particular occupational title may be altered once each year with an incremental increase. A public body shall specify in the call for bids for each contract the [prevailing] applicable hourly rate of wages in the locality for each type of worker as set forth in the annual wage order or any replacement page(s) identifying the annual incremental increase issued by the department for the prevailing hourly rate of wages. The wage rates attached to, and made a part of, the call for bids for a contract shall remain in effect for the duration of that particular contract.

[[5]](6) It should be understood by all interested parties that the certified [prevailing] applicable wage rates determined by the department are minimum wage rates. The contractor may not pay less than the [prevailing] applicable wage rates determined by the department for the project or contract awarded to him/her as set forth in the proposal on which s/he submitted his/her bid. Employees are free to bargain for a higher rate of pay and employers are free to pay a higher rate of pay.

[[6]](7) Each month the successful bid contractors shall submit certified copies of their current payrolls to the contracting public body. The public body, upon receipt of the payrolls on a project, shall keep the payrolls on file for a period of one (1) year from the date of submission of the final payrolls by the contractor. The payroll records shall set out accurately and completely the following: name and address of each worker, the class or type of worker, rate of pay, daily and weekly number of hours worked for each class or type of work performed, deduction made, and actual wages paid for each class or type of work performed by each worker. The payroll records shall be available at all times for inspection by authorized representatives of the Department of Labor and Industrial Relations.

[[7]](8) The public body shall make examinations of the payrolls and other records of each contractor or subcontractor as may be necessary to assure compliance with the provisions of the law. In connection with those examinations, particular attention should be given to the correctness of classifications and any disproportionate employment of any workers. The examinations shall be of a frequency that

may be necessary to assure conformity with the provisions of the law. An examination shall be made after the project has been substantially completed, but prior to the acceptance of the affidavit as required by section 290.290, RSMo. If any violation of sections 290.210–290.580, RSMo, is discovered by the inspecting public body, it is their duty under section 290.250, RSMo, to withhold and retain from payments to the contractor all sums and amounts due and owing as a result of any violation. Any violation shall be immediately reported to the Division of Labor Standards at PO Box 449, Jefferson City, MO 65102 or by telephone.

AUTHORITY: section 290.240.2, RSMo [2000] *Supp.* 2018. Original rule filed Dec. 18, 1975, effective Dec. 28, 1975. For intervening history, please consult the *Code of State Regulations*. Emergency amendment filed Nov. 21, 2018, effective Dec. 1, 2018, expires May 29, 2019. Amended: Filed Nov. 21, 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 Labor Standards, Attn: Matt Cowell, Director, PO Box 449, Jefferson City, MO 65102-0449. 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 8—DEPARTMENT OF LABOR AND
INDUSTRIAL RELATIONS
Division 30—Division of Labor Standards
Chapter 3—Prevailing Wage Law Rules**

PROPOSED AMENDMENT

8 CSR 30-3.030 Apprentices and [Trainees] Entry-Level Workers. The division proposes to amend sections (1) and (2); rescind section (3); and renumber the remaining section.

PURPOSE: This amendment implements statutory changes to the Missouri Prevailing Wage Law enacted by the passage of HB 1729 (2018).

PURPOSE: This rule sets forth the requirements for the payment of apprentice **and entry-level worker wages** for [workers] those employed on public works subject to the Prevailing Wage Law.

(1) Journeymen’s rate of pay shall be paid to all workers employed on public works construction except **entry-level workers or apprentices [and trainees]** registered and participating in apprentice [or trainee] programs registered with the United States Department of Labor, [Bureau of Apprenticeship and Training] **Employment and Training Administration**; and apprentices [and trainees] registered and participating in [apprenticeship and skill training] programs certified by the Secretary of the United States Department of Transportation as promoting equal opportunity in connection with federal-aid highway construction programs. **Such workers shall be paid not less than fifty percent (50%) of the applicable wage rate for a journeyman worker under the appropriate occupational title for a specific locality. In calculating the applicable wage rate for a journeyman worker, fringe benefits shall be included.**

(2) [Apprentices shall be permitted to work at less than the predetermined rate for the class or type of work they per-

formed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the United States Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training. The allowable ratio of apprenticeship to journeymen on the site of the construction for any class or type of workers shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on the payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this rule, shall be paid not less than the applicable wage rate on the wage determination for the class or type of work actually performed. In addition, those apprentices performing work on the site of the construction who are in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the class or type of work actually performed. Every apprentice shall be paid at not less than the rate specified in the registered program for the apprentice’s level of progress, expressed as a percentage of the journeymen hourly rate for the class or type of worker specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices shall be paid the full amount of fringe benefits listed on the wage determination for the applicable class or type of work performed. In the event the Bureau of Apprenticeship and Training withdraws approval of an apprenticeship program, the contractor shall no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the class or type of work performed until an acceptable program is approved.] As set forth in section 290.235, RSMo, “on-the-job training workers” are defined as follows:

(A) “Federally-registered apprentices” – Workers participating in programs administered by the United States Department of Labor and subject to their specific requirements (See 29 U.S.C. section 50 and 29 C.F.R. 29) and workers participating in programs administered by the United States Department of Transportation and subject to their specific requirements. (See 23 U.S.C. section 113 and 23 C.F.R. 230); and

(B) “Entry-level workers” – Any worker who is not a journeyman and who is not otherwise enrolled in a federally-registered apprenticeship program.

[(3) Trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the United States Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee’s level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the annual wage order for the applicable class or type of work performed. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the annual wage order for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less

than the applicable wage rate on the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.]

[(4)](3) Workers employed on federal-aid highway construction projects may be paid at an apprentice or trainee rate of pay if enrolled in an apprenticeship or skill training program which has been certified by the Secretary of the United States Department of Transportation pursuant to 23 U.S.C. 113. In the event the Secretary of Transportation withdraws approval of a program, the contractor will no longer be permitted to pay workers less than the applicable predetermined rate for the work performed until an acceptable program is approved.

AUTHORITY: section 290.240, RSMo [1994] Supp. 2018. Original rule filed Aug. 24, 1990, effective April 29, 1991. Amended: Filed July 17, 1995, effective Jan. 30, 1996. Emergency amendment filed Nov. 21, 2018, effective Dec. 1, 2018, expires May 29, 2019. Amended: Filed Nov. 21, 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 Labor Standards, Attn: Matt Cowell, Director, PO Box 449, Jefferson City, MO 65102-0449. 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 8—DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
Division 30—Division of Labor Standards
Chapter 3—Prevailing Wage Law Rules**

PROPOSED AMENDMENT

8 CSR 30-3.040 Classifications of Construction Work. The division proposes to amend section (1).

PURPOSE: This amendment implements statutory changes to the Missouri Prevailing Wage Law enacted by the passage of HB 1729 (2018).

(1) All public works construction, for which the prevailing hourly rate of wages **or the public works contracting minimum wage** of workers are to be determined, shall be classified as either—

AUTHORITY: section 290.240, RSMo [1994] Supp. 2018. Original rule filed Aug. 24, 1990, effective April 29, 1991. Amended: Filed July 17, 1995, effective Jan. 30, 1996. Emergency amendment filed Nov. 21, 2018, effective Dec. 1, 2018, expires May 29, 2019. Amended: Filed Nov. 21, 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 Labor Standards, Attn: Matt Cowell, Director, PO Box 449, Jefferson City, MO 65102-0449. 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 8—DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
Division 30—Division of Labor Standards
Chapter 3—Prevailing Wage Law Rules**

PROPOSED AMENDMENT

8 CSR 30-3.050 Posting of Prevailing Wage Rates. The division proposes to amend section (1).

PURPOSE: This amendment implements statutory changes to the Missouri Prevailing Wage Law enacted by the passage of HB 1729 (2018).

(1) Contractors and subcontractors engaged in public works projects shall post the *[prevailing]* applicable hourly rate of wages (**the prevailing wage or the public works contracting minimum wage as provided in section 290.257, RSMo**) in a dry, accessible place within the field office at the site of the building or construction job. On public works projects for which no field office is needed or established, such as road construction, sewer lines, pipelines and the like, a contractor/subcontractor may post the *[periling]* applicable hourly rates of wages at the contractor/subcontractor's local office or batch plant, so long as the contractor/subcontractor provides a copy of the prevailing hourly wage rates to any worker upon request. *[Prevailing]* Applicable hourly wage rates must be posted and maintained in a clearly legible condition for the duration of the public works project as provided by law.

AUTHORITY: section 290.240, RSMo [1986] Supp. 2018. Original rule filed Aug. 24, 1990, effective April 29, 1991. Emergency amendment filed Nov. 21, 2018, effective Dec. 1, 2018, expires May 29, 2019. Amended: Filed Nov. 21, 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 Labor Standards, Attn: Matt Cowell, Director, PO Box 449, Jefferson City, MO 65102-0449. 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 8—DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
Division 30—Division of Labor Standards
Chapter 3—Prevailing Wage Law Rules**

PROPOSED AMENDMENT

8 CSR 30-3.060 Occupational Titles of Work Descriptions. The division proposes to rescind section (3) and renumber the remaining sections and amend sections (4), (7), and (8).

PURPOSE: This amendment implements statutory changes to the Missouri Prevailing Wage Law enacted by the passage of HB 1729 (2018).

[(3) Any person wishing to add, delete or modify an occupational title of work description shall submit to the director of the Division of Labor Standards a written request containing the proposed changes. Proposals shall contain the following information:

(A) Occupational title;

(B) A description of the physical duties to be performed by workers under the title;

(C) A copy of any current collective bargaining agreements that are relevant to the proposal, if any;

(D) Evidence of hours worked and wages paid while performing work under the title, including fringe benefits paid, if any;

(E) Identification of the county(ies) where the work was performed;

(F) Evidence that the proposed occupational title of work description is for a type or class of work that is commonly utilized by the construction industry on building or heavy and highway construction projects in Missouri; and

(G) Other information concerning the proposed addition, deletion or modification as the director of the Division of Labor Standards may deem advisable under the circumstances.]

*[(4)](3) Interested parties who wish to submit wage information to be used in establishing the prevailing hourly rate of wages for a particular class or type of work are required to identify the work according to the applicable occupational title of work description set forth in this rule. Hours of work reported by a contractor or subcontractor to the department shall not be used to establish the prevailing hourly rate of wages if the party submitting the hours of work fails to identify the work under one of the **recognized** occupational titles [recognized by this rule].*

[(5)](4) Any question as to the proper classification of work should be resolved before the work in question is commenced. Interested parties are encouraged to contact the Prevailing Wage Section of the Division of Labor Standards for an interpretation of these rules and for a determination of the appropriate occupational title of work description, relative to the class or type of work to be performed.

[(6)](5) The occupational titles and work descriptions for each type or class of work contained herein are valid throughout the entire state of Missouri. Through an objection to a wage order, an interested party may assert that any given description of work, as stated within this rule, does not apply to a specific occupational title(s) and that a different work description should apply to that occupational title(s). The interested party shall have the burden of proving by a preponderance of the evidence the inapplicability of the description of work within that particular occupational title, but shall be afforded the opportunity to do so in a hearing on an objection to the wage order before the Labor and Industrial Relations Commission.

[(7)](6) Occupational titles of work descriptions may be obtained from the department by written request to the director of the Division of Labor Standards, PO Box 449, Jefferson City, MO 65102 or by visiting the following website: <https://labor.mo.gov/DLS/PrevailingWage/pwContractors>.

[(8)](7) The occupational titles of work descriptions set forth here are as follows:

(A) Asbestos Worker/[Heat and Frost Insulator]—Applies to workers who apply insulation materials to mechanical systems to reduce loss or absorption of heat, prevent moisture condensation,

and to deaden sound and prevent vibration. The workers remove all insulation materials from mechanical systems unless the mechanical system is being scrapped. The work falling within this occupational title of work description includes:

1. The preparation, including the building of enclosures and hanging polyurethane, and physical distribution on the job site of asbestos, cork, plastic, magnesia or similar materials, or other materials used as a substitute, and used as thermal insulation. The manufacture, fabrication, assembling, molding, handling, erection, spraying, pouring, making, hanging, application, adjusting, alteration, repairing, dismantling, reconditioning, corrosion control, and testing of heat or frost insulation, such as asbestos, cork, mineral wall, infusorial earth, mercerized silk, flax, fiber, fire felt, asbestos paper, asbestos curtain, asbestos millboard, fibrous glass, foam glass, styrofoam, polyurethane, polystyrene, metals, plastics, fibrous matter, roving, and resins, and the erection of scaffolding up to fourteen feet (14'), working platform;

2. The covering, including encapsulation, of boilers, tanks, refrigeration units, evaporators, turbines, fittings, valves, ducts, flues, vats, equipment, hot and cold pipes, or any other hot or cold surfaces with the insulation materials listed in this rule, used for the purpose of thermal insulation, fire stoppage, fireproofing, radiator protection, sound deadeners, and the lagging (covering) on piping; and

3. The removal of all insulation materials from mechanical systems, unless the mechanical system is being scrapped, whether they contain asbestos or not (pipes, boilers, ducts, flues, breechings). All cleanup required in connection with this work, shall include the sealing, labeling, and dropping of scrap material into the appropriate containers. (After drop, final disposal is considered to be the class or type of work falling within the occupational title of work description for second semiskilled laborer.);

(B) Boilermaker—Applies to workers who assemble, erect, and repair boilers, tanks, vats, and pressure vessels according to blueprint specifications, using handtools, portable power tools, and equipment. The work falling within this occupational title of work description includes:

1. Locating and marking of reference points for columns on plates or foundations, using master straightedge, squares, transit, and measuring tape;

2. Using rigging or cranes to lift parts to specified positions;

3. Aligning structures or plate sections, using plumb bobs, levels, wedges, dogs, or turnbuckles;

4. Drilling, reaming, chipping, caulking, and grinding of structures and sections and bolting or welding them together;

5. Setting of drums and headers and installation of tubes;

6. Cleaning up as necessary in connection with this work; and

7. Riveting, acetylene burning, rigging, fitting-up, impact machine operating, unloading and handling of material and equipment where power equipment and rigging are required;

(C) Bricklayers [and Stone Mason]—Applies to workers who prepare, lay, set, bed, point, patch, grout, caulk, cut, fit, plumb, align, level, anchor, bolt, or weld brick, stone masonry, precast aggregate panels, and all types of artificial or imitation masonry. Also, the workers install expansion joint materials in brick, stone masonry, precast aggregate panels, and all types of artificial or imitation masonry. The work falling within this occupational title of work description includes:

1. The unloading of brick, stone masonry, precast aggregate panels, and all types of artificial or imitation masonry where power equipment and rigging are required;

2. The masonry paving and rip-rapping of all types, with or without mortar;

3. The reinforcing of masonry, including placing, tying, and setting of rods;

4. The application of insulation systems and materials, and air and/or vapor barrier systems and materials, by spray, trowel, roller, adhesive, or mechanically fastened in or to all masonry walls;

5. The caulking of abutting masonry openings in masonry walls, expansion joints, and false joints in all types of masonry;

6. The waterproofing of all types of masonry, which shall include installation and application of air and/or vapor barrier systems and materials by spray, trowel, roller, adhesive, or mechanically fastened; and

7. The cleaning, tuckpointing, sandblasting, steam cleaning, and Guniting work on all types of masonry;

(D) **Carpenter (which shall include pile driver, millwright, lather, and linoleum layer)**—Applies to workers who construct, erect, install, and repair structures, structural members and fixtures made of wood, plywood, wallboard, and materials that take the place of wood, such as plastic, metals, composites, fiberglass, and Transit sheeting and Cemesto Board, using carpenter hand tools and power tools. The work falling within this occupational title of work description includes:

1. General Carpenter.

[1./A. The layout of buildings or structures on the site or plot. The installation of aluminum expansion joints for buildings and bridge structure as well as concrete strike-off machines/;].

[2./B. The making and setting of all concrete forms (except curb forms on heavy construction), including establishment of building lines or flow lines (box culverts, bridges) including footing forms. The making of all forms used in tilt-up construction. The layout, installation, and construction for wall forms and footing forms, all block-outs, wood or steel, layout, and installation of all embedded items/;].

[3./C. The building and handling of scaffolds used by carpenters to work from. All scaffolding, constructed or assembled, fourteen feet six inches (14'6") and higher for normal or specialty use—regardless of purpose/;].

[4./D. The building of rough wooden structures, such as concrete forms, scaffolds, wooden bridges, trestles, coffer dams, tunnel and sewer support/;], welding and burning/;].

[5./E. The selection of specified type of lumber or other materials. Prepare layout, using rule, framing square, and calipers. Mark cutting and assembling lines on materials, using pencil, chalk, and marking gauge. Shape materials to prescribed measurements, using saws, chisels, and planes. Assemble, cut, and shape materials and fasten them together with nails, dowel pins, or glue. Erect framework for structures. Verify trueness of structure with plumb bob and carpenter's level. Apply decorative paneling to walls/;].

[6./F. The installation of ladders, handrails, walkways, platforms, and gangways made of wood as well as shoring and lagging. Install doors and wood and metal windows and bucks, including hardware (bucks are rough frames in which finished frames are inserted) in building framework and brace them with boards nailed to framework. Install pallet racks and metal shelving. Install sub-flooring in buildings. Install insulation such as batt, board, saffing, thermal, styrofoam, sound attenuation, fiberglass when the installation of the insulation material is not being applied as an integral part of the roofing system. Nail plaster grounds (wood or metal strips) to studding. Fit and nail sheathing on outer walls and roofs on buildings. Install beams and trusses of wood laminate/;].

[7./G. The making, handling, and setting of all frames, sash, blinds, trim, and other fixtures (for example, cabinets, bookcases, and benches), when made of wood or any wood substitute. The handling and assembly of chairs, seats, bleachers, and benches and other furniture in theaters, halls, schools, and other places of assemblage on floors of any kind. Install protection screens, chalk boards, toilet partitions (plastic laminate, solid plastic). Caulking of fixtures and countertops including Corian tub and shower enclosures/;].

[8./H. The installation of wood and metal studs and exterior panels/;].

[9./I. The handling, cutting, sawing, fitting of drywall (sheetrock), and lead-lined drywall whether for walls, ceilings, floors, soffits, or any use, no matter how installed—nailed, screwed, glued, or otherwise (interior, exterior). Lead-lined drywall is used in X rays to avoid radiation exposure. Install corner guards and wooden

and plastic column covers/;].

[10./J. The handling and installation of acoustical and egg crate ceiling systems in its entirety (hanger wire, grid, molding, tile) whether vertically or horizontally installed/;].

[11./K. The installation of all builders hardware, including door tracks of every description. The installation of all weather strips. The making, fitting, and hanging of fly screens for doors, windows, and other openings/;].

[12./L. Installation of wood and hollow metal doors, rollup garage doors, overhead doors or rolling fire doors, automatic doors, channel iron door bucks, glass sliding, and bi-fold doors/; and].

[13./M. The installation of access flooring, computer floors, and raised or elevated floors. Install modular headwall units and laboratory casework and fume hoods;

2. Pile Driver—The work falling within the occupational title of work description for pile driver includes:

A. The handling, layout, driving, cutting, and splicing of wood, metal, or concrete piling regardless of purpose (for example, sheets, I-beams, pile caps, and welding to piling);

B. The assembly, disassembly, and rigging of the pile driving equipment; and

C. The conduct of underwater diving that is incidental to pile driving work;

3. Millwright—Applies to workers who design, build, or repair mills or mill machinery; hoist, dismantle, erect, assemble, line, and adjust all machines used in the transmission of power in buildings, factories or elsewhere; unload machines used in the transmission of power in buildings, factories, or elsewhere, where power equipment and rigging are required. The work falling within this occupational title of work description includes: the setting of all classes of engines, direct drive motors, dynamos, turbines, generators, and air compressors and pumps. The assembling, setting, and packing of all compressors and pumps. The placing of all pulleys, sheaves, and fly wheels on the listed equipment. The making and setting of all templates and bolts for all machinery requiring same. Drypacking for sole plates. Installation of truck and railroad scales. Installation of trash compactors. Installation of all types of conveyors. The cutting and threading of all bolts. The handling and operating of all acetylene and devices for heating, welding, and cutting when used in connection with millwright work;

4. Lather—Applies to workers who erect horizontal metal framework to which laths are fastened, using nails, bolts, stud-gun, or a combination of these, drills holes in floor and ceiling, and drives ends of wooden or metal studs into holes to provide anchor for furring or rockboard laths. The occupational title of lather applies to workers who nail, clip, or fasten, all types of wood, wire, and metal laths, plasterboard, wallboard, rockboard, gypsum, sheetrock, and acoustical materials which take the place of same to walls, ceilings, and partitions of buildings to provide supporting base for plaster, fireproofing, or acoustical material. The occupational title of work description for lather applies to workers who erect all metal plastering accessories which are covered or serve as ground, or both, guard, stock, or screed for plaster materials, including wire mesh. The work falling within the occupational title of work description includes:

A. The installing of carrying bars and purlins (pieces of horizontal timber), light iron, and metal furring (thin strips of wood or metal to create air space) of all descriptions, such as rods, channels, flat iron, T-bar, H-bar, and other ceiling bars or systems for the receipt of lath and board;

B. The wiring of plasterer channels to overhead structural framework to provide support for plaster or acoustical ceiling tile; and

C. The nailing of plaster grounds (wood or metal strips) to studding to provide a guide for those workers performing work falling within the occupational title of work description for plasterer;

5. Linoleum Layer—Applies to workers who measure, cut,

sew, make-up and seam, tape, fit, lay, and install and seal and wax materials to be cemented, tacked, or otherwise applied to its base, wherever it may be. These materials may be used as shock-absorbing, sound-absorbing, or decorative coverings. With the exception of terrazzo, magnesite, and latex built-up floors, the materials include oil cloth, matting, linen, carpet, synthetic turf, linoleum, vinyl, plastic, rubber, cork, mastic, asphalt, mastipave, tile, wood tile, interlocking and magnetic tile, chalk and bulletin board, nonslip or abrasive materials, resilient, decorative seamless surface coatings, monolithic coverings (monolithic shall mean all resilient seamless material such as epoxy, polyethylene, plastics and their derivatives, components and systems), and all other resilient coverings on floors, walls, counters, table tops, and ceilings. The work falling within the occupational title of work description includes:

- A. The handling of materials at the point of installation;
- B. The performing of all necessary preparation and finish work, such as sweeping, scraping, sanding, or chipping dirt and irregularities from base surfaces and filling cracks with putty, plaster, or cement grout to form smooth, clean foundations, drilling holes for sockets and pins;
- C. The installing of underlayment, sanding and filling, fitting of metal edgings, metal corners, and caps and fitting devices for attachment of these materials;
- D. The spreading of adhesive cement over floor to cement foundation material to the floor;
- E. The laying of covering on cement; and
- F. The rolling of finished floor to smooth it out and press cement into base and covering;

(E) Cement Mason (which shall include plasterer)—*[Applies to workers who perform work on concrete where finishing tools are used.]* The work falling within this occupational title of work description includes:

1. Cement Mason - Applies to workers who perform work on concrete where finishing tools are used.

[1./A. The setting of screeds, the rodding (buildings), shaping, smoothing, and finishing of the surfaces of freshly poured concrete floors, walls, sidewalks, curbs, steps, and stairways, the finishing of extruded barrier rails or any other concrete surface requiring finishing, using hand tools or power tools, including floats, trowels, screeds, and straightedge/;].

