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

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 If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission.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

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

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

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

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

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

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 65—Endowed Care Cemeteries
Chapter 1—Organization and Description

PROPOSED RESCISSION

4 CSR 65-1.020 Cemetery Advisory Committee. *This rule defined the Endowed Care Cemetery Advisory Committee.*

PURPOSE: This rule is being rescinded in order to dissolve the advisory committee.

AUTHORITY: sections 214.280, RSMo Supp. 1999 and 214.392, RSMo 1994. Original rule filed Sept. 11, 1997, effective March 30, 1998. Amended: Filed April 14, 2000, effective Oct. 30, 2000. Rescinded: Filed June 25, 2004.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Endowed Care Cemeteries Committee, Rodger Fitzwater, Executive Director, PO Box 1335, Jefferson City, MO 65102-1335, by faxing (573) 526-3489 or via e-mail at endocare@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 65—Endowed Care Cemeteries
Chapter 1—Organization and Description

PROPOSED AMENDMENT

4 CSR 65-1.030 Definitions. The board is deleting section (2) and renumbering the remaining sections accordingly.

PURPOSE: This amendment removes the definition of the advisory committee.

[(2) Committee—the Endowed Care Cemetery Advisory Committee.]

[(3)] **(2)** Division—the Division of Professional Registration.

[(4)] **(3)** FDIC—Federal Deposit Insurance Corporation.

[(5)] **(4)** Office—Office of Endowed Care Cemeteries.

AUTHORITY: sections 214.270, [RSMo Supp. 1999] and 214.392.1(5), RSMo [1994] ***Supp. 2003****. Original rule filed April 14, 2000, effective Oct. 30, 2000. Amended: Filed June 25, 2004.*

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 Endowed Care Cemeteries Committee, Rodger Fitzwater, Executive Director, PO Box 1335, Jefferson City, MO 65102-1335, by faxing (573) 526-3489 or via e-mail at endocare@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 65—Endowed Care Cemeteries
Chapter 1—Organization and Description

PROPOSED AMENDMENT

4 CSR 65-1.050 Complaint Handling and Disposition. The board is amending sections (1) and (3), (4), (6) and (7).

PURPOSE: *This amendment deletes references to the advisory committee.*

(1) The Division of Professional Registration*[, in coordination with the Endowed Care Cemetery Advisory Committee,]* will receive and process each complaint made against any holder of a certificate of authority in which the complaint alleges certain acts or practices that may constitute one (1) or more violations of provisions of sections 214.270–214.516, RSMo, or administrative rules. *[No member of the Endowed Care Cemetery Advisory Committee may file a complaint with the division or committee while holding office, unless that member is excused from further committee deliberation or activity concerning the matters alleged within that complaint.]* Any division staff member *[or committee member]* may file a complaint pursuant to this rule in the same manner as any member of the public.

(3) All complaints shall be made in writing on a form provided by the division and shall fully identify the complainant by name and address. Verbal or telephone communication will not be considered or processed as complaints, however, the person making such communication will be asked to supplement the communication with a written complaint. Complaints may be based upon personal knowledge, or upon information and belief, reciting information received from other sources. Individuals with special needs, as addressed by the Americans with Disabilities Act, may notify the *[committee office]* **division** at (573) 751-0849 for assistance. The text for the hearing impaired is (800) 735-2966.

(4) Each complaint received under this rule will be logged and maintained by the division. The log will contain a record of each complainant's name; the name and address of the subject(s) of the complaint; the date each complaint was received by the division*[/committee]*; a brief statement concerning the alleged acts or practices and the ultimate disposition of the complaint. This log shall be a closed record of the *[committee]* **division**.

(6) This rule shall not be deemed to limit the authority to file a complaint with the Administrative Hearing Commission charging the *[committee's]* licensee with any actionable conduct or violation, whether or not such a complaint exceeds the scope of the acts charged in a preliminary public complaint filed with the *[committee]* **division**.

(7) The division interprets this rule, which is required by law, to exist for the benefit of those members of the public who submit complaints to the *[committee]* **division**. This rule is not deemed to protect, or inure to the benefit of those licensees or other persons against whom the *[committee]* **division** has instituted or may institute administrative or judicial proceedings concerning possible violations of the provisions of sections 214.270–214.516, RSMo.

*AUTHORITY: sections 214.392[, RSMo 1994 and] 620.010.15(6), RSMo Supp. [1999] **2003**. Original rule filed April 14, 2000, effective Oct. 30, 2000. Amended: Filed June 25, 2004.*

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 Endowed Care Cemeteries Committee, Rodger Fitzwater, Executive Director, PO Box 1335, Jefferson City, MO 65102-1335, by faxing (573) 526-3489 or via e-mail at endocare@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 65—Endowed Care Cemeteries
Chapter 2—General Rules

PROPOSED AMENDMENT

4 CSR 65-2.010 Application for a License. The board is amending section (2).

PURPOSE: This amendment removes the reference to the committee and requires applications to be submitted to the division.

(2) An application is not considered officially filed with the *[committee]* **division** until it has been determined by the division that a fully completed application has been submitted to the division. Application forms provided by the division must be completed, signed, notarized and accompanied by adequate documentation, as requested by the division to establish compliance with all state laws, rules and regulations, and county or municipal ordinances and regulations.

*AUTHORITY: section 214.275, RSMo Supp. [2001] **2003**. Original rule filed Sept. 28, 2001, effective March 30, 2002. Amended: Filed June 25, 2004.*

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 Endowed Care Cemeteries Committee, Rodger Fitzwater, Executive Director, PO Box 1335, Jefferson City, MO 65102-1335, by faxing (573) 526-3489 or via e-mail at endocare@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 110—Missouri Dental Board
Chapter 2—General Rules

PROPOSED RULE

4 CSR 110-2.085 Definitions of Dental Specialties

PURPOSE: This rule establishes a definition for all the existing dental specialties recognized by the Missouri Dental Board and adds one new specialty that was recognized by the American Dental Association in April 2001.

(1) The following identifies and defines the dental specialties recognized by the board:

(A) Endodontics—is the branch of dentistry which is concerned with the morphology, physiology and pathology of the human dental pulp and periradicular tissues. Its study and practice encompass the basic and clinical sciences including biology of the normal pulp, the etiology, diagnosis, prevention and treatment of diseases and injuries of the pulp and associated periradicular conditions;

(B) Oral and Maxillofacial Pathology—is the specialty of dentistry and discipline of pathology that deals with the nature, identification, and management of diseases affecting the oral and maxillofacial regions. It is a science that investigates the causes, processes, and effects of these diseases. The practice of oral pathology includes research and diagnosis of diseases using clinical, radiographic, microscopic, biochemical, or other examinations;

(C) Oral and Maxillofacial Surgery—is the specialty of dentistry which includes the diagnosis, surgical and adjunctive treatment of diseases, injuries and defects involving both the functional and esthetic aspects of the hard and soft tissues of the oral and maxillofacial region.

(D) Orthodontics and Dentofacial Orthopedics—is that area of dentistry concerned with the supervision, guidance and correction of the growing or mature dentofacial structures, including those conditions that require movement of teeth or correction of malrelationships and malformations of their related structures and the adjustment of relationships between and among teeth and facial bones by the application of forces and/or the stimulation and redirection of functional forces within the craniofacial complex. Major responsibilities of orthodontic practice include the diagnosis, prevention, interception and treatment of all forms of malocclusion of the teeth and associated alterations in their surrounding structures; the design, application and control of functional and corrective appliances; and the guidance of the dentition and its supporting structures to attain and maintain optimum occlusal relations in physiologic and esthetic harmony among facial and cranial structures;

(E) Pediatric Dentistry—is an age-defined specialty that provides both primary and comprehensive preventive and therapeutic oral health care for infants and children through adolescence, including those with special health care needs;

(F) Periodontics—is that specialty of dentistry which encompasses the prevention, diagnosis and treatment of diseases of the supporting and surrounding tissues of the teeth or their substitutes and the maintenance of the health, function and esthetics of these structures and tissues;

(G) Prosthodontics—is the dental specialty pertaining to the diagnosis, treatment planning, rehabilitation and maintenance of the oral function, comfort, appearance and health of patients with clinical conditions associated with missing or deficient teeth and/or maxillofacial tissues using biocompatible substitutes;

(H) Public Health—is the science and art of preventing and controlling dental diseases and promoting dental health through organized community efforts. It is that form of dental practice which serves the community as a patient rather than the individual. It is concerned with the dental health education of the public, with applied dental research, and with the administration of group dental care programs as well as the prevention and control of dental diseases on a community basis; and

(I) Oral and Maxillofacial Radiology—is the specialty of dentistry and discipline of radiology concerned with the production and interpretation of images and data produced by all modalities of radiant energy that are used for the diagnosis and management of diseases, disorders and conditions of the oral and maxillofacial region.

AUTHORITY: sections 332.031 and 332.171.2, RSMo 2000. Original rule filed June 25, 2004.

