

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

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 If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission.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

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

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

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

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

Proposed Amendment Text Reminder:

Boldface text indicates new matter.

[Bracketed text indicates matter being deleted.]

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 197—Board of Therapeutic Massage
Chapter 1—General Rules**

PROPOSED AMENDMENT

4 CSR 197-1.030 Name and Address Changes for Individuals. The board is proposing to amend section (2) delete section (3), renumber the remaining sections and amend the newly renumbered section (4).

PURPOSE: This amendment makes it easier for a licensee to change the legal name with the board office.

(2) A licensee whose name has changed shall *[promptly:]*
[(A) N]notify the board in writing **within thirty (30) days** of the change and provide a copy of the appropriate document *[indicating/authorizing the name change/;].*

[(B) Request from the board a new license bearing the individual's new legal name; and

(C) Return the current license bearing the former name.]

[(3) A licensee may request a replacement wall-hanging certificate by paying the wall-hanging replacement fee.]

[(4)] (3) A licensee whose address has changed from that printed on the license must inform the board, in writing, within thirty (30) days of the effective date of the change.

[(5)](4) Changes in telephone numbers [should] shall also be reported in the same manner as that described for changes in address.

AUTHORITY: sections 324.245, RSMo Supp. 2003 and 324.250, RSMo [Supp. 1999] 2000. Original rule filed Feb. 25, 2000, effective Sept. 30, 2000. Amended: Filed Nov. 26, 2003.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Board of Therapeutic Massage, PO Box 1335, Jefferson City, MO 65102, by facsimile at (573) 751-0735 or via e-mail at massther@mail.state.mo.us. 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 197—Board of Therapeutic Massage
Chapter 1—General Rules**

PROPOSED AMENDMENT

4 CSR 197-1.040 Fees. The board is proposing to amend section (3).

PURPOSE: The Board of Therapeutic Massage is statutorily obligated to enforce and administer the provisions of sections 324.240–324.275, RSMo. Pursuant to section 324.245, RSMo, the board shall by rule and regulation set the amount of fees authorized by section 324.245, RSMo so that the revenue produced is sufficient, but not excessive, to cover the cost and expense to the board for administering the provisions of sections 324.240–324.275, RSMo. This proposed amendment is necessary because the board's fund balance will not allow the board to pay back funds loaned to the board in the initial start up portion of the fiscal years 2000 and 2001 and the projected revenue will not support the expenditures necessary to enforce and administer the provisions of sections 324.240–324.275, RSMo for future years which will result in an endangerment to the health, welfare, and safety of the public. Additionally, subsections (3)(D) and (3)(E) are being deleted pursuant to section 610.026, RSMo which states fees for copying records shall not exceed the actual cost of document search and duplication. Subsections (3)(F), (3)(G), (3)(K), (3)(N), and (3)(P) are being deleted as they are no longer applicable. Subsection (3)(O) is being amended to reflect the actual fees charged by the Missouri State Highway Patrol.

(3) The fees are established as follows:
(A) Business License Fee / \$ 50.00/ \$100.00
(B) Business License Renewal Fee / \$ 50.00/ \$100.00

1. Late Renewal Fee	\$50.00
(C) Certified Mentor Fee	[\$ 50.00] \$100.00
[(D)] Computer Printout Fee (per page)	\$.25]
[(E)] Copy Fee (per page)	\$.25]
[(F)] Duplicate License Fee	\$ 5.00]
[(G)] Endorsement to another Jurisdiction Fee	\$ 15.00]
[(H)] (D) Insufficient Funds Check Charge Fee	\$ 25.00
[(I)] (E) Massage Therapist Application Fee	[\$ 150.00] \$200.00
[(J)] (F) Massage Therapist Renewal Fee	[\$ 150.00] \$200.00
1. Late Renewal Fee 1–30 days	\$ 50.00
2. License Reinstatement Fee 31 days–2 years	\$100.00
3. Late Continuing Education Fee	\$ 50.00
[(K)] Massage Therapist Temporary License Fee	\$ 150.00]
[(L)] (G) Provisional License Application Fee	[\$ 30.00] \$50.00
[(M)] (H) Provisional License [Extension]	
Renewal Fee	[\$ 30.00] \$50.00
[(N)] Wall-Hanging Fee Replacement	\$ 15.00]
[(O)] (I) Criminal Background Check Fee	[\$ 23.00]
Amount to be determined by the Missouri State Highway Patrol	
[(P)] Reciprocity Application Fee	\$ 150.00]
[(Q)] (J) Student License Fee	[\$ 15.00] \$25.00
(K) Education Review Fee	\$25.00

AUTHORITY: sections 324.245, *RSMo Supp. 2003*, 324.247, 324.250, 324.252, 324.265 and 324.267, *RSMo [Supp. 1999] 2000*. Original rule filed Feb. 25, 2000, effective Sept. 30, 2000. Amended: Filed Nov. 26, 2003.

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

PRIVATE COST: This proposed amendment will cost private entities an estimated five thousand six hundred eighty dollars (\$5,680) annually for the life of the rule. It is anticipated that the increase will recur for the life of the rule, may vary with inflation and is expected to increase annually at the rate projected by the Legislative Oversight Committee. A detailed fiscal note, which estimates the cost of compliance with this rule, has been filed with the secretary of state.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Board of Therapeutic Massage, PO Box 1335, Jefferson City, MO 65102, by facsimile at (573) 751-0735 or via e-mail at massther@mail.state.mo.us. 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.

PRIVATE ENTITY FISCAL NOTE

I. RULE NUMBER

Title 4 -Department of Economic Development

Division: 197 - Missouri Board of Therapeutic Massage

Chapter 1 - General Rules

Proposed Amendment - 4 CSR 197-1.040

Prepared August 8, 2003 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Estimate the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by type of the business entities which would likely be affected:	Estimated cost of compliance with the rule by affected entities:
543	Students (Student License Fee Increase @ \$10)	\$5,430.00
5	Certified Mentors (Certified Mentor Fee Increase @ \$50)	\$250.00
Estimated Annual Cost of Compliance for the Life of the Rule		\$5,680.00

III. WORKSHEET

See table above.

IV. ASSUMPTION

1. The original fiscal notes estimating the costs of the student and certified mentor licenses were filed with the Secretary of States Office on February 25, 2000 with 4 CSR 197-2.040 Student License and 4 CSR 197-4.010 Certified Mentor.
2. The board has been issuing student licenses for 3 full fiscal years. The above estimates are based on an average of the 3 years student licenses and 5 certified mentor licenses have been issued.
3. All other costs associated with the fee increases are reflected in the fiscal note associated with changes made to the substantive rule.
4. The total annual 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.

NOTE: The board is statutorily obligated to enforce and administer the provisions of sections 324.240-324.275, RSMo. Pursuant to Section 324.245, RSMo, the board shall by rule and regulation set the amount of fees authorized by sections 324.240-324.275, RSMo so that the revenue produced is sufficient, but not excessive, to cover the cost and expense to the board for administering the provisions of sections 324.240-324.275, RSMo. This proposed amendment is necessary because the board's projected revenue will not support the expenditures necessary to enforce and administer the provisions of sections 324.240-324.275, RSMo, which will result in an endangerment to the health, welfare, and safety of the public.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 197—Board of Therapeutic Massage
Chapter 2—Massage Therapist Licensure Requirements**

PROPOSED AMENDMENT

4 CSR 197-2.010 Application for Licensure. The board is proposing to amend sections (1), (2) and (4) and adding a new section (5).

PURPOSE: This amendment expands accessibility to massage therapy programs and course work to include area vocational technical programs, board approved mentorships, colleges and universities. This amendment also outlines the procedure for an education review.

(1) A person who has completed massage therapy studies consisting of at least five hundred (500) clock hours of supervised instruction in a Coordinating Board of Higher Education (CBHE) certified school, **Missouri Department of Elementary and Secondary Education (DESE) approved vocational program or school, or school, college, university, or other institution of higher learning in the United States accredited by a regional accrediting commission recognized by the United States Department of Education** or an equivalent approving body for out-of-state applicants, shall be at least eighteen (18) years of age and shall submit or cause to be submitted:

(C) An official final transcript showing successful completion of the program to be submitted directly to the board office from the massage therapy program which includes:

1. The applicant's name;
2. Date of enrollment;
3. Date of completion; and

4. Documentation that the massage therapy program consisted of at least five hundred (500) clock hours of supervised instruction which consisted of:

A. Three hundred (300) clock hours dedicated to massage theory and practice techniques provided by an instructor(s) who has practiced professionally for at least two (2) years and who is licensed or meets the qualifications for licensure as a massage therapist in the state of Missouri;

B. One hundred (100) clock hours dedicated to the study of anatomy and physiology provided by an instructor(s) who holds a bachelor's degree/minor in a healthcare related field including but not limited to the fields of physical therapy, chiropractic, osteopathy, medical doctor, physician assistant, nursing, etc. or a bachelor's degree/minor in a field related to anatomy and physiology including but not limited to biology, chemistry, health, microbiology, medicine, etc.;

C. Fifty (50) clock hours dedicated to business practice, professional ethics, hygiene and massage law in the state of Missouri provided by an instructor who demonstrates documentable experience/education in a related field; and

D. Fifty (50) clock hours dedicated to ancillary therapies provided by an instructor(s) who demonstrates *[documentable]* **documented** experience/education in a related field. The fifty (50) clock hours shall include but not be limited to cardiopulmonary resuscitation (CPR) and first aid which shall be provided by an instructor who holds the respective instructor certification; *[and]*

(D) Evidence of passing an examination from one of the following:

1. The National Certification Board of Therapeutic Massage and Bodywork (NCBTMB); or
2. The National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM); or
3. An examination deemed appropriate by the board./; and

(E) An applicant completing a massage therapy program consisting of less than five hundred (500) hours of supervised instruction from a Missouri Coordinating Board of Higher

Education (CBHE) approved school, Missouri Department of Elementary and Secondary Education (DESE) approved vocational program or school, college, university, or other institution of higher learning in the United States accredited by a regional accrediting commission recognized by the United States Department of Education or an equivalent approving agency for out-of-state schools, or who has completed a massage therapy program deficient in clock hours according to 4 CSR 197-2.010(1)(C)4.A.–D. may complete deficiencies at either a Missouri CBHE approved school, DESE approved vocational program, mentorship approved by the board, or school, college, university, or other institution of higher learning in the United States accredited by a regional accrediting commission recognized by the United States Department of Education, or an out-of-state school approved by an agency equivalent to CBHE.