[2./B. The removing of rough or defective spots from concrete surfaces, using grinder or chisel and hammer and patching holes with fresh concrete or epoxy compound preparatory to sacking/;].

[3./C. The molding of expansion joints and edges, using edging tools, jointers, and straightedge/;].

[4./D. The application of penetrating sealer and primer protective coatings to concrete floors and steps when part of the finishing process/;].

[5./E. The installation of seamless composition floors and the installation and finishing of epoxy-based coatings or polyester-based linings to all surfaces, when the coatings or linings are applied by spraying or troweling/;].

[6./F. The sandblasting or water blasting for architectural finish or preparatory to patching/;].

[7./G. The cutting of joints with concrete saw for the control of cracks in buildings and sidewalks, driveways, and curbs and gutters contiguous to buildings/; and/.

[8./H. The setting of concrete curb, gutter, and sidewalk forms one (1) board high up to twelve inches (12");

2. Plasterer - Applies to workers who apply gypsum, Portland cement, stucco, imitation stone, and kindred materials and products to interior walls, ceilings, and partitions and to exterior walls of buildings, and finish those materials and products.

A. The spreading of plaster over laths, masonry, or any other base, using trowel, and smoothing the plaster with darby

and float for uniform thickness;

B. The application of the various manufacturers' brand names of thin coat or plaster veneer;

C. The application of all bonding agents and mastic;

D. The roughing of undercoat with wire or metal scraper to provide bond for succeeding coat of plaster;

E. The application of all malleable plastic materials and epoxy materials;

F. The setting in place of plasterboard, insulation board, styrofoam and bead-board, ground, locks, patent dots, cork plates, brownstone and acoustical tile, fiberglass reinforcement and finished products;

G. The plastering of joints, nail holes, and bruises on wallboard;

H. The grouting and filling of door bucks, runners, and similar installations, in conjunction with plastering operations;

I. The application of scratchcoat, browncoat, and finish coat of plaster to wood, metal or board laths successively to all ceilings and walls when finished with terrazzo or tile, and the application of any plastic material to same;

J. The fireproofing of all building assemblies with plaster materials, sprayed fiberglass or similar materials, whether applied to gypsum, metal lath, or directly;

K. The application of crushed stone, marble, or ceramic chips and broken glass where embedded in plaster, or similar materials;

L. The placing of acoustic blocks with any plastic material, regardless of thickness;

M. The placing, by any method, of plaster or composition caps and ornaments;

N. The creating of decorative textures in finish coat by marking surface of coat with brush and trowel or by spattering it with small stones (stucco) where plastering equipment or materials, or both, are used; and

O. The operation and control of all types of plastering machines, including power trowels and floats;

(F) Communications *[(Electronic/Telecommunication)]* Technician—Applies to workers who install, inspect, repair, and service electronic and telecommunication systems. The work falling within the occupational title of Communication (Electronic/Telecommunication) Technician includes:

1. Installing, repairing, and servicing of radio, television, and recording systems and devices; systems for paging, intercommunication, public address, wired music, clocks, security and surveillance systems, and mobile radio systems; fire alarm and burglar alarm systems;

2. Wiring of low-voltage surface wiring and wiring in nonmetallic conduits and incidental shielded metallic conduit runs of no longer than ten feet (10') nor larger than one inch (1") when required in conjunction with the work listed in this rule;

3. Installing, repairing, servicing, or a combination of these, of the Main Distribution Frame (MDF) where the permanent outside lines entering a building terminate and where the subscriber's line multiple cabling and trunk multiple cabling originate. It is usually located on the ground floor of a building;

4. Installing, repairing, servicing, or a combination of these, of the Intermediate Distribution Frames (IDF), which provides flexibility in allocating the subscriber's number to the line unit or equipment in the office that is to be associated with the particular line. These frames are located on each floor of a building;

5. Installing, repairing, servicing, or a combination of these, of the subpanels (blocks). The subpanels are connecting devices where large feed cables terminate at the distribution frames;

6. Installing, repairing common equipment or key service unit, or a combination of these. This equipment consists of a backboard assembly and an equipment mounting frame, which are utilized for connecting external telephones;

7. Installing, repairing, servicing of the instruments, terminals,

and sets, or a combination of these. This equipment is at either end of a circuit, or at a subscriber's or user's terminal;

8. Installing, repairing, servicing, or a combination of these, of the ancillary or add-on equipment such as bells, buzzers, speaker-phones, headsets, automatic dialers, recorders; and

9. Installing, repairing, servicing of the telephone cable, or a combination of these. Telephone cable includes: network channel service cable; riser cables between floors of a building; distribution cables installed on each floor of a building in the floor or the ceiling, and inside wires between the telephone and the connection to the distribution cable;

(G) Electrician—*[Encompasses two (2) subclassifications as follows, Inside Wireman and Outside-Line Construction/Lineman:*

1. *Inside wireman*—] Applies to workers who are responsible for installation, assembly, construction, inspection, operation, and repair of all electrical work within the property lines of any given property (manufacturing plants, commercial buildings, schools, hospitals, power plants, parking lots). This scope of work shall begin at the secondary site of the transformer when the transformer is furnished by the local utility and the service conductors are installed underground. When service conductors are installed overhead in open air from wooden poles, this scope of work shall start immediately after the first point of attachment to the buildings or structures. The work falling within this occupational title of work description includes:

[A.]1. Planning and layout of electrical systems that provide power and lighting in all structures. This includes cathodic protection systems utilized to protect structural steel in buildings and parking structures;

[B.]2. All handling, moving, loading, and unloading of any electrical materials, materials used in association with an electrical system, electrical equipment, and electrical apparatus on the job site, whether by hand or where power equipment and rigging are required;

[C.]3. Welding, burning, brazing, bending, drilling, and shaping of all copper, silver, aluminum, angle iron, and brackets to be used in connection with the installation and erection of electrical wiring and equipment;

[D.]4. Measuring, cutting, bending, threading, forming, assembling, and installing of all electrical raceways (conduit, wireways, cable trays), using tools, such as hacksaw, pipe threader, power saw, and conduit bender;

[E.]5. Installing wire in raceways (conduit, wireways, troughs, cable trays). This wire may be service conductors, feeder wiring, subfeeder wiring, branch circuit wiring;

[F.]6. Chasing and channeling necessary to complete any electrical work, including the fabrication and installation of duct banks and manholes incidental to electrical, electronic, data, fiber optic, and telecommunication installation;

[G.]7. Splicing wires by stripping insulation from terminal leads with knife or pliers, twisting or soldering wires together, and applying tape or terminal caps;

[H.]8. Installing and modifying of lighting fixtures. This includes athletic field lighting when installed on stadium structures or supports other than wooden poles, or both;

[I.]9. Installing and modifying of all electrical/fiber optic equipment (AC-DC motors, variable frequency drives, transformers, reactors, capacitors, motor generators, emergency generators, UPS equipment, data processing systems, and annunciator systems where sound is not a part thereof);

[J.]10. Installing of raceway systems utilizing conduit, conduit bodies, junction boxes, and device boxes for switches and receptacles. This also may include wiring systems utilizing other methods and materials approved by the *National Electrical Code* (MC cable, AC cable, BX, or flexible metal tubing or electrical nonmetallic tubing);

[K.]11. Installing of main service equipment, distribution pan-

els, subpanels, branch circuit panels, motor starters, disconnect switches, and all other related items;

[L.]12. Installing and wiring of instrumentation and control devices as they pertain to heating, ventilating, air conditioning (HVAC) temperature control and energy management systems, building automation systems, and electrically or fiber optic operated fire/smoke detection systems where other building functions or systems are controlled;

[M.]13. Installing conduit or other raceway greater than ten feet (10') when used for the following: fire alarm systems, security systems, sound systems, closed circuit television systems or cable television systems, or any system requiring mechanical protection or metallic shielding (telephone systems);

[N.]14. Testing continuity of circuit to insure electrical compatibility and safety of components. This includes installation, inspecting, and testing of all grounding systems including those systems designed for lighting protection; and

[O.]15. Removing electrical systems, fixtures, conduit, wiring, equipment, equipment supports, or materials involved in the transmission and distribution of electricity within the parameters of the building property line if reuse of any of the existing electrical system is required. This may include the demolition and removal and disposal of the electrical system;

[2. Outside-line construction/lineman—Applies to workers who erect and repair transmission poles (whether built of wood, metal, or other material), fabricated metal transmission towers, outdoor substations, switch racks, or similar electrical structures, electric cables, and related auxiliary equipment for high-voltage transmission and distribution powerlines used to conduct energy between generating stations, substations, and consumers. The work (overhead and underground) falling within this occupational title of work description includes:

A. Construction, repair, or dismantling of all overhead and underground electrical installations. The handling and operation of all equipment used to transport men, tools, and materials to and from the job site. The framing, trenching, digging, and backfilling of vaults, holes and poles and anchors (by hand or mechanical equipment), guying, fastening to the stub-in on concrete footings or pads, assembling of the grillage, grounding of all structures, stringing overhead wire, installing underground wire, splicing, and installation of transformers;

B. Construction and repair of highway and street lighting and traffic signal systems, cathodic protection systems, and ball field lighting systems;

C. Lineman operator—Operates equipment used on the outside line portion of a project. The lineman operator assists linemen in the performance of their work but does not climb or work out of any type of aerial lift equipment. The lineman operator does not perform any work that requires the use of hand tools;

D. Groundman—Work performed on the ground to assist the journeymen outside-line construction/lineman on work not energized. Groundmen use jack hammers, air drills, shovels, picks, tamps, trenching equipment, and other such tools for excavating and/or compacting dirt or rock on the outside line portion of a project but do not use hand tools;

E. Lineman tree trimmer—Trimming and removal of trees, stumps, limbs, brush, and other related tasks in and around electrical systems by use of chain saws, pruners, pole saws, and hand saws only when specifically required to provide clearance and right-of-way preparation for installation of overhead or underground high-voltage electric utility lines, and excluding the clearance of right-of-ways related to heavy-highway construction or other public projects not directly related to the installation of electrical utility lines. Lineman tree trimmer work may be performed on the ground

and in the air; and

F. Groundman tree trimmer—Assists the lineman tree trimmer in the performance of their work using rakes, chain saws, chippers, and industrial mowers in and around electrical systems only when specifically required to provide clearance and right-of-way preparation for installation of overhead or underground high-voltage electric utility lines, and excluding the clearance of right-of ways related to heavy-highway construction or other public projects not directly related to the installation of electrical utility lines. Groundman tree trimmer work is only performed on the ground; and

3. The occupational title of electrician may include in a particular wage determination the subclassifications of lineman operator, groundman, lineman tree trimmer, groundman tree trimmer, or any combination of these, pursuant to section (6). The description of work and corresponding wage rates shall be established pursuant to the proceedings set forth in section (6);]

(H) Elevator Constructor—Applies to workers who assemble and install electric and hydraulic freight and passenger elevators, escalators, dumbwaiters, and moving walks. The work falling within this occupational title of work description includes:

1. The handling, unloading, and hoisting of all equipment to be assembled or installed by workers performing work within this occupational title of work description, from the time that equipment arrives at, or near the building site;

2. The wrecking or dismantling of elevator plants, to include elevators, escalators, dumbwaiters, moving walks, and all other equipment to be reused and assembled or installed by workers performing work within this occupational title of work description;

3. The sinking, drilling, boring, digging cylinder wells, or backfilling for hydraulic lifts, hydraulic elevators, or screw lifts;

4. The layout, erecting and assembling of all elevator equipment (for example, electric, hydraulic, steam, belt, compressed air, and hand-powered elevators; dumbwaiters, residence elevators, parking garage elevators); and the assembly of all escalators, moving walks and link belt carriers;

5. The erecting and assembly of all theater stage and curtain equipment and guides and rigging to them, organ consoles, and orchestra elevators;

6. The installing of all wiring, conduit, and raceways from the first point of attachment of main feeder terminals on the controller to other apparatus and operating circuits;

7. The operating of temporary cars; and

8. The installing of all elevator enclosures, fronts, fascias, sills, frames, and bucks;

(I) Glazier—Applies to workers who select, cut, prepare, handle, install, or remove all window glass, plate, and all other types of glass, including structural glass, mirror glass, tempered and laminated glass, safety or protection glass, all types of insulating glass units, all plastics or other similar materials when used in place of glass and when set or glazed with putty, moulding rubber, cement, lead, and all types of mastic, or other materials used in place of same. The workers performing work within this occupational title of work description install these materials in windows, louvers, doors, partitions, skylights, and on building fronts, walls, ceilings and tables, whether the materials are set in wood, stone, cement, or metal of all types. The work falling within the occupational title of work description includes:

1. The installing of mirrors of all types;

2. The marking of an outline or pattern on glass and cut glass with a glasscutter;

3. The breaking off of excess glass by hand or with a notched tool;

4. The fastening of glass panes into wood sash with glazier's points, and the spreading smooth of putty around the edge of panes with a knife to seal joints;

5. The installing of metal window and door frames into which glass panels are to be fitted or sliding windows. The bolting of metal hinges, handles, locks, and other hardware to prefabricated glass doors;

6. The installing of mirror or structural glass on building fronts, walls, ceilings or tables, using mastic, screws, or decorative moulding;

7. The installing of metal-framed glass enclosures for showers, bathtubs, and skylights; and

8. The installing, cutting, and removal of all window glass, plate, and all other types of glass, including structural glass, mirror glass, tempered and laminated glass, safety or protection glass, all types of insulating glass units, all plastics or other similar materials when used in place of glass and when set or glazed with putty, moulding rubber, cement, lead, and all types of mastic, or other materials used in place of same;

(J) Ironworker—Applies to workers who perform work in connection with field fabrication, erection, or both, installation, removal, wrecking, and dismantling of structural, architectural, and reinforcing iron and steel, ornamental lead, bronze, brass, copper, and aluminum, and plastics or other materials when used in place of them. The work falling within the occupational title of work description includes:

1. Structural. The unloading, erecting, bolting-up, plumbing-up, welding, and in-stalling of structural steel, including any field fabrication;

2. Reinforcing. The unloading, carrying, placing, and tying of all concrete reinforcing, such as re-bar, wire mesh, expanded metal or post tensioning cable (including the tension process) or prestress cables when installed on the job site;

3. Rigging. The unloading, moving, handling, placing, and setting of electrical machinery and equipment when rigging or power equipment, or both, is used (with the exception of setting of electric motors). The assembly and erection of radio and television and other structural steel towers (with the exception of electrical transmission towers). The unloading, handling, moving, and placing of machinery to be assembled or dismantled, erected, or installed to its approximate position (over the anchor bolts);

4. Windows. The installation of metal windows (with the exception of store fronts display windows), curtain walls, and metal panels. The caulking of metal-to-metal joints and metal-to-brick;

5. Doors. The erection of curtain type doors (overhead rolling-type doors), heavy industrial doors when made of metal, fire doors, and exterior metal hinged doors that carry a fire underwriters label are erected by iron workers;

6. Sheeting and decking. The installation of sheeting which is attached to metal framework including metal floor decking;

7. Metal buildings. The erection and installation of structural steel and sheet metal packaged buildings when they come in a package unit, such as Butler, Delta, Varco Prudent, or other name brand packaged buildings. The installation of all doors, windows, and insulation (when installed in conjunction with sheeting) in the packaged buildings. The installation of metal siding and metal roof decking, regardless of the fastening method or the object to which it is fastened;

8. Elevators. The installation of elevator doors for gates manually operated and all elevator enclosures, fronts, fascias, sills, frames, and bucks;

9. Precast. The unloading and installation/erection of precast bridge girders, single T's, double T's, top panels, and tilt-up slabs; and

10. Other. The installation of all catwalks, stairways, and hand rails made of aluminum, bronze, or any type of metal, glass or plastic. The installation of ornamental iron, such as revolving doors, gates, handrails, window grills, jail and cell work, and chain link fences. The installation of dry storage bins, hoppers, chutes, and conveyors where sand ore, coal, or any dry component is stored or transferred. The erection, installation, removal, wrecking, and dismantling of bridges, viaducts, cableways, tramway, monorail transportation systems. The

erection, installation, removal, wrecking, and dismantling of locks, gates, metal forms, railings (including pipe). The erection, installation, removal, wrecking, and dismantling of frames in support of boilers. The installation of metal siding and metal roof decking, regardless of the fastening method, or the object to which it is fastened. The handling, burning, welding, and tying of all materials used to reinforce concrete structures. The installation and erection of TV and microwave towers, self-supporting towers, or guy towers. The installation of metal guardrails with metal posts and highway signage;

(K) **General Laborer (including first semi-skilled laborer and second semi-skilled laborer)**—Consists of providing routine manual labor. This work encompasses several subclassifications, with the title and work description considered in light of whether the public works project pertains to building construction or heavy/highway construction.

1. Building construction. The subtitles falling within the occupational title of work description for laborer, as applicable to building construction, are as follows:

A. *[General]* Laborer. The work falling within this subtitle of work description includes:

(I) Being included in one (1) of the following categories: flagmen, heaters, material plant man, carpenter tender, landscaper, signalman, wrecker (old/new structures), form handler, or posthole digger;

(II) Cleaning and clearing of all debris for all crafts, loading and unloading, conveying, distributing, construction material by hand and collecting and hoisting debris, backfilling, grading, and landscaping by hand;

(III) Covering of tanks, structures, and material piles with tarpaulins or other materials. Cleaning of masonry and other type walls and windows. Signaling and hoisting concrete buckets and for all other material handled by workers falling within the occupational title of work description for laborer;

(IV) Providing drinking water. Handling and cleaning of concrete chutes. Cleaning of concrete spills and chipping where hand tools are required. Performance of work necessary in remedying defects in concrete caused by leakage, bulging, sagging, or shifting of forms when finishing tools are not used. Jackhammer and paving breaker, air compressors, motor buggies, pumps (removal of water), except set-up men and nozzle men, chipping tool operator, concrete mixer operator (up to and including two- (2-)/-/ bag capacity); and

(V) Laying nonpressurized pipe for downspout drain lines, header lines, or laying of nonpressurized conduit, or a combination of these, for the carrying of storm water, waste, sewage, gravity flow lines, catch basins and manholes, effluent lines, originating outside the building and all those lines originating inside the building at the first Y, T, or connection outside the building;

B. First semiskill laborer. The work falling within this subtitle of work description includes: hod-carriers, plasterers, and cement mason tenders (who assist bricklayers, plasterers, and cement masons). The mixing, packing, wheeling, and tempering of mortar and fire clay. The mixing, handling and conveying of all other materials used by bricklayers, plasterers, and cement masons (for example, brick, tile, stone and cast stone), whether done by hand or using a forklift (walk behind or similar types). Building of scaffolds, trestles, boxes, and swinging staging for bricklayers, plasterers, and cement masons; and

C. Second semiskill laborer. The work falling within this subtitle of work description includes: concrete pump set-up men and nozzle men, tile layers and bottom men, on sewers and drains, cutting torch, and burning bar (demolition), trench, or pier holes twelve feet (12') or over, wagon drill, air track or any mechanical drill, powder man, tamper, one hundred pounds (100 lbs.) or over, laborers working for mechanical and electric contractors (including but not limited to digging of all trenches, ditches, holes, paving of concrete, and cleaning of all trash), paving breaker, jackhammer and vibrator, laser beam man for sewer, grade checker for roads and railroads,

asbestos removal (except mechanical systems that are not being scrapped and any type of roofing where the roof is to be relaid), hazardous waste removal, disposal work, or any combination of these.