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Dental Board, Sharlene Rimiller, Executive Director, PO Box 1367, Jefferson City, MO 65102, by facsimile at (573) 761-8216 or via e-mail at dental@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 110—Missouri Dental Board
Chapter 2—General Rules

PROPOSED RULE

4 CSR 110-2.111 Addressing the Public—Dental Hygienists

PURPOSE: This rule regulates the manner in which dental hygienists may advertise.

(1) For the purpose of these rules, advertising shall mean any communication, whether oral or written, between a dental hygienist or other entity acting on behalf of one (1) or more dental hygienists and the public. It shall include, but not be limited to: business cards, signs, insignias, letterheads, web pages, Internet communications, radio, television, newspaper and magazine ads, and display or group ads or listings in telephone directories, or both.

(2) Any advertising engaged in by a duly registered and currently licensed dental hygienist in Missouri shall be in compliance with the provisions set out in section 332.321.2(14), RSMo.

(3) A duly registered and currently licensed dental hygienist in Missouri shall not use or participate in the use of any advertising containing a false, fraudulent, misleading, deceptive or unfair statement or claim.

(4) No duly registered and currently licensed dental hygienist in Missouri shall directly advertise his or her dental hygiene services to the public unless said hygienist is practicing in a public health setting without the supervision of a dentist pursuant to section 332.311.2, RSMo. All duly registered and currently licensed dental hygienists in Missouri who are employed by and/or working under the supervision of a duly registered and currently licensed dentist in Missouri shall have their names and/or dental hygiene services, including fees for services, advertised to the public only through advertising engaged in by their employing or supervising dentist.

(5) No duly registered and currently licensed dental hygienist in Missouri who has or is about to change employers shall be permitted to contact the patients of the employer s/he is leaving or has left for the purpose of soliciting those persons to become patients of the employer s/he is joining or has joined.

(6) Any dental health article, message or newsletter published under a dental hygienist's byline to the public without making truthful disclosure of the source and authorship, or designed to give rise to questionable expectations for the purpose of inducing the public to utilize the services of the sponsoring dental hygienist and/or the dentist who employs and/or supervises the hygienist shall be deemed to be a false, misleading or deceptive representation to the public.

(7) Failure to comply with this rule will subject the holder of a certificate of registration and license to practice dental hygiene in this

state to disciplinary action in accordance with section 332.321.2(6)–(14), RSMo.

(8) The provisions of this rule are declared severable. If any provision of this rule is held invalid by a court of competent jurisdiction, the remaining provisions of this rule shall remain in full force and effect, unless otherwise determined by a court of competent jurisdiction to be invalid.

AUTHORITY: sections 332.311 and 332.321, RSMo Supp. 2003. Original rule filed June 25, 2004.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Dental Board, Sharlene Rimiller, Executive Director, PO Box 1367, Jefferson City, MO 65102, by facsimile at (573) 761-8216 or via e-mail at dental@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 205—Missouri Board of Occupational Therapy
Chapter 4—Supervision

PROPOSED AMENDMENT

4 CSR 205-4.010 Supervision of Occupational Therapy Assistants and Occupational Therapy Assistant Limited Permit Holders. The board is amending subsections (3)(G) and (H).

PURPOSE: This proposed amendment clarifies the level of participation of an occupational therapy assistant in completing treatment and discharge plans.

(3) The supervising occupational therapist has the overall responsibility for providing the necessary supervision to protect the health and welfare of the patient/client receiving treatment from an occupational therapy assistant and/or occupational therapy assistant limited permit holder. The supervising occupational therapist shall—

(G) Be responsible for developing and modifying the patient's treatment plan. The treatment plan must include goals, interventions, frequency, and duration of treatment. **The occupational therapy assistant and/or occupational therapy assistant limited permit holder may contribute to the preparation, implementation and documentation of the treatment plan.** The supervising occupational therapist shall be responsible for the outcome of the treatment plan and assigning of appropriate intervention plans to the occupational therapy assistant and/or occupational therapy assistant limited permit holder within the competency level of the occupational therapy assistant and/or occupational therapy assistant limited permit holder;

(H) Be responsible for *[preparing, implementing, and documenting the]* **developing the patient's** discharge plan. The occupational therapy assistant and/or occupational therapy assistant limited permit holder may contribute to the *[process]* **preparation, implementation and documentation of the discharge plan. The supervising occupational therapist shall be responsible for the outcome of the discharge plan and assigning of appropriate tasks to the occupational therapy assistant and/or occupational therapy assistant limited permit holder within the competency level of the occupational therapy assistant and/or occupational therapy assistant limited permit holder**; and

*AUTHORITY: sections 324.050, 324.056, and 324.065.2, RSMo 2000 and 324.086, RSMo Supp. [2001] **2003**. Original rule filed Aug. 4, 1998, effective Dec. 30, 1998. Amended: Filed March 14, 2001, effective Sept. 30, 2001. Amended: Filed Oct. 30, 2002, effective April 30, 2003. Amended: Filed June 25, 2004.*

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 Vanessa Beauchamp, Executive Director, State Board of Occupational Therapy, PO Box 1335, Jefferson City, MO 65102, by facsimile at (573) 526-3489, or via e-mail at ot@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 120—New Manufactured Homes

PROPOSED RULE

4 CSR 240-120.085 Re-Inspection Fee

PURPOSE: This rule outlines the procedure for the re-inspection of manufactured homes and third party requests for inspections pursuant to section 700.040, RSMo.

(1) The commission may conduct as needed re-inspections of new manufactured homes to verify corrections have been made as identified during the original inspection, where required corrections have not been completed by the dealer or manufacturer within sixty (60) days of receipt of the original written complaint from the consumer as filed with the commission.

(2) The commission may charge the dealer or the manufacturer, or both, a fee for the re-inspection. The fee is charged to the dealer or the manufacturer who was responsible for making the corrections, or both where both were responsible, when items are not completed in a timely manner as required in section (1).

(3) If recommended by the director, the commission may waive the fee for either the dealer or the manufacturer, or both, if it is found during the re-inspection that there is neither any material defect, nor material violation of Chapter 700, nor any material violation of Part 3280 of the *Manufactured Home Construction and Safety Standards Code*.

(4) The re-inspection shall address all violations listed in the original consumer inspection report. A copy of the report shall be forwarded to the manufacturer or dealer, or both, for corrective action as well as an invoice for the re-inspection fee. A copy shall also be forwarded to the consumer, if applicable.

(5) The manufacturer and the dealer shall be sent a copy of the re-inspection report within ten (10) days from the date of the re-inspection.

(6) The assessed fee shall be paid to the commission within twenty (20) working days from the date the re-inspection is completed. Each manufacturer and each dealer shall submit along with the fee a written plan of action to be taken by each to correct any statutory, rule or code violations identified and corrections shall be completed within thirty (30) days of the re-inspection.

(7) The fee shall be implemented on all re-inspections conducted after the effective date of the rule.

(8) The commission shall send written notification to each licensed manufacturer and each licensed dealer giving the effective date of the rule.

(9) The fee shall be two hundred dollars ($200) per inspection to be paid by the manufacturer responsible for making the corrections as identified in the original inspection report, if the defect(s) or violation(s) as outlined in section (3) have not been corrected. The fee shall be two hundred dollars ($200) per inspection to be paid by the dealer responsible for making the corrections as identified in the original inspection report, if the defect(s) or violation(s) as outlined in section (3) have not been corrected. The total fee shall not exceed four hundred dollars ($400) per inspection and shall only be paid by the manufacturer or dealer, or both, who has failed to make the applicable corrections in a timely manner. The fee shall be submitted with a form provided by the commission. The commission shall make the determination of who shall be assessed the fee.

(10) The commission shall assess an inspection fee of four hundred dollars ($400) for all third party requests for inspections. Third party requests for inspections must be submitted in writing to the commission and the inspection fee must accompany the request. Third parties do not include licensed manufacturers or dealers.

(11) The following situations shall constitute grounds for the denial, suspension, revocation, or placing on probation of a manufacturer or dealer certificate of registration:

(A) Failure to pay the inspection fees within twenty (20) days of their prescribed due date;

(B) Failure to pay the fee by the prescribed due date for two (2) consecutive months; or

(C) Failure to pay the fee by the prescribed due date for any four (4) of the preceding twelve (12) months.

AUTHORITY: section 700.040, RSMo 2000. Original rule filed June 16, 2004.

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

PRIVATE COST: This proposed rule is estimated to cost private entities approximately twenty thousand dollars ($20,000) annually for the life of the rule.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Public Service Commission, Dale Hardy Roberts, Secretary, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register*** *and reference Case No. MX-2004-0517. No public hearing is scheduled.*

FISCAL NOTE
PRIVATE ENTITY COST

I. RULE NUMBER

Title: 4

Division: 240 Public Service Commission

Chapter: 120 Manufactured Homes

Type of Rulemaking: Proposed Rule

Rule Number and Name: 4 CSR 240-120.085 Re-Inspection Fee

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which could be affected by the adoption of the proposed rule:	Classifications by type 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
There are approximately 330 Manufactured Home manufacturers and dealers.	Manufactured Home Manufacturers and Dealers	$20,000 in the first year and a similar amount in succeeding years.

III. WORKSHEET

1. Estimate the number of re-inspections that will be conducted during Fiscal Year 2004 will be 100.
2. 100 re-inspections @ $200 per home = $20,000.