(2) A person who has completed five hundred (500) clock hours in an apprenticeship with a certified mentor and has successfully passed an examination approved by the board shall be at least eighteen (18) years of age and shall submit or cause to be submitted:

(C) Official evidence of completing five hundred (500) clock hours of massage therapy training in an apprenticeship with a certified mentor which includes:

1. The applicant name;
2. Date of enrollment;
3. Date of completion;

4. Documentation that the mentorship program consisted of at least five hundred (500) clock hours of supervised instruction which consisted of:

A. Three hundred (300) clock hours dedicated to massage theory and practice techniques provided directly by the certified mentor;

B. One hundred (100) clock hours dedicated to the study of anatomy and physiology provided by an instructor(s) who holds a bachelor's degree/minor in a healthcare related field including but not limited to the fields of physical therapy, chiropractic, osteopathy, medical doctor, physician assistant, nursing, etc. or a bachelor's degree/minor in a field related to anatomy and physiology including but not limited to biology, chemistry, health, microbiology, medicine, etc.;

C. Fifty (50) clock hours dedicated to business practice, professional ethics, hygiene and massage law in the state of Missouri provided by an instructor(s) who demonstrates *[documentable]* **documented** experience/education in a related field; and

D. Fifty (50) clock hours dedicated to ancillary therapies provided by an instructor(s) who demonstrates *[documentable]* **documented** experience/education in a related field. The fifty (50) clock hours shall include but not be limited to cardiopulmonary resuscitation (CPR) and first aid which shall be provided by an instructor who holds the respective instructor certification; and

(4) Temporary Two (2)-Year License.

(C) During the temporary two (2)-year license period the licensee shall complete at least one hundred (100) additional clock hours of formal training approved by the board and shall:

1. Cause an official final transcript to be submitted directly to the board office from the approved massage therapy school, **Missouri Department of Elementary and Secondary Education (DESE) approved vocational program or school, mentorship approved by the board, or school, college, university, or other institution of higher learning in the United States which, at the time the applicant was enrolled, was accredited by a regional accrediting commission recognized by the United States Department of Education** which includes:

- A. The applicant's name;
- B. Date of enrollment;
- C. Date of completion; and

D. Evidence that one hundred (100) clock hours of formal training included at least twenty-five (25) clock hours in anatomy and physiology.

(5) Educational Review.

(A) The board may review a person's educational credentials prior to application for licensure upon receiving a written request to the board. The person requesting the education review shall be responsible for providing official transcripts and paying the required fee.

AUTHORITY: sections 324.240, 324.265, 324.267 and 324.270, RSMo [Supp. 1999] 2000, 324.243 and 324.245, RSMo Supp. 2003. Original rule filed Feb. 25, 2000, effective Sept. 30, 2000. Amended: Filed Nov. 26, 2003.

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions an estimated increase of eighteen dollars and thirty-seven cents (\$18.37) annually for the life of the rule. It is anticipated that the increase will recur for the life of the rule, may vary with inflation and is expected to increase annually at the rate projected by the Legislative Oversight Committee. A detailed fiscal note, which estimates the cost of compliance with this rule, has been filed with the secretary of state.

PRIVATE COST: This proposed amendment will cost private entities an estimated increase of eighteen thousand four hundred forty-three dollars and eighty-one cents (\$18,443.81) annually for the life of the rule. It is anticipated that the increase will recur for the life of the rule, may vary with inflation and is expected to increase annually at the rate projected by the Legislative Oversight Committee. A detailed fiscal note, which estimates the cost of compliance with this rule, has been filed with the secretary of state.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Board of Therapeutic Massage, PO Box 1335, Jefferson City, MO 65102, by facsimile at (573) 751-0735 or via e-mail at massther@mail.state.mo.us. 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 ENTITY FISCAL NOTE

I. RULE NUMBER

Title 4 -Department of Economic Development
Division 197 - Application for Licensure
Chapter 2 - Massage Therapist Licensure Requirements
Proposed Amendment - 4 CSR 197-2.010 Application for Licensure
 Prepared August 8, 2003 by the Division of Professional Registration

Affected Agency or Political Subdivision	Estimated Cost of Compliance
Board of Therapeutic Massage	\$18.37
Total Annual Cost of Compliance for the Life of the Rule	
	\$18.37

III. WORKSHEET

IV. ASSUMPTIONS

1. The number of individuals by class are based on actual figures from FY03 and projected figures in FY04. The board estimates 10 education reviews will be conducted annually.

2. Calculation of Expense & Equipment and Personal Services Costs:

The salary for the Executive Director is shared with four (4) other boards. The figures below represent the personal service costs supported by the Board of Therapeutic Massage.

Employee's salaries were calculated using their annual salary multiplied by 40.47% for fringe benefits and then were divided by 2080 hours per year to determine the hourly salary. The hourly salary was then divided by 60 minutes to determine the cost per minute. The cost per minute was then multiplied by the amount of time individual staff spent on the processing of applications or renewals. The total cost was based on the cost per application multiplied by the estimated number of applications or renewals.

STAFF	ANNUAL SALARY	SALARY TO INCLUDE FRINGE BENEFIT	HOURLY SALARY	COST PER MINUTE	TIME PER APPLICATION	COST PER APPLICATION	TOTAL COST
Executive Director	\$8,215.20	\$11,539.89	\$5.55	\$0.09	15	\$1.39	\$13.87
							\$13.87

It is estimated that the following staff time will be devoted on each educational review request for the following duties:

Executive Director - Applications for content and instructor approval from the Department of Elementary and Secondary Education will be reviewed by the executive director and sent to the board's educational subcommittee for review - 5 minutes

Educational Subcommittee - The Educational Subcommittee of the board is comprised of 3 board members. The subcommittee will be responsible for the prespective applicant's educational review. Members of the board/subcommittee do not receive per diem. The board estimates it will cost \$4.50 annually to mail the educational review documentation to members of the committee.

Expense and Equipment Costs (postage for mailing packets to members of the subcommittee)	\$4.50
Personal Service Cost (Executive Director time for preparing reviews for mailing to subcommittee)	\$13.87
Total Expense and Equipment and Personal Service Cost for Board Staff	\$18.37

3. The total annual 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.

NOTE: The public fiscal note for this rule only reflects the cost for this particular process. However, private entity fees are set at an amount to cover the total actual cost incurred by the board, which includes personal service, expense and equipment and transfers.

PRIVATE ENTITY FISCAL NOTE

I. RULE NUMBER**Title 4 -Department of Economic Development****Division: 197 - Missouri Board of Therapeutic Massage****Chapter 2 - Massage Therapist Licensure Requirements****Proposed Rule - 4 CSR 197-2.010 Application for Licensure**

Prepared August 8, 2003 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Estimate the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by type of the business entities which would likely be affected:	Estimated cost of compliance with the rule by affected entities:
225	Applicants (Massage Therapy Application - Increase @ \$50)	\$11,250.00
10	Perspective Applicants (Education Review @ \$25)	\$250.00
13	Perspective Applicants (Postage @ \$.37)	\$4.81
13	Perspective Applicants (Transcript @ \$3.00)	\$39.00
3 @ 200 hours	Perspective Applicants (Program Hour \$11.50 per hour)	\$6,900.00
	Estimated Annual Cost of Compliance for the Life of the Rule	\$18,443.81

III. WORKSHEET

See table above.

IV. ASSUMPTION

1. In fiscal year 2003 the board issued 289 licenses to massage therapists. Given the number of provisionally licensed massage therapists and applicants from other states the board estimates it will issue 225 original licenses per fiscal year.
2. The board has received requests from perspective applicants to review the curriculum of a massage therapy program. Based upon the review of closed session minutes regarding credentials of perspective applicants the board estimates it will conduct at least 10 education reviews each fiscal year.
3. The costs for postage and transcripts are based upon current costs to send a letter first class mail and an average cost of a transcript. The total costs include education review and documenting additional course work completed toward the 500 hour requirement.

4. The board has reviewed nearly 100 massage therapy education programs from other states with the vast majority meeting Missouri's requirements in both minimum number of hours and content. An applicant licensed by the State of Texas, for example, must complete 300 hours of massage therapy education from an approved program to meet the minimum educational requirements in that state. The board estimates it has reviewed at least 3 applications from Texas licensees with the 200 hour program deficiency noted. It must be underscored that the number of hours composing out of state programs varies and that most contemporary programs either meet or exceed Missouri's requirements. The range to comply with educational requirements could be less than \$50 to complete 3 program hours to \$2,300 to complete 200 hours. The cost estimate is based upon the average per program hour charge of Missouri approved programs.