2. Heavy/highway construction. The subtitle falling within the occupational title of work description for **general** laborer, as applicable to heavy/highway construction, are as follows:

A. *[General]* Laborer. The work falling within this subtitle of work description includes: carpenters tenders, salamander tenders, dump man, ticket takers, flagman, loading trucks under bins, hoppers and conveyors, track men, cement handler, dump man on earth fill, Georgia buggy man, material batch hopper man, spreader on asphalt machine, material mixer man (except on man holes), coffer dams, riprap pavers—rock, block, or brick, signal man for materials handled by laborers, scaffolds over ten feet (10') not self-supported from ground up, skipman on concrete paving, wire mesh setters on concrete paving, work in connection with nonpressurized pipelines, such as nonpressurized sewer, water, gas, gasoline, oil, drainage pipe, conduit pipe, tile, and duct lines and other nonpressurized pipelines; power tool operator; work performed by hand in connection with hydraulic or general dredging operations, form setters (curb and gutter), puddlers (paving only), straw blower nozzle man, asphalt plant platform man, chuck tender, crusher feeder, men handling creosote ties or creosote materials, men working with and handling epoxy material(s), topper of standing trees, feeder man on wood pulverizers, board and willow mat weavers and cable tiers on river work, deck hands, guardrail and temporary signs, pile dike and revetment work, all laborers working on underground tunnels less than twenty-five feet (25') where compressed air is not used, abutment and pier hole men working six feet (6') or more below ground, men working in coffer dams for bridge piers and footings in the river, Barca tamper, Jackson or any other similar tamp, cutting torch man, liners, curb, gutters, ditchliners, hot mastic kettleman, hot tar applicator, hand blade operators and mortar men on brick or block manholes, rubbing concrete, air tool operator under sixty-five pounds (65 lbs.), caulker and led man, chain or concrete saw under fifteen horsepower (15 HP). The unloading, handling, and carrying of concrete reinforcing bars, by hand, to the areas in which they are used, wrecking, stripping, dismantling, cleaning, moving, and oiling of all concrete forms; digging and laying sewer tile; and

B. Skilled laborer. The work falling within this subtitle of work description includes: vibrator man, asphalt raker, head pipe layer on sewer work, batterboard man on pipe and ditch work, cliff scalers working from Bosun's chairs, scaffolds, or platforms on dams or power plants over ten feet (10') high, air tool operator over sixty-five pounds (65 lbs.), stringline man on concrete paving and the like, sandblast man, laser beam man, wagon drill, churn drill, air track drill, and all other similar type drills, jackhammers, and other pneumatic hammers and tampers, Gunite nozzle man, pressure grout man, screed man on asphalt, concrete saw fifteen (15) HP and over, grade checker, stringline man on electronic grade control, manhole builder, dynamite man, powder man, welder, tunnel man waterblaster—one thousand pounds per square inch (1000 psi) over, asbestos (except mechanical systems that are not being scrapped), hazardous waste removal, disposal, or any combination of these;

[(L) Lather—Applies to workers who erect horizontal metal framework to which laths are fastened, using nails, bolts, studgun, or a combination of these, drills holes in floor and ceiling and drives ends of wooden or metal studs into holes to provide anchor for furring or rockboard laths. The occupational title of lather applies to workers who nail, clip or fasten, all types of wood, wire and metal laths, plasterboard, wallboard, rockboard, gypsum, sheetrock and acoustical materials which take the place of same to walls, ceilings and partitions of buildings to provide supporting base for plaster, fireproofing or acoustical material. The occupational title of work description for lather applies to workers who erect all metal plastering accessories which are covered or serve as ground, or both, guard, stock or screed for plaster materials,

including wire mesh. The work falling within the occupational title of work description includes:

1. The installing of carrying bars and purlins (pieces of horizontal timber), light iron and metal furring (thin strips of wood or metal to create air space) of all descriptions, such as rods, channels, flat iron, T-bar, H-bar and other ceiling bars or systems for the receipt of lath and board;

2. The wiring of plasterer channels to overhead structural framework to provide support for plaster or acoustical ceiling tile; and

3. The nailing of plaster grounds (wood or metal strips) to studding to provide a guide for those workers performing work falling within the occupational title of work description for plasterer;

(M) *Linoleum Layer and Cutter*—Applies to workers who measure, cut, sew, make-up and seam, tape, fit, lay and install and seal and wax materials to be cemented, tacked or otherwise applied to its base, wherever it may be. These materials may be used as shock-absorbing, sound-absorbing or decorative coverings. With the exception of terrazzo, magnesite and latex built-up floors, the materials include oil cloth, matting, linen, carpet, synthetic turf, linoleum, vinyl, plastic, rubber, cork, mastic, asphalt, mastipave, tile, wood tile, interlocking and magnetic tile, chalk and bulletin board, nonslip or abrasive materials, resilient, decorative seamless surface coatings, monolithic coverings (monolithic shall mean all resilient seamless material such as epoxy, polyethylene, plastics and their derivatives, components and systems) and all other resilient coverings on floors, walls, counters, table tops and ceilings. The work falling within the occupational title of work description includes:

1. The handling of materials at the point of installation;

2. The performing of all necessary preparation and finish work, such as sweeping, scraping, sanding, or chipping dirt and irregularities from base surfaces and filling cracks with putty, plaster, or cement grout to form smooth, clean foundations, drilling holes for sockets and pins;

3. The installing of underlayment, sanding and filling, fitting of metal edgings, metal corners and caps and fitting devices for attachment of these materials;

4. The spreading of adhesive cement over floor to cement foundation material to the floor;

5. The laying of covering on cement; and

6. The rolling of finished floor to smooth it out and press cement into base and covering;

(N) *Millwright*—Applies to workers who design, build, or repair mills or mill machinery; hoist, dismantle, erect, assemble, line and adjust all machines used in the transmission of power in buildings, factories or elsewhere; unload machines used in the transmission of power in buildings, factories or elsewhere, where power equipment and rigging are required. The work falling within this occupational title of work description includes: the setting of all classes of engines, direct drive motors, dynamos, turbines, generators and air compressors and pumps. The assembling, setting and packing of all compressors and pumps. The placing of all pulleys, sheaves and fly wheels on the listed equipment. The making and setting of all templates and bolts for all machinery requiring same. Drypacking for sole plates. Installation of truck and railroad scales. Installation of trash compactors. Installation of all types of conveyors. The cutting and threading of all bolts. The handling and operating of all acetylene and devices for heating, welding and cutting when used in connection with millwright work;]

(L) *Mason* (which shall include marble mason, marble finisher, terrazzo worker, terrazzo finisher, tile setter, and tile finisher).

1. *Marble Mason-Terazzo Worker*—The work falling within

the occupational title of work description for Marble Mason-Terazzo Worker includes:

A. The installing of marble, mosaic, venetian enamel, and terrazzo; the cutting and assembling of mosaics and art ceramics; the casting of all terrazzo on the job site; all rolling of terrazzo work;

B. The preparing, cutting, layering, or setting of metal, composition, or wooden strips and grounds on all bedding above concrete floors or walls; and the laying and cutting of metal, strips, lath, or other reinforcement, where used in terrazzo work;

C. The installing of cement terrazzo, magnesite terrazzo, dex-o-tex terrazzo, epoxy matrix terrazzo, exposed aggregate. Rustic or rough wash of exterior or interior of buildings. The mixing or applying of any other kind of mixtures of plastics composed of chips or granules of marble, granite, blue stone, enamel, mother of pearl, quartz ceramic colored quartz, and all other kinds of chips or granules when mixed with cement, rubber, neoprene, vinyl, magnesium chloride, or any other resinous or chemical substances used for seamless flooring systems. The applying of binding materials when used on walls, floors, ceilings, stairs, saddles, or any other part of the interior or exterior of the building, or other work not considered a part of the building such as fountains, swimming pools;

D. The finishing of cement floors where additional aggregate of stone is added by spreading or sprinkling on top of the finished base and troweled or rolled into the finish and then the surface ground by grinding machines (When no additional stone aggregate is added to the finished mixture, even though the surface may be ground, the work falls within the occupational title of work description for cement masons.); and

E. The carving, cutting, and setting of all marble, slate, including slate backboards, stone, albereen, carrara, sanionyx, vitrolite, and similar opaque glass, scaglia, marbleitic, and all artificial, imitation, or case marble of whatever thickness or dimension. This shall apply to all interior work, such as sanitary, decorative, and other purposes inside of buildings of every description wherever required, including all polish, honed, or sand finish.

2. *Marble Finisher*—The work falling within the occupational title of work description for Marble Finisher includes:

A. The preparation of floors and/or walls by scraping, sweeping, grinding, and related methods to prepare surface for Marble Mason installation of construction materials on floor and/or walls; the movement of marble installation materials, tools, machines, and work devices to work areas; the erection of scaffolding and related installation structures;

B. The movement of marble slabs for installation; the drilling of holes and the chiseling of channels in edges of marble slabs to install wall anchors, using power drill and chisel; the securing of marble anchors to studding, using and covering ends of anchors with plaster to secure anchors in place;

C. The supply and mixture of construction materials for Marble Mason; the mixture of grout, as required, following standard formulas and using manual or machine mixing methods; the application of grout to installed marble; the movement of mixed mortar or plaster to installation area, manually or using wheelbarrow;

D. The removal of excess grout, using wet sponge; the cleaning of installed marble surfaces, work and storage areas, installation tools, machinery, and work aids, using water and cleaning agents;

E. The modification of mixing, material moving, grouting, polishing, and cleaning metal pieces, using a torch, spatula, and heat sensitive adhesive and filler;

F. The removal of marble installation materials and related debris from immediate work area; the storing of marble, installation material tools, machines, and related items; and

G. The provision of assistance to Marble Mason with the

following tasks: bending or forming of wire to form metal anchors, using pliers; inserting anchors into holes of marble slab; securing anchors in place with wooden stakes and plaster; selecting marble slab for installation following numbered sequences or drawings; grinding and polishing marble, using abrasives, chemical and/or manual, in machine grinding and/or polishing techniques, under Marble Mason's direction; the moving and positioning of marble.

3. Terrazzo Finisher—The work falling within the occupational title of work description for Terrazzo Finisher includes:

A. The preparation of floors and/or walls by scraping, sweeping, grinding, and related methods to prepare surface for Terrazzo Worker installation of construction materials on floors, base, and/or walls; the moving of terrazzo installation materials, tools, machines, and work devices to area, manually or using wheelbarrow;

B. The supply and mixture of construction materials for Terrazzo Worker; the preparation, mixture by hand, mixture by mixing machine, or transportation of premixed materials and the distribution with shovel, rake, hoe, or pail, of all kinds of concrete foundations necessary for mosaic and terrazzo work; the dumping of mixed materials that form base or top surface of terrazzo into prepared installation site, using wheelbarrow; the measuring of designated amounts of ingredients for terrazzo or grout, using graduated containers and scale, following standard formulas and specifications, and the loading of portable mixer using proper means of transport; the mixture of materials according to experience and requests from Terrazzo Worker;

C. The spreading of marble chips or other material over fresh terrazzo surface and the pressing of the material into terrazzo by use of a roller; the application of grout finishes to surfaces of installed terrazzo; the spreading of grout across terrazzo to finish surface imperfections, using trowel; the installation of grinding stones in power grinders, using hand tools; the fine grinding and polishing of the surface of terrazzo, when grout has set, using power grinders; the application of curing agent to installed terrazzo to promote even curing, using brush or sprayer; the cutting of grooves in terrazzo stairs, using power grinder, and the filling of grooves with nonskid material;

D. The modification of mixing, grouting, grinding, and cleaning position and the securing of moisture membrane and wire mesh prior to pouring base materials for terrazzo installation;

E. The washing of the surface of polished terrazzo, using cleaner and water, and the application of sealer, according to manufacturer specifications, using brush; the cleaning of the installation site, and storage areas, tools, machines, and equipment; the removal of Terrazzo Worker materials and related debris from immediate work area; and

F. The provision of assistance to Terrazzo Worker with the following tasks: grinding surfaces of cured terrazzo; using power grinders.

4. Tile Setter—The work falling within the occupational title of work description for Tile Setter includes:

A. The application of tile to floors, walls, ceilings, stair treads, promenade roof decks, garden walks, swimming pools, and all places where tiles may be used to form a finished surface for practical use, sanitary finish, or decorative purpose. (Tile includes all burned clay products, as used in the tile industry, either glazed or unglazed, all composition materials; all substitute materials in single units up to and including, fifteen inches by twenty inches by two inches (15" × 20" × 2") (except quarry tiles larger than nine inches by eleven inches (9" × 11")) and all mixtures in the form of cement, plastics, and metals that are used as a finished surface.);

B. The cutting and shaping of tile with saws, tile cutters, and biters; and

C. The positioning of tile and tapping it with a trowel han-

dle to affix tile to plaster or adhesive base.

5. Tile Finisher—The work falling within the occupational title of work description for Tile Finisher includes:

A. The preparation of floors and/or walls by scraping, sweeping, grinding, and related methods for Tile Setter to install construction materials on floors and walls; the movement of tiles, tile setting tools, and work devices from storage area to installation site manually or using wheelbarrow;

B. The supply and mixture of materials for Tile Setter; the supply and mixture of construction materials for Tile Setter; the mixture of mortar and grout accordingly to standard formulas and request from Tile Setter using bucket, water hose, spatulas, and portable mixer; the modification of mixing, grouting, grinding, and cleaning procedures according to type of installation or material used; the supply to Tile Setter of mortar, using wheelbarrow and shovel; the application of grout between joints of installed tile, using grouting trowel; the application of grout; the cutting of installed tile;

C. The removal of excess grout from tile joints with a sponge and scraping of corners and crevices with a trowel; the application of caulk, sealers, acid, steam, or related agents to caulk, seal, or clean installed tile, using various application devices and equipment;

D. The wiping of surfaces of tile after grouting to remove grout residue and polish tile, using non-abrasive materials; the removal of Tile Setter materials and related debris from immediate work area; the cleaning of installation site, mixing and storage tools, and equipment, using water and various cleaning tools; the storing of tile setting material machines, tools, and equipment; and

E. The provision of assistance to Tile Setter to secure position of metal lath, wire mesh, felt paper, Dur/rock or wonder-board prior to installation of tile;

(O)/(M) Operating Engineer (which shall include operating engineer group I, operating engineer group II, operating engineer group III, operating engineer group III-A, operating engineer group IV, and operating engineer group V)— *[The]* Applies to workers who perform work falling within the occupational title of work description for operating engineer/portable and hoisting *[operate]* operator, monitor, and control, repair, modify, assemble, erect, oil, service each or all electrically or electronically, hydraulically, or any power-operated equipment. This occupational title encompasses several subclassifications, with the title and work description considered in light of whether the public works project pertains to building construction or heavy/highway construction.

1. Building construction. The subtitles falling within the occupational title of work description for operating engineer, as applicable to building construction, are as follows:

A. Group I—This subtitle applies to workers who operate, monitor, and control, repair, modify, assemble, erect, oil, service each or all electrically or electronically, hydraulically, or any power-operated equipment set forth as follows: crane (for example, crawler or truck); dragline—clam shell—gradall; Derrick (all types); kimmer scoop; power shovel or backhoe over one (1) cubic yard; pile driver (for example, land or floating); Whirley; mechanic and welder; hydraulic, self-propelled crane; stinger or cherry picker crane; switch boat; concrete portable plant/concrete mixer paver; cableways;

B. Group II—This subtitle applies to workers who operate, monitor, and control, repair, modify, assemble, erect, oil, service each or all electrically or electronically, hydraulically, or any power-operated equipment set forth as follows: asphalt paver and spreader/concrete spreader; asphalt plant mixer operators; asphalt plant operator; backfillers; back hoe (under one (1) cubic yard); Barber-Green loader (similar type); blade—power, all types; boats—power; boilers; boring machine (all types, including tunnel boring); brooms—power operated (all types); concrete saw (self-propelled); chip spreader (front man); clef plane operators; combination

concrete hoist and mixer such as mix or mobile; crab—power operated; crusher rock; ditching machine; dozer/dredges; finishing machine; firemen on rigs; flex plane; floating machine; form grader; greaser; hoist operator (all types); hopper—power operated; hydra hammer (all types); Lad-A-Vator—similar type; loaders—all types, including skid-steer (for example, */b/Bobcat*); locomotives (all types); curb finishing machine; mucking machine; orange peels; pumps (all types); push cats; rollers (all types); scoops (all types except skimmer scoop); self-propelled rotary drill; air compressors (all types); side boom; siphons, jets, and jennies; welding machine; subgrader; testhole machine; throttle man tractors over fifty (50) HP; air tugger with air compressor; anchor placing barge; Ahoy force feeder loader (self-propelled); bull float; pipe cleaning/wrapping machine; conveyor; heaters, fuel fired with forced air; quadtrack; tie tamper; vibrating machine; well drilling machine; forklift (except masonry forklift);

C. Group III—This subtitle applies to workers who operate, monitor, and control, repair, modify, assemble, erect, oil, service each or all electrically or electronically, hydraulically, or any power-operated equipment set forth as follows: tractors (under fifty (50) HP); distributor (bituminous); scissor lift; small machine (operator); mud jack; wench truck operator; pug mill operator; elevator-push button; A-frame truck; mixers; oilers;

D. Group III-A—This subtitle applies to workers who operate, monitor, and control, repair, modify, assemble, erect, oil, service each or all electrically or electronically, hydraulically, or any power-operated equipment set forth as a masonry forklift;

E. Group IV—This subtitle applies to workers who operate, monitor, and control, repair, modify, assemble, erect, oil, service each or all electrically or electronically, hydraulically, or any power-operated equipment set forth as a self-propelled floor sweeper; and

F. Group V—This subtitle applies to workers who operate, monitor, and control, repair, modify, assemble, erect, oil, service each or all electrically or electronically, hydraulically, or any power-operated equipment set forth as follows: elevator—auto; air pressure oiler; air pressure engineer.

2. Heavy/highway construction. The subtitles falling within the occupational title of work description for operating engineer, as applicable to heavy/highway construction, are as follows:

A. Group I—This subtitle applies to workers who operate, monitor, and control, repair, modify, assemble, erect, oil, service each or all electrically or electronically, hydraulically, or any power-operated equipment set forth as follows: asphalt finishing machine and trench; widening spreader; asphalt plant console operator; autograder; automatic slipform paver; backhoe; blade operator (all types); boat operator (all types); boilers—two (2); central mix concrete plant operator; clamshell operator; concrete mixer paver; crane operator; Derrick or Derrick trucks; ditching machine; dozer operator; dragline operator; dredge booster pump; dredge drillman; dredge operator; drill cat with compressor mounted on cat; drilling or boring machine rotary self-propelled; highloader including skid steer (for example, */b/Bobcat*); hoisting engine—two (2) active drums; launchhammer wheel; locomotive operator—standard gauge; mechanics and welders; mucking machine; piledriver operator; Pitman crane operator; push cat operator; quadtrack; scoop operator—all types; shovel operator; sideboom cats; skimmer scoop operator; trenching machine operator; truck crane;

B. Group II—This subtitle applies to workers who operate, monitor, and control, repair, modify, assemble, erect, oil, service each or all electrically or electronically, hydraulically, or any power-operated equipment set forth as follows: A-frame truck; asphalt hot mix silo; asphalt plant fireman, drum or boiler; asphalt plant mixer operator; asphalt plant man; asphalt roller operator; backfiller operator; Barber-Greene loader; chip spreader; concrete mixer operator, skip loader; concrete plant operator; concrete pump operator; crusher operator; dredge oiler; elevating grader operator; forklift; greaser—fleet; hoisting engine—one (1); locomotive operator—narrow gauge; multiple compactor; pavement breaker; power-

broom—self-propelled; power shield; roter; side discharge concrete spreader; slip form finishing machine; stumpcutter machine; throttle man; tractor operator—over fifty (50) HP; wench truck;

C. Group III—This subtitle applies to workers who operate, monitor, and control, repair, modify, assemble, erect, oil, service each or all electrically or electronically, hydraulically, or any power-operated equipment set forth as follows: boilers—one (1); chip spreader (front man); churn drill operator; clef plane operator; concrete saw operator self-propelled; curb finishing machine; distributor operator; finishing machine operator; flex plane operator; float operator; form grader operator; pugmill operator; roller operator, other than high-type asphalt; screening and washing plant operator; siphons and jets; subgrading machine operator; spreader box operator, self-propelled (not asphalt); tank car heater operator—combination boiler and booster; tractor operator fifty (50) HP or less; Ulmac, Ulric, or similar spreader; vibrating machine operator, not hand;

D. Group IV—This subtitle applies to workers who operate, monitor, and control, repair, modify, assemble, erect, oil, service each or all electrically or electronically, hydraulically, or any power-operated equipment set forth as an oiler or oiler-driver (fireman—rig; maintenance operator); *[and]*

[E. Oiler-driver—This subtitle applies to workers who operate, monitor and control, repair, modify, assemble, erect, oil, service each or all electrically or electronically, hydraulically or any power-operated equipment set forth as follows: fireman—rig; maintenance operator;]

(N) Outside- lineman, lineman operator, groundman, lineman tree trimmer, groundman tree trimmer, and any combination thereof.