IV. ASSUMPTIONS

1. The Missouri Public Service Commission (MoPSC) will conduct re-inspections of manufactured homes to assure compliance with this rule.
2. This estimate is made for this rule is on a stand-alone basis.
3. Affected entities are assumed to be in compliance with all other MoPSC rules and regulations.
4. Estimate approximately 100 re-inspections of manufactured homes will be conducted during FY 2004.
5. The Commission feels the $200 re-inspection fee will only apply to either the Manufacturer or Dealer. The history of inspections and re-inspections reflects that re-inspections are only required to address problems which have not been corrected for only one entity either the manufacturer or dealer.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 120—New Manufactured Homes

PROPOSED RESCISSION

4 CSR 240-120.135 New Manufactured Home Inspection Fee. This rule provided for the manner in which inspection fees assessed on new manufactured home sales were calculated by the commission and submitted by registered dealers.

PURPOSE: The commission is proposing this rule be rescinded because it has not ever been enforced by the agency, and the agency is seeking a replacement source of funding.

AUTHORITY: sections 700.040 and 700.115, RSMo Supp. 1999. Original rule filed Sept. 5, 2000, effective April 30, 2001. Rescinded: Filed June 16, 2004.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Public Service Commission, Dale Hardy Roberts, Secretary, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register*** *and reference Case No. MX-2004-0517. No public hearing is scheduled.*

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 121—Pre-Owned Manufactured Homes

PROPOSED RESCISSION

4 CSR 240-121.185 Pre-Owned Manufactured Home Inspection Fee. This rule provided for the manner in which inspection fees assessed on pre-owned manufactured home sales were calculated by the commission and submitted by registered dealers.

PURPOSE: The commission proposes to rescind this rule because it has not ever been enforced by the agency, and the agency is seeking a replacement source of funding.

AUTHORITY: sections 700.040 and 700.115, RSMo Supp. 1999. Original rule filed Sept. 5, 2000, effective April 30, 2001. Rescinded: Filed June 16, 2004.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Public Service Commission, Dale Hardy Roberts, Secretary, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register*** *and reference Case No. MX-2004-0517. No public hearing is scheduled.*

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 123—Modular Units

PROPOSED RESCISSION

4 CSR 240-123.075 Modular Unit Inspection Fee. This rule provided for the manner in which inspection fees assessed on modular unit sales were calculated by the commission and submitted by registered dealers.

PURPOSE: The commission proposes to rescind this rule because it has not ever been enforced by the agency, and the agency is seeking a replacement source of funding.

AUTHORITY: sections 700.040 and 700.115, RSMo Supp. 1999. Original rule filed Sept. 5, 2000, effective April 30, 2001. Rescinded: Filed June 16, 2004.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Public Service Commission, Dale Hardy Roberts, Secretary, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register*** *and reference Case No. MX-2004-0517. No public hearing is scheduled.*

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 123—Modular Units

PROPOSED RULE

4 CSR 240-123.095 Re-Inspection Fee

PURPOSE: This rule outlines the procedure for the re-inspection of modular homes and third party requests for inspections pursuant to section 700.040, RSMo.

(1) The commission may conduct as needed re-inspections of new modular homes to verify corrections have been made as identified during the original inspection, where required corrections have not been completed by the dealer or manufacturer within sixty (60) days of receipt of the original written complaint from the consumer as filed with the commission.

(2) The commission may charge the dealer or the manufacturer, or both, a fee for the re-inspection. The fee is charged to the dealer or the manufacturer who was responsible for making the corrections, or both where both were responsible, when items are not completed in a timely manner as required in section (1).

(3) If recommended by the director, the commission may waive the fee for either the dealer or the manufacturer, or both, if it is found during the re-inspection that there is neither any material defect, nor

material violation of Chapter 700, nor any material violation of the *International Building Code* or the *International Residential Code* as adopted by the commission.

(4) The re-inspection shall address all violations listed in the original consumer inspection report. A copy of the report shall be forwarded to the manufacturer or dealer, or both, for corrective action as well as an invoice for the re-inspection fee. A copy shall also be forwarded to the consumer, if applicable.

(5) The manufacturer and the dealer shall be sent a copy of the re-inspection report within ten (10) days from the date of the re-inspection.

(6) The assessed fee shall be paid to the commission within twenty (20) working days from the date the re-inspection is completed. Each manufacturer and each dealer shall submit along with the fee a written plan of action to be taken by each to correct any statutory, rule or code violations identified and corrections shall be completed within thirty (30) days of the re-inspection.

(7) The fee shall be implemented on all re-inspections conducted after the effective date of the rule.

(8) The commission shall send written notification to each licensed manufacturer and each licensed dealer giving the effective date of the rule.

(9) The fee shall be two hundred dollars ($200) per inspection to be paid by the manufacturer responsible for making the corrections as identified in the original inspection report, if the defect(s) or violation(s) as outlined in section (3) have not been corrected. The fee shall be two hundred dollars ($200) per inspection to be paid by the dealer responsible for making the corrections as identified in the original inspection report, if the defect(s) or violation(s) as outlined in section (3) have not been corrected. The total fee shall not exceed four hundred dollars ($400) per inspection and shall only be paid by the manufacturer or dealer, or both, who has failed to make the applicable corrections in a timely manner. The fee shall be submitted with a form provided by the commission. The commission shall make the determination of who shall be assessed the fee.

(10) The commission shall assess an inspection fee of four hundred dollars ($400) for all third party requests for inspections. Third party requests for inspections must be submitted in writing to the commission and the inspection fee must accompany the request. Third parties do not include licensed manufacturers or dealers.

(11) The following situations shall constitute grounds for the denial, suspension, revocation, or placing on probation of a manufacturer or dealer certificate of registration:

(A) Failure to pay the inspection fees within twenty (20) days of their prescribed due date;

(B) Failure to pay the fee by the prescribed due date for two (2) consecutive months; or

(C) Failure to pay the fee by the prescribed due date for any four (4) of the preceding twelve (12) months.

AUTHORITY: section 700.040, RSMo 2000. Original rule filed June 16, 2004.

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

PRIVATE COST: This proposed rule is estimated to cost private entities approximately two thousand dollars ($2,000) annually for the life of the rule.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Public Service Commission, Dale Hardy Roberts, Secretary, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register*** *and reference Case No. MX-2004-0517. No public hearing is scheduled.*

FISCAL NOTE
PRIVATE ENTITY COST

I. RULE NUMBER

Title: 4

Division: 240 Public Service Commission

Chapter: 123 Modular Units

Type of Rulemaking: Proposed Rule

Rule Number and Name: 4 CSR 240.123.095 Re-Inspection Fee

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which could be affected by the adoption of the proposed rule:	Classifications by type 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
There are approximately 140 Modular Unit manufacturers and dealers.	Modular Unit Manufacturers and Dealers	$2,000 in the first year and a similar amount in succeeding years.

III. WORKSHEET

1. Estimate the number of re-inspections that will be conducted during Fiscal Year 2004 will be 10.
2. 10 re-inspections @ $200 per home = $2000.

IV. ASSUMPTIONS

1. The Missouri Public Service Commission (MoPSC) will conduct re-inspections of manufactured homes to assure compliance with this rule.
2. This estimate is made for this rule is on a stand-alone basis.
3. Affected entities are assumed to be in compliance with all other MoPSC rules and regulations.
4. Estimate approximately 10 re-inspections of modular units will be conducted during FY 2004.
5. The Commission feels the $200 re-inspection fee will only apply to either the Manufacturer or Dealer. The history of inspections and re-inspections reflects that re-inspections are only required to address problems which have not been corrected for only one entity either the manufacturer or dealer.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 245—Real Estate Appraisers
Chapter 4—Certificates and Licenses

PROPOSED AMENDMENT

4 CSR 245-4.060 Temporary Nonresident Certificate or License. The board amends the original Purpose statement, deletes section (1), adds a new section (1) and (2) and deletes the forms that immediately follow this rule in the *Code of State Regulations*.

PURPOSE: This amendment clarifies the procedures related to temporary certification and licensure.

PURPOSE: [This rule clarifies and qualifies who may obtain a temporary nonresidential certificate or license.] ***This rule sets forth the administrative procedures, terms and conditions under which a nonresident applicant may obtain a temporary real estate appraiser certification or licensure.***

[(1) The commission may recognize, on a temporary basis, the certification or licensure of an appraiser issued by another state if the property to be appraised is part of a federally-related transaction, the appraiser's business is of a temporary nature and the appraiser registers with the commission.]

(1) A nonresident applicant, who is certified or licensed and in good standing under the laws of another state, may obtain a Missouri temporary appraiser certification or license for a maximum of six (6) months for the purpose of completing a particular appraisal assignment. To obtain a temporary certification or license, the applicant shall make application on a form prescribed by the commission requesting the specific term of the certificate up to six (6) months, setting forth the particular assignment for which the temporary certificate or license is requested, and paying the prescribed fees as outlined in 4 CSR 245-5.020. The commission may grant an extension if made in writing and for just cause.