5. The total annual 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.

NOTE: The board is statutorily obligated to enforce and administer the provisions of sections 324.240-324.275, RSMo. Pursuant to Section 324.245, RSMo, the board shall by rule and regulation set the amount of fees authorized by sections 324.240-324.275, RSMo so that the revenue produced is sufficient, but not excessive, to cover the cost and expense to the board for administering the provisions of sections 324.240-324.275, RSMo. This proposed amendment is necessary because the board's projected revenue will not support the expenditures necessary to enforce and administer the provisions of sections 324.240-324.275, RSMo, which will result in an endangerment to the health, welfare, and safety of the public.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 197—Board of Therapeutic Massage
Chapter 2—Massage Therapist Licensure Requirements**

PROPOSED AMENDMENT

4 CSR 197-2.030 Provisional License. The board is proposing to amend sections (2) and (3).

PURPOSE: This amendment changes the amount of time that a massage therapist shall be provisionally licensed and outlines the process to renew a provisional license.

(2) A provisional license is valid for *[sixty (60)]* **ninety (90)** days **from the date of issuance**. Upon expiration of a provisional license the licensee shall no longer engage in the practice of massage therapy.

(3) *[A provisional license may be renewed once at the discretion of the board.]* **A provisional license may be renewed for an additional ninety (90) days from the date of expiration at the discretion of the board. To renew a provisional license the applicant must complete an application and pay the required fee.**

AUTHORITY: sections 324.245, RSMo Supp. 2003 and 324.265, RSMo [Supp. 1999] 2000. Original rule filed Feb. 25, 2000, effective Sept. 30, 2000. Amended: Filed Nov. 26, 2003.

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

PRIVATE COST: This proposed amendment will cost private entities an estimated four thousand two hundred dollars (\$4,200) annually for the life of the rule. It is anticipated that the increase will recur for the life of the rule, may vary with inflation and is expected to increase annually at the rate projected by the Legislative Oversight Committee. A detailed fiscal note, which estimates the cost of compliance with this rule, has been filed with the secretary of state.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Board of Therapeutic Massage, PO Box 1335, Jefferson City, MO 65102, by facsimile at (573) 751-0735 or via e-mail at massther@mail.state.mo.us. 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.*

PRIVATE ENTITY FISCAL NOTE

I. RULE NUMBER

Title 4 -Department of Economic Development

Division: 197 - Missouri Board of Therapeutic Massage

Chapter 2 - Massage Therapist Licensure Requirements

Proposed Rule - 4 CSR 197-2.030 Provisional License

Prepared August 8, 2003 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Estimate the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by type of the business entities which would likely be affected:	Estimated cost of compliance with the rule by affected entities:
200	Applicants (Provisional License Application - Increase \$20)	\$4,000.00
10	Applicants (Provisional License Renewal - Increase \$20)	\$200.00
	Estimated Annual Cost of Compliance for the Life of the Rule	\$4,200.00

III. WORKSHEET

See table above.

IV. ASSUMPTION

1. It is estimated the board will issue 200 provisional licenses based upon FY 2002 applications approved.
2. This issuance of a renewed provisional license will likely be the result of an licensee failing to pass the national examination. The number of candidates failing the exam is confidential information maintained by the testing service and not reported to the board. Therefore, the number of renewed provisional licenses is an estimate.
3. The total annual 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.

NOTE: The board is statutorily obligated to enforce and administer the provisions of sections 324.240-324.275, RSMo. Pursuant to Section 324.245, RSMo, the board shall by rule and regulation set the amount of fees authorized by sections 324.240-324.275, RSMo so that the revenue produced is sufficient, but not excessive, to cover the cost and expense to the board for administering the provisions of sections 324.240-324.275, RSMo. This proposed amendment is necessary because the board's projected revenue will not support the expenditures necessary to enforce and administer the provisions of sections 324.240-324.275, RSMo, which will result in an endangerment to the health, welfare, and safety of the public.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 197—Board of Therapeutic Massage
Chapter 2—Massage Therapist Licensure Requirements**

PROPOSED AMENDMENT

4 CSR 197-2.050 License Renewal. The board is proposing to add new language in subsection (1)(A), amend section (5), and add new sections (6) and (7).

PURPOSE: This amendment adds language to allow a licensee to submit a late fee for continuing education and obtain the continuing education within thirty (30) days of the expiration of the license and adds language regarding the process to renew and reinstate an expired license based upon the number of days from the expiration the license has lapsed.

(1) Each licensee who holds a license pursuant to sections 324.240 to 324.275, RSMo shall complete, during the two (2)-year license period prior to renewal, as a condition of the license renewal, twelve (12) clock hours of continuing education relevant to the practice of massage therapy which shall include universal precautions/infection control and cardiopulmonary resuscitation (CPR) certification.

(A) Continuing education credits earned after the expiration date of a license may apply to the previous renewal cycle if the licensee pays the continuing education late fee as defined in 4 CSR 197-1.040(3)(F)3. and documents completion of the continuing education as required by 4 CSR 197-2.050(1). Payment of the continuing education late fee will entitle a licensee to earn continuing education credits for the previous year. Such hours shall be completed no later than thirty (30) days from the expiration date of the license.

(5) [Receipt of the application for renewal after the expiration date of the license shall cause the license to become not current and a licensee who continues to practice without a valid license shall be deemed to be practicing in violation of sections 324.240 to 324.275, RSMo and subject to the penalties contained therein.] The license of a massage therapist that is not renewed by the expiration date shall lapse and become not current. A person may renew the lapsed license by completing the renewal form and paying the required renewal and late fees as defined in 4 CSR 197-1.040(3)(F) and (3)(F)1. within thirty (30) days of the expiration date. The lapsed licensee shall not provide massage therapy until filing the renewal form and paying the required fees.

(6) A licensed massage therapist may request reinstatement of a license up to two (2) years from the expiration date by completing the required reinstatement application, paying the required fees as defined in 4 CSR 197-1.040(3)(F) and (3)(F)2. and document completion of the continuing education as required by 4 CSR 197-2.050(1). If the massage therapist fails to reinstate a license within two (2) years of the expiration date, the former licensee must submit an application for licensure, pay the required fee, and comply with the current requirements for licensure.

(7) A massage therapist with a lapsed license, as provided in this rule, may be reinstated at the sole discretion of the board upon payment of the required fee and submitting the required application.

AUTHORITY: sections 324.245, RSMo Supp. 2003, 324.262 and 324.265, RSMo [Supp. 1999] 2000. Original rule filed Feb. 25, 2000, effective Sept. 30, 2000. Amended: Filed Nov. 26, 2003.

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

PRIVATE COST: This proposed amendment will cost private entities an estimated increase of sixty-six thousand five hundred fourteen dollars and eighty cents (\$66,514.80) biennially for the life of the rule. It is anticipated that the increase 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. A detailed fiscal note, which estimates the cost of compliance with this rule, has been filed with the secretary of state.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Board of Therapeutic Massage, PO Box 1335, Jefferson City, MO 65102, by facsimile at (573) 751-0735 or via e-mail at massther@mail.state.mo.us. 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.

PRIVATE ENTITY FISCAL NOTE

I. RULE NUMBER

Title 4 -Department of Economic Development

Division: 197 - Missouri Board of Therapeutic Massage

Chapter 2 - Massage Therapist Licensure Requirements

Proposed Rule - 4 CSR 197-2.050 License Renewal

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:
1300	Licensees (Renewal Fee Increase \$50)	\$65,000.00
20 Requests	Licensees (Late Fee 1-30 Days \$25)	\$500.00
10 Requests	Licensees (Late Fee 31 Days-2 Years \$50)	\$500.00
10 Requests	Licensees (Late Continuing Education Fee \$50)	\$500.00
40 Requests	Licensees (Postage for Late Fee Requests \$.37)	\$14.80
Estimated Biennial Cost of Compliance for the Life of the Rule		\$66,514.80

III. WORKSHEET

See table above.

IV. ASSUMPTION

1. In fiscal year 2003, 1,300 licenses were renewed.
2. The board estimates it will receive at least 20 requests to reinstate the license within 30 days of the expiration date.
3. The board estimates it will receive at least 10 requests to reinstate the license up to 2 years from the expiration date.
4. The board estimates it will receive at least 10 requests to obtain continuing education for the current renewal cycle within 30 days of the expiration date of the license.
5. The postage estimate is for all requests relating to paying a late fee.
6. The total annual 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.

NOTE:

The board is statutorily obligated to enforce and administer the provisions of sections 324.240-324.275, RSMo. Pursuant to Section 324.245, RSMo, the board shall by rule and regulation set the amount of fees authorized by sections 324.240-324.275, RSMo so that the revenue produced is sufficient, but not excessive, to cover the cost and expense to the board for administering the provisions of sections 324.240-324.275, RSMo. This proposed amendment is necessary because the board's projected revenue will not support the expenditures necessary to enforce and administer the provisions of sections 324.240-324.275, RSMo, which will result in an endangerment to the health, welfare, and safety of the public.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 197—Board of Therapeutic Massage
Chapter 3—Standards of Practice**

PROPOSED AMENDMENT

4 CSR 197-3.010 Standards of Practice. The board is proposing to add subsection (4)(B) to clarify the licensee's responsibility for client/patient records.

PURPOSE: This amendment clarifies the licensee's responsibility for maintaining client/patient records.