1. Outside-lineman—Applies to workers who erect and repair transmission poles (whether built of wood, metal, or other material), fabricated metal transmission towers, outdoor substations, switch racks, or similar electrical structures, electric cables, and related auxiliary equipment for high-voltage transmission and distribution powerlines used to conduct energy between generating stations, substations, and consumers. The work (overhead and underground) falling within this occupational title of work description includes:

A. Construction, repair, or dismantling of all overhead and underground electrical installations. The handling and operation of all equipment used to transport men, tools, and materials to and from the job site. The framing, trenching, digging, and backfilling of vaults, holes and poles, and anchors (by hand or mechanical equipment), guying, fastening to the stub-in on concrete footings or pads, assembling of the grillage, grounding of all structures, stringing overhead wire, installing underground wire, splicing, and installation of transformers;

B. Construction and repair of highway and street lighting and traffic signal systems, cathodic protection systems, and ball field lighting systems;

2. Lineman operator—Operates equipment used on the outside line portion of a project. The lineman operator assists linemen in the performance of their work but does not climb or work out of any type of aerial lift equipment. The lineman operator does not perform any work that requires the use of hand tools;

3. Groundman—Work performed on the ground to assist the journeymen outside line construction/lineman on work not energized. Groundmen use jack hammers, air drills, shovels, picks, tamps, trenching equipment, and other such tools for excavating and/or compacting dirt or rock on the outside line portion of a project but do not use hand tools;

4. Lineman tree trimmer—Trimming and removal of trees, stumps, limbs, brush, and other related tasks in and around electrical systems by use of chainsaws, pruners, pole saws, and hand saws only when specifically required to provide clearance and right-of-way preparation for installation of overhead or underground high-voltage electric utility lines, and excluding the clearance of right-of-ways related to heavy-highway construction or other public projects not directly related to the installation of

electrical utility lines. Lineman tree trimmer work may be performed on the ground and in the air; and

5. Groundman tree trimmer—Assists the lineman tree trimmer in the performance of their work using rakes, chainsaws, chippers, and industrial mowers in and around electrical systems only when specifically required to provide clearance and right-of-way preparation for installation of overhead or underground high-voltage electric utility lines, and excluding the clearance of right-of-ways related to heavy-highway construction or other public projects not directly related to the installation of electrical utility lines. Groundman tree trimmer work is only performed on the ground;

[(P)](O) Painter—The work falling within the occupational title of work description for painter includes:

1. Preparation of surfaces. The washing, cleaning, pointing, and taping of drywall, regardless of material used, and smoothing of surfaces, using sandpaper, brushes, or steel wool. The removal of old paint or other coatings from surfaces, using paint remover, scraper, wire brushing, sandblasting, water blasting, liquid steam, or by any other similar process. The filling of nail holes, cracks, and joints with putty, plaster, or other fillers;

2. Color matching and mixing. The application of paint, varnish, stain, enamel, lacquer, vinyl, wallpaper, and other materials of whatever kind of quality applied to walls or ceilings with paste or adhesive, using brushes, spray gun (spray painter), or paint rollers. The application of polyurethane elastomers, vinyl plastics, neoprene, resin, polyester, and epoxy as waterproofing or protective coatings to any kind of surface (except roofs) when applied with brushes, spray guns, or rollers;

3. Texturing and decorating. The erecting of scaffolding or setting up of ladders to perform the work above ground level. The paperhanging of walls and ceilings with decorative wall coverings made of fabric, vinyl, or paper. The preparing of the surface to be covered by applying sizing, which seals the surface and makes the covering stick better. The removal of the old covering by soaking, steaming, or applying solvents. The patching of holes and other imperfections before applying the new wall covering. The measuring of the area to be covered; the cutting of the covering into strips of the proper size, the checking of the covering for flaws and the examination of the pattern so it can be matched when the strips are hung. The preparation of paste or other adhesives according to manufacturers' directions, and the brushing or rolling it on the covering. The placing of the strips on the wall or ceiling, to match adjacent patterns. The smoothing of the strips to remove bubbles and wrinkles; the trimming of the top and bottom with a razor blade; and the painting or taping of highway striping, or both; and

4. Cleanup. The cleanup of tools and equipment required in connection with work falling within this occupational title;

[(Q)] Plasterer—Applies to workers who apply gypsum, Portland cement, stucco, imitation stone and kindred materials and products to interior walls, ceilings and partitions and to exterior walls of buildings, and finish those materials and products. The work falling within the occupational title of work description includes:

1. The spreading of plaster over laths, masonry or any other base, using trowel; and smoothing the plaster with darby and float for uniform thickness;

2. The application of the various manufacturers' brand names of thin coat or plaster veneer;

3. The application of all bonding agents and mastical;

4. The roughing of undercoat with wire or metal scraper to provide bond for succeeding coat of plaster;

5. The application of all malleable plastic materials and epoxy materials;

6. The setting in place of plasterboard, insulation board, styrofoam and bead-board, ground, locks, patent dots, cork plates, brownstone and acoustical tile, fiberglass reinforcement and finished products;

7. The plastering of joints, nail holes and bruises on wallboard;

8. The grouting and filling of door bucks, runners and similar installations, in conjunction with plastering operations;

9. The application of scratchcoat, browncoat and finish coat of plaster to wood, metal or board laths successively to all ceilings and walls when finished with terrazzo or tile, and the application of any plastic material to same;

10. The fireproofing of all building assemblies with plaster materials, sprayed fiberglass or similar materials, whether applied to gypsum, metal lath or directly;

11. The application of crushed stone, marble or ceramic chips and broken glass where embedded in plaster, or similar materials;

12. The placing of acoustic blocks with any plastic material, regardless of thickness;

13. The placing, by any method, of plaster or composition caps and ornaments;

14. The creating of decorative textures in finish coat by marking surface of coat with brush and trowel or by spattering it with small stones (stucco) where plastering equipment or materials, or both, are used; and

15. The operation and control of all types of plastering machines, including power trowels and floats;]

[(R)](P) Plumber—Applies to workers who install and repair domestic potable water lines, gravity waste disposal systems inside the curb or fence lines, plumbing fixtures such as: bathtubs, sinks and toilets—and appliances such as, dishwashers and water heaters. The work falling within the occupational title of work description for plumber includes:] (which shall include pipe fitter).

1. General Plumber—Applies to workers who install and repair domestic potable water lines, gravity waste disposal systems inside the curb or fence lines, plumbing fixtures such as: bathtubs, sinks, and toilets—and appliances such as, dishwashers and water heaters. The work falling within the occupational title of work description for plumber includes:

[1.]A. Assembling and installing piping systems, fixtures and equipment for the transportation of domestic water and sewage. Piping systems installed in structures (for example, buildings, industrial plants) to the first Y, T, or connection located outside the building;

[2.]B. Cutting, threading, and bending pipe. Joining pipes by use of screws, bolts, fittings, solder, welding brazing, and caulking or any other method of making joints in the plumbing industry;

[3.]C. Assembling, installing, and repairing valves, pipe fittings, and pumps. Testing the piping system. Installing and repairing plumbing fixtures, such as sinks, bathtubs, water heaters, and water softeners; and

[4.]D. Cutting holes in floors and walls for pipes with point and hammer, core drill, or both;].

2. Pipe Fitter—Applies to workers who fabricate, install, and repair piping systems to include: water and waste processing systems; heating and air-conditioning systems, pneumatic controls, and pneumatic delivery systems; powerhouse and all pressurized piping systems; gas, oxygen systems; gasoline systems not for public sale. The work falling within this occupational title of work description includes:

A. Piping systems installed in structures (for example, buildings, industrial plants, and the like);

B. Cutting, threading, and bending pipe. Joining pipes by use of screws, bolts, fittings, solder, welding, and caulking, or any other method of making joints in the pipefitting industry;

C. Assembling, installing, and repairing valves, pipe fittings, and pumps. Testing the piping system. Cutting holes in floors and walls for pipes with point and hammer, core-drill, or both;

D. Installing of distribution lines (for example, water mains, sewer mains, oil and gas lines);

E. Welding of steel pipe joints and joining pipes with screws, bolts, fittings, solder, caulking, or any other method for making joints in the industry; and

F. Joining ductile iron and plastic pipes by using any method for making joints in the industry, when the pipe will be under pressure;

[(S) Pile Driver—The work falling within the occupational title of work description for pile driver includes:

1. The handling, layout, driving, cutting and splicing of wood, metal or concrete piling regardless of purpose (for example, sheets, I-beams, pile caps and welding to piling);

2. The assembly, disassembly and rigging of the pile driving equipment; and

3. The conduct of underwater diving that is incidental to pile driving work;

(T) Pipe Fitter—Applies to workers who fabricate, install and repair piping systems to include: water and waste processing systems; heating and air-conditioning systems, pneumatic controls and pneumatic delivery systems; powerhouse and all pressurized piping systems; gas, oxygen systems; gasoline systems not for public sale. The work falling within this occupational title of work description includes:

1. Piping systems installed in structures (for example, buildings, industrial plants and the like);

2. Cutting, threading and bending pipe. Joining pipes by use of screws, bolts, fittings, solder, welding and caulking, or any other method of making joints in the pipefitting industry;

3. Assembling, installing, and repairing valves, pipe fittings and pumps. Testing the piping system. Cutting holes in floors and walls for pipes with point and hammer, core-drill, or both;

4. Installing of distribution lines (for example, water mains, sewer mains, oil and gas lines);

5. Welding of steel pipe joints and joining pipes with screws, bolts, fittings, solder, caulking or any other method for making joints in the industry; and

6. Joining ductile iron and plastic pipes by using any method for making joints in the industry, when the pipe will be under pressure;]

[(U)](Q) Roofer/[Waterproofer]—Applies to workers who apply and install any and all types of roofing materials, other than sheet metal. The work falling within this occupational title of work description includes:

1. The installation of slate and tile and all substitute materials taking the place of slate and tile used for roofing including flat or promenade slate, with necessary metal flashing to make water-tight;

2. The cementing in, on, or around slate and tile roofs. The laying of felt or paper beneath the slate and tile. The dressing, punching, and cutting of all roof slate or tile either by hand or machinery;

3. The installation of all forms of plastic, slate, slag, gravel; asphalt and composition roofing; rock asphalt mastic when used for damp and waterproofing; prepared paper; compressed paper and chemically prepared paper, and burlap with or without coating. The installation of all damp resisting preparations regardless of the method of application in or outside of building. The installation of damp courses, sheeting, or coating on foundation work and tarred roofs. The laying of the tile or brick, when laid in asphalt or pitch tar;

4. The installation and application of new materials used in roofing, water-proofing, encapsulation, and containment process including all forms of elastomeric or plastic (elastoplastic), or both, roofing systems, both sheet and liquid applied, whether single-ply or multi-ply. The installation of aggregates or stone, used as a ballast for inverted roofing membrane assembly, or roof of similar construction where insulation is laid over the roofing membrane. The sealing and caulking of seams and joints on these elastoplastic systems to insure water-tight-

ness. The applying of liquid-type elastoplastic preparation for roofing, damp, or waterproofing when applied with a squeegee, trowel, roller, or spray equipment whether applied inside or outside of a building. The priming of surfaces to be roofed, damp, or waterproofed, whether done by roller, mop, swab, three- (3-)/-/ knot brush, or spray systems. The waterproofing of all types of preformed panels;

5. The application of all types of spray-in-place such as urethane or polyurethane, and the coatings that are applied over them;

6. The application of roof insulation, when the insulation material is applied as an integral part of the roofing system, whether the insulation material is applied as the first, last, or any other layer in between;

7. The operation and servicing of all kettles, bulk tankers, stationary heating tankers, and other types of equipment and tools used to accomplish this work (including heating systems for the operation of the equipment); and compressors for applying roofing material components, roof and mop carts, hydraulics, tools and equipment, be it hand or power, needed to apply waterproofing, insulated, and roofing materials;

8. The handling, hoisting, and storing of all roofing, damp, and waterproofing materials; and

9. The tear-off, removal, or both, of any type of roofing, all spudding, sweeping, vacuuming, cleanup, or a combination of these, of any areas of any type where a roof is to be relayed;

[(V)](R) Sheet Metal Worker—The work falling within the occupational title of sheet metal worker includes:

1. The handling, conditioning, assembling, installing, servicing, repairing, altering, and dismantling of the duct work for the heating, ventilation, and air-conditioning systems regardless of the materials used and the setting of all equipment and all supports and reinforcements in connection with the system;

2. The installation of expansion and discharge valves, air filters, and water filters in heating, ventilation, and air-conditioning systems;

3. The testing and balancing of air-handling equipment and duct work;

4. The forming, rolling, drawing, stamping, or pressing of sheet metal shingles, sheet metal tile, sheet metal brick, sheet metal stone, and sheet metal lumber, when specified for use as roofing, siding, waterproofing, weather proofing, fire proofing, or for ornamental or any other purpose;

5. The performing of sheet metal work specified for use in connection with or incidental to steeples, domes, minarets, look outs, dormers, louvers, ridges, copings, roofing, decking, hips, valleys, gutters, outlets, roof flanges, flashings, gravel stops, leader heads, down spouts, mansards, balustrades, skylights, cornice moulding, columns, capitals, panels, pilasters, mullions, spandrils, and any and all other shapes, forms and design of sheet metal work specified for use for waterproofing, weatherproofing, fire proofing, ornamental, decorative, or display purposes, or as trim on exterior of the buildings;

6. The installing of sheet metal ceilings with cornices and mouldings of plain, ornamental, enameled, glazed, or acoustic type;

7. The installing of side walls, wainscoting of plain, ornamental, enameled, or glazed types, including sheet metal tile;

8. The application of all necessary wood or metal furring, plastic, or other materials, to which they are directly applied;

9. The performing of sheet-metal work specified for use in connection with or incidental to direct, indirect, or other types of heating, ventilating, air-conditioning, and cooling systems (including risers, stacks, ducts, S strips, fittings, dampers, casings, recess boxes, outlets, radiator enclosures, exhausts, ventilators, frames, grisses, louvers, registers, cabinets, fans, and motors);

10. The air washers, filters, air brushes, housings, air-conditioning chambers;

11. The setting and hanging of air-conditioning units, unit heaters or air-veyor systems, and air handling systems regardless of material used;

12. The assembling and setting up of all cast iron parts, warm air furnace, all stoker, gas, and oil burner equipment used in connection with warm air heating, all sheet metal hoods, casings, wall stacks, smoke pipes, truck lines, cold air intake, air chambers, vent pipes, frames, registers, dampers, and regulation devices;

13. The installing of equipment utilized in the operation of kitchens including ranges, canopies, steam tables, work tables, dishwashers, coffee urns, soda fountains, warming closets, sinks, drainboards, garbage chutes, incinerators, and refrigerators;

14. The installing of tubing, pipes, and fittings, used in connection with or incidental to coppersmithing work. The installation of fume hoods, metal toilet partitions, metal lockers, plain metal shelving; and

15. The handling, moving, hoisting, and storing of all sheet metal materials on the job site, where power equipment and rigging are required;

[(W)](S) Sprinkler Fitter—[Fire Protection—] Applies to workers who perform the installation, adjustments, and corrections, repair, and dismantling of all fire protection and fire control systems and the installation of all fire piping for tubing, appurtenances, and equipment. The work falling within the occupational title includes: The handling and installation of all piping and appurtenances pertaining to sprinkler equipment, including both overhead and underground water mains, fire hydrants and hydrant mains, standpipes, and hose connections to the sprinkler systems, sprinkler tank heaters, air lines and thermal systems used in connection with sprinkler and alarm systems, tank and pump connections, and fire protection systems using mulsifyre, spray, water, fog, carbon dioxide (CO₂), gas and foam and dry chemical systems; **and**

[(X) Terrazzo and Marble Occupational Titles—This subsection sets forth work descriptions for three (3) occupational titles related to terrazzo and marble work.

1. *Terrazzo Worker-Marble Mason—The work falling within the occupational title of work description for Terrazzo Worker-Marble Mason includes:*

A. *The installing of marble, mosaic, venetian enamel and terrazzo; the cutting and assembling of mosaics and art ceramics; the casting of all terrazzo on the job site; all rolling of terrazzo work;*

B. *The preparing, cutting, layering or setting of metal, composition or wooden strips and grounds on all bedding above concrete floors or walls; and the laying and cutting of metal, strips, lath or other reinforcement, where used in terrazzo work;*

C. *The installing of cement terrazzo, magnesite terrazzo, dex-o-tex terrazzo, epoxy matrix terrazzo, exposed aggregate. Rustic or rough wash of exterior or interior of buildings. The mixing or applying of any other kind of mixtures of plastics composed of chips or granules of marble, granite, blue stone, enamel, mother of pearl, quartz ceramic colored quartz, and all other kinds of chips or granules when mixed with cement, rubber, neoprene, vinyl, magnesium chloride or any other resinous or chemical substances used for seamless flooring systems. The applying of binding materials when used on walls, floors, ceilings, stairs, saddles or any other part of the interior or exterior of the building, or other work not considered a part of the building such as fountains, swimming pools;*

D. *The finishing of cement floors where additional aggregate of stone is added by spreading or sprinkling on top of the finished base and troweled or rolled into the finish and then the surface ground by grinding machines (When no additional stone aggregate is added to the finished mixture, even though the surface may be ground, the work falls within the occupational title of work description for cement masons.); and*

E. *The carving, cutting and setting of all marble, slate, including slate backboards, stone, albereen, carrara, san-*

ionyx, vitrolite and similar opaque glass, scaglioa, marbleitic and all artificial, imitation or case marble of whatever thickness or dimension. This shall apply to all interior work, such as sanitary, decorative and other purposes inside of buildings of every description wherever required, including all polish, honed or sand finish;

2. *Marble Finisher—The work falling within the occupational title of work description for Marble Finisher includes:*

A. *The preparation of floors, and/or walls by scraping, sweeping, grinding, and related methods to prepare surface for Marble Mason installation of construction materials on floor and/or walls; the movement of marble installation materials, tools, machines, and work devices to work areas; the erection of scaffolding and related installation structures;*

B. *The movement of marble slabs for installation; the drilling of holes and the chiseling of channels in edges of marble slabs to install wall anchors, using power drill and chisel; the securing of marble anchors to studding, using and covering ends of anchors with plaster to secure anchors in place;*

C. *The supply and mixture of construction materials for Marble Mason; the mixture of grout, as required, following standard formulas and using manual or machine mixing methods; the application of grout to installed marble; the movement of mixed mortar or plaster to installation area, manually or using wheelbarrow;*

D. *The removal of excess grout, using wet sponge; the cleaning of installed marble surfaces, work and storage areas, installation tools, machinery, and work aids, using water and cleaning agents;*

E. *The modification of mixing, material moving, grouting, polishing, and cleaning metal pieces, using a torch, spatula, and heat sensitive adhesive and filler;*

F. *The removal of marble installation materials and related debris from immediate work area; the storing of marble, installation material tools, machines, and related items; and*

G. *The provision of assistance to Marble Mason with the following tasks: bending or forming of wire to form metal anchors, using pliers; inserting anchors into holes of marble slab; securing anchors in place with wooden stakes and plaster; selecting marble slab for installation following numbered sequences or drawings; grinding and polishing marble, using abrasives, chemical and/or manual, in machine grinding and/or polishing techniques, under Marble Mason's direction; the moving and positioning of marble;*

3. *Terrazzo Finisher—The work falling within the occupational title of work description for Terrazzo Finisher includes:*

A. *The preparation of floors, and/or walls by scraping, sweeping, grinding, and related methods to prepare surface for Terrazzo Worker installation of construction materials on floors, base and/or walls; the moving of terrazzo installation materials, tools, machines, and work devices to area, manually or using wheelbarrow;*

B. *The supply and mixture of construction materials for Terrazzo Worker; the preparation, mixture by hand, mixture by mixing machine, or transportation of pre-mixed materials and the distribution with shovel, rake, hoe or pail, of all kinds of concrete foundations necessary for mosaic and terrazzo work; the dumping of mixed materials that form base or top surface of terrazzo into prepared installation site, using wheelbarrow; the measuring of designated amounts of ingredients for terrazzo or grout, using graduated containers and scale, following standard formulas and specifications, and the loading of portable mixer using proper means of transport; the mixture of materials according to experience and requests from Terrazzo Worker;*

C. *The spreading of marble chips or other material*

over fresh terrazzo surface and the pressing of the material into terrazzo by use of a roller; the application of grout finishes to surfaces of installed terrazzo; the spreading of grout across terrazzo to finish surface imperfections, using trowel; the installation of grinding stones in power grinders, using hand tools; the fine grinding and polishing of the surface of terrazzo, when grout has set, using power grinders; the application of curing agent to installed terrazzo to promote even curing, using brush or sprayer; the cutting of grooves in terrazzo stairs, using power grinder, and the filling of grooves with nonskid material;

D. The modification of mixing, grouting, grinding, and cleaning position and the securing of moisture membrane and wire mesh prior to pouring base materials for terrazzo installation;

E. The washing of the surface of polished terrazzo, using cleaner and water, and the application of sealer, according to manufacturer specifications, using brush; the cleaning of the installation site, and storage areas, tools, machines, and equipment; the removal of Terrazzo Worker materials and related debris from immediate work area; and

F. The provision of assistance to Terrazzo Worker with the following tasks: grinding surfaces of cured terrazzo; using power grinders;

(Y) *Tile Occupational Titles*—This subsection sets forth work descriptions for two (2) occupational titles related to tile work.