(2) The commission may refuse to issue a certificate or license for one or any combination of causes set forth in section 339.532, RSMo. The scope of the temporary appraiser certification or license shall be limited to the particular appraisal assignment described in the application.

AUTHORITY: sections ***339.503****, 339.509 and 339.521, RSMo [1994]* ***2000****. Emergency rule filed Dec. 6, 1990, effective Dec. 16, 1990, expired April 14, 1991. Emergency rule filed April 4, 1991, effective April 14, 1991, expired Aug. 11, 1991. Original rule filed Jan. 3, 1991, effective April 29, 1991. Amended: Filed March 14, 1996, effective Sept. 30, 1996. Amended: Filed June 25, 2004.*

PUBLIC COST: This proposed amendment will cost state agencies and political subdivisions approximately three hundred eighty-five dollars and ninety-eight cents ($385.98) annually for the life of the rule. It is anticipated that the costs will recur for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.

PRIVATE COST: This proposed amendment will cost private entities approximately twenty-six thousand three hundred fourteen dollars and seventy-five cents ($26,314.75) annually for the life of the rule. It is anticipated that the costs will recur for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Real Estate Appraisers Commission, 3605 Missouri Boulevard, PO Box 1335, Jefferson City, MO 65102, by fax at (573) 526-3489 or via e-mail to reacom@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

PUBLIC ENTITY FISCAL NOTE

I. RULE NUMBER

Title 4 -Department of Economic Development

Division 245 - Real Estate Appraisers

Chapter 4 - Certificates and Licenses

Proposed Amendment - 4 CSR 245-4.060 Temporary Non Resident Certificate or License

Prepared March 30, 2004 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Annual Cost of Compliance
Real Estate Appraisers Comimssion	$385.98
Total Annual Cost of Compliance for the Life of the Rule	**$385.98**

III. WORKSHEET

Applications for temporary permits are processed by theClerk IV and Licensure Technician II who review the applications, update the information contained in the licensing computer system, check the national registry, issue letters of approval with the terms of the permit, and mails the documents to the applicants.

The board estimates of 175 applications for temporary permits will be received annually. Staff resources are shared with other boards/commissions within the Division of Professional Registration. The figures below represent costs paid by the Real Estate Appraisers Commission for implementation of this rule.

Employee's salaries were calculated using the annual salary multiplied by 40.47% for fringe benefits and then 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.

STAFF	ANNUAL SALARY	SALARY TO INCLUDE FRINGE BENEFIT	HOURLY SALARY	COST PER MINUTE	TIME PER APPLICATION	COST PER APPLICATION	TOTAL COST
Clerk IV	$15,402.48	$20,654.73	$9.93	$0.17	15 minutes	$2.48	$215.98
Executive I	$11,985.60	$16,072.69	$7.73	$0.13	15 minutes	$1.93	$170.00
					Total Personal Service Costs		**$385.98**

IV. ASSUMPTION

1. Based on actual figures from FY01-FY03 and projected figures for FY04, it is estimated that approximately 175 applicants will apply for a temporary permit annually.
2. Expenses for printing and mailing applications were not calculated in this fiscal note as the application is available on the commission's website at http://pr.mo.gov/appraisers.asp or can be faxed to the potential applicants.
3. It is anticipated that the total cost will recur annually 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.

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 245 - Real Estate Appraisers

Chapter 4 - Certificates and Licenses

Proposed Amendment - 4 CSR 245-4.060 Temporary Non Resident Certificate or License

Prepared March 30, 2004 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:
175	Applicants (temporary pracitce permit - $150)	$26,250.00
175	Applicants (notary - $2.50)	$437.50
175	Applicants (postage @ $.37)	$64.75
	Estimated Annual Cost of Compliance for the Life of the Rule	**$26,314.75**

III. WORKSHEET

See table above.

IV. ASSUMPTION

1. Based on actual figures from FY01-FY03 and projected figures for FY04, it is estimated that approximately 175 applicants will apply for a temporary permit annually.
2. It is anticipated that the total cost will recur annually 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 339.500-339.549, RSMo. Pursuant to section 339.513, RSMo, the board shall by rule and regulation set the amount of fees authorized by sections 339.500-339.549, 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 339.500-339.549, 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 339.500-339.549, RSMo, which will result in an endangerment to the health, welfare, and safety of the public.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 245—Real Estate Appraisers
Chapter 5—Fees

PROPOSED AMENDMENT

4 CSR 245-5.020 Application, Certificate and License Fees. The board is amending subsections (2)(A)–(2)(F) and adding new subsections (2)(J) and (2)(K).

PURPOSE: This amendment deletes fees that are obsolete and establishes a fee for temporary practice permits and letters of good standing.

(2) The following fees shall be paid for original issuance and renewal of certificates or licenses:

(A) Initial Certified General Real Estate Appraiser Fee—	
[Prior to July 1, 2002	*$300.00]*
[Effective July 1, 2002]	$400.00
(B) Initial Certified Residential Real Estate Appraiser Fee—	
[Prior to July 1, 2002	*$300.00]*
[Effective July 1, 2002]	$400.00
(C) Initial-Licensed Real Estate Appraiser Fee—	
[Prior to July 1, 2002	*$300.00]*
[Effective July 1, 2002]	$400.00
(D) Certified General Real Estate Appraiser Renewal Fee—	
[Prior to April 1, 2002	*$300.00]*
[Effective April 1, 2002]	$400.00
(E) Certified Residential Real Estate Appraiser Renewal Fee—	
[Prior to April 1, 2002	*$300.00]*
[Effective April 1, 2002]	$400.00
(F) Licensed Real Estate Appraiser Renewal Fee—	
[Prior to April 1, 2002	*$300.00]*
[Effective April 1, 2002]	$400.00
(J) Temporary Practice Permit (valid for six (6) months)	**$150.00**
(K) Letter of Good Standing (per letter)	**$10.00**

*AUTHORITY: sections 339.509, 339.513 and 339.525.5, RSMo 2000. Emergency rule filed Dec. 6, 1990, effective Dec. 16, 1990, expired April 14, 1991. Emergency rule filed April 4, 1991, effective April 14, 1991, expired Aug. 11, 1991. Original rule filed Jan. 3, 1991, effective April 29, 1991. For intervening history, please consult the **Code of State Regulations**. Amended: Filed June 25, 2004.*

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 approximately two thousand one hundred sixty-seven dollars and thirty-three cents ($2,167.33) annually for the life of the rule. It is anticipated that the costs will recur for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Real Estate Appraisers Commission, 3605 Missouri Boulevard, PO Box 1335, Jefferson City, MO 65102, by fax at (573) 526-3489 or via e-mail to reacom@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

PRIVATE ENTITY FISCAL NOTE

I. RULE NUMBER

Title 4 -Department of Economic Development

Division 245 - Real Estate Appraisers

Chapter 5 - Fees

Proposed Amendment - 4 CSR 245-5.020 Application, Certificate and License Fees

Prepared March 30, 2004 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:
209	Licensees (Letter of Good Standing - $10 per letter)	$2,090.00
209	Applicants (postage @ $.37)	$77.33
	Estimated Annual Cost of Compliance for the Life of the Rule	**$2,167.33**

III. WORKSHEET

See table above.

IV. ASSUMPTION

1. Based on actual figures from FY02 and FY03 and projected figures for FY04, it is estimated that the the commission will receive 209 request for letters of good standing annually.
2. It is anticipated that the total cost will recur annually 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 Chapter 326, RSMo. Pursuant to Section 326.319, RSMo, the board shall by rule and regulation set the amount of fees authorized by Chapter 326, 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 Chapter 326, 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 Chapter 326, RSMo, which will result in an endangerment to the health, welfare, and safety of the public.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 245—Real Estate Appraisers
Chapter 5—Fees

PROPOSED RESCISSION

4 CSR 245-5.030 Miscellaneous Fees. *This rule established and fixed certain fees and charges statutorily authorized to be made by the Missouri Real Estate Appraiser Commission by the provisions of section 610.026, RSMo.*

PURPOSE: This rule is being rescinded pursuant to section 610.026, RSMo which states fees for copying records shall not exceed the actual cost of document search and duplication.

AUTHORITY: sections 339.509 and 610.026, RSMo 1994. Emergency rule filed Dec. 6, 1990, effective Dec. 16, 1990, expired April 14, 1991. Emergency rule filed April 4, 1991, effective April 14, 1991, expired Aug. 11, 1991. Original rule filed Jan. 3, 1991, effective April 29, 1991. Rescinded: Filed June 25, 2004.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Real Estate Appraisers Commission, 3605 Missouri Boulevard, PO Box 1335, Jefferson City, MO 65102, by fax at (573) 526-3489 or via e-mail to reacom@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 245—Real Estate Appraisers
Chapter 9—Competency and Scope of Practice Standards

PROPOSED RULE

4 CSR 245-9.010 Competency and Scope of Practice Standards

PURPOSE: This rule sets the scope of practice standards for the development and communication of real estate appraisals by state-certified general real estate appraisers, state-certified residential real estate appraisers, and state-licensed real estate appraisers.