(4) Confidentiality of Clients.

(B) Client records for massage therapy services not provided at a licensed massage therapy business shall be maintained by the licensed massage therapist.

AUTHORITY: sections 324.245, *RSMo Supp. 2003* and 324.262, *RSMo [Supp. 1999] 2000*. Original rule filed Feb. 25, 2000, effective Sept. 30, 2000. Amended: Filed Nov. 26, 2003.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Board of Therapeutic Massage, PO Box 1335, Jefferson City, MO 65102, by facsimile at (573) 751-0735 or via e-mail at massther@mail.state.mo.us. 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 197—Board of Therapeutic Massage
Chapter 5—Massage Therapy Business Requirements**

PROPOSED AMENDMENT

4 CSR 197-5.010 Massage Therapy Business—Survey Inspections. The board is proposing to amend subsections (1)(G) and (1)(H).

PURPOSE: This proposed amendment clarifies who is responsible for maintaining client/patient records and clarifies the requirement that a massage therapy business maintain proof of general liability insurance.

(1) Each massage therapy business owner or manager shall:

(G) Be responsible for maintaining client records for at least three (3) years. This includes safeguarding verbal and written confidential information of the client, unless disclosure is required by law, court order, or authorized by the client. **Client records for massage therapy services not provided at a licensed massage therapy business shall be maintained by the licensed massage therapist;**

(H) *[Maintain professional liability insurance; a copy of which shall be available on the premises;]* **Shall maintain proof that the massage therapy business location or premises has current general liability insurance;**

AUTHORITY: sections 324.240, 324.247, 324.250, 324.252, 324.255, 324.257 and 324.260, *RSMo [Supp. 1999] 2000* and

324.245, *RSMo Supp. 2003*. Original rule filed Feb. 25, 2000, effective Sept. 30, 2000. Amended: Filed Nov. 26, 2003.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Board of Therapeutic Massage, PO Box 1335, Jefferson City, MO 65102, by facsimile at (573) 751-0735 or via e-mail at massther@mail.state.mo.us. 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 197—Board of Therapeutic Massage
Chapter 5—Massage Therapy Business Requirements**

PROPOSED AMENDMENT

4 CSR 197-5.020 Issuance of an Original Business License. The board is proposing to delete section (2) and renumber the remaining sections.

PURPOSE: This amendment removes language that is not applicable or enforceable regarding massage therapy business inspections.

[(2) Six (6) months from the effective date of this rule no massage therapy business shall practice without a business license issued by the board.]

[(3)](2) A massage therapist may not practice massage therapy at a site, location, or place which is not duly licensed as a massage therapy business, except at the residence or location provided by the client, at a health fair, sports event, trade show or healthcare facility.

[(4)](3) The license is valid only for the premises located at the address provided in the initial application for the massage therapy business.

[(5)](4) Massage practiced in the home shall be in an area used only for massage therapy or for clinical or other health related purposes and shall have lavatory facilities.

[(6)](5) A person applying for a business license shall be at least eighteen (18) years of age and shall submit:

(A) A completed notarized application and application fee.

[(7)](6) A survey inspection shall be completed and on file with the board prior to the issuance of a business license.

[(8)](7) The board may conduct any survey inspection, as they deem appropriate during normal business hours.

[(9)](8) Refusal to permit a survey inspection shall constitute valid grounds for denial of licensure or renewal of license.

[(10)](9) The business license shall be displayed in a conspicuous place on the premises of the licensed massage therapy business.

[(11)](10) Upon completion of each board survey inspection, a written report shall be prepared with respect to the massage therapy business's compliance or noncompliance with the provisions of sections

324.240 to 324.275, RSMo and the rules of this Chapter and the deficiencies found.

[(12)](11) A copy of the survey report and the list of deficiencies found shall be sent to the massage therapy business within fifteen (15) days following the survey inspection. The list of deficiencies shall specifically state the statute or rule which the massage therapy business is alleged to have violated.

[(13)](12) Within thirty (30) days of receipt of the report the board must receive a plan of correction from the business owner or manager to include time necessary for compliance.

[(14)](13) After thirty (30) days, if the massage therapy business does not acknowledge the deficiencies, file an acceptable plan of correction with the board, or complete an acceptable plan of correction, the board may file a complaint with the Administrative Hearing Commission.

[(15)](14) The board may conduct follow-up survey inspections.

[(16)](15) A massage therapy business shall not operate or advertise using a name other than the name under which the business license was issued.

AUTHORITY: sections 324.240, 324.247, 324.250, 324.252, 324.255, 324.257 and 324.260, RSMo [Supp. 1999] 2000 and 324.245, RSMo Supp. 2003. Original rule filed Feb. 25, 2000, effective Sept. 30, 2000. Amended: Filed Nov. 26, 2003.

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

PRIVATE COST: This proposed amendment will cost private entities an estimated increase of five thousand dollars (\$5,000) annually for the life of the rule. It is anticipated that the increase will recur for the life of the rule, may vary with inflation and is expected to increase annually at the rate projected by the Legislative Oversight Committee. A detailed fiscal note, which estimates the cost of compliance with this rule, has been filed with the secretary of state.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Board of Therapeutic Massage, PO Box 1335, Jefferson City, MO 65102, by facsimile at (573) 751-0735 or via e-mail at massther@mail.state.mo.us. 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.

PRIVATE ENTITY FISCAL NOTE

I. RULE NUMBER

Title 4 -Department of Economic Development

Division: 197 - Missouri Board of Therapeutic Massage

Chapter 5 - Massage Therapy Business Requirements

Proposed Rule - 4 CSR 197-5.020 Issuance of an Original Business License

Prepared August 8, 2003 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Estimate the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by type of the business entities which would likely be affected:	Estimated cost of compliance with the rule by affected entities:
100	Business License Application Fee Increase \$50	\$5,000.00
	Estimated Annual Cost of Compliance for the Life of the Rule	\$5,000.00

III. WORKSHEET

See table above.

IV. ASSUMPTION

1. In fiscal year 2003 the board issued 288 business licenses and completed a renewal cycle and the figure is less than annual estimate. It is important to note that more allied practitioners and professions are becoming familiar with the requirements. As a result, the board estimates the number of new applications will stabilize in the next year and as a result fewer new applications are anticipated than in FY 2003.
2. The total annual 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.

NOTE: The board is statutorily obligated to enforce and administer the provisions of sections 324.240-324.275, RSMo. Pursuant to Section 324.245, RSMo, the board shall by rule and regulation set the amount of fees authorized by sections 324.240-324.275, RSMo so that the revenue produced is sufficient, but not excessive, to cover the cost and expense to the board for administering the provisions of sections 324.240-324.275, RSMo. This proposed amendment is necessary because the board's projected revenue will not support the expenditures necessary to enforce and administer the provisions of sections 324.240-324.275, RSMo, which will result in an endangerment to the health, welfare, and safety of the public.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 197—Board of Therapeutic Massage
Chapter 5—Massage Therapy Business Requirements**

PROPOSED AMENDMENT

4 CSR 197-5.030 Massage Therapy Business—Change of Name, Ownership or Location. The board is proposing to amend section (1)–(3) and add section (6).

PURPOSE: This proposed amendment clarifies requirements for changing the name of a massage therapy business and applying for a new license if the business is sold or management changes; clarifies settings that are considered exempted from massage therapy business licensure; and specifies how an expired license can be reinstated.

[(1) Change of a Massage Therapy Business Name.]

[(A)] (1) At least thirty (30) days prior to a proposed name change, [T]the massage therapy business owner shall notify the board of the proposed name change in writing prior to changing the business name or before revising any printing materials or advertisements.

[(B) A duplicate license fee shall be submitted to the board along with written notification of the change of name at least thirty (30) days prior to the proposed change.]

[(C)] (A) The license reflecting the name change shall replace the original license and be displayed in a conspicuous place on the premises of the licensed massage therapy business.

[(2) Change of a Massage Therapy Business Address.]

[(A)](2) The massage therapy business owner shall submit a new application, fee and a new license will be obtained for a new location. [The old license shall be voided.]

[(3) Change of Ownership.]

[(A)](3) When a massage therapy business is sold or ownership or management is transferred, or the corporate legal organization status is substantially changed, [the license of the massage therapy business shall be void and a new license obtained.] the massage therapy business owner shall apply for a license by submitting an application and paying the required application fee. The previous license shall be void.

(6) A massage therapist shall not practice massage therapy at a site, location, or place that is not licensed as a massage therapy business, except at the residence, or location provided by the client, health fair, sports event, trade show or healthcare facility. For the purpose of this rule a health care facility shall be defined pursuant to section 197.366, RSMo.

AUTHORITY: sections 324.240, 324.247, 324.250, 324.252, 324.255, 324.257, 324.260 and 324.262, RSMo [Supp. 1999] 2000 and 324.245, RSMo Supp. 2003. Original rule filed Feb. 25, 2000, effective Sept. 30, 2000. Amended: Filed Nov. 26, 2003.

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

PRIVATE COST: This proposed amendment will cost private entities an estimated increase of five hundred seven dollars and forty cents (\$507.40) annually for the life of the rule. It is anticipated that the increase will recur for the life of the rule, may vary with inflation and is expected to increase annually at the rate projected by the Legislative Oversight Committee. A detailed fiscal note, which estimates the cost of compliance with this rule, has been filed with the secretary of state.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Board of Therapeutic Massage, PO Box 1335, Jefferson City, MO 65102, by facsimile at (573) 751-0735 or via e-mail at massther@mail.state.mo.us. 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.