1. *Tile Setter*—The work falling within the occupational title of work description for *Tile Setter* includes:

A. The application of tile to floors, walls, ceilings, stair treads, promenade roof decks, garden walks, swimming pools and all places where tiles may be used to form a finished surface for practical use, sanitary finish or decorative purpose. (Tile includes all burned clay products, as used in the tile industry, either glazed or unglazed, all composition materials; all substitute materials in single units up to and including, fifteen inches by twenty inches by two inches (15" × 20" × 2") (except quarry tiles larger than nine inches by eleven inches (9" × 11")) and all mixtures in the form of cement, plastics and metals that are used as a finished surface.);

B. The cutting and shaping of tile with saws, tile cutters and biters; and

C. The positioning of tile and tapping it with a trowel handle to affix tile to plaster or adhesive base.

2. *Tile Finisher*—The work falling within the occupational title of work description for *Tile Finisher* includes:

A. The preparation of floors and/or walls by scraping, sweeping, grinding, and related methods for *Tile Setter* to install construction materials on floors and walls; the movement of tiles, tile setting tools, and work devices from storage area to installation site manually or using wheelbarrow;

B. The supply and mixture of materials for *Tile Setter*; the supply and mixture of construction materials for *Tile Setter*; the mixture of mortar and grout accordingly to standard formulas and request from *Tile Setter* using bucket, water hose, spatulas, and portable mixer; the modification of mixing, grouting, grinding, and cleaning procedures according to type of installation or material used; the supply to *Tile Setter* of mortar, using wheelbarrow and shovel; the application of grout between joints of installed tile, using grouting trowel; the application of grout; the cutting of installed tile;

C. The removal of excess grout from tile joints with a sponge and scraping of corners and crevices with a trowel; the application of caulk, sealers, acid, steam, or related agents to caulk, seal, or clean installed tile, using various application devices and equipment;

D. The wiping of surfaces of tile after grouting to

remove grout residue and polish tile, using non-abrasive materials; the removal of *Tile Setter* materials and related debris from immediate work area; the cleaning of installation site, mixing and storage tools, and equipment, using water and various cleaning tools; the storing of tile setting material machines, tools, and equipment; and

E. The provision of assistance to *Tile Setter* to secure position of metal lath, wire mesh, felt paper, Dur/rock or wonderboard prior to installation of tile; and]

[(Z)](T) *Truck Driver[-Teamster/Traffic Control Service Driver]* (which shall include truck control service driver, truck driver group I, truck driver group II, truck driver group III, and truck driver group IV)—The workers who perform work falling within the occupational title of work description for truck driver/*teamster*] includes the operation, repair, and servicing of the following mechanical equipment. This occupational title encompasses several subclassifications, with the title and work description considered in light of whether the public works project pertains to building construction or heavy/highway construction.

1. Building construction. The subtitles falling within the occupational title of work description for truck driver/*teamster*], as applicable to building construction, are as follows:

A. **Truck control service driver – Applies to workers who perform work including:**

(I) The delivery, installation, and pickup of traffic control devices;

(II) The unloading and installation of barricades, plastic channelizer drums, safety cones, and temporary flashing lights not to exceed one hundred fifteen (115) volts;

(III) Regular periodic inspections to assure that traffic control devices are clean, clearly visible, and properly positioned. Inspection and maintenance includes replacing batteries and bulbs in lights, cleaning reflective material and lenses, and repairing or replacing damaged or missing devices when incidental to and part of a public works construction project; and

(IV) Removal of all traffic control devices by loading them on a truck and driving them to a storage yard where they are unloaded;

[A.]B. Group I—This subtitle applies to workers who operate, monitor, control, repair, modify, assemble, erect, oil, and service the following equipment: flat bed trucks single axle, station wagons, pick-up trucks, material trucks single axle, tank wagon single axle;

[B.]C. Group II—This subtitle applies to workers who operate, monitor, control, repair, modify, assemble, erect, oil, and service the following equipment: agitator and transit mix-trucks;

[C.]D. Group III—This subtitle applies to workers who operate, monitor, control, repair, modify, assemble, erect, oil, and service the following equipment: flat bed trucks tandem axle, articulated dump trucks, material trucks tandem axle, tank wagon tandem axle; and

[D.]E. Group IV—This subtitle applies to workers who operate, monitor, control, repair, modify, assemble, erect, oil, and service the following equipment: semi and/or pole trailers, winch, fork and steel trucks, distributor drivers and operators, tank wagon semi-trailer, Insley wagons, dumpsters, halftracks, speedace, euclids, and other similar equipment, A-frame and Derrick trucks, float or low boy, and boom truck.

2. Heavy/highway construction. The subtitles falling within the occupational title work description for truck driver/*teamster*], as applicable to heavy/highway construction, are as follows:

A. **Truck control service driver – Applies to workers who perform work including:**

(I) The delivery, installation, and pickup of traffic control devices;

(II) The unloading and installation of barricades, plastic channelizer drums, safety cones, and temporary flashing lights not to exceed one hundred fifteen (115) volts;

(III) Regular periodic inspections to assure that traffic control devices are clean, clearly visible, and properly positioned. Inspection and maintenance includes replacing batteries and bulbs in lights, cleaning reflective material and lenses, and repairing or replacing damaged or missing devices when incidental to and part of a public works construction project; and

(IV) Removal of all traffic control devices by loading them on a truck and driving them to a storage yard where they are unloaded;

[A./B. Group I—This subtitle applies to workers who operate, monitor, control, repair, modify, assemble, erect, oil, and service the following equipment: flat bed trucks single axle, station wagons, pick-up trucks, material trucks single axle, tank wagon single axle;

[B./C. Group II—This subtitle applies to workers who operate, monitor, control, repair, modify, assemble, erect, oil, and service the following equipment: agitator and transit mix-trucks;

[C./D. Group III—This subtitle applies to workers who operate, monitor, control, repair, modify, assemble, erect, oil, and service the following equipment: flat bed trucks tandem axle, articulated dump trucks, material trucks tandem axle, tank wagon tandem axle; and

[D./E. Group IV—This subtitle applies to workers who operate, monitor, control, repair, modify, assemble, erect, oil, and service the following equipment: semi-and/or pole trailers, winch, fork and steel trucks, distributor drivers and operators, tank wagon semi-trailer, Insley wagons, dumpsters, halftracks, speedace, euclids, and other similar equipment, A-frame and Derrick trucks, float or low boy, and boom truck.

[3. The workers who perform work falling within the occupational title of traffic control service driver include:

A. The delivery, installation and pickup of traffic control devices;

B. The unloading and installation of barricades, plastic channelizer drums, safety cones and temporary flashing lights not to exceed one hundred fifteen (115) volts;

C. Regular periodic inspections to assure that traffic control devices are clean, clearly visible and properly positioned. Inspection and maintenance includes replacing batteries and bulbs in lights, cleaning reflective material and lenses and repairing or replacing damaged or missing devices when incidental to and part of a public works construction project; and

D. Removal of all traffic control devices by loading them on a truck and driving them to a storage yard where they are unloaded.]

AUTHORITY: section 290.240.2., RSMo [2000] Supp. 2018. Original rule filed Sept. 15, 1992, effective May 6, 1993. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Nov. 21, 2018, effective Dec. 1, 2018, expires May 29, 2019. Amended: Filed Nov. 21, 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 Labor Standards, Attn: Matt Cowell, Director, PO Box 449, Jefferson City, MO 65102-0449. 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 7—Juvenile Court Diversion

PROPOSED RULE

13 CSR 110-7.010 Community-Based Diversionary Programs

PURPOSE: This rule establishes standards of eligibility and operation of Community-Based Diversionary Programs funded through grants from the Division of Youth Services pursuant to section 219.041, RSMo.

(1) The Division of Youth Services (DYS) is authorized under section 219.041, RSMo, to administer a Juvenile Court Diversion Grant Program (JCD Grant Program) for the purpose of assisting local units of government in the development and implementation of community-based treatment programs for the care and treatment of youth.

(2) The goal of the program is to support juvenile courts to serve youth on a local level so that youth may be afforded the necessary services through their local courts in order that they can remain in the community rather than being exposed to a larger segment of the juvenile justice system.

(3) The Director of DHS may designate an employee of the division to act as the authorized representative of the division for the purpose of entering into and administering contractual services agreements between the division and a local juvenile court.

(4) The local juvenile court shall not supplant funds because of the implementation of the JCD Grant Program in accordance with section 219.041.8, RSMo.

(5) The standards for the JCD Grant Program shall be—

(A) Programs initiated with JCD Grant Funds shall be consistent with the evidence-based and promising-practices approach described in the “Office of Juvenile Justice and Delinquency Prevention’s Model Programs Guide” and shall contain projects within one (1) or more of the following focus areas:

1. School and education support programs, including day treatment services and other community-based programs, that provide educational and treatment services to youth to keep them productively involved in their local communities;

2. Counseling/treatment services, including sex offender treatment and supervision services providing community-based sex-offense specific treatment groups, parent support groups, and in-home therapy and supervision to pre-and post-adjudicated juvenile sex offenders;

3. Family support/preservation, including family therapy and support services, to assist youth in working through family issues and providing tools to resolve conflict;

4. Supplemental court services/supervision/gang prevention, including community-based supervision of assigned youth during the evenings and weekends when youth are at the greatest risk to engage in unproductive and unlawful behavior. This includes the monitoring of assigned youth to ensure that they are complying with the conditions of their community placement and the provision of supportive services such as parent education, crisis intervention, mentoring, and skill-building as needed; and it includes mentoring services by which volunteer mentors are recruited, trained, matched with troubled youth, and supported in their work with them. Participating youth may be under either formal or informal supervision by the court during their time in the program;

5. Restorative justice services by which juvenile offenders are held accountable and educated as to the far-reaching impact of their behaviors; and

6. Private care diversion services designed for those youth who require structured residential services specialized in providing treatment for their complex needs. Under this program, youth are served in alternative living centers without committing them to the care and supervision of DYS.

(B) Projects shall fall within a general program description supported by organizations such as the Office of Juvenile Justice and Delinquency Prevention. Projects may provide for—

1. Educational services/tutoring;
2. School/court liaisons;
3. Day treatment/alternative schools;
4. Jobs/vocational training/job placement;
5. Recreational/after school programs;
6. Truancy prevention;
7. Suspension/expulsion alternatives;
8. Violence prevention;
9. Community group counseling;
10. Anger management;
11. Mental health services;
12. Substance abuse prevention;
13. Sex offender therapy;
14. Prevention education/treatment;
15. Mentoring/advocacy;
16. Family therapy;
17. Family support preservation;
18. Parenting skills;
19. Family mediation;
20. Teen court;
21. Electronic monitoring/intensive supervision;
22. Gang prevention/intervention;
23. Drug court;
24. Gang education;
25. Restitution program services;
26. Community service;
27. Victim mediation;
28. Community accountability program services;
29. Alternative residential placement;
30. Purchased residential care (foster/shelter); and
31. Other model programs providing probation, supervision, family support, or restorative justice services.

(6) For those projects where youth will be placed in residential care with a private contractor, the contractor must have and maintain a license in good standing from the Department of Social Services, Children's Division. The JCD Grant recipient must have a written agreement in place with each contractual residential care provider that requires the provider to notify the JCD Grant recipient within ten days of any change in the provider's licensing status. The JCD Grant recipient shall then notify DYS of any change in the provider's licensing status within ten days and shall arrange for alternative placement of the youth unless an express written waiver is provided by the DYS.

(7) Applications for the JCD Grant Program shall be made in writing by the local JCD Grant Program Planning Committee. Each application shall include a completed application form and a written report containing a program description, method of implementation, and a proposed budget of all projects proposed to be funded.

(8) The local juvenile court judge shall appoint a planning committee (JCD Grant Program Planning Committee) whose membership shall be representative of the community's population as required by section 219.041.3, RSMo. The JCD Grant Program Planning Committee shall consist of at least three and no more than seven members. Members may include the juvenile court judge or his/her designee, the juvenile officer or his/her designee, a representative from a local school district, or a parent of a child who has received services from the juvenile court. Other people may include the chief

court administrator, school superintendent or his/her designee, or any local or community leader that focuses on the well-being of youth and their families and is supported by their local juvenile court. The committee shall actively participate in the formulation of plans for the proper expenditure of funds and shall cooperate and assist the juvenile court judge in the implementation of these plans. Members of this committee shall receive no compensation for their service on the committee.

(9) The local JCD Grant Program Planning Committee shall submit to the director a grant application form with a written report containing a program description, method of implementation, and a proposed budget of all projects proposed to be funded. The information provided shall list—

(A) The specific services that will be provided through the use of the grant funds;

(B) The exact parameters of these services;

(C) The total amount of monies requested;

(D) The apportionment of monies for each service;

(E) The steps that will be taken to implement the program and the timeline for the full implementation of the program;

(F) The number of youth to be served;

(G) The description of the performance and the outcome measures that the grantee will use in evaluating the effectiveness of the program; and

(H) The local juvenile court programming and commitment history, including program outcomes, effective utilization of funding, and diversion history.

(10) The recipient of a grant must permit the director of DYS or his/her designee to visit and inspect each project funded by the JCD Grant Program. The recipient of a grant must account for the monies, provide performance statistics, and make the books and records of the program open to DYS or the Department of Social Services for inspection and monitoring upon request. Upon a written recommendation from DYS for needed changes or improvements in a funded project, the grant recipients shall make the necessary changes to the project. The recipient of a grant must allow DYS to monitor all functions of programs developed with JCD Grant Funds. Juvenile court staff must assist and cooperate with division staff in monitoring programs and in determining if the program is operating according to the contractual agreement negotiated between both parties.

(11) When the director determines that there are reasonable grounds to believe that a grant recipient is not in compliance with the operating standards established by this regulation, the following may occur:

(A) The director may give thirty (30) days written notice to the grant recipient that the director is terminating the grant;

(B) The director may give thirty (30) days written notice to the grant recipient that the director is suspending all or a portion of any grant subsidy payment until the required standard of operation has been met;

(C) A revocation or suspension shall have immediate effect when the director has reason to believe the grant was obtained by fraud, trick, misrepresentation, or concealment of any material fact; the grant was issued by inadvertence or mistake and the grant recipient was not qualified to receive the grant; or the grant recipient has endangered the safety of a youth;

(D) Whenever the director terminates or suspends a JCD Grant, the notice will be sent via certified mail and the JCD Grant recipient who is aggrieved by the action may request an informal, administrative review before the director or the director's designee;

(E) The JCD Grant recipient must make a written request for an administrative review within ten (10) business days of receipt of the notice of the termination or suspension. The grant recipient shall submit the grounds for error, along with any supporting documentation to

the director;

(F) The director or the director's designee may then review the request based upon the written submission or, at the request of the grantee, hold an informal meeting to discuss the grantee's concerns. The hearing shall be informal, the rules of evidence will not apply, and there is no right to subpoena witnesses;

(G) At the sole discretion of the director, the director may allow the JCD Grant recipient an opportunity to cure any deficiencies in the standard of operation of the recipient's program pending the administrative review; and

(H) DYS shall be authorized to recoup funds from the JCD Grant recipient if DYS determines, after an administrative hearing, that funds were improperly expended.

AUTHORITY: sections 219.036, 219.041, and 660.017, RSMo 2016. Original rule filed Nov. 30, 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 not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Social Services, 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 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 130—Professional Employer Organization Act**

PROPOSED RULE

15 CSR 30-130.010 Definitions

PURPOSE: This rule facilitates the administration of the Professional Employer Act in accordance with sections 285.700–285.750, RSMo. This rule provides definitions of terms in addition to those found in section 285.705, RSMo for the administration of the Act.

(1) "Business experience" (as used in the application and renewal forms) shall mean a narrative detailed description of business-related achievements, credentials, and experience of an individual. Alternatively, a resumé may be used in lieu of a narrative description if it contains, at a minimum, the following information: current contact information, relevant degree(s)/certification(s), and a five- (5-) year work history.

(2) "PEO" (as used in this rule) shall mean a professional employer organization including a PEO Group, a controlling person of a PEO, or a person offering PEO services.

(3) "Secretary" shall mean the secretary of state or his/her designee.

AUTHORITY: section 285.705, RSMo Supp. 2018. Emergency rule filed Nov. 30, 2018, effective Dec. 10, 2018, expires June 7, 2019. Original rule filed Nov. 30, 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 not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Office of the Secretary of State, PO Box 1767, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 130—Professional Employer Organization Act**

PROPOSED RULE

15 CSR 30-130.020 Applications, Interim Operating Permits, and Forms

PURPOSE: This rule provides instructions for full, limited, or group applications along with renewals. It also provides instructions for obtaining an interim operating permit pursuant to section 285.715, RSMo.

(1) Every application shall conform to the requirements within section 285.715, RSMo including evidence of business experience and an audited financial statement. The audited financial statement may not express any ongoing concerns.

(2) A professional employer organization (PEO) not registered in Missouri, must decline to provide services or notify the secretary within five (5) business days of obtaining knowledge that an existing client not based in Missouri has employees or operations in Missouri.

(A) If the PEO does not decline to provide services to the existing client, the PEO must immediately file a limited registration application if the client has less than fifty (50) employees based in Missouri.

(B) The PEO may request an interim operating permit until such application is approved. The secretary may issue an interim operating permit if—

1. The PEO is currently registered or licensed by another state;
2. The PEO makes the request for an interim operating permit in writing indicating in what other states it is licensed or registered;
3. The secretary determines it is in the best interest of the potential covered employees to grant an interim operating permit; and
4. The PEO has filed a limited registration application.

(3) Application and renewal forms may be found on the secretary's website at www.sos.mo.gov/peo.

AUTHORITY: section 285.715, RSMo Supp. 2018. Emergency rule filed Nov. 30, 2018, effective Dec. 10, 2018, expires June 7, 2019. Original rule filed Nov. 30, 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 not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Office of the Secretary of State, PO Box 1767, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 130—Professional Employer Organization Act

PROPOSED RULE

15 CSR 30-130.030 Fees

PURPOSE: This rule provides the fee structure for professional employer organization (PEO) applications and renewal.

- (1) The following fees for a PEO shall apply:
- (A) Full Application - \$500.00;
 - (B) Full Renewal - \$250.00;
 - (C) Limited Application - \$250.00;
 - (D) Limited Renewal - \$250.00;
 - (E) Group Application - \$500.00, plus \$250.00 for each entity in the PEO Group;
 - (F) Group Renewal - \$250.00, plus \$125.00 for each entity in the PEO Group.

AUTHORITY: section 285.725, RSMo Supp. 2018. Emergency rule filed Nov. 30, 2018, effective Dec. 10, 2018, expires June 7, 2019. Original rule filed Nov. 30, 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 three hundred thirty-seven thousand five hundred dollars (\$337,500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Office of the Secretary of State, PO Box 1767, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

**FISCAL NOTE
PRIVATE COST**

- I. Department Title:**
Division Title:
Chapter Title:

Rule Number and Title:	15 CSR 30-130.030 Fees
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
Full Applicants	Professional Employer Organizations	\$25,000
Limited Applicants	Professional Employer Organizations	\$18,750
Group Applicants	Professional Employer Organizations	\$175,000
Full Applicant Renewals	Professional Employer Organizations	\$12,500
Limited Applicant Renewals	Professional Employer Organizations	\$18,750
Group Applicant Renewals	Professional Employer Organizations	\$87,500

III. WORKSHEET

Each Full applicant must pay \$500
 Each Limited applicant must pay \$250
 Each Group applicant must pay \$500 plus \$250 for each entity in the Group
 Full applicants must pay \$250 to renew their application annually
 Limited applicants must pay \$250 to renew their application annually
 Group applicants must pay \$250 plus \$125 for each entity in the Group to renew their application annually

IV. ASSUMPTIONS

We assume that there will initially be 50 Full applications filed.
 We assume that there will initially be 75 Limited applications filed
 We assume that there will initially be 100 Group applications filed

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 130—Professional Employer Organization Act

PROPOSED RULE

15 CSR 30-130.040 Approval of Assurance Organizations

PURPOSE: This rule addresses how an assurance organization may be approved to submit applications and renewals on behalf of their members.

(1) An applicant or registered professional employer organization (PEO) may enter into an agreement with an assurance organization approved by the secretary to act on its behalf in accomplishing the provisions of the Professional Employer Organization Act or these rules.

(2) The approval of an assurance organization by the secretary, to act on behalf of an applicant or registered PEO, does not relieve the applicant or registered PEO from the ultimate responsibility to comply with its obligations pursuant to the Act or these rules.

(3) An assurance organization desiring to become approved by the secretary shall submit to the secretary—

(A) A letter requesting approval;

(B) Evidence that the assurance organization is qualified to perform the functions on behalf of the applicant or registered PEO; and

(C) An explanation of how the assurance organization will certify each of the criteria and obligations required of the applicant or registered PEO by the Act or rule.

(4) An assurance organization's approval by the secretary shall remain in effect until such time the secretary, after written notice, terminates the approval, or until such time the assurance organization, by written notice, withdraws or terminates its status as an approved assurance organization.

(5) An assurance organization that has been approved by the secretary shall notify the secretary annually, in writing, on the anniversary of its approval date, of any material change in the assurance organization's national accreditation and financial assurances during the previous year.

(6) The secretary shall make available to the public a current list of approved assurance organizations, upon request.

(7) The secretary shall notify the assurance organization, in writing, if the secretary becomes aware of any information that indicates that the assurance organization is failing to adequately monitor or provide compliance assistance as intended by the Act.

(8) The assurance organization shall respond to the secretary within thirty (30) days of its receipt of such notification of deficiency. The secretary may terminate an assurance organization's approval based on a finding that the assurance organization is no longer in compliance.

AUTHORITY: section 285.715, RSMo Supp. 2018. Emergency rule filed Nov. 30, 2018, effective Dec. 10, 2018, expires June 7, 2019. Original rule filed Nov. 30, 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 not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Office of the Secretary of State, PO Box 1767, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 130—Professional Employer Organization Act

PROPOSED RULE

15 CSR 30-130.050 Use of Assurance Organization by Applicant

PURPOSE: This rule sets forth the process for an applicant to use a secretary-approved assurance organization.

(1) The secretary shall accept an approved assurance organization's written certification as evidence that an applicant has met, and continues to meet, the criteria and obligations set forth in the Act and rules. The secretary retains the right to independently verify any information or certification provided by the assurance organization, including the ability to verify information contained in the assurance organization's database.