(1) Prior to accepting an assignment or entering into an agreement to perform any assignment, an appraiser shall properly identify the problem to be addressed and have the knowledge and experience to complete the assignment competently; or alternatively, must:

(A) Disclose the lack of knowledge and/or experience to the client before accepting the assignment;

(B) Take all steps necessary or appropriate to complete the assignment competently; and

(C) Describe the lack of knowledge and/or experience and the steps taken to complete the assignment competently in the report.

(2) If an appraiser discovers during the course of an appraisal assignment that he or she lacks the required knowledge or experience to complete the assignment competently, at the point of such discovery, the appraiser shall notify the client and comply with subsections (1)(B) and (1)(C) of this rule.

(3) Notwithstanding the requirements and allowances of sections (1) and (2) of this rule, state-certified and state-licensed real estate appraisers shall limit their practice to the development and communication of real estate appraisals as follows:

(A) State-certified general real estate appraisers may perform appraisals on all types of real estate regardless of complexity or transaction value and may perform appraisal consulting, if, and only if, performed in compliance with all state and federal laws, rules and regulations pertaining to the appraisal assignment;

(B) State-certified residential real estate appraisers may perform appraisals on residential real estate of one (1) to four (4) residential units without regard to transaction value or complexity and may perform appraisal consulting in the area of residential real estate, if, and only if, performed in compliance with all state and federal laws, rules and regulations pertaining to the appraisal assignment. This designation permits the appraisal of vacant or unimproved land that may be utilized for one (1) to four (4) family purposes. This certification does not permit the appraisal of subdivisions. For all other appraisals, the appraisal report shall be signed by the state-certified residential real estate appraiser and a state-certified general real estate appraiser; and

(C) State-licensed real estate appraisers may perform appraisals of real property consisting of one (1) residential unit, if, and only if, performed in compliance with all state and federal laws, rules and regulations pertaining to the appraisal assignment. For all other appraisals, the appraisal report shall be signed by the state-licensed real estate appraiser and a state-certified real estate appraiser.

(4) In all instances, a real estate appraiser must comply with sections (1), (2) and (3) of this rule. Sections (1), (2) and (3) shall not be interpreted so as to except a real estate appraiser from compliance with the other sections.

(5) Prior to July 1, 2007, the provisions of section (3) of this rule shall not apply to any person that was certified or licensed as a real estate appraiser before the effective date of this rule.

AUTHORITY: section 339.509(5), RSMo 2000. Original rule filed June 25, 2004.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Real Estate Appraisers Commission, 3605 Missouri Boulevard, PO Box 1335, Jefferson City, MO 65102, by fax at (573) 526-3489 or via e-mail to reacom@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 263—State Committee for Social Workers
Chapter 2—Licensure Requirements

PROPOSED RULE

4 CSR 263-2.082 Continuing Education

PURPOSE: This rule outlines the continuing education requirements for licensed social workers.

(1) As a condition for renewing a license to practice, all licensed social workers shall be required to have completed thirty (30) clock hours of acceptable continuing professional education courses prior to the renewal of the license. For the purpose of this rule, hours are considered the same as clock hours.

(2) As part of the thirty (30) continuing education hours required for each renewal cycle, each applicant for renewal or reinstatement of a license shall complete a program on professional social work ethics and on state licensure statute/rules review.

(A) Each ethics program shall not be less than a total of three (3) clock hours and shall comply with section (6) or (7) of this rule to be acceptable to the committee. The ethics program shall be presented by a social worker with a master's level degree or higher who has graduated from an accredited school of social work.

(B) Each state licensure statute/rules review program shall not be less than a total of one and one-half (1 1/2) clock hours and shall be presented by a member of the State Committee for Social Workers, staff or its designee.

(3) The committee shall have authority to make exceptions to the continuing professional education requirement for reasons of health, military service, foreign residency or other good cause.

(4) The overriding consideration in determining whether a specific program is acceptable is that it shall be a formal curriculum of learning which contributes directly to the professional advancement, extension and enhancement of the professional skills and scientific knowledge of an individual after s/he has been licensed to practice clinical or baccalaureate social work.

(5) The term "programs" refers to both formal group and formal self-study courses, that comply with the following standards:

(A) The program shall contribute to the professional advancement, extension and enhancement of the professional skills and scientific knowledge of participants;

(B) The education experience or prerequisites, or both, for the program shall be stated;

(C) Programs shall be presented by an individual(s) qualified in the subject matter and in instructional design. A "qualified" individual is an instructor or discussion leader whose documented background, training, education or experience is appropriate for leading a discussion on the subject matter at the particular program;

(D) Program content should be current;

(E) Programs presented by qualified instructor(s) or discussion leader(s) shall be reviewed by an acceptable professional development process within Missouri other than the instructor(s) or discussion leader(s) to ensure compliance with the standards in this section;

(F) The stated program objectives shall specify the level of knowledge the participant should have upon entering and completing the program;

(G) Each program shall provide a mechanism for evaluation of the program by the participants. The evaluation may be completed on-site immediately following the program or an evaluation questionnaire may be distributed to participants to be completed and returned by mail. The sponsor, as defined in section (7), and the instructor or discussion leader, together, shall review the evaluation outcome and revise subsequent programs accordingly; and

(H) Programs shall require registration by the participant with the program sponsor, as defined in section (8) and shall provide a certificate upon evidence of satisfactory completion of the program.

(6) A formal group is an educational process designed to permit a participant to learn a given subject or subjects through interaction with an instructor and other participants. When a group program complies with sections (4) and (5) of this rule, it is a formal group program.

(A) Formal group programs requiring class attendance shall be acceptable only if an outline or agenda is prepared in advance and retained. The agenda, outline or attendance record shall indicate the name(s) of the instructor(s), the subject matter covered and the date(s) and length of the program.

(B) Credit for participating in formal group programs of learning shall be determined as follows:

1. For university or college courses that the licensee successfully completes for credit, each semester-hour credit shall equal fifteen (15) hours of continuing professional education and each quarter-hour credit shall equal ten (10) hours. Noncredit courses shall be measured in classroom hours;

2. Licensees who arrive late, leave before a program is completed or otherwise miss part of a program shall claim credit only for the actual time they attend the program.

(7) A formal self-study is an educational process designed to permit a participant to learn a given subject without major interaction with an instructor. For a self-study program to be formal, the sponsor shall require registration by the participant and shall provide a certificate upon evidence of satisfactory completion, such as a completed workbook or examination, and the program must comply with sections (4) and (5) of this rule.

(A) The credit hours for formal self-study programs recommended by the program sponsor will be granted provided the requirements are satisfied and the sponsor has:

1. Pretested the program to determine average completion time; and

2. Recommended the credit be equal to one-half (1/2) the average completion time.

(B) Credit for formal self-study shall not exceed fifty percent (50%) or half of fifteen (15) hours of the continuing education requirement per year. This percentage is equal to seven and one-half (7 1/2) hours of continuing education per year of the total.

(8) Sponsors are the organizations, groups, or entities responsible for developing programs. Sponsors can subcontract with the instructor(s) or discussion leader(s) to present qualified program(s). They shall be responsible for the following:

(A) Verifying attendees for all programs;

(B) Maintaining all attendance records and program material for five (5) years and providing these records to the board or its agent upon request by the committee;

(C) Monitoring and editing all attendance records to reflect the correct number of continuing education hours according to time present and accounted for at a program by a licensee;

(D) Having a degreed social worker from an accredited social work program be a member of the planning committee for all programs; and

(E) Complying with the criteria in (2), (4), and (5).

(9) One (1) credit hour of continuing education may be granted for writing an article published by a professional journal or periodical or a published book; provided it contributes directly to the author's advancement, extension and enhancement of professional skills and scientific knowledge. The maximum credit for published books and articles shall not exceed twenty percent (20%) of the continuing education requirement per year. This percentage is equal to three (3) hours of continuing education per year of the total.

(10) Five (5) hours may be given for each initial preparation and presentation of a social work course, seminar, institute or workshop. The maximum number of allowable continuing education hours shall be five (5) per year. Credit for either preparation or presentation shall not be granted for repetitious presentations. Credit as an instructor or discussion leader including time devoted to preparation

shall not exceed thirty-three percent (33%) of the continuing education requirement per year. Three (3) credit hours of continuing education may be granted for initial preparation for supervision of undergraduate and graduate practicum students, provided such preparation entails a formal learning program. The maximum credit of supervision of a practicum shall not exceed twenty percent (20%) of the continuing education requirement per year.

(11) Audit of Continuing Education.

(A) Licensees are required to retain documentation of continuing education verified on the renewal form for two (2) years following license renewal.

1. A licensee is subject to an audit of continuing education activity documentation after the time of license renewal.

2. The committee may audit continuing education activities as time and resources allow.

3. Upon request the licensee shall submit to the committee for review the continuing education documentation verifying successful completion of the continuing education requirements. Licensees shall assist the committee in its audits by providing timely and complete responses to the committee's inquiries.

4. Failure to submit requested information to the board by the date requested or submission of inadequate or falsified records may result in disciplinary action.