PRIVATE ENTITY FISCAL NOTE

I. RULE NUMBER

Title 4 -Department of Economic Development

Division: 197 - Missouri Board of Therapeutic Massage

Chapter 5 - Massage Therapy Business Requirements

Proposed Rule - 4 CSR 197-5.030 Massage Therapy Business-Change of Name, Ownership or Location

Prepared August 8, 2003 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Estimate the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by type of the business entities which would likely be affected:	Estimated cost of compliance with the rule by affected entities:
20	Postage for Name Change .37	\$7.40
5	Business Applicants (Application Fee - Change Location \$50 Increase)	\$250.00
5	Business Applicants (Business Application Fee -Change Ownership/Management \$50 Increase)	\$250.00
	Estimated Annual Cost of Compliance for the Life of the Rule	\$507.40

III. WORKSHEET

See table above.

IV. ASSUMPTION

1. The postage is for all applications received regarding change of location or ownership.
2. The board estimates it will receive a total of ten (10) applications due to a new location or a business and change of ownership.
3. The total annual 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.

NOTE: The board is statutorily obligated to enforce and administer the provisions of sections 324.240-324.275, RSMo. Pursuant to Section 324.245, RSMo, the board shall by rule and regulation set the amount of fees authorized by sections 324.240-324.275, RSMo so that the revenue produced is sufficient, but not excessive, to cover the cost and expense to the board for administering the provisions of sections 324.240-324.275, RSMo. This proposed amendment is necessary because the board's projected revenue will not support the expenditures necessary to enforce and administer the provisions of sections 324.240-324.275, RSMo, which will result in an endangerment to the health, welfare, and safety of the public.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 197—Board of Therapeutic Massage
Chapter 5—Massage Therapy Business Requirements**

PROPOSED AMENDMENT

4 CSR 197-5.040 Massage Therapy Business License Renewal.
The board is proposing to amend section (4) and add new sections (5) and (6).

PURPOSE: This amendment specifies procedures for a massage therapist to reinstate an expired license.

(4) *[Receipt of the application for renewal after the expiration date of the license shall cause the license to become not current and a business that continues to operate without a valid license shall be deemed to be operating in violation of sections 324.240 to 324.275, RSMo and subject to the penalties contained therein.] The license of a massage therapy business that is not renewed by the expiration date shall lapse and become not current. A massage therapy business license that has lapsed may be renewed by completing the renewal form and paying the required renewal and late fees as defined in 4 CSR 197-1.040(3)(B)1. within thirty (30) days of the expiration date. A massage therapy business shall not offer massage therapy until filing the renewal form and paying the required fees.*

(5) **If a license is not renewed within thirty (30) days of the expiration date, the lapsed licensee shall submit an application, required fee, and submit to a reinspection before a license will be reinstated.**

(6) **A massage therapy business with a lapsed license, as provided in this rule, may be reinstated at the sole discretion of the board upon payment of the required fee and submitting the required application.**

AUTHORITY: sections 324.250, 324.255, 324.257, 324.260 and 324.262, RSMo [Supp. 1999] 2000 and 324.245, RSMo Supp. 2003. Original rule filed Feb. 25, 2000, effective Sept. 30, 2000. Amended: Filed Nov. 26, 2003.

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

PRIVATE COST: This proposed amendment will cost private entities an estimated increase of thirty-one thousand seven dollars and forty cents (\$31,007.40) biennially for the life of the rule. It is anticipated that the increase 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. A detailed fiscal note, which estimates the cost of compliance with this rule, has been filed with the secretary of state.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Board of Therapeutic Massage, PO Box 1335, Jefferson City, MO 65102, by facsimile at (573) 751-0735 or via e-mail at massther@mail.state.mo.us. 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.*

PRIVATE ENTITY FISCAL NOTE

I. RULE NUMBER

Title 4 -Department of Economic Development

Division: 197 - Missouri Board of Therapeutic Massage

Chapter 5 - Massage Therapy Business Requirements

Proposed Rule - 4 CSR 197-5.040 Massage Therapy Business License Renewal

Prepared August 1, 2003 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Estimate the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by type of the business entities which would likely be affected:	Estimated cost of compliance with the rule by affected entities:
600	Business Renewal Fee Increase of \$50	\$30,000.00
20	Business License Late Fee \$50	\$1,000.00
20	Postage for Mailing Late Fee \$.37	\$7.40
	Estimated Biennial Cost of Compliance for the Life of the Rule	\$31,007.40

III. WORKSHEET

See table above.

IV. ASSUMPTION

1. During the renewal cycle of 2003, there were 311 massage therapy business licenses renewed. Considering the 100 new applications per year and business licenses issued to date the board estimates it will renew 600 business licenses per year.
2. The board estimates it will receive 20 requests to reinstate the massage therapy business license per biennial renewal cycle.
3. The total annual 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.

NOTE: The board is statutorily obligated to enforce and administer the provisions of sections 324.240-324.275, RSMo. Pursuant to Section 324.245, RSMo, the board shall by rule and regulation set the amount of fees authorized by sections 324.240-324.275, RSMo so that the revenue produced is sufficient, but not excessive, to cover the cost and expense to the board for administering the provisions of sections 324.240-324.275, RSMo. This proposed amendment is necessary because the board's projected revenue will not support the expenditures necessary to enforce and administer the provisions of sections 324.240-324.275, RSMo, which will result in an endangerment to the health, welfare, and safety of the public.

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

PROPOSED AMENDMENT

11 CSR 70-2.120 Retail Licensees. The director is deleting the current section (7) and replacing it with a new section (7) and deleting the forms that follow this rule in the *Code of State Regulations*.

PURPOSE: This amendment will clarify the language by providing specific information to control the noise levels in areas of licensed premises.

[(7) The use by the licensee of any public speaking system transmitter, sound device or any other type of device, mechanical or electric to emit and direct music, spoken words, sounds or noise of any kind either from the inside or outside of the permitted premises to the sidewalks, streets or areas joining the licensed premises is prohibited.]

(7) No licensee shall operate, play, or permit the operation of any public speaking system transmitter, sound amplification device or any other type of device, mechanical or electronic, to emit or direct music, spoken words, sounds or noise of any kind exceeding eight-six decibels on an A-weighted scale when measured across a residential property line fifty feet (50') or more from the source of the noise between the hours of 11:00 p.m. and 11:00 a.m. This regulation does not supersede any state or local laws or ordinances regulating noise in the area.

AUTHORITY: section 311.660, RSMo [1994] 2000. This version of rule filed Feb. 8, 1973, effective Feb. 18, 1973. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Nov. 20, 2003.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Public Safety, Division of Alcohol and Tobacco Control, Truman State Office Building, Room 860 Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

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

PROPOSED AMENDMENT

11 CSR 70-2.140 All Licensees. The director is deleting section (11) and replacing it with a new section (11) and deleting the forms that follow this rule in the *Code of State Regulations*.

PURPOSE: This rule establishes additional rules for the conduct of business in both retail and wholesale establishments regarding inspection, record keeping, storage, employment, sales, gambling and consumption by minors.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. Therefore, the material which is so incorporated is on file with the agency who filed this rule, and with the Office of the Secretary of State. Any interested person may view this material at either agency's headquarters or the same will be made available at the Office of the Secretary of State at a cost not to exceed actual cost of copy reproduction. The entire text of the rule is printed here. This note refers only to the incorporated by reference material.

(11) [No licensee shall employ on or about the licensed premises any person who has been convicted since the ratification of the twenty-first amendment of the Constitution of the United States of a violation of the provisions of any law applicable to the manufacture or sale of intoxicating liquor; nor shall any licensee employ on or about the licensed premises any person who shall have had a license revoked under Chapter 311 or 312, RSMo. No retail licensee shall employ on or about the licensed premises any felon or prostitute, except that licensees may employ persons convicted of a felony unrelated to the manufacture or sale of intoxicating liquor so long as any such felon does not directly participate in retail sales of intoxicating liquor or nonintoxicating beer, by accepting payment, taking orders, delivering, mixing or assisting in mixing or serving intoxicating liquor or nonintoxicating beer in the capacity of, but not limited to, bar manager, bartender, waiter, waitress, cashier and sales clerk. Each retail licensee shall report the identity of any employee with a felony conviction to the supervisor of liquor control within ten (10) days of his/her employment and each retail licensee shall notify the supervisor of liquor control within ten (10) days of the employee leaving the licensee's employment, using forms provided by the division for that purpose.] No licensee shall employ on or about the licensed premises any person who has been convicted since the ratification of the twenty-first amendment of the Constitution of the United States of a violation of the provisions of any law applicable to the manufacture or sale of intoxicating liquor; nor shall any licensee employ on or about the licensed premises any person who shall have had a license revoked under Chapter 311 or 312, RSMo.

(A) No retail licensee shall employ a prohibited felon to any position that involves the direct participation in retail sales of intoxicating liquor or non-intoxicating beer. The phrase "direct participation in retail sales" includes the duties of accepting payment, taking orders, delivering, mixing or assisting in the mixing or serving of intoxicating liquor or non-intoxicating beer in the capacity of, but not limited to, bar manager, bartender, waiter, waitress, cashier, and sales clerk.