(2) An applicant using an assurance organization, proof of compliance with the assurance organization will satisfy the application requirements of section 285.715, RSMo. Additionally, renewal requirements under section 285.715, RSMo, will be waived provided that the appropriate renewal fee is paid prior to the due date.

(3) An approved assurance organization shall notify the secretary, in writing, no later than ten (10) days after it receives a complaint, or becomes aware of information indicating that an applicant or registered professional employer organization (PEO) they represent is not in compliance with its obligations under the Act.

(4) An approved assurance organization shall notify the secretary, in writing, no later than ten (10) days after it has made a determination that a registered PEO has violated any of the standards of accreditation of the assurance organization or has ceased membership with the assurance organization.

(5) In the event that a registered PEO loses its accreditation, or has ceased membership with an assurance organization, the secretary shall immediately suspend the license of the registered PEO until all necessary information for the appropriate registration sought is filed with the secretary.

(6) In the event that a registered PEO ceases its membership with an assurance organization, the secretary reserves the right to immediately require the registered PEO to submit relevant documents and information in order to comply with the application requirements of the Act.

AUTHORITY: section 285.715, RSMo Supp. 2018. Emergency rule filed Nov. 30, 2018, effective Dec. 10, 2018, expires June 7, 2019. Original rule filed Nov. 30, 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 not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Office of the Secretary of State, PO Box 1767, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 130—Professional Employer Organization Act**

PROPOSED RULE

15 CSR 30-130.060 Proof of Positive Working Capital, Bonds, and Letters

PURPOSE: This rule describes positive working capital, as well as, the posting of bonds and letters of credit.

(1) An applicant or registered professional employer organization (PEO) must demonstrate positive working capital. This must be demonstrated in the financial audit that—

(A) Was prepared in accordance with generally accepted accounting principles;

(B) Was audited by an independent certified public accountant without qualification as to the ongoing concern status of the applicant or registered PEO;

(C) Reflects positive working capital; and

(D) Is based on adequate reserves for taxes, insurance, and incurred claims that are not paid.

(2) An applicant who does not have a positive working capital may provide a bond—

(A) With a minimum market value equaling the deficiency plus one hundred thousand dollars (\$100,000);

(B) Held by a lender authorized to do business in the state of Missouri and found on <https://treasurer.mo.gov/LinkedDepositProgramParticipatingInstitutions/default.aspx>;

(C) Is payable to the Missouri secretary of state; and

(D) States that the surety will provide the secretary written notice sixty (60) days prior to cancelling the bond.

(3) In the alternative, an applicant who does not have a positive working capital may provide a letter of credit with a minimum market value equaling the deficiency plus one hundred thousand dollars (\$100,000) that—

(A) Is irrevocable;

(B) Is issued by a financial institution authorized to do business in the state of Missouri and which is financially responsible for the amount of the letter;

(C) Does not require examination of the performance of the underlying transaction between the secretary and the applicant;

(D) Is payable to the secretary on sight or within a reasonable period of time after presentation of all required documents; and

(E) Does not include any condition that makes payment to the secretary contingent upon the consent of, or other actions by, the applicant or other party.

AUTHORITY: section 285.725, RSMo Supp. 2018. Emergency rule filed Nov. 30, 2018, effective Dec. 10, 2018, expires June 7, 2019. Original rule filed Nov. 30, 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 not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Office of the Secretary of State, PO Box 1767, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 130—Professional Employer Organization Act**

PROPOSED RULE

15 CSR 30-130.070 Disciplinary Actions

PURPOSE: This rule describes the disciplinary action the secretary may take pursuant to section 285.750, RSMo, and the notice provided to initiate a disciplinary action.

(1) Upon a decision to take disciplinary action for violation of section 285.750, RSMo, the secretary shall mail such professional employer organization (PEO) written notice, by certified mail, at the address on file with the secretary.

(2) The secretary shall notify a PEO, in writing, by certified mail that the secretary intends to take disciplinary action. The notice shall contain the following information:

(A) The PEO's name and address;

(B) The specific allegations for the disciplinary action; and

(C) Instructions for requesting a hearing.

(3) If disciplinary action is taken against a PEO who registered through an assurance organization, the secretary may provide such notice to the assurance organization. Such notice shall constitute sufficient notice for section 285.750.3, RSMo.

AUTHORITY: section 285.750, RSMo Supp. 2018. Emergency rule filed Nov. 30, 2018, effective Dec. 10, 2018, expires June 7, 2019. Original rule filed Nov. 30, 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 not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Office of the Secretary of State, PO Box 1767, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 130—Professional Employer Organization Act**

PROPOSED RULE

15 CSR 30-130.080 Request for Hearing

PURPOSE: This rule prescribes how a professional employer organization (PEO) may request a hearing for any disciplinary action the

secretary intends to take.

(1) When a PEO receives a notice of disciplinary action from the secretary, the PEO may request a hearing. A request for hearing must be received by the secretary no later than thirty (30) calendar days after the PEO receives the notice of discipline. Failure to file a request for hearing within thirty (30) calendar days of receipt of said notice shall constitute waiver of a hearing.

(2) If a PEO does not request a hearing, or fails to request a hearing within thirty (30) calendar days, as outlined in section (1) above, the secretary shall still make findings pursuant to section 285.750.3, RSMo.

(3) A request for hearing must be signed by the PEO or its attorney. It must also contain the name, mailing address, and telephone number of the PEO (or the name, address, and telephone number of the PEO's attorney). The request for hearing must be mailed to the Office of the Secretary of State, PEO Registration, PO Box 1767, Jefferson City, MO 65102.

(4) A PEO may request that a hearing be conducted by telephone. If so, the PEO must include that information in its request for hearing and provide a good telephone number that the PEO will use during the hearing. The PEO is responsible for a good connection if it requests a telephone hearing, and the secretary is not responsible for any disruption caused by a poor cell phone signal. If a party or witness leaves the phone for any reason, or the connection is disconnected, all such action shall be considered voluntary, and the hearing shall proceed without such party or witness.

AUTHORITY: section 285.750, RSMo Supp. 2018. Emergency rule filed Nov. 30, 2018, effective Dec. 10, 2018, expires June 7, 2019. Original rule filed Nov. 30, 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 not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Office of the Secretary of State, PO Box 1767, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 15—ELECTED OFFICIALS

Division 30—Secretary of State

Chapter 130—Professional Employer Organization Act

PROPOSED RULE

15 CSR 30-130.090 Hearings

PURPOSE: This rule describes the nature and process of disciplinary hearings conducted by the secretary.

(1) All disciplinary hearings shall be governed by the administrative hearing process found in Chapter 536, RSMo.

(2) No disciplinary hearing will be held less than thirty (30) days after the secretary receives a written request for a hearing.

(3) Notice of hearing will be provided to the professional employer

organization (PEO) by certified mail and shall include the date, time, and place of the hearing.

(4) Hearings will be open to the public and notice of the hearing shall be posted pursuant to Chapter 610, RSMo.

(5) All hearings will be audio recorded unless the PEO requests the hearing be transcribed by a court reporter. If a PEO requests a court reporter, the PEO is responsible for the cost of the court reporter and all copies of the transcripts.

(6) Oral evidence shall be taken on oath or affirmation. Each party shall have the right to call and examine witnesses, introduce exhibits, and cross-examine witnesses on any relevant issue related to the disciplinary action.

(7) Each party shall provide copies of all exhibits it intends to use at the hearing to the other party and the secretary no later than five (5) working days prior to the hearing.

(8) A list of all documents and exhibits submitted at the hearing shall become part of the record and officially noted in the transcript/recording.

(9) Copies of writings, documents, and records shall be admissible without proof that the originals thereof cannot be produced if it appears by testimony or otherwise that the copy offered is a true copy of the original.

(10) The secretary or his/her representative shall present evidence first. The PEO shall then have the opportunity to present its evidence in the same manner. Each party has the right to rebut the evidence presented and present closing statements.

(11) The secretary shall issue written findings of facts and conclusions of law. Such findings shall include the violations found and the disciplinary action to be taken as authorized under section 285.750, RSMo. Such findings shall be a final adjudication of the matter.

AUTHORITY: section 285.750, RSMo Supp. 2018. Emergency rule filed Nov. 30, 2018, effective Dec. 10, 2018, expires June 7, 2019. Original rule filed Nov. 30, 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 not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Office of the Secretary of State, PO Box 1767, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 15—ELECTED OFFICIALS

Division 30—Secretary of State

Chapter 130—Professional Employer Organization Act

PROPOSED RULE

15 CSR 30-130.100 Appeals

PURPOSE: This rule describes how a professional employer organization (PEO) may appeal the secretary's findings that disciplinary

action should be taken against it.

(1) A PEO who receives findings of fact and conclusions of law as provided in 15 CSR 30-130.090 upholding any disciplinary action may seek judicial review as provided for in Chapter 536, RSMo.

AUTHORITY: section 285.750, RSMo Supp. 2018. Emergency rule filed Nov. 30, 2018, effective Dec. 10, 2018, expires June 7, 2019. Original rule filed Nov. 30, 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 not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Office of the Secretary of State, PO Box 1767, 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 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 200—Insurance Solvency and Company
Regulation
Chapter 19—Discount Medical Plans**

PROPOSED AMENDMENT

20 CSR 200-19.060 Net Worth Requirements. The director is amending sections (1) and (2).

PURPOSE: This amendment removes unnecessary language and relaxes a regulatory restriction.

(1) *[Requirement. Each discount medical plan organization shall maintain a net worth of no less than one hundred fifty thousand dollars (\$150,000), as required by section 376.1518, RSMo.] The [N]net worth referenced in section 376.1518, RSMo shall be determined according to generally accepted accounting principles (GAAP) or the statutory statement of accounting principles (SSAP).*

(2) *[Review.]* The net worth requirement is ongoing and subject to review by the director through examination. Each discount medical plan organization is required to demonstrate it meets the requirement at registration and at annual renewal.

(A) Registration. At the time of registration, *[E]each discount medical plan organization [is required at the time of registration to] will demonstrate that it meets the net worth requirement according to GAAP or SSAP by one (1) of the following means:*

1. A report of an audit by an independent certified public accountant (CPA). Such report must include:

A. *Either [:-]*

(I) *[t]The statement of profit or loss, balance sheet, and statement of cash flows of the discount medical plan organization as of a date not more than twelve (12) months prior to the date of such organization's registration; or*

(II) *[t]The consolidated statement of profit or loss, balance sheet, and statement of cash flows of the discount medical plan organization and entities affiliated with the discount medical plan organization as of a date not more than twelve (12) months prior to the*

date of such organization's registration, as well as the consolidating worksheets that specifically show the account entries of the discount medical plan **organization** itself and which reconcile to such consolidated statement of profit or loss, balance sheet, and statement of cash flows; and

B. A statement by the independent CPA that recognizes without qualification the right of the director to rely on such report; or

2. A report of examination conducted by the director pursuant to sections 374.202 to 374.207 and 376.1506, RSMo, except that such examination will be conducted on the basis of GAAP or SSAP, which will review and opine on the discount medical **plan** organization's statement of profit or loss, balance sheet, and statement of cash flows as of a date not more than twelve (12) months prior to the date of such organization's registration.

(B) Renewal of Registration. At the time of renewal, *[E]each discount medical plan organization [is required at the time of renewal to] will demonstrate that it meets the net worth requirement according to GAAP or SSAP by filing a statement sworn to or affirmed by two (2) or more officers of such organization, which statement consists of the statement of profit or loss, balance sheet, and statement of cash flows of the discount medical **plan** organization as of a date not more than twelve (12) months prior to the date of such organization's renewal of registration.*

(C) Five- (5)-*[:-]* Year Report. At least once every five (5) years, each discount medical plan organization shall file with the director at the time of renewal, *[:] a report of an audit by an independent CPA or a director's examination as provided in subsection (2)(A).*

AUTHORITY: sections 374.045 [and], 374.202 to 374.207, [RSMo 2000 and sections] 376.1506, and 376.1528, RSMo [Supp. 2007] 2016. Original rule filed Nov. 1, 2007, effective June 30, 2008. Amended: Filed Nov. 19, 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 Department of Insurance, Financial Institutions and Professional Registration, Attention: Terra Sapp, PO Box 690, 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 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 200—Insurance Solvency and Company
Regulation
Chapter 20—Captive Insurance Companies**

PROPOSED AMENDMENT

20 CSR 200-20.010 Scope and Definitions. The director is amending sections (1) and (2).

PURPOSE: This amendment makes corrections to the rule and removes unnecessary language.

(1) Applicability of Rules. The rules in this chapter apply to captive insurance companies transacting business under sections 379.1300 to 379.1350, RSMo and special purpose life **reinsurance** captives

transacting business under sections 379.1353 to 379.1421, RSMo. The rules *[shall]* **are to be read together with** *[c]*Chapter 536, RSMo.

(2) Definitions.

(A) “Company,” captive insurance company or companies, including a special purpose life reinsurance captive (SPLRC), unless otherwise specified.

(B) “Director,” the director of the department.

(C) “Department,” the *[d]*Department of *[i]*Insurance, *[f]*Financial *[i]*Institutions and *[p]*Professional *[r]*Registration.

AUTHORITY: sections 374.045, [RSMo 2000 and sections] 379.1328, and 379.1421, RSMo [Supp. 2007] 2016. Original rule filed Nov. 15, 2007, effective June 30, 2008. Amended: Filed Nov. 19, 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 Department of Insurance, Financial Institutions and Professional Registration, Attention: Terra Sapp, PO Box 690, 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 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 200—Insurance Solvency and Company
Regulation
Chapter 20—Captive Insurance Companies**

PROPOSED AMENDMENT

20 CSR 200-20.030 Admission. The director is amending sections (1)–(3).

PURPOSE: This amendment clarifies and simplifies the rule.

(1) Application and Fees. Application for admission as a captive insurance company *[shall]* **will** contain the information outlined in sections 379.1300 to 379.1350 or 379.1353 to 379.1421, RSMo by filing with the director:*]-*

(A) Initial Admission:

1. A completed Form CI-1;
2. A license fee of seven thousand five hundred dollars (\$7,500) for a company; and
3. An application fee of ten thousand dollars (\$10,000) for a special purpose life reinsurance captive.*]-*

(B) Renewal.*]-*

1. All annual reports due at the time of renewal *[as required by]* pursuant to sections 379.1300 to 379.1350, RSMo and rule 20 CSR 200-20.040; and
2. **An annual renewal fee of** *[S]*seven thousand five hundred dollars (\$7,500) *[annual renewal fee]*.

(2) Organizational Examination. In addition to processing of the application, an organizational investigation or examination may be performed before an applicant is admitted. Such investigation or

examination *[shall]* **may** consist of a general survey of the company’s corporate records, including charter, bylaws, and minute books; verification of capital and surplus; verification of principal place of business; determination of assets and liabilities; and a review of such other factors as the director deems necessary.

(3) Change of Business. Any change in the nature of the captive business from that stated in the company’s plan of operation filed with the director upon application requires prior approval from the director. Any change in any other information filed with the application *[must be filed with the director but does not require prior approval]* **requires only an informational filing with the director.**

AUTHORITY: sections 374.045, [RSMo 2000 and sections] 379.1328, and 379.1421, RSMo [Supp. 2007] 2016. Original rule filed Nov. 15, 2007, effective June 30, 2008. Amended: Filed Nov. 19, 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 Department of Insurance, Financial Institutions and Professional Registration, Attention: Terra Sapp, PO Box 690, 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 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 200—Insurance Solvency and Company
Regulation
Chapter 20—Captive Insurance Companies**

PROPOSED AMENDMENT

20 CSR 200-20.050 Management and Control. The director is amending sections (1) and (2) and deleting sections (3) and (4).

PURPOSE: This amendment clarifies and simplifies the rule by removing duplicative language.

(1) Directors. Every company shall report to the director within thirty (30) days after any change in its executive officers or directors, including in its report a statement of the business and professional affiliations of any new executive officer or director. No director, officer, or employee of a company shall, except on behalf of the company, accept, or be the beneficiary of, any fee, brokerage, gift, or other emolument because of any investment, loan, deposit, purchase, sale, payment, or exchange made by or for the company but such person may receive reasonable compensation for necessary services rendered to the company in his or her usual private, professional, or business capacity. Any profit or gain received by or on behalf of any person in violation of this section *[shall]* inure to and *[be]* is recoverable by the company.

(2) Conflict of Interest. In addition to the investment of funds in section (1) of this rule, each company chartered in this state is required to adopt a conflict of interest statement from officers, directors, and key employees. Such statement shall disclose that the individual has

no outside commitments, personal or otherwise, that would divert him from his duty to further the interests of the company he represents but this [shall] does not preclude such person from being a director or officer in more than one (1) insurance company. Each officer, director, and key employee shall file such disclosure with the board of directors yearly.

[(3) Insurance Managers and Intermediaries. No person shall, in or from within this state, act as an insurance manager, broker, agent, salesman, or reinsurance intermediary for captive business without the authorization of the director. Application for such authorization must be on a form prescribed by the director.

(4) Acquisitions of Control of or Merger with Domestic Company. No person other than the issuer shall make a tender offer of or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire in the open market or otherwise, any voting security of a domestic company if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of such company; and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic company without the prior written approval of the director. In considering any application for acquisition of control or merger with a domestic company, the director shall consider all of the facts and circumstances surrounding the application as well as the criteria for establishment of a company set out in this chapter.]

AUTHORITY: sections 374.045, [RSMo 2000 and sections] 379.1328, and 379.1421, RSMo [Supp. 2007] 2016. Original rule filed Nov. 15, 2007, effective June 30, 2008. Amended: Filed Nov. 19, 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 Department of Insurance, Financial Institutions and Professional Registration, Attention: Terra Sapp, PO Box 690, 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 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 400—Life, Annuities and Health
Chapter 7—Health Maintenance Organizations**

PROPOSED RESCISSION

20 CSR 400-7.020 Changes to Documents Submitted to Obtain Original Certificate of Authority. This rule set forth the documents which were required to be submitted to the Department of Insurance prior to any changes becoming effective. This rule was promulgated pursuant to sections 354.405, 354.410, 354.425 and 354.485, RSMo.

PURPOSE: This rule is being rescinded as it is either duplicative of or in conflict with Missouri statutes.

AUTHORITY: sections 354.405, 354.410, 354.425 and 354.485, RSMo 1986. This rule was previously filed as 4 CSR 190-15.080. Original rule filed Nov. 2, 1987, effective April 11, 1988. Rescinded: Filed Nov. 19, 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 Insurance, Financial Institutions and Professional Registration, Attention: Terra Sapp, PO Box 690, 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 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2220—State Board of Pharmacy
Chapter 4—Fees Charged by the Board of Pharmacy**

PROPOSED AMENDMENT

20 CSR 2220-4.010 General Fees. The board is amending section (1) and deleting section (4).

PURPOSE: The proposed rule would decrease renewal fees for Missouri pharmacy technicians and establish fees for third-party logistic providers and drug outsourcers created by HB 1719.

(1) The following fees are established by the State Board of Pharmacy:

(H) Change of Pharmacy [or], Drug Distributor, Drug Outsourcer or Third-Party Logistics Provider Name Fee	\$ 25
(K) Change of Pharmacy [or], Drug Distributor, Drug Outsourcer, or Third-Party Logistics Provider Location Fee	\$ 175
(L) Original Pharmacy Distributor/Wholesale Drug Distributor, Drug Outsourcer, or Third-Party Logistics Provider License Fee (includes both temporary and permanent license)	\$ 300
(M) Pharmacy Distributor/Wholesale Drug Distributor/Drug Outsourcer or Third-Party Logistics Provider License Renewal Fee	\$ 450
(U) Pharmacy Technician Annual Renewal Fee	\$ 35
1. Effective from January 1, 2019 to June 1, 2019	\$ 20

[(4) To ensure compliance with section 338.070, RSMo, the following renewal fees shall be effective from January 1, 2018 to June 1, 2018:

(A) Pharmacy Technician Annual Renewal Fee	\$ 10]
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AUTHORITY: sections 338.020, 338.035, 338.040, 338.060, 338.070, 338.140, 338.185, 338.220, 338.230, 338.270, 338.280, 338.335, and 338.350, RSMo 2016. This rule originally filed as 4 CSR 220-4.010. Emergency rule filed July 15, 1981, effective Aug. 3, 1981, expired Nov. 11, 1981. Original rule filed Aug. 10, 1981, effective Nov. 12, 1981. For intervening history, please consult the Code

of State Regulations. Emergency amendment filed Nov. 28, 2018, effective Dec. 8, 2018, expires June 5, 2019. Amended: Filed Nov. 28, 2018.

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions approximately two hundred eighty-three thousand five hundred dollars (\$283,500) in FY 19 as the result of the proposed decrease and increase revenue by thirty thousand dollars (\$30,000) biennially thereafter.