AUTHORITY: sections 337.600, 337.612, 337.618, 337.650, 337.662, 337.668, 337.677, RSMo Supp. 2003 and 337.627, RSMo 2000. Original rule filed June 25, 2004.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions approximately two thousand seven hundred forty-six dollars ($2,746) annually for the life of the rule. It is anticipated that the costs will recur annually for the life of the rule, may vary with inflation and are expected to increase at the rate projected by the Legislative Oversight Committee.

PRIVATE COST: This proposed rule will cost private entities approximately $1,880,616 beginning in FY07 with a continuous annual growth rate of nine thousand four hundred three dollars ($9,403) each odd numbered year for the life of the rule and $1,754,886 beginning in FY06 with a continuous annual growth rate of eight thousand seven hundred seventy-four dollars ($8,774) each even numbered year. It is anticipated that the costs will recur for the life of the rule, may vary with inflation and are expected to increase at the rate projected by the Legislative Oversight Committee.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with Vanessa Beauchamp, Executive Director, State Committee for Social Workers, PO Box 1335, Jefferson City, MO 65102, by facsimile at (573) 526-3489, or via e-mail at lcsw@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

PUBLIC ENTITY FISCAL NOTE

I. RULE NUMBER

Title 4 -Department of Economic Development

Division 263 - Licensed Clincial Social Workers

Chapter 2 - Licensure Requirements

Proposed Rule - 4 CSR 263-2.082 Continuing Education

Prepared January 29, 2004 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Annual Cost of Compliance
State Committee for Social Workers	$2,746.00
Total Annual Cost of Compliance for the Life of the Rule	**$2,746.00**

III. WORKSHEET

The board may conduct an annual audit of licensees to verify compliance with the continuing education requirements. Licensees shall assist the board with its audits by providing timely and complete responses to the board's inquiries. Based on the current number of licensed social workers, (2468 licensees expire on 9/30/05 and approximately 2303 licensees expiring 9/30/06), the board estimates approximately 3% of the current license population will be audited each renewal period. The committee estimates that approximately 73 licensees will be audited annually.

The division's central processing unit will process the renewal form. The Executive Director will request and monitor receipt of the continuing education. The Licensing Tech. II's will prepare letters requesting licensees to submit information, assist with monitoring their receipt, update the computer licensing system and mail the information to members of the board. The salary of the Executive Director and one Licensing Technican II are shared with other boards within the division One License Technician II is supported solely by the committee.

STAFF	ANNUAL SALARY	SALARY TO INCLUDE FRINGE BENEFIT	HOURLY SALARY	COST PER MINUTE	TIME PER APPLICATION	COST PER APPLICATION	TOTAL COST EACH BIENNIAL RENEWAL PERIOD
Executive Director	$20,040.00	$26,873.64	$12.92	$0.22	30 minutes	$15.72	$911.09
Licensing Tech. II	$10,036.80	$13,459.35	$6.47	$0.11	30 minutes	$7.87	$456.31
Licensing Tech. II	$24,660.00	$33,069.06	$15.90	$0.26	30 minutes	$19.34	$1,121.14

Three members of the board will review for approval all continuing education received. The board estimates each member will receive up to $70 per day for this review. It is estimated that board members will spend a total of 1 day reveiwing the licensee's contiuing education. Based on these assumptions, it is estimated the board will pay $210 annually for this review. Because other board correspondence may be mailed to the members of the board with continuing education audits, the cost for this mailing was not calculated into the fiscal note.	$210.00
Total Personal Service Costs	**$2,698.54**

Expenditure of Money

CLASSIFICATION	Fee Amount	Number in Class	AGGREGATE COST
Letterhead Printing Cost	$0.15	73	$10.95
Envelope for Mailing Letter Requesting Verification of Continuing Education Hours	$0.16	73	$11.68
Postage for Mailing Application	$0.34	73	$24.82
		Total Expense and Equipment Costs	**$47.45**

IV. ASSUMPTION

1. In order to even out the board's cash flow, the board implemented a biennial split renewal. Licenses are generally renewed for a 2 year period depending on the year of issuance (even or odd). The board will be conducting audits annually based on the split biennial renewal cycles. The above figures are based on FY03 actuals.
2. Employees' 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/renewals. The total cost was based on the cost per application/renewal multiplied by the estimated number applications or renewals.
3. It is anticipated that the total cost will recur annually for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.

PRIVATE ENTITY FISCAL NOTE

I. RULE NUMBER

Title 4 -Department of Economic Development

Division 263 - State Committee for Social Workers

Chapter 2 - Licensure Requirements

Proposed Rule - 4 CSR 263-2.082 Continuing Education

Prepared January 29, 2004 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Beginning in 2005

Estimate the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by type of the business entities which would likely be affected:	Estimated savings with the rule by affected entities:
2,468	Licensees (CE courses - $762)	$1,880,616.00
	Estimated Biennial Savings for the Life of the Rule	**$1,880,616.00 with a continuous biennial growth rate of $9,403.00**

Beginning in 2006

Estimate the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by type of the business entities which would likely be affected:	Estimated savings with the rule by affected entities:
2,303	Licensees (CE courses - $762)	$1,754,886.00
	Estimated Biennial Savings for the Life of the Rule	**$1,754,886.00 with a continuous biennial growth rate of $8,774.00**

III. WORKSHEET

See table above.

IV. ASSUMPTION

1. As of March 19, 2004 the committee reports that 2,303 social workers hold licenses that will expire on September 30, 2004 and 2,468 licensees hold licenses that will expire on September 30, 2005. The committee estimates a 5% growth rate in the number of licensees.
2. The committee estimates that the cost of continuing education courses will cost approximately $55-$200 per course to obtain 6 credit hours. For the purpose of this fiscal note the committee estimates the average cost of a continuing education course is $127. In order to meet the requirements of the rule, licensees will have to attend 5 courses biennially. Therefore, the committee estimates licensees will spend an average of $762 biennially for continuing education courses.
3. It is not possible to estimate all costs (i.e., mileage, meals, and lodging) that a licensee could incur in obtaining the required continuing education.

NOTE: The board is statutorily obligated to enforce and administer the provisions of sections 337.600 through 337.689, RSMo. Pursuant to Section 326.612, RSMo, the board shall by rule and regulation set the amount of fees authorized by sections 337.600 through 337.689, 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 337.600 through 337.689, 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 337.600 through 337.689, RSMo, which will result in an endangerment to the health, welfare, and safety of the public.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 263—State Committee for Social Workers
Chapter 3—Ethical Standards/Disciplinary Rules

PROPOSED AMENDMENT

4 CSR 263-3.010 Scope of Coverage and Organization. The committee is amending section (1).

PURPOSE: This amendment implements changes made to sections 331.612–337.689, RSMo pursuant to House Bill 567 of the 91st General Assembly.

(1) The ethical standards/disciplinary rules for licensed *[clinical]* social workers, provisional licensed *[clinical]* social workers, temporary permit holders and registrants, as set forth hereafter by the committee, are mandatory. The failure of a licensed *[clinical]* social worker, provisional licensed *[clinical]* social worker, temporary permit holder or registrant to abide by any ethical standard/disciplinary rule in this chapter shall constitute unethical conduct and be grounds for disciplinary proceedings.

AUTHORITY: sections 337.600, 337.615, ***337.650, 337.665, 337.677 and 337.680, RSMo Supp. 2003 and*** *337.627, and 337.630, RSMo [Supp. 1998]* ***2000****. Original rule filed Sept. 18, 1990, effective Feb. 14, 1991. Rescinded and readopted: Filed Dec. 30, 1998, effective July 30, 1999. Amended: Filed June 25, 2004.*

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 Vanessa Beauchamp, Executive Director, State Committee for Social Workers, PO Box 1335, Jefferson City, MO 65102, by facsimile at (573) 526-3489, or via e-mail at lcsw@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 263—State Committee for Social Workers
Chapter 3—Ethical Standards/Disciplinary Rules

PROPOSED AMENDMENT

4 CSR 263-3.060 Relationships with Colleagues. The committee is amending sections (1)–(6).

PURPOSE: This amendment implements changes made to sections 331.612–337.689, RSMo pursuant to House Bill 567 of the 91st General Assembly.

(1) A licensed *[clinical]* social worker, provisional licensed *[clinical]* social worker, temporary permit holder and registrant should act with integrity in his/her relationships with colleagues, other organizations, agencies, institutions, referral sources and other professions so as to facilitate the contribution of all colleagues toward achieving optimum benefit for clients.

(2) A licensed *[clinical]* social worker, provisional licensed *[clinical]* social worker, temporary permit holder and registrant shall not knowingly cause a client to terminate the service of another professional solely for personal gain.

(3) A licensed *[clinical]* social worker, provisional licensed *[clinical]* social worker, temporary permit holder and registrant shall not exploit his/her professional relationships with supervisors, colleagues, supervisees, students or employees either sexually, economically or otherwise.

(4) Licensed *[clinical]* social workers, provisional licensed *[clinical]* social workers, temporary permit holders and registrants who have direct knowledge of a social work colleague's impairment which is due to personal problems, psychosocial distress, substance abuse, or mental health difficulties, and which interferes with practice effectiveness should consult with that colleague when feasible and assist the colleague in taking remedial action.