(B) A "prohibited felon" is one who has been convicted of a crime under the laws of any state or the United States, where the possible penalty at the time of the offense exceeded one (1) year confinement and the crime involves homicide, assault involving a threat of death or serious physical injury or actual physical injury, assault upon a law enforcement officer, kidnapping or false imprisonment, any action that would constitute a sexual offense under Chapter 566, RSMo, prostitution, pornography, robbery, arson, stealing, burglary, forgery, counterfeiting, identity theft or false identification, bribery, unlawful use of a weapon, gambling, driving or boating while intoxicated, perjury, fake reports or declarations, the possession, purchase, sale or manufacture of drugs, tax fraud, mail fraud, food stamp fraud, or welfare fraud.

(C) Each retail licensee shall report the identity of any employee with a felony conviction to the supervisor of alcohol and tobacco control within ten (10) days of his/her employment and each retail licensee shall notify the supervisor of alcohol and tobacco control within ten (10) days of the employee leaving the licensee's

employment, using forms provided by the division for that purpose.

(D) If the employee is hired in a position that involves the direct participation in retail sales and is a prohibited felon, the division shall notify the licensee that the employee may not serve in the position involving the direct participation in retail sales upon receipt of notice from the licensee. The licensee will either dismiss the employee or reassign the employee to a position not involving the direct participation in retail sales within ten (10) days of the date notice is received by licensee from the division by regular mail service.

(E) If the division determines that an employee involved in the direct participation of retail sales has a felony conviction not listed in subsection (11)(B), above, but believes that the felon's conviction should disqualify the employee from the direct participation in retail sales, the division will notify the licensee within ten (10) days. The licensee will either dismiss the employee, reassign the employee to a position not directly involving the retail sale of intoxicating liquor or non-intoxicating beer, or file a written appeal with the division within ten (10) days of receiving notice from the division by regular mail service.

(F) If a licensee, or an employee of the licensee acting through the licensee, wishes to appeal a determination by the division that the employee is disqualified from the direct participation in the retail sale of intoxicating liquor or non-intoxicating beer as set forth in subsection (11)(E), above, the appeal will be heard by the supervisor or his/her designee within thirty (30) days of the division receiving written notice of appeal. At the appeal, the division will determine whether the employee's conviction is reasonably related to the competency of the employee to be involved in the direct participation in retail sales. A written determination will be sent to the licensee and employee, if an address is supplied by the employee, within ten (10) days of the appeal.

AUTHORITY: section 311.660, RSMo [1994] 2000. This version of rule filed Feb. 8, 1973, effective Feb. 18, 1973. For intervening history, please consult the Code of State Regulations. Amended: Filed Nov. 20, 2003.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Public Safety, Division of Alcohol and Tobacco Control, Truman State Office Building, Room 860, Jefferson City, MO 65101. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 80—Missouri State Water Patrol
Chapter 9—Mandatory Boater Safety Education
Program**

PROPOSED RULE

11 CSR 80-9.010 Mandatory Boater Safety Education Program

PURPOSE: This rule defines the responsibilities and procedures regarding mandatory boater safety education pursuant to section 306.127, RSMo for vessel operators on the waterways of the state of Missouri to ensure and promote public safety and welfare.

(1) The minimum standards for certified boater education shall be the standards established by the National Association of State Boating Law Administrators (NASBLA).

(2) Beginning January 1, 2005, any person convicted of an offense pursuant to section 306.110, 306.111, 306.112, 306.127, 306.132 or 306.141, RSMo must complete and pass a certified boater education course even if such person completed a certified boater safety education course prior to January 1, 2005.

(3) Any person convicted of an offense pursuant to section 306.110, 306.111, 306.112, 306.127, 306.132 or 306.141, RSMo shall not operate a vessel until he or she possesses a certification card issued by the Missouri State Water Patrol.

(4) It shall be the responsibility of the person to whom a boater education certification card is issued to notify the Missouri State Water Patrol of name and address changes. Upon notification, the Missouri State Water Patrol shall issue a replacement certification card for a fee that does not substantially exceed the administrative and production costs of the certification cards.

(5) Every boat operator required to carry a boating safety education certification card pursuant to section 306.127 or 306.128, RSMo shall also have in his or her possession some form of valid state or school issued identification with a photograph of the certification card holder.

(6) Beginning January 1, 2005, no person shall rent, lease or loan a vessel to any person born after January 1, 1984, unless such person has taken a certified boater education course and is in possession of the certification card and valid identification with a photograph.

(7) As used in section 306.127, RSMo, subsection 4, paragraph 8, the term "previously" means prior to January 1, 2005, but does not exempt the boat operator from the requirement to carry the certification card.

(8) Every nonresident boat operator pursuant to section 306.127 or 306.128, RSMo shall possess a boating safety certification card from their home state, United States Coast Guard Auxiliary, U.S. Power Squadron, or the Missouri State Water Patrol.

(9) Every resident boat operator pursuant to section 306.127 or 306.128, RSMo shall possess a certification card issued by the Missouri State Water Patrol.

AUTHORITY: section 306.129, RSMo Supp. 2003. Original rule filed Nov. 26, 2003.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions two hundred thirty-two thousand forty-two dollars (\$232,042) the first year, one hundred fifty-six thousand nine hundred fifty-three dollars (\$156,953) the second year, and one hundred fifty-nine thousand five hundred twenty-six dollars (\$159,526) annually thereafter.

PRIVATE COST: This proposed rule will cost private entities fifteen dollars (\$15) for one (1) boater safety education certification card and ten dollars (\$10) for one (1) replacement boater safety education certification card. It is not known how many persons will request a boater safety education certification card nor is it known how many persons would request a replacement boater safety education certification card. Assuming thirty thousand (30,000) persons will take the course the first year, twenty thousand (20,000) persons will take the course the second year, and fifteen thousand (15,000) persons will take the course the third and subsequent years, the approximate aggregate cost would be four hundred fifty thousand dollars (\$450,000) the first year, three hundred thousand dollars

the second year, and two hundred twenty-five thousand dollars (\$225,000) for the third and subsequent years.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with Colonel Jerry E. Adams, Commissioner, Missouri State Water Patrol, PO Box 1368, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

FISCAL NOTE
PUBLIC COST

I. RULE NUMBER

Rule Number and Name:	11 CSR 80-9.010 Mandatory Boater Safety Education Program
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated cost of compliance in the aggregate:
Office of Secretary of State	\$369.00**
Missouri State Water Patrol	\$232,042 the first year, \$156,953 the second year, and \$159,526 annually thereafter

III. WORKSHEET

See below.

IV. ASSUMPTIONS

Officials from the **Office of Secretary of State (SOS)** assume there would be costs due to additional publishing duties related to the Missouri State Water Patrol's authority to promulgate rules, regulations, and forms. SOS estimates the division could require approximately 6 new pages of regulations in the Code of State Regulations at a cost of \$27.00 per page, and 9 new pages in the Missouri Register at a cost of \$23.00 per page. Costs due to this proposal is estimated to be \$369, however, the actual fiscal impact would be dependent upon the actual rule-making authority and may be more or less. Financial impact in subsequent fiscal years would depend entirely on the number, length, and frequency of the rules filed, amended, rescinded, or withdrawn. SOS does not anticipate the need for additional staff as a result of this proposal, however, the enactment of more than one similar proposal may, in the aggregate, necessitate additional staff.**

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process. Any decisions to raise fees to defray costs would likely be made in subsequent fiscal years.**

** The above figure and information was taken from the Committee on Legislative Research Oversight Division Fiscal Summary to the Fiscal Note for Senate Bill 1 from the 2003 legislative session.

Officials from the **Department of Public Safety - Missouri State Water Patrol (MSWP)** assume that the number of watercraft registrations for a

year does not reflect the age group that is targeted in this legislation. The revenue for permanent boating safety identification card that would be received for the successful completion of the Boating Safety course would not be realized until after the Mandatory Boating Education Program was established.

The MSWP estimates that the number of students to complete and pass the course and request a permit in the 1st year would be around 30,000. The 2nd year is estimated at 20,000 and the 3rd year and each year thereafter to be around 15,000. The MSWP estimates that even though this substitute adds an effective date of January 1, 2005, there will still be roughly 30,000 permits issued in the first fiscal year since the MSWP may issue the cards prior to January 1, 2005 and also since the second six months of FY 2005 (January through June) would be considered the pre-boating season where youths will be getting ready for the boating season. The MSWP estimates a charge of \$15 for the permanent boating safety identification card to cover the costs of the program and the i.d. cards and a charge of \$10 for a replacement card.

The MSWP assumes the need for one Water Patrol Sergeant FTE (at \$45,156 annually) to administer the mandatory education program beginning in FY 2005. The MSWP also assumes the need for additional E&E based on specific equipment and supplies needed to administer the program and to replace an officer in the field that would be moved to GHQ. The MSWP assumes the need for the additional FTE for the entire FY 2005 even though youths are not required to have the boating safety identification cards until January 1, 2005. The MSWP assumes the FTE will be needed to set up and establish the program in the first part of FY 2005 as well as perhaps offer the tests and cards prior to the required date of having the boating safety identification cards. The cost to produce, mail and print the education materials for the Mandatory Boating Education Program is estimated to be \$4 per card. This does not cover the cost to administer the program.

Oversight assumes MSWP may charge a fee for the card that does not substantially exceed the costs of administrating this section. According to the Department of Revenue (DOR) 2000 Comprehensive Annual Financial Report, the Department of Revenue processed 119,405 watercraft registrations in 2002, 113,504 in 1999 and 116,500 in 1998. This was based on a 3-year renewal, so the assumption is made that there are actually 349,409 marine vessels currently registered in Missouri. In a fiscal note for similar legislation in a previous year, Oversight utilized the number of boat registrations to estimate the number of persons that would be issued the identification card each year. This year, however, Oversight has received the estimate by MSWP regarding the number of possible applicants (30,000 initially, 20,000 in the second year and 15,000 each year thereafter), and have utilized these estimates.