PRIVATE COST: This proposed amendment will save private entities approximately two hundred eighty-three thousand five hundred dollars (\$283,500) in FY 19 and cost private entities thirty thousand dollars (\$30,000) biennially thereafter.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Board of Pharmacy, PO Box 625, 3605 Missouri Boulevard, Jefferson City, MO 65102, by facsimile at (573) 526-3464, or via email at pharmacy@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this amendment in the **Missouri Register**. No public hearing is scheduled.*

**FISCAL NOTE
PUBLIC COST**

- I. Department Title: Department of Insurance, Financial Institutions and Professional Registration**
Division Title: State Board of Pharmacy
Chapter Title: Fees Charged by the Board of Pharmacy

Rule Number and Name:	20 CSR 2220-4.010- General Fees
Type of Rulemaking:	Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Fiscal Impact
State Board of Pharmacy	\$ 283,500 <i>(FY 2019 Revenue Decrease)</i>
State Board of Pharmacy	\$30,000 <i>(Biennial Increase Thereafter)</i>

III. WORKSHEET

See Private Entity Fiscal Note

IV. ASSUMPTIONS

1. The estimated licensing counts were based on FY 2018 actual pharmacy technician licensee counts and actual renewal totals. The projected revenue decrease will result in a net savings to pharmacy technicians based on decreasing the renewal fee from \$35 to \$20. Actual revenue decreases may vary based on renewal applications received.
2. Prior to August 28, 2018, Missouri law required third-party logistics providers (3PLs) and drug outsourcers to be licensed as drug distributors. Effective August 28, 2018, the names of the licenses have been changed to a separate 3PL and drug outsourcer license to be consistent with federal law. The proposed amended rule incorporates the name change and maintains the fees currently applicable to 3PLs/Drug outsourcers as drug distributors. Accordingly, no new or additional revenue is anticipated as a result of the name change. Once again, 3PLs and drug outsourcer applicants and licensees are currently required to pay the designated fees to be licensed as a drug distributor. Although no new or additional fees will be imposed, a fiscal note is being submitted to ensure full compliance with Chapter 536, RSMo.

3. The Board does not track data on the number of drug distributors that may be performing 3PL or drug outsourcer activity. Accordingly, the exact number of affected applicants/licensees is unknown. It should be noted, however, that the entities affected by the rule are currently required to be licensed by the Board as drug distributors. The amended rule simply recognizes the change in license name; No new license requirements or fees will be imposed as a result of the amendment. Actual revenue impact may vary based on applications received.

FISCAL NOTE
PRIVATE COST

- I. Department Title: Department of Insurance, Financial Institutions and Professional Registration**
Division Title: State Board of Pharmacy
Chapter Title: Fees Charged by the Board of Pharmacy

Rule Number and Name:	20 CSR 2220-4.010- General Fees
Type of Rulemaking:	Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Fiscal Impact
State Board of Pharmacy	\$ 283,500 (FY 2019)
State Board of Pharmacy	\$30,000 (Biennial Cost Thereafter)

IV. WORKSHEET

Estimated # of Applicants/Licensees	Affected Agency	Description of Costs	Calculation of Estimates	TOTAL SAVINGS
19,900	Board of Pharmacy	Pharmacist Technician Renewal Fee	\$ 298,500 <i>(anticipated decrease in FY 19 revenue based on a \$20 pharmacy technician renewal fee)</i>	(\$ 298,500)
50	Board of Pharmacy	Third-Party Logistics Providers/ Drug Outsourcers New License Fee	\$ 15,000 <i>(anticipated FY 19 revenue based on initial \$ 300 license fee x 50 applicants)</i>	\$ 15,000
TOTAL ESTIMATED FY 19 SAVINGS				\$ 283,500

Estimated # of Applicants/Licensees	Affected Agency	Description of Costs	Calculation of Estimates	TOTAL COSTS
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25	Board of Pharmacy	Third-Party Logistics Providers/ Drug Outsourcers New License Fee	\$ 7,500 <i>(anticipated biennial revenue based on initial \$ 300 license fee x 25 applicants)</i>	\$ 7,500
50	Board of Pharmacy	Third-Party Logistics Providers/ Drug Outsourcers Renewal Fee	\$ 22,500 <i>(anticipated biennial revenue based on current \$ 450 renewal fee x 50 licensees)</i>	\$ 22,500
TOTAL ESTIMATED BIENNIAL COSTS				\$ 30,000

V. ASSUMPTIONS

1. The estimated licensing counts were based on FY 2018 actual pharmacy technician licensee counts and actual renewal totals.
2. The projected savings will result in a net savings to pharmacy technicians based on decreasing the renewal fee from \$35 to \$20. Actual savings may vary based on renewal applications received.
3. Prior to August 28, 2018, Missouri law required third-party logistics providers (3PLs) and drug outsourcers to be licensed as drug distributors. Effective August 28, 2018, the names of the licenses have been changed to a separate 3PL and drug outsourcer license to be consistent with federal law. The proposed amended rule incorporates the name change and maintains the fees currently applicable to 3PLs/Drug outsourcers as drug distributors. Accordingly, no new or additional revenue is anticipated as a result of the name change. Once again, 3PLs and drug outsourcer applicants and licensees are currently required to pay the designated fees to be licensed as a drug distributor. Although no new or additional fees will be imposed, a fiscal note is being submitted to ensure full compliance with Chapter 536, RSMo.
4. The Board does not track data on the number of drug distributors that may be performing 3PL or drug outsourcer activity. Accordingly, the exact number of affected applicants/licensees is unknown. It should be noted, however, that the entities affected by the rule are currently required to be licensed by the Board as drug distributors. The amended rule simply recognizes the change in license name; No new license requirements or fees will be imposed as a result of the amendment. Actual revenue impact may vary based on applications received.

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

**Division 2220—State Board of Pharmacy
Chapter 8—Third-Party Logistic Providers and Drug
Outsourcer Facilities**

PROPOSED RULE

20 CSR 2220-8.010 Definitions

PURPOSE: This rule adopts definitions for purposes of 20 CSR Chapter 8 governing drug outsourcers and third-party logistics providers.

(1) Definitions. The following definitions are applicable to 20 CSR 2220 Chapter 8:

(A) “Drug outsourcer” or “Drug outsourcer facility”- An entity registered with the United States Food and Drug Administration pursuant to section 503(B) of the federal Food, Drug and Cosmetic Act, as amended by the Drug Quality and Security Act (21 section USC 353b);

(B) “Drug related device”—An article that is not considered a prescription drug under federal law, but which meets the definition of a device as provided in 21 U.S.C. 321(h) and 21 U.S.C. 360j(e);

(C) “Drug” or “Prescription drug”—A legend drug as defined by section 338.330, RSMo; and

(D) “Third-party logistics provider” or “3PL”—An entity that provides or coordinates warehousing, or other logistics services of a prescription drug or drug-related device on behalf of a manufacturer, wholesale distributor, or dispenser of such a product, but does not take ownership of the product, nor has responsibility to direct the sale or disposition of the product. A third-party logistics provider license is required for entities conducting 3PL activities that are physically located in this state or shipping drug products into Missouri.

AUTHORITY: sections 338.140, 338.150, 338.280, and 338.350, RSMo 2016, and sections 338.315, 338.330, 338.333, 338.337, and 338.340, RSMo Supp. 2018. Emergency rule filed Nov. 28, 2018, effective Dec. 8, 2018, expires June 5, 2019. Original rule filed Nov. 28, 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 not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri State Board of Pharmacy, PO Box 625, 3605 Missouri Boulevard, Jefferson City, MO 65102, by facsimile at (573) 526-3464, or via email at pharmacy@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 2220—State Board of Pharmacy
Chapter 8—Third-Party Logistic Providers and Drug
Outsourcer Facilities**

PROPOSED RULE

20 CSR 2220-8.020 Licensing Requirements

PURPOSE: This rule establishes licensing requirements and procedures for drug outsourcers and third-party logistics providers.

(1) No person or entity may act as a third-party logistics provider (3PL) or a drug outsourcer unless the person/entity has obtained the applicable 3PL or drug outsourcer license from the board. A separate license is required for each facility owned or operated as a 3PL or drug outsourcer.

(A) Applicants must submit a completed application to the board with the applicable fee along with the following information:

1. The name, full business address, e-mail address, and telephone number of the applicant and the facility where third-party logistics provider services or drug outsourcer activities will be provided, if different;

2. All trade or business names used by the licensee;

3. For 3PL applicants, the name, address, telephone number, and e-mail address of a manager-in-charge that meets the requirements of 20 CSR 2220-8.030 along with his/her employment history for the previous seven (7) years and a notarized manager-in-charge affidavit;

4. For drug outsourcer applicants, the name, address, telephone number, and e-mail address of a pharmacist responsible for supervising the facility who holds a current and active pharmacist license issued by a U.S. state or territory. If the designated pharmacist does not have a current and active Missouri pharmacist license, official verification must be submitted from the board of pharmacy or equivalent pharmacist governmental licensing agency verifying that the designated pharmacist holds a current and active pharmacist license issued by such state/territory;

5. The type of ownership or legal structure; and

6. The name(s) of the owner, operator, or both, of the licensed entity, including:

A. If a sole proprietorship, the full name of the sole proprietor and the name of the business entity. The sole proprietor must sign the application;

B. If a partnership or limited liability partnerships, the name of each partner and the name of the partnership. A partner or general partner must sign the application; or

C. If a corporation, the name of the corporate president, vice president, secretary, treasurer, chief executive officer, board of directors, and senior vice presidents, or their equivalents, the corporate name(s), and the name of the state of incorporation. An officer of the corporation must sign the application.

(B) A license will not be issued to a facility located in Missouri until the board or its duly authorized agent has inspected the premises of the new location and approved it. For nonresident applicants, an inspection report must be submitted as required by 20 CSR 2220-8.030.

(C) All third-party logistics provider and drug outsourcer licenses will expire on the date specified by the director of the Division of Professional Registration by appropriate rule. Once issued, licenses must be conspicuously posted in the licensed facility where 3PL or drug outsourcer operations are conducted.

(D) A 3PL or drug outsourcer license will not be issued to any location where drugs are stored or maintained that is in a residence or that shares an address and/or physical space with a business not related to distributing prescription drugs or drug-related devices, or not licensed and regulated by the state of Missouri.

(E) An application will become null and void if the applicant fails to complete the process for licensure within six (6) months after the application is received by the board.

(F) All application fees are non-refundable.

(2) Change of Ownership. A third-party logistics provider or drug outsourcer license shall become void on the effective date of any change of ownership. The subsequent owners must obtain a new license from the board prior to operating as a third-party logistics provider or drug outsourcer in this state, provided a temporary license may be issued to the new ownership until a new license is

granted as outlined in section (5). Facilities located in Missouri must be inspected by the board prior to issuing a new license.

(A) A change of ownership of a sole proprietorship is deemed to have occurred when—

1. The business is sold and the sale becomes final;
2. The proprietor enters into a partnership with another individual or business entity; or
3. The proprietor dies, provided, the proprietor's estate may continue to operate the third-party logistics provider or drug outsourcer facility for a period of no more than one (1) year if all appropriate fees are paid.

(B) If a corporation owns a third-party logistics provider or drug outsourcer, a new license is not required if the owners of the stock change. If a limited liability partnership or a limited liability company owns a third-party logistics provider or drug outsourcer, a new license is not required if the partners or members of the company change, as long as the partnership or company is not dissolved by the change. Written notice must be filed with the board within thirty (30) days after a change of twenty-five percent (25%) or more in the ownership of corporation stock, or the partners of a limited liability partnership, or the members of a limited liability company. The required notification must be in writing and notarized.

(C) When a sole proprietorship, corporation, limited liability partnership, or limited liability company begins or ceases ownership of a third-party logistics provider or drug outsourcer, a new license must be obtained regardless of the relationship between the previous and subsequent owners.

(3) Change of Location. A third-party logistics provider or drug outsourcer license is only valid for the address listed on the license issued by the board. If the location of a third-party logistics provider or drug outsourcer facility changes either within the existing facility or to a new facility, a change of location application must be submitted to the board with the applicable fee. A Missouri located facility may not open for business at the new location until the board or its duly authorized agent has inspected the premises of the new location and approved it. Once approved, the board will issue a license for the new location with the same license number as the previous license. A license will remain valid if the facility address changes but not the location, in such case an amended license will be issued on request without charge.

(4) Change of Name. Licensees may only conduct 3PL or drug outsourcing activities in the state of Missouri under the name(s) licensed by the board. If a name change occurs, a change of name application must be submitted to the board with the applicable fee within three (3) business days of the change. The facility's license will be reissued under the new name with the same license number. A change of ownership application is required if the licensee is changing corporate or legal structure or otherwise changing ownership.

(5) Temporary Licenses. The board may grant a temporary license to an applicant, subject to any terms or conditions the board deems necessary or appropriate, to allow the business to continue operating in Missouri until the board makes a determination on the applicant's license application. Unless otherwise authorized by the board, temporary licenses are valid for one (1) year or until final action by the board, whichever is less.

(A) The board will consider the following in determining whether to issue a temporary license:

1. Any conduct or activity that constitutes grounds for denial or discipline under section 338.055, RSMo;
2. The applicant's compliance with state and federal drug and/or distribution laws;
3. Any failure to produce records or information requested by the board or failure to provide full and truthful information;
4. Failure to cooperate with any board request or inquiry related to the application;
5. Current or pending disciplinary action by any federal, state,

or local government against any license or registration currently or previously held by the applicant;

6. Compliance with licensing requirements under previously granted licenses, if any; and

7. Any other factor relevant to the applicant's ability to safely or properly operate in Missouri.

(B) A notification letter will be sent to the applicant once a decision is made on the applicant's permanent license. The temporary license will be considered void ten (10) days after board notification is sent to the applicant.

(C) Applicants issued a temporary license may conduct business in this state as a third-party logistics provider or, for drug outsourcer applicants, as a drug outsourcer as long as all state and federal laws governing provider/drug outsourcing activities are followed and no action that results in professional misconduct as outlined in section 338.055, RSMo, occurs.

(6) A nonresident third-party logistics provider or drug outsourcer licensed by the board must designate a registered agent in Missouri for service of process. Any licensee that does not designate a registered agent shall be deemed to have designated the Missouri secretary of state to be its true and lawful attorney for service of process in any action or proceeding against the third-party logistics provider or drug outsourcer growing out of or arising from such 3PL or drug outsourcing services. Service of process shall be accomplished as authorized by law.

(7) Licensure Exemptions. A Missouri 3PL or drug outsourcer license is not required for the following activities—

(A) The sale, purchase, transfer, or trade of a drug or an offer to sell, purchase, transfer, or trade a drug for emergency administration to an individual patient if a delay in therapy would negatively affect a patient outcome. Prior to the distribution, the unlicensed entity or proposed recipient must file a written request with the board to approve the emergency transaction. The amount sold, purchased, transferred, or traded shall not exceed one percent (1%) of the 3PL's or drug outsourcer's total gross prescription sales or, if prescriptions are not sold, one percent (1%) of the 3PL's/drug outsourcer's total drug purchases;

(B) The storage or distribution of drugs by a local, state, or federal facility that are received from the Strategic National Stockpile or the state stockpile for the purpose of providing those drugs in an emergency situation as authorized by a state or federal agency; and

(C) The sale, purchase, transfer, or trade of a prescription drug by a 3PL to alleviate a temporary shortage of a prescription drug that is in limited supply or unavailable due to delays in or interruption of supply. Drugs sold, purchased, transferred, or traded pursuant to this section shall only be sold, purchased, transferred, or traded directly from an importer or manufacturer authorized by or registered with the United States Food and Drug Administration (FDA) to import or manufacture the drug that is unavailable or in short supply. In addition, sales, purchases, transfers, or trades shall be limited to the period of shortage and to the drug that is unavailable or in limited supply. Documentation of FDA authorization or registration shall be maintained in the 3PL's records.

AUTHORITY: sections 338.140, 338.150, 338.280, and 338.350, RSMo 2016, and sections 338.315, 338.330, 338.333, 338.337, and 338.340, RSMo Supp. 2018. Emergency rule filed Nov. 28, 2018, effective Dec. 8, 2018, expires June 5, 2019. Original rule filed Nov. 28, 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 not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri State Board of Pharmacy, PO Box 625, 3605 Missouri Boulevard, Jefferson City, MO 65102, by facsimile at (573) 526-3464, or via email at pharmacy@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 2220—State Board of Pharmacy
Chapter 8—Third-Party Logistic Providers and Drug
Outsourcer Facilities**

PROPOSED RULE

20 CSR 2220-8.030 Nonresident Third-Party Logistics Providers/Drug Outsourcer Facilities

PURPOSE: This rule establishes additional guidelines for non-resident third-party logistics providers and drug outsourcer applicants.

(1) Nonresident third-party logistics (3PL) providers or drug outsourcer facilities may not act as a third-party logistics provider or a drug outsourcer or ship, mail, or deliver legend drugs, or for drug outsourcers, compounded drugs into Missouri without first obtaining the applicable license from the board. Nonresident third-party logistics providers or drug outsourcers may be licensed by reciprocity if they—

(A) Possess a valid 3PL or drug outsourcer license or an equivalent license that is in good standing in the state or foreign jurisdiction in which they are located that was issued pursuant to legal standards comparable to those which must be met by a Missouri third-party logistics provider or drug outsourcer; and

(B) Are located in a state or foreign jurisdiction which extends reciprocal treatment to a third-party logistics provider of this state or, for drug outsourcer applicants, a drug outsourcer of this state.

(2) Except as otherwise provided in this rule, applicants for a non-resident third-party logistics provider or drug outsourcer license must comply with 20 CSR 2220-8.020, including, but not limited to, all application, change of ownership, change of location, and change of name requirements. In addition to the requirements of 20 CSR 2220-8.020, non-resident applicants must also submit the following with their application:

(A) A copy of the applicant's 3PL or drug outsourcer license or its equivalent from the state or foreign jurisdiction where the non-resident third-party logistics provider or drug outsourcer facility is located;

(B) An official verification from the state or foreign jurisdiction where the third-party logistics provider or drug outsourcer facility is located verifying that the applicant holds a current and active third-party logistics provider license or its equivalent, for drug outsourcer applicants, a drug outsourcer license or its equivalent issued by such state or foreign jurisdiction;

(C) A copy of the applicant's most recent inspection report or findings from the applicant's resident board of pharmacy or its equivalent state/foreign regulatory body. For 3PL applicants, the inspection must have occurred within the last twenty-four (24) months. For drug outsourcer applicants, the inspection must have occurred within the last eighteen (18) months. If a state inspection is unavailable, an inspection by the Missouri Board of Pharmacy, the United States Food and Drug Administration (FDA) or the National Association of State Boards of Pharmacy must be submitted or a similar inspection by an entity approved by the board;

(D) If controlled substances will be shipped into Missouri, a copy of the applicant's federal controlled substance registration and, if applicable, a copy of the applicant's state controlled substance registration from the state where the applicant is located; and

(E) If requested by the board, any inspection reports, correction active responses, warning notices, deficiency notices, or any other related state, federal, or foreign jurisdiction report or notice related to the applicant's handling, distribution, manufacturing, or sale of medication.

AUTHORITY: sections 338.140, 338.150, 338.280, and 338.350, RSMo 2016, and sections 338.315, 338.330, 338.333, 338.337, and 338.340, RSMo Supp. 2018. Emergency rule filed Nov. 28, 2018, effective Dec. 8, 2018, expires June 5, 2019. Original rule filed Nov. 28, 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 not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri State Board of Pharmacy, PO Box 625, 3605 Missouri Boulevard, Jefferson City, MO 65102, by facsimile at (573) 526-3464, or via email at pharmacy@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 2220—State Board of Pharmacy
Chapter 8—Third-Party Logistic Providers and Drug
Outsourcer Facilities**

PROPOSED RULE

20 CSR 2220-8.040 Standards of Operation (Drug Outsourcers)

PURPOSE: This rule provides standards of operation for drug outsourcers licensed by the board.

(1) Drug outsourcers shall comply with all applicable state and federal laws governing drug outsourcing activities, including, but not limited to, controlled substance laws and the federal Food, Drug and Cosmetics Act, as amended by the Drug Quality and Security Act.

(A) Except as otherwise required by federal law, drug outsourcers must comply with all applicable current good manufacturing practices (cGMPs) required by federal law and the United States Food and Drug Administration.

(B) A separate Missouri drug distributor license is required if a drug outsourcer is engaged in any additional drug distribution activities as defined by Chapter 338, RSMo, other than drug outsourcing. A pharmacy license is required if medication will be dispensed pursuant to a patient-specific prescription.

(2) No drug outsourcer license will be issued unless the facility is under the direct supervision of a pharmacist who has been designated with the board and who will be responsible for facility operations and ensuring compliance with state and federal law. The pharmacist must hold a current and active pharmacist license issued by Missouri or another U.S. state/territory.

(A) Drug outsourcing activities must be conducted at all times

under the supervision of the designated pharmacist. The pharmacist must be actively involved in and aware of the daily operations of the outsourcing facility and must ensure that policies and procedures governing drug outsourcing operations are current and accurate.

(B) In the event the pharmacist designated with the board to supervise the facility changes, the drug outsourcer may not continue operations until a new pharmacist is named to supervise the facility. A change of pharmacist application must be submitted to the board with the applicable fee within fifteen (15) calendar days after a new pharmacist is designated to supervise.

(3) Sterile compounding and drug outsourcing activities must be safely and accurately performed at all times to ensure that only drugs of appropriate quality are distributed. No counterfeit, misbranded, expired, or adulterated drug may be compounded, distributed, sold, or brokered by or on behalf of a drug outsourcer.

(A) All individuals employed or engaged in sterile compounding or drug outsourcer activities must have sufficient education, training, or experience to perform the duties assigned. A list must be maintained of all individuals engaged in sterile compounding or in drug outsourcer activities with a description of the individual's duties.

(B) Drug outsourcers located in this state may only purchase or receive legend drugs and/or drug related devices from an entity licensed as a Missouri drug distributor, third-party logistics provider, drug outsourcer, or pharmacy.

(C) Medication held for distribution must be stored in a secure area where only authorized personnel have access to them. A list of all individuals who have independent access to drug storage areas must be maintained. The list must be maintained for three (3) years and must be readily retrievable on request of the board or the board's authorized designee.