(5) Licensed *[clinical]* social workers and temporary permit holders who function as supervisors or educators should not engage in sexual intimacies or contact as defined in the rules promulgated by the committee, with supervisees, students, trainees, or other colleagues over whom they exercise professional authority.

(6) Licensed *[clinical]* social workers and temporary permit holders must exercise appropriate supervision and provide appropriate working conditions, timely evaluations, constructive consultation and experience opportunities.

AUTHORITY: sections 337.600, 337.615, [337.627, and 337.630,] ***337.650, 337.665, 337.677 and 337.680,*** *RSMo Supp. [1998]* ***2003 and 337.627 and 337.630, RSMo 2000****. Original rule filed Sept. 18, 1990, effective Feb. 14, 1991. Rescinded and readopted: Filed Dec. 30, 1998, effective July 30, 1999. Amended: Filed June 25, 2004.*

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 Vanessa Beauchamp, Executive Director, State Committee for Social Workers, PO Box 1335, Jefferson City, MO 65102, by facsimile at (573) 526-3489, or via e-mail at lcsw@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 263—State Committee for Social Workers
Chapter 3—Ethical Standards/Disciplinary Rules

PROPOSED AMENDMENT

4 CSR 263-3.080 Public Statements/Fees. The committee is amending sections (1)–(9).

PURPOSE: This amendment implements changes made to sections 331.612–337.689, RSMo pursuant to House Bill 567 of the 91st General Assembly.

(1) A licensed *[clinical]* social worker, provisional licensed *[clinical]* social worker, temporary permit holder and registrant shall not—

(2) A licensed *[clinical]* social worker, provisional licensed *[clinical]* social worker, temporary permit holder and registrant shall use only those educational credentials in association with his/her license and practice as a *[clinical]* **licensed** social worker that have been earned at an acceptable educational institution. Licensed *[clinical]* social workers, provisional licensed *[clinical]* social workers, temporary permit holders and registrants shall not misrepresent their credentials, training or level of education.

(3) A licensed *[clinical]* social worker holder shall use the title "Licensed Clinical Social Worker (LCSW)" **or "Licensed Baccalaureate Social Worker (LBSW)"** in any advertising, public directory or solicitation, including telephone directory listings, regardless of whether this presentment is made under the licensee's name, a fictitious business or group name, or a corporate name.

(4) A licensed *[clinical]* social worker, provisional licensed *[clinical]* social worker and temporary permit holder shall have his/her license prominently displayed at all times as proof of licensure to the client.

(5) Licensed *[clinical]* social workers whose licenses have lapsed or been revoked shall not use the title "Licensed Clinical Social Worker" **or "Licensed Baccalaureate Social Worker (LBSW)."**

(6) Without disclosure to the client, a licensed *[clinical]* social worker, provisional licensed *[clinical]* social worker, temporary permit holder and registrant shall not accept compensation for the professional services from anyone other than the client without disclosure to the client or his/her legal guardian.

(7) A licensed *[clinical]* social worker, provisional licensed *[clinical]* social worker, temporary permit holder and registrant shall not accept for professional services any form of remuneration including the bartering of services which has the effect of exploiting the professional relationship or creating a dual or multiple relationship.

(8) A licensed *[clinical]* social worker and temporary permit holder shall consider the value of his/her services and the financial ability of clients in establishing reasonable fees for professional services.

(9) A licensed *[clinical]* social worker and temporary permit holder should not accept a fee for professional services or any form of remuneration from clients who are entitled to services from that licensed *[clinical]* social worker and temporary permit holder or similar services through an institution or agency or other benefits structure, unless clients have been fully informed of the availability of, or payments for, these services from other sources.

AUTHORITY: sections 337.600, 337.615, ***337.650, 337.665, 337.677 and 337.680, RSMo Supp. 2003 and*** *337.627 and 337.630, RSMo Supp. [1998] **2000**. Original rule filed Sept. 18, 1990, effective Feb. 14, 1991. Rescinded and readopted: Filed Dec. 30, 1998, effective July 30, 1999. Amended: Filed June 25, 2004.*

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 Vanessa Beauchamp, Executive Director, State Committee for Social Workers, PO Box 1335, Jefferson City, MO 65102, by facsimile at (573) 526-3489, or via e-mail at lcsw@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 263—State Committee for Social Workers
Chapter 3—Ethical Standards/Disciplinary Rules

PROPOSED AMENDMENT

4 CSR 263-3.100 Confidentiality. The committee is amending sections (1)–(6).

PURPOSE: This amendment implements changes made to sections 331.612–337.689, RSMo pursuant to House Bill 567 of the 91st General Assembly.

(1) A licensed *[clinical]* social worker, provisional licensed *[clinical]* social worker, temporary permit holder and registrant should take reasonable personal action, and inform responsible authorities or inform those persons at risk, when the conditions or actions of clients indicate that there is clear and imminent danger to clients or others. When the licensed *[clinical]* social worker, provisional licensed *[clinical]* social worker, temporary permit holder and registrant is uncertain about the duty to protect, consultation with other professionals is appropriate.

(2) A licensed *[clinical]* social worker, provisional licensed *[clinical]* social worker, temporary permit holder and registrant shall inform clients, at the onset of the professional relationship, of the limits of confidentiality.

(3) A licensed *[clinical]* social worker, provisional licensed *[clinical]* social worker, temporary permit holder and registrant shall keep confidential his/her therapy relationships with clients including information obtained from this relationship with clients with the following exceptions:

(C) When the licensed *[clinical]* social worker, provisional licensed *[clinical]* social worker, temporary permit holder or registrant is under court order to disclose information; or

(4) A licensed *[clinical]* social worker, provisional licensed *[clinical]* social worker, temporary permit holder and registrant should make every effort to see that the employer provides for maintenance, storage and disposal of the records of clients so that unauthorized persons shall not have access to these records.

(5) A licensed *[clinical]* social worker, provisional licensed *[clinical]* social worker, temporary permit holder and registrant shall not forward to another person, agency or potential employer any confidential information without the written consent of the client(s) or their legal guardian(s).

(6) When providing counseling services to families, couples or groups, licensed *[clinical]* social workers, provisional licensed *[clinical]* social workers, temporary permit holders and registrants shall seek agreement among the parties involved concerning each individual's right to confidentiality and obligation to preserve the confidentiality of information shared by others. Participants in family, couples or group counseling shall be informed by the licensed *[clinical]* social worker, provisional licensed *[clinical]* social worker, temporary permit holder and registrant that there is no guarantee that all participants will honor such agreements.

*AUTHORITY: sections 337.600, 337.615, **337.650, 337.665, 337.677, and 337.680,** RSMo Supp. [1998] **2003 and** 337.627 and 337.630, **RSMo 2000**. Original rule filed Sept. 18, 1990, effective Feb. 14, 1991. Rescinded and readopted: Filed Dec. 30, 1998, effective July 30, 1999. Amended: Filed June 25, 2004.*

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 Vanessa Beauchamp, Executive Director, State Committee for Social Workers, PO Box 1335, Jefferson City, MO 65102, by facsimile at (573) 526-3489, or via e-mail at lcsw@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 263—State Committee for Social Workers
Chapter 3—Ethical Standards/Disciplinary Rules

PROPOSED AMENDMENT

4 CSR 263-3.120 Research on Human Subjects. The committee is amending sections (1)–(5)

PURPOSE: This amendment implements changes made to sections 331.612–337.689, RSMo pursuant to House Bill 567 of the 91st General Assembly.

(1) A licensed *[clinical]* social worker, provisional licensed *[clinical]* social worker, temporary permit holder and registrant shall ensure that the welfare of a client is in no way compromised in any experimentation and/or that the client is not participating against his/her will.

(2) In presenting case studies in classes, professional meetings or publications, licensed *[clinical]* social workers, provisional licensed *[clinical]* social workers, temporary permit holders and registrants shall disguise the identity of clients to assure full protection.

(3) In conducting any research on human subjects, a licensed *[clinical]* social worker, provisional licensed *[clinical]* social worker, temporary permit holder and registrant shall not violate any laws or regulations of this state or the federal government.

(4) When planning any research activity dealing with human subjects, a licensed *[clinical]* social worker, provisional licensed *[clinical]* social worker, temporary permit holder and registrant shall ensure that research problems, design and execution are in full compliance with Protection of Human Subjects as published in the *Code of Federal Regulations* (45 CFR 46).

(5) Licensed *[clinical]* social workers, provisional licensed *[clinical]* social workers, temporary permit holders and registrants engaged in evaluation or research must obtain voluntary and written informed consent from participants without any implied or actual deprivation or penalty for refusal to participate, without undue inducement to participate, and with due regard for participants' well-being, privacy and dignity. Informed consent must include information about the nature, extent and duration of the participation requested and disclosure of the risks and benefits in the research.

*AUTHORITY: sections 337.600, 337.615, **337.650, 337.665, 337.677, and 337.680, RSMo Supp. 2003 and** 337.627 and 337.630, RSMo [Supp. 1998] **2000**. Original rule filed Sept. 18, 1990, effective Feb. 14, 1991. Rescinded and readopted: Filed Dec. 30, 1998, effective July 30, 1999. Amended: Filed June 25, 2004.*

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 Vanessa Beauchamp, Executive Director, State Committee for Social Workers, PO Box 1335, Jefferson City, MO 65102, by facsimile at (573) 526-3489, or via e-mail at lcsw@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 270—Missouri Veterinary Medical Board
Chapter 4—Minimum Standards

PROPOSED AMENDMENT

4 CSR 270-4.042 Minimum Standards for Continuing Education for Veterinarians. The board is amending section (3), subsection (6)(D), section (11) and subsection (11)(B).

PURPOSE: This amendment clarifies for recent graduates the requirement for continuing education during the initial year of licensure. Also, the rule allows an extension of time for veterinarians to complete their continuing education requirement, after showing good cause for the extension.

(3) For the license renewal due on November 30, 2002, and each subsequent renewal thereafter, the licensee shall certify that he/she has obtained at least ten (10) hours of continuing education during the year preceding the license renewal on the renewal form provided by the board. The renewal form shall be mailed directly to the board office prior to November 30 of each year. The licensee shall not submit the record of continuing education attendance to the board except in the case of a board audit. **A licensee is not required to obtain any continuing education hours for the reporting period in which the licensee graduates from an accredited school of veterinary medicine and is initially licensed to practice as a veterinarian in Missouri.**

(6) A continuing education hour includes but is not limited to:

(D) Completion of academic course work **for credit** in veterinary medicine at an accredited college of veterinary medicine with one (1) credit hour equaling ten (10) continuing education hours.

(11) **The board shall waive continuing education requirements as required by section 41.946, RSMo and grant a waiver or an extension of time for continuing education requirements to a licensee for good cause.** Any licensee seeking renewal of a license or certificate without having fully complied with these continuing education requirements who wishes to seek a waiver **or extension** of the requirements shall file with the board a renewal application, a statement setting forth the facts concerning the noncompliance, a request for waiver *[of]* **or an extension of time in which to complete** the continuing education requirements *[on the basis of such facts]* and, if desired, a request for an interview before the board.

If the board finds from the statement or any other evidence submitted, that good cause has been shown for waiving the continuing education requirements, or any part thereof, **or for granting an extension of time in which to obtain the required continuing education hours,** the board shall waive part or all of the requirements for the renewal period for which the licensee has applied **or grant an extension of time, not to exceed six (6) months, in which to obtain the required continuing education hours**. At that time, the licensee will be requested to submit the required renewal fee.

(B) If an interview before the board is requested at the time the request for waiver **or extension** is filed, the licensee shall be given at least twenty (20) days written notice of the date, time and place of the interview.

AUTHORITY: sections ***41.946,*** *340.210, 340.258 and 340.268, RSMo 2000. Original rule filed April 13, 2001, effective Oct. 30, 2001. Amended: Filed April 1, 2003, effective Sept. 30, 2003. Amended: Filed June 25, 2004.*

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Veterinary Medical Board, Dana Hoelscher, Executive Director, PO Box 633, Jefferson City, MO 65102 or at http://pr.mo.gov/veterinarian.asp. 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 270—Missouri Veterinary Medical Board
Chapter 4—Minimum Standards

PROPOSED AMENDMENT

4 CSR 270-4.050 Minimum Standards for Continuing Education for Veterinary Technicians. The board is creating section (7).

PURPOSE: This amendment allows an extension of time for veterinary technicians to complete their continuing education requirement, after showing good cause for the extension.

(7) The board shall waive continuing education requirements as required by section 41.946, RSMo and otherwise may grant a waiver or an extension of time for continuing education requirements to a license for good cause. Any licensee seeking renewal of a license or certificate without having fully complied with these continuing education requirements who wishes to seek a waiver or extension of the requirements shall file with the board a renewal application, a statement setting forth the facts concerning the noncompliance, a request for waiver or extension of time in which to complete the continuing education requirements and, if desired, a request for an interview before the board. If the board finds from the statement or any other evidence submitted, that good cause has been shown for waiving the continuing education requirements, or any part thereof, or for granting an extension of time in which to obtain the required continuing education hours, the board shall waive part or all of the requirements for the renewal period for which the licensee has applied or grant an extension of time, not to exceed six (6) months, in which to obtain the required continuing education hours. At that time, the licensee will be requested to submit the required renewal fee.

(A) Good cause shall be defined as an inability to devote sufficient hours to fulfilling the continuing education requirements during the applicable renewal period based on one of the following reasons:

1. Full-time service in the armed forces of the United States during a substantial part of the renewal period; or

2. An incapacitating illness; or

3. Undue hardship.

(B) If an interview before the board is requested at the time the request for waiver or extension is filed, the licensee shall be given at least twenty (20) days written notice of the date, time and place of the interview.

AUTHORITY: sections ***41.946,*** *340.210, 340.258 and 340.324, RSMo 2000. Original rule filed Nov. 4, 1992, effective July 8, 1993. Amended: Filed April 13, 2001, effective Oct. 30, 2001. Amended: Filed June 25, 2004.*

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Veterinary Medical Board, Dana Hoelscher, Executive Director, PO Box 633, Jefferson City, MO 65102 or at http://pr.mo.gov/veterinarian.asp. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 50—Division of School Improvement
Chapter 345—Missouri School Improvement Program

PROPOSED RULE

5 CSR 50-345.100 Missouri School Improvement Program

PURPOSE: This rule implements a program of comprehensive assessments of school districts' educational resources, instructional processes and educational outcomes designed to stimulate and encourage improvement in the efficiency and effectiveness of instruction, and provides information which will enable the State Board of Education to accredit and classify the districts as required by state law.

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.

(1) This rule is to be effective July 1, 2006, and incorporates by reference and makes it a part of this rule the *Missouri School Improvement Program (MSIP) Standards and Indicators Manual* which is comprised of qualitative and quantitative standards for

school districts. As referenced in the MSIP Standards and Indicators Manual, the standards are organized in three (3) sections—Resource Standards, Process Standards and Performance Standards. The standards are supported by appendices which include: the minimum graduation requirements, media standards for school learning resource centers, teacher certification requirements and assessment program standards.

(2) During each year, the Department of Elementary and Secondary Education (DESE) will select school districts which will be reviewed and classified in accordance with this rule, including the standards, with the appropriate scoring guide and forms and procedures outlined in the annual MSIP.

(3) The State Board of Education (board) will assign classification designations of unaccredited, provisionally accredited and accredited based on the standards of the MSIP.

(4) As a condition of receiving a classification designation other than unaccredited, each school district reviewed under MSIP must file, within sixty (60) days of the board's decision, a school improvement plan in a form specified by DESE and implement it in accordance with a specified schedule approved by DESE.

(5) A school district's classification designation based on the standards of the MSIP will remain in effect until the board approves another designation. The board may consider changing a district's classification designation after its regularly scheduled review or upon its determination that the district has:

(A) Failed to implement its school improvement plan at an acceptable level;

(B) Implemented its school improvement plan substantially and, therefore, may qualify for a higher classification designation;

(C) Employed a superintendent or chief executive officer without a valid Missouri superintendent's certificate in a K–12 school district; or employed a superintendent or chief executive officer without a valid Missouri superintendent's or elementary principal's certificate in a K–8 school district; and/or

(D) Altered significantly the scope or effectiveness of the programs, services or financial integrity upon which the original classification designation was based.

(6) A school district designated unaccredited by the board under the provisions of this rule will be liable for tuition and transportation for resident students legally transferring to another district pursuant to applicable state laws and regulations from the date of the action by the board through the end of the school year during which the board awards the district a designation of provisionally accredited or higher.

(7) Any school district which on June 30, 1997, or thereafter, has been classified unaccredited by the board in two (2) successive years will be subject to lapsing, pursuant to applicable state laws and regulations. A school district that is classified as unaccredited shall lapse on June 30 of the second full year after the school year during which the unaccredited classification is initially assigned.

(8) A school district designated provisionally accredited twice sequentially or a school district designated provisionally accredited after being unaccredited will be designated provisionally accredited for three (3) years, at which time a re-review will be conducted. A district's accreditation designation may not be raised more than one (1) level during a re-review.

(A) The board may lower a district's accreditation if a district fails to gain full accreditation after being designated provisionally accredited twice sequentially; or after being designated provisionally accredited after being unaccredited and the district fails to make significant or consistent improvement in student achievement in order to gain accreditation.

(9) The board of education of any school district which is dissatisfied with the classification designation assigned by the board may request a hearing before the commissioner of education for the purpose of showing cause why its classification designation should be reconsidered. Each request must be submitted in writing within thirty (30) days of the board's classification designation, setting forth the specific reasons for the request, including any errors of fact upon which the board relied in making the classification designation. If the commissioner of education agrees that sufficient cause has been shown, s/he will request the board to reconsider the district's classification designation together with the additional or corrected information.

AUTHORITY: sections 161.092 and 168.081, RSMo Supp. 2003 and 162.081 and 167.131, RSMo 2000. Original rule filed June 30, 2004.

PUBLIC COST: This proposed rule is estimated to cost school districts three hundred eleven thousand two hundred forty-four dollars ($311,244) per year for the life of the rule and Department of Elementary and Secondary Education two hundred twenty thousand five hundred thirty-eight dollars ($220