Since the application is a one-time occurrence with no renewal, **Oversight** assumes the volume of cards issued will decrease in subsequent years.

Missouri State Water Patrol will utilize the estimate of \$15.00 to be charged to each licensee for the cost to administer the program.

This proposal will increase Total State Revenues.

FISCAL IMPACT - State Government	FY 2005	FY 2006	FY 2007
GENERAL REVENUE FUND			
Estimated Number of Students Taking Class	30,000	20,000	15,000
Income - Missouri Water Patrol (MSWP)			
I.D. Fees	\$450,000	\$300,000	\$225,000
Costs - Missouri Water Patrol (MSWP)			
Personal Service (1 FTE)	(\$47,442)	(\$48,628)	(\$49,844)
Fringe Benefits	(\$19,200)	(\$19,680)	(\$20,172)
Expense and Equipment	(\$45,400)	(\$8,645)	(\$9,510)
I.D. Production & class materials	(\$120,000)	(\$80,000)	(\$80,000)
Total Costs - MSWP	(\$232,042)	(\$156,953)	(\$159,526)
ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
	\$217,958	\$143,047	\$65,474

NOTE: After the introductory year, the number of students should level out in approximately the third year (FY-07) and we estimate approximately 15,000 students per year.

FISCAL IMPACT - Local Government	FY 2005	FY 2006	FY 2007
	\$0	\$0	\$0

FISCAL IMPACT - Small Business

Marinas that rent out boats and personal watercraft covered under this legislation will have to verify boating safety identification cards before rental of boats.

FISCAL NOTE
 PRIVATE COST

V. RULE NUMBER

Rule Number and Name: 11 CSR 80 9.010 Mandatory Boater Safety Education Program
Type of Rulemaking: Proposed Rule

VI. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
30,000 Vessel Operators the first year, 20,000 Vessel Operators the second year, and 15,000 Vessel Operators annually thereafter	n/a	\$450,000 during the first year, \$300,000 during the second year, and \$225,000 annually thereafter

VII. WORKSHEET

See below.

VIII. ASSUMPTIONS

This proposed rule will cost private entities fifteen dollars (\$15.00) for one (1) boater safety education certification card and ten dollars (\$10.00) for a replacement boater safety education certification card. It is not known how many persons will request a boater safety education certification card nor is it known how many persons would request a replacement boater safety education certification card; however, it is assumed that approximately 30,000 persons would take the course the first year, 20,000 persons would take the course the second year, and 15,000 persons would take the course annually thereafter. Therefore, we believe the approximate cost to individuals the first year would be \$450,000; the approximate cost the second year would be \$300,000; and the approximate cost would be approximately \$225,000 for each year thereafter.

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

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

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 10—Adjutant General
Chapter 5—Missouri Veterans' Recognition Program**

ORDER OF RULEMAKING

By the authority vested in the Adjutant General under sections 41.160 and 173.239, RSMo Supp. 2000, the director amends a rule as follows:

11 CSR 10-5.010 Missouri Veterans' Recognition Program is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 2, 2003 (28 MoReg 1508-1510). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received during the comment period.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 13—Hearings**

ORDER OF RULEMAKING

By the authority vested in the Missouri Gaming Commission under section 313.805, RSMo 2000, the commission amends a rule as follows:

11 CSR 45-13.010 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 1, 2003 (28 MoReg 1377). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Gaming Commission (commission) received written comments from Thad C. McCause, a contract hearing officer for the commission. A public hearing on this proposed amendment was held on September 3, 2003, and the public comment period ended September 1, 2003. At the public hearing no comments were received.

COMMENT: Mr. McCause recommended that additional language should be added to this section allowing the commission to extend time limits for good cause.

RESPONSE AND EXPLANATION OF CHANGE: The commission currently allows requests for a hearing to be made beyond the thirty (30)-day time limit for good cause, so the language Mr. McCause recommends is consistent with current practice. The commission has revised this section to include the recommended language.

11 CSR 45-13.010 All Types of Hearings

(1) The rules contained in this chapter shall govern all hearings of the commission. In all hearings before the commission, the applicant or licensee shall be the petitioner. For good cause, the commission may extend the time limits set forth in this chapter.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 13—Hearings**

ORDER OF RULEMAKING

By the authority vested in the Missouri Gaming Commission under section 313.805, RSMo 2000, the commission amends a rule as follows:

11 CSR 45-13.020 Hearing Officer is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 1, 2003 (28 MoReg 1377). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Gaming Commission (commission) received written comments from Thad C. McCause, a contract hearing officer for the commission. A public hearing on this proposed amendment was held on September 3, 2003, and the public comment period ended September 1, 2003. At the public hearing no comments were received.

COMMENT: Mr. McCause recommended that a contract hearing officer preside with the commissioners at hearings at which the commissioners vote to hear live testimony themselves, since some commissioners are not attorneys.

RESPONSE: If the commissioners designate one or more gaming commissioners to conduct hearings on a particular matter, the commissioners would be able to obtain advice on legal matters from the

commission legal staff. No wording changes have been made to the proposed amendment as a result of this comment.

time provided for, the letter shall become a final order of the commission.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 13—Hearings**

ORDER OF RULEMAKING

By the authority vested in the Missouri Gaming Commission under section 313.805, RSMo 2000, the commission amends a rule as follows:

11 CSR 45-13.030 Requests for Hearings is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 1, 2003 (28 MoReg 1377-1378). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment, becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 13—Hearings**

ORDER OF RULEMAKING

By the authority vested in the Missouri Gaming Commission under section 313.805, RSMo 2000, the commission adopts a rule as follows:

11 CSR 45-13.045 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 1, 2003 (28 MoReg 1378). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Gaming Commission (commission) received written comments from Thad C. McCause, a contract hearing officer for the commission. A public hearing on this proposed rule was held on September 3, 2003, and the public comment period ended September 1, 2003. At the public hearing no comments were received.

COMMENT: Mr. McCause recommended that additional language be added to this section to clarify the method and time for filing a request for hearing.

RESPONSE AND EXPLANATION OF CHANGE: The commission has revised this section to include the recommended language.

11 CSR 45-13.045 Suitability and Exclusion Hearings for Gaming Applicants and Licensees

(3) Whenever the commission finds an applicant unsuitable for licensing, the commission shall send a written letter to the applicant outlining the reasons for the finding, including both the applicable criteria for suitability that the applicant has established and those criteria that the applicant has failed to establish. This letter shall be sent certified mail, return receipt requested or by personal delivery. Within thirty (30) days from the date of mailing, the licensee shall file a request for hearing by serving it on the director as provided in 11 CSR 45-13.030(2). If a request for hearing is not filed within the

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 13—Hearings**

ORDER OF RULEMAKING

By the authority vested in the Missouri Gaming Commission under section 313.805, RSMo 2000, the commission amends a rule as follows:

11 CSR 45-13.050 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 1, 2003 (28 MoReg 1378-1379). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Gaming Commission (commission) received written comments from Thad C. McCause, a contract hearing officer for the commission. A public hearing on this proposed amendment was held on September 3, 2003, and the public comment period ended September 1, 2003. At the public hearing no comments were received.

COMMENT: Mr. McCause recommended that additional language be added to this section to clarify the method and time for filing a request for hearing and that section (5) be renumbered.

RESPONSE AND EXPLANATION OF CHANGE: The commission has revised this section to include the recommended language.

11 CSR 45-13.050 Disciplinary Action Against Gaming Licensees

(3) Within thirty (30) days from the date of mailing of the proposed order, the licensee shall file his/her/its request for hearing by serving it on the director as provided in 11 CSR 45-13.030(2). If a request for hearing is not filed within the time provided for, the proposed order shall become a final order of the commission.

(4) The commission may authorize the director to investigate and to issue a proposed order for disciplinary action with regard to any applicant for or holder of a license of the type that may be issued by the director pursuant to 11 CSR 45-4.260(1).

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 13—Hearings**

ORDER OF RULEMAKING

By the authority vested in the Missouri Gaming Commission under section 313.805, RSMo 2000, the commission adopts a rule as follows:

11 CSR 45-13.051 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 1, 2003 (28 MoReg 1379). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Gaming Commission (commission) staff commented on this rule in response to an opinion

from a commissioner on the Missouri Administrative Hearing Commission (AHC). A public hearing on this proposed rule was held on September 3, 2003, and the public comment period ended September 1, 2003. At the public hearing no comments were received.

COMMENT: The AHC has recently provided an opinion to the commission that the commission's existing procedures relating to waiver of hearings and settlement of cases at the AHC should be modified.

RESPONSE AND EXPLANATION OF CHANGE: The commission has revised this section to satisfy the request of the AHC that a complaint and answer must be filed in all contested cases prior to a waiver of hearing and settlement agreement.

11 CSR 45-13.051 Bingo Hearings

(5) Any licensee who receives a notice of commission action may request a hearing on the proposed action before the Missouri Administrative Hearing Commission (AHC) as set forth in Chapter 621, RSMo.

Title 11—DEPARTMENT OF PUBLIC SAFETY Division 45—Missouri Gaming Commission Chapter 13—Hearings

ORDER OF RULEMAKING

By the authority vested in the Missouri Gaming Commission under section 313.805, RSMo 2000, the commission amends a rule as follows:

11 CSR 45-13.060 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 1, 2003 (28 MoReg 1379-1380). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Gaming Commission (commission) received written comments from Thad C. McCause and Honorable McCormick V. Wilson, contract hearing officers for the commission. A public hearing on this proposed amendment was held on September 3, 2003, and the public comment period ended September 1, 2003. At the public hearing no comments were received.

COMMENT: Judge Wilson suggested that the commission be required to make an opening statement during the hearings, to narrow the issues and eliminate the possibility that a petitioner be required to disprove all possible reasons for denial of a license or discipline, such as a plea to or conviction of a crime.

RESPONSE AND EXPLANATION OF CHANGE: The commission has revised section (4) of the rule to require that the commission provide an opening statement during hearings.

COMMENT: Mr. McCause commented that in section (8), which provides for a default judgment, if the commission were to order a hearing evidence should be limited to the nature of the penalty imposed.

RESPONSE: The commission is of the opinion that the provision giving the commissioners discretion to order a hearing should not be limited to the penalty, but instead could examine evidence on the allegations of violation, as well. No changes to the rule have been made as a result of this comment.

11 CSR 45-13.060 Proceedings

(4) Petitioner may present an opening statement, and the commission shall present an opening statement on the merits. Petitioner proceeds first to present evidence, except in the case of disciplinary actions against gaming licensees, in which case the commission shall present evidence first. The hearing officer shall then hear evidence from the other party and any evidence in rebuttal.

Title 11—DEPARTMENT OF PUBLIC SAFETY Division 45—Missouri Gaming Commission Chapter 13—Hearings

ORDER OF RULEMAKING

By the authority vested in the Missouri Gaming Commission under section 313.805, RSMo 2000, the commission amends a rule as follows:

11 CSR 45-13.070 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 1, 2003 (28 MoReg 1380-1381). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Gaming Commission (commission) received written comments from Thad C. McCause and Honorable McCormick V. Wilson, contract hearing officers for the commission. A public hearing on this proposed amendment was held on September 3, 2003, and the public comment period ended September 1, 2003. At the public hearing no comments were received.

COMMENT: During a public commission meeting one of the commissioners commented on subsection (4)(A) that parties should have the right to oral argument before the commission prior to final action on hearing officer recommendations. Another commissioner commented during that meeting that the procedure proposed for oral argument would create administrative difficulties for the commission in deciding who would be allowed to present oral argument and notifying the parties.

RESPONSE AND EXPLANATION OF CHANGE: As a result of these comments, the language in subsection (4)(A) has been modified to permit oral arguments by the parties.

COMMENT: Judge Wilson commented on section (3) that providing the parties the right to file written objections or comments to the hearing officer's proposed recommendations would result in the parties briefing and re-arguing all of their legal positions to the commissioners that were already in the record in arguments to the hearing officer. The commissioners, who are not necessarily attorneys, may not wish to or be able to deal with these complex legal issues.

RESPONSE: The commission finds that the benefit to the commissioners in receiving comments and objections from the parties to the hearing officer recommendations outweighs the burden of reviewing additional legal pleadings. No changes to the rule have been made as a result of this comment.

COMMENT: Mr. McCause commented on subsection (4)(A) that if the commission was concerned with the length of oral arguments, language should be inserted giving the commission discretion to limit them. He also commented that in paragraph (4)(A)3. the word "dissolve" should be replaced by the word "reject."

RESPONSE AND EXPLANATION OF CHANGE: As a result of these comments, the language in section (4) has been modified.

11 CSR 45-13.070 Transmittal of Record and Recommendation to the Commission

(4) Final Commission Order.

(A) The commission shall review the entire record and shall render a written decision on the merits which shall contain findings of fact and conclusions of law, and after that will issue a final Commission Order. During the public meeting at which the commission considers proposed findings of fact, conclusions of law and recommendations issued by a hearing officer, the parties may present oral argument to the commission within the time limits that the commission may impose. The commission may take any of the following actions:

1. The commission may adopt the findings of fact, conclusions of law and recommendations of the hearing officer as its final Commission Order;
2. The commission may modify the findings of fact, conclusions of law and recommendations submitted by the hearing officer;
3. The commission may reject the findings of fact, conclusions of law and recommendations submitted by the hearing officer; or
4. The commission may remand the matter, with instructions, to the hearing officer for further proceedings.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 13—Hearings**

ORDER OF RULEMAKING

By the authority vested in the Missouri Gaming Commission under section 313.805, RSMo 2000, the commission adopts a rule as follows:

11 CSR 45-13.080 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 1, 2003 (28 MoReg 1381). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Gaming Commission (commission) received written comments from Thad C. McCause, contract hearing officer for the commission. A public hearing on this proposed rule was held on September 3, 2003, and the public comment period ended September 1, 2003. At the public hearing no comments were received.

COMMENT: Mr. McCause commented on section (1) that a reference should be made to section (3).

RESPONSE AND EXPLANATION OF CHANGE: As a result of this comment, the language in section (1) has been modified.

11 CSR 45-13.080 Prohibition on Ex Parte Communications

(1) A party or its representative shall not communicate directly or indirectly with the hearing officer regarding any pending matter, except upon notice and opportunity for all parties to participate or as provided in section (3).

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 4—Conditions of Recipient Participation, Rights
and Responsibilities**

ORDER OF RULEMAKING

By the authority vested in the director of the Division of Medical Services under section 208.201, RSMo 2000, the director amends a rule as follows:

13 CSR 70-4.070 Title XIX Recipient Lock-In Program is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 2, 2003 (28 MoReg 1511). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Division of Medical Services (DMS) received one (1) written comment about the proposed amendment from a MC+ managed care health plan.

COMMENT: A clarification to the Purpose Statement was requested regarding who is responsible for the management of the recipient while in lock-in. Concern was expressed that the state has not reviewed the current applicability of the lock-in process as it relates to referrals to MC+ managed care health plans. Referral information from the state is insufficient while the MC+ managed care health plan's utilization history does not demonstrate a pattern of abuse. Also, retrieval of medical records may be time consuming and limited due to HIPAA privacy implementation. The MC+ managed care health plan contract requires case management and outreach documentation prior to pharmacy lock-in. The state should manage recipients who reach the division's thresholds, and not the MC+ managed care health plan.

RESPONSE: The proposed regulatory change applies to the Missouri Medicaid program. The Missouri Medicaid program has contracted with Managed Care Organizations (MCOs) for administration and delivery of services to certain Medicaid recipients in particular geographic areas of the state. The relationship of the Missouri Medicaid program and the MCO is governed through a contract between the two entities. The contract includes numerous provisions including the responsibility that the MCO conduct fraud and abuse detection activities as outlined in Section 2.31 of their contract. The MCO is responsible for members enrolled in their plan, including case management, outreach and pharmacy lock-in restrictions according to the MCO's policies and procedures as approved by the state. No changes have been made to the rule as a result of this comment.

COMMENT: The MC+ managed care health plan believes it is beneficial that the state is supporting the management of difficult members, but they have concerns that this process will not accomplish the goal. If thresholds under state agency policy are reached within a fee-for-service period and the recipient subsequently enrolls in a MC+ managed care health plan, member history of such concerns do not flow to the plans with member eligibility and enrollment. It is expected that the plans provide documentation of abuse and serial documentation of unsuccessful attempts within specific time intervals to gain member compliance through case management and outreach before a pharmacy lock-in request can be submitted to DMS. Non-compliant members in smaller communities may create physician access problems if the treating physician will no longer provide services.

RESPONSE: The contract does not require that the MCO must obtain state approval prior to locking in an enrolled managed care member into a pharmacy for misutilization of services. The contract requires that the MCO have its pharmacy lock-in policies and procedures approved prior to implementing a pharmacy lock-in program (Section 2.31.6 of the MCO contract). It appears that the commenter confused the requirements for requesting an enrolled managed care member be disenrolled from their MCO with the provisions regarding pharmacy lock-in. Prior to requesting an enrolled managed care member be disenrolled, the MCO must provide documentation of sequential level of case management and outreach documentation. This is not the case for an MCO to lock-in an enrolled managed care

member into a pharmacy for misutilization of services. The occurrence of fee-for-service non-compliant members in smaller communities, who are locked-in to physicians, has not created access problems. No changes have been made to the rule as a result of this comment.

COMMENT: The proposed amendment, if finalized, will cost much more than five hundred dollars (\$500) in the aggregate for the private sector over the life of the amendment. The amended rule will require development of system indicators or manual processes to detect suspect utilization, retrieval of medical records from one to several providers to determine medical condition, treatment plan and appropriateness of care/utilization. These are very time consuming and costly processes per case.

RESPONSE: The proposed amendment will not cost more than five hundred dollars (\$500) in the aggregate for the Missouri Medicaid program to implement. The proposed amendment will complement existing policies and procedures for pharmacy lock-in and will not require additional costs to implement. It appears the commenter is questioning the costs of the entire pharmacy lock-in regulation and not just the proposed amendment. In addition, it appears that the reference to costs to the "private sector" is regarding the contractual obligation of the MCO regarding fraud and abuse fraud and detection activities of which one component is pharmacy lock-in. No changes have been made to the rule as a result of this comment.

COMMENT: The commenter suggested alternatives to the proposed rule.

RESPONSE: The commenter suggested alternatives to the proposed rule that appear more to be alternatives to contractual requirements between the MCO and the Missouri Medicaid agency. No changes have been made to the rule as a result of this comment.