(D) The outside shipping container of received medication and product ingredients must be visually examined for identity and for container and content integrity to prevent the acceptance or distribution of any contaminated, adulterated, or otherwise unfit medication. Any prescription drug or drug ingredient whose immediate or sealed outer container or sealed secondary container has been opened, used, or improperly compromised must be quarantined and physically separated from the facility's active inventory.

(E) Medication shipped for distribution or further use must be carefully inspected prior to shipping/distribution for identity and to ensure no contaminated, adulterated, or misbranded drug or compounded preparation is distributed. Licensees shall maintain and follow security procedures for delivering drugs and compounded preparations from the facility to the destination site.

(F) Drug outsourcers must develop and implement written policies and procedures to ensure the safe and appropriate delivery of prescription drugs within the temperature requirements recommended by the manufacturer or the *United States Pharmacopeia* (USP).

(G) For returned medication, licensees must consider the conditions under which the drug has been held, stored, or shipped, the condition of the drug and its container/carton and any other relevant factor that may reflect on the drug's fitness for further use or distribution. If the conditions under which medication has been returned cast doubt on the drug's safety, identity, strength, quality, or purity, then the drug must be destroyed or returned to the supplier, unless examination, testing, or other investigation proves that the drug meets appropriate standards of safety, identity, strength, quality, and purity.

(H) Drug products must be labeled as required by the manufacturer and state and federal law, including, section 338.059.2, RSMo.

(4) Facility Standards. The following standards are applicable to all drug outsourcing facilities:

(A) Drug outsourcing facilities must be securely maintained at all times to prevent unauthorized access to the facility, drugs, or drug storage areas. Additionally, the facility must be equipped with a security system that will provide suitable protection against theft and diversion, including, electronic theft or diversion. All facilities must

be equipped with an alarm system to detect unauthorized entry after hours.

(B) Appropriate sewage disposal and a hot and cold water supply must be available.

(C) Waste and hazardous materials must be handled and disposed of in compliance with applicable state and federal law.

(D) Drug outsourcing facilities must be free from insects, vermin, and animals of any kind, except for service animals as defined by the Americans with Disabilities Act (ADA).

(E) Medication must be properly stored and maintained in a thermostatically controlled area within temperature and humidity requirements as provided in the FDA approved drug product labeling or the *United States Pharmacopeia* (USP).

(F) Temperatures in drug storage areas must be recorded and reviewed at least once each day the facility is in operation. Alternatively, a continuous temperature monitoring system may be used if the system maintains ongoing documentation of temperature recordings that alerts the pharmacist designated with the board for supervising the facility or alerts designated facility staff when temperatures are outside of the required range.

(G) No outdated, misbranded, or adulterated drugs or devices may be dispensed or maintained within the facility's active inventory, including prescription and related nonprescription items. Outdated, misbranded, or adulterated medication must be quarantined in a clearly identified segregated area and maintained separately from drugs intended for distribution or compounding.

(H) Medication may not be stored on the floor. Drug products must be raised above floor level and placed on a pallet or similar device.

(I) Drug outsourcers must report any recall of medication or a sterile preparation that is, or suspected to be, misbranded, adulterated, or non-sterile. Recalls must be reported to the board in writing within seven (7) days of a recall.

(5) Policies and Procedures. Drug outsourcers must maintain and follow current and accurate policies and procedures governing all aspects of the facility's drug outsourcing activities. Policies and procedures may be physically or electronically maintained at the facility, provided the policies/procedures are immediately retrievable at the request of the board or the board's authorized designee.

(6) Record-Keeping. Drug outsourcer records must be accurately maintained in compliance with state and federal law. Additionally, licensees must maintain inventories and records of all transactions regarding the receipt, distribution, compounding, or other disposition of prescription drugs or sterile preparations. Unless otherwise provided by law, records required by Chapter 338 or this rule must be maintained for three (3) years. Records may be manually or electronically maintained, provided the record is readily retrievable and available for inspection, photographing, or duplication at the request of the board or the board authorized designee or at the request of authorized federal, state, or local law enforcement officials. Records maintained offsite and not electronically retrievable at the drug outsourcer facility must be made available for inspection within two (2) working days of a request by the board or an authorized board designee.

AUTHORITY: sections 338.140, 338.150, 338.280, and 338.350, RSMo 2016, and sections 338.315, 338.330, 338.333, 338.337, and 338.340, RSMo Supp. 2018. Emergency rule filed Nov. 28, 2018, effective Dec. 8, 2018, expires June 5, 2019. Original rule filed Nov. 28, 2018.

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

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

**Division 2220—State Board of Pharmacy
Chapter 8—Third-Party Logistic Providers and Drug
Outsourcer Facilities**

PROPOSED RULE

20 CSR 2220-8.045 Standards of Operation (Third-Party Logistics Providers)

PURPOSE: This rule provides standards of operation for third-party logistic providers licensed by the board.

(1) Third-party logistics providers (3PL) shall comply with all applicable state and federal law governing 3PL activities, controlled substances and drug distribution/handling, including, but not limited to, the federal Food, Drug and Cosmetics Act, as amended by the federal Drug Supply Chain Security Act (20 USC section 351 et seq).

(2) Manager-In-Charge. No third-party logistics provider license will be issued unless the facility is under the direct supervision of a manager-in-charge who has been designated with the board and who will be responsible for facility operations and ensuring compliance with state and federal law. The designated manager-in-charge must have appropriate education or experience to perform the duties assigned. At a minimum, the manager-in-charge must have at least two (2) years of education/experience in third-party logistics provider or drug distribution standards of operation or legal/compliance requirements. Education beyond a high school diploma or its equivalent may be used to meet these minimum requirements.

(A) 3PL activities must be conducted under the supervision of the designated manager-in-charge. The manager-in-charge must be actively involved and aware of the daily operations of the third-party logistics provider and must be physically present at the third-party logistics provider facility during normal business hours, except for absences due to illness, scheduled vacations, or other authorized absence. The manager-in-charge must ensure that policies and procedures governing the third-party logistics provider's operations are current and accurate.

(B) In the event the manager-in-charge designated with the board changes, the third-party logistics provider may not continue operations until a new manager-in-charge is named. A change of manager-in-charge application must be submitted to the board with the applicable fee within fifteen (15) calendar days after the new manager-in-charge is designated.

(C) In addition to the manager-in-charge, all individuals employed or engaged in third-party logistics operations must have sufficient education, training, or experience to perform the duties assigned. A list must be maintained of all managers or other individuals in charge of 3PL activities or drug distribution, storage and handling, and a description of the individual's duties.

(3) Facility Standards. The following requirements are applicable to all 3PL facilities:

(A) All state and federal 3PL, controlled substance and drug dis-

tribution licenses or registrations must be current and accurate. The facility's Missouri 3PL license must be conspicuously posted at the 3PL facility licensed by the board;

(B) 3PL facilities must be of suitable size and construction to allow proper cleaning, maintenance, and facility operations. Appropriate sewage disposal and a hot and cold water supply must be available. The outside perimeter of the premises must be well-lit; and

(C) 3PL facilities must be securely maintained at all times to prevent unauthorized access to the facility, drugs, or drug storage areas. Additionally, 3PL facilities must be equipped with a security system that will provide suitable protection against theft and diversion, including, electronic theft or diversion. All facilities must be equipped with an alarm system to detect entry after hours.

(4) Drug Storage and Distribution. 3PL activities must be safely and accurately performed at all times in compliance with applicable state and federal law. Only drugs of appropriate quality may be distributed. No counterfeit, outdated, misbranded, expired, or adulterated drug may be distributed, sold, or brokered by or on behalf of a 3PL.

(A) Appropriate lighting, sanitation, ventilation, and humidity must be maintained in all areas where drugs are stored or distributed. Aisles, walkways, and shelves in drug storage areas must be clear of debris, dirt, and filth. Dust must be kept at low levels through adequate ventilation or proper cleaning procedures.

(B) Waste and hazardous materials must be handled and disposed of in compliance with applicable state and federal law.

(C) Drug storage areas must be free from insects, vermin, and animals of any kind, except for service animals as defined by the Americans with Disabilities Act (ADA).

(D) Drugs must be properly stored and maintained in a thermostatically controlled area within temperature and humidity requirements as provided in the FDA approved drug product labeling or the *United States Pharmacopeia* (USP).

(E) Temperatures in drug storage areas must be recorded and reviewed at least once each day the facility is in operation. Alternatively, a continuous temperature monitoring system may be used if the system maintains ongoing documentation of temperature recordings that alerts the manager-in-charge or designated facility staff when temperatures are outside of the required range.

(F) 3PLs located in this state may only purchase or receive legend drugs and/or drug related devices from an entity licensed as a Missouri drug distributor, third-party logistics provider, or drug outsourcer.

(G) No outdated, misbranded, or adulterated drugs or devices may be dispensed or maintained within the facility's active inventory, including prescription and related nonprescription items. Outdated, misbranded, or adulterated medication must be quarantined in a clearly identified segregated area and maintained separately from drugs intended for distribution or being processed for distribution.

(H) No third-party logistics provider with physical facilities located in the state of Missouri shall knowingly purchase or receive legend drugs and/or drug related devices from a wholesale drug distributor, third-party logistics provider, drug outsourcer, or pharmacy not licensed or registered by the board.

(I) Drugs held for distribution must be stored in a secure area where only authorized personnel have access to them. A list of all individuals who have independent access to drug storage areas must be maintained. The list must be maintained for three (3) years and must be readily retrievable on request of the board or the board's authorized designee.

(J) Medication may not be stored on the floor. Drug products must be raised above floor level and placed on a pallet or similar device.

(K) The outside shipping container of received medication must be visually examined for identity and for container and content integrity to prevent the acceptance or distribution of any contaminated, adulterated, or otherwise unfit medication. Any prescription drug whose immediate or sealed outer container or sealed secondary container has been opened, used, or improperly compromised must be quarantined

and physically separated from the facility's active inventory.

(L) Drugs shipped for distribution or further use must be carefully inspected prior to shipping/distribution for identity and to ensure prescription drugs that have been damaged in storage or held under improper conditions are not distributed. Licensees shall maintain and follow security procedures for delivering drugs from the facility to the destination site.

(M) Drug products must be labeled as required by the manufacturer and state and federal law, including, section 338.059.2, RSMo.

(N) Third-party logistics providers must develop and implement written policies and procedures to ensure the safe and appropriate delivery of prescription drugs within the temperature requirements recommended by the manufacturer or the *United States Pharmacopeia* (USP).

(O) For returned medication, licensees must consider the conditions under which the medication has been held, stored, or shipped, the condition of the drug and its container/carton and any other relevant factor that may reflect on the drug's fitness for further use or distribution. If the conditions under which a prescription drug has been returned cast doubt on the drug's safety, identity, strength, quality, or purity, then the drug must be destroyed or returned to the supplier, unless examination, testing, or other investigation proves that the drug meets appropriate standards of safety, identity, strength, quality, and purity.

(P) Licensees shall file a written or electronic report with the board within seventy-two (72) hours after discovery of:

1. Any suspected criminal activity related to or diversion of a prescription drug or device; and

2. Any real or suspected counterfeit, contraband, or illegitimate prescription drug or drug-related device. The report must include the name of the drug, quantity, and lot number(s). Recalls initiated by the Food and Drug Administration (FDA) or by a supplier licensed with the state of Missouri do not have to be reported, unless otherwise required by state and federal law.

(5) Policies and Procedures. 3PLs must maintain and follow current and accurate policies and procedures governing all aspects of the facility's 3PL activities. Policies and procedures must be physically or electronically maintained at the facility, provided the policies/procedures are immediately retrievable at the request of the board or the board's authorized designee.

(6) Agents or employees of a licensed third-party logistics provider may have legend drugs in their custody if they are acting in the usual course of business or employment and their names and addresses and the addresses of all sites where drugs are stored have been provided to the board. Drugs stored and transported by agents or employees of a third-party logistics provider must be maintained in accordance with manufacturer or USP guidelines and must be free of contamination, deterioration, or adulteration.

(7) Record-Keeping. 3PL records must be accurately maintained in compliance with state and federal law. Additionally, licensees must maintain inventories and records of all transactions regarding the receipt, distribution, or other disposition of prescription drugs or prescription drug-related devices.

(A) The following records must be maintained:

1. The date drugs or drug-related devices are received or distributed;

2. The identity and quantity of drugs or drug-related devices received, distributed, or disposed of;

3. The identity of any suppliers of prescription drugs or drug-related items, including the name and principal address of the seller/transferor and the address of the location where the drug/drug-related item was shipped from;

4. The name and address of any recipients of prescription drugs or drug-related items; and

5. Any records required by state and federal law.

(B) Unless otherwise provided by law, records required by Chapter

338 or this rule must be maintained for three (3) years. Records may be manually or electronically maintained, provided the record is readily retrievable and available for inspection, photographing, or duplication at the request of the board or the board's authorized designee or at the request of authorized federal, state, or local law enforcement officials. Records maintained offsite and not electronically retrievable at the 3PL facility must be made available for inspection within two (2) working days of a request by the board or an authorized board designee.

(8) Exemptions. At its discretion, the board may grant an exemption to the facility requirements of this rule for a time period designated by the board if such exemption is not contrary to law and the exemption will provide equal or greater protection of the public safety, health, or welfare. Exemption requests must be submitted in writing and identify the specific exemption requested, the grounds for exemption, the requested exemption length, and proposed procedures or safeguards for protecting the public safety, health, or welfare if the exemption is approved.

AUTHORITY: sections 338.140, 338.150, 338.280, and 338.350, RSMo 2016, and sections 338.315, 338.330, 338.333, 338.337, and 338.340, RSMo Supp. 2018. Emergency rule filed Nov. 28, 2018, effective Dec. 8, 2018, expires June 5, 2019. Original rule filed Nov. 28, 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 not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri State Board of Pharmacy, PO Box 625, 3605 Missouri Boulevard, Jefferson City, MO 65102, by facsimile at (573) 526-3464, or via email at pharmacy@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 2220—State Board of Pharmacy Chapter 8—Third-Party Logistic Providers and Drug Outsourcer Facilities

PROPOSED RULE

20 CSR 2220-8.050 Inspection Exemptions

PURPOSE: This rule defines requirements for inspection standards for drug outsourcers and third-party logistics providers and standards for inspection exemptions for third-party logistic providers.

(1) Board inspections of third-party logistics providers and drug outsourcers will be conducted in accordance with Chapter 338, RSMo. At the discretion of the board, a third-party logistics provider facility that has been inspected by the United States Food and Drug Administration (FDA) within the previous two (2) years may be exempt from inspection by the board if the FDA inspection(s) resulted in a satisfactory rating. The FDA inspection must be a full inspection of all facility operations and procedures.

(2) The board may terminate an exemption under this section if

deemed necessary or appropriate, if the last full FDA inspection is two (2) years old or greater or if any subsequent facility inspection by a state or federal entity results in less than a satisfactory rating.

(A) For purposes of this rule, a less than satisfactory rating includes, but is not limited to, any documented deficiency related to third-party logistic provider operations, drug distribution, repackaging, labeling, quality control, environmental policies/procedures, or controlled substances. Deficiencies include any statement that is a part of a federal compliance, inspection or observational report with or without sanctions, penalties, fines, or discipline imposed.

(B) Licensees granted an inspection exemption under this section shall notify the board if any inspection conducted by the FDA or the Drug Enforcement Administration results in less than a satisfactory rating as defined in subsection (2)(A).

AUTHORITY: sections 338.140, 338.150, 338.280, and 338.350, RSMo 2016, and sections 338.315, 338.330, 338.333, 338.337, and 338.340, RSMo Supp. 2018. Original rule filed Nov. 28, 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 not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri State Board of Pharmacy, PO Box 625, 3605 Missouri Boulevard, Jefferson City, MO 65102, by facsimile at (573) 526-3464, or via email at pharmacy@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 2220—State Board of Pharmacy
Chapter 8—Third-Party Logistic Providers and Drug
Outsourcer Facilities**

PROPOSED RULE

20 CSR 2220-8.060 Termination of Business

PURPOSE: This rule establishes guidelines for terminating business as a third-party logistics provider or drug outsourcer.

(1) A licensed third-party logistics provider or drug outsourcer must notify the board within fifteen (15) days after terminating business in Missouri. Notification must be in writing or on a form provided by the board and include the following information:

(A) The name, address, license number, and effective date of closure;

(B) The name, address, and license number of the entity to which any of the stock/inventory will be transferred; and

(C) The name and address of the location where records required to be maintained by law will be transferred.

(2) Licensees terminating business may transfer all drugs and records in accordance with the following:

(A) Misbranded, outdated, or adulterated drugs may not be transferred, except for purposes of proper disposal;

(B) The entity's Missouri license must be returned to the board either in person or by registered or certified mail; and

(C) Any records transferred to an unlicensed location must be

retrievable for board review within seven (7) working days of a request made by an authorized official of the board.

(3) This rule does not preempt any other laws or regulations governing third-party logistic (3PL) or drug outsourcer licensure, change of ownership, change of location, or change of name.

AUTHORITY: sections 338.140, 338.150, 338.280, and 338.350, RSMo 2016, and sections 338.315, 338.330, 338.333, 338.337, and 338.340, RSMo Supp. 2018. Original rule filed Nov. 28, 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 not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri State Board of Pharmacy, PO Box 625, 3605 Missouri Boulevard, Jefferson City, MO 65102, by facsimile at (573) 526-3464, or via email at pharmacy@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 2245—Real Estate Appraisers
Chapter 5—Fees**

PROPOSED AMENDMENT

20 CSR 2245-5.020 Application, Certificate and License Fees. The committee is adding new sections (3) and (4), renumbering as necessary, and amending asterisked paragraphs.

PURPOSE: This amendment changes the payment schedule for federal fees.

(3) The commission will collect the fees outlined in 20 CSR 2245-5.020(2)(B)1. and (F) yearly. The commission will send notification to the licensed AMCs in January of each year which outlines the reporting period and instructions for the collection of said fees.

(4) Fees shall be remitted and received by the office no later than the date specified on the notice to ensure that the commission is able to include the AMC on the national registry submission sent to the Appraisal Subcommittee. Failure to receive said fees by the date specified on the notice will not guarantee the submission of the AMC on the national registry.

[(3)](5) All fees are nonrefundable.

* For those AMC's that meet the federal definition of AMC as defined in 12 U.S.C. 3350(11): an additional \$25 multiplied by the number of appraisers who have performed an appraisal for the AMC in connection with a covered transaction during the *[previous two (2) years]* reporting period shall be remitted.

**Appraisal management companies that are owned and controlled by an insured depository institution as defined in 12 U.S.C. 1813 and regulated by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal

Deposit Insurance Corporation are to remit a check made payable to the Appraisal Subcommittee *[by June 30th of even numbered year]* **no later than the date specified on the notice**. The amount to be remitted shall be determined by multiplying the number of appraisers who have performed an appraisal for the AMC in connection with a covered transaction by twenty-five dollars (\$25) for each *[of the previous two (2) years]* **reporting period**.

AUTHORITY: sections 339.509, 339.513, and 339.525.4, RSMo 2016. This rule originally filed as 4 CSR 245-5.020. Emergency rule filed Dec. 6, 1990, effective Dec. 16, 1990, expired April 14, 1991. Emergency rule filed April 4, 1991, effective April 14, 1991, expired Aug. 11, 1991. Original rule filed Jan. 3, 1991, effective April 29, 1991. For intervening history, please consult the Code of State Regulations. Amended: Filed Nov. 28, 2018.

PUBLIC COST: This proposed amendment will increase revenue for the Appraisal Subcommittee of the Federal Financial Institutions Examination Council by three hundred seventy-five thousand dollars (\$375,000) annually for the life of the rule. The Real Estate Appraisers Commission will not be affected by this proposed amendment.

PRIVATE COST: This proposed amendment will cost private entities three hundred seventy-five thousand dollars (\$375,000) 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 Real Estate Appraisers Commission, PO Box 1335, Jefferson City, MO 65102, by facsimile at (573) 526-3489, or via email at reacom@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 2245 - Missouri Real Estate Appraisers Commission
Chapter 5 - Fees
Proposed Rule - 20 CSR 2245-5.020 Application, Certificate and License Fees**

II. SUMMARY OF FISCAL IMPACT

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Annual Increase in Revenue
Appraisal Subcommittee of the Federal Financial Institutions Examination Council	\$375,000

III. WORKSHEET

See Private Entity Fiscal Note

IV. ASSUMPTION

1. It is anticipated that the total cost will recur for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight

PRIVATE FISCAL NOTE

I. RULE NUMBER

Title 20 - Department of Insurance, Financial Institutions and Professional Registration
 Division 2245 - Missouri Real Estate Appraisers Commission
 Chapter 5 - Fees
 Proposed Rule - 20 CSR 2245-5.020 Application, Certificate and License Fees

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:
2,499	Federal AMC Covered Transactions Estimate: 2499 appraisers each on 6 AMC panels (2499 appraisers x 6 AMCs = \$14,994 x \$25 national registry fee = 374,850	\$ 374,850
1	Appraisal Subcommittee Fee Estimate: 1 appraiser on 6 AMC panels (1 appraiser x 6 AMCs = 6 x \$25 Appraisal Subcommittee Fee = \$150	\$ 150
	Estimated Annual Cost of Compliance for the Life of the Rule	\$ 375,000

III. WORKSHEET

See table above.

IV. ASSUMPTION

1. The above figures are based on the number of licensed appraisers divided by the number of licensed appraisal management company panels.
2. The Federal AMC covered transactions and Appraisal Subcommittee fees are pass through fees determined by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council (ASC). The commission does not establish or retain the fees.
3. It is anticipated that the total cost will recur for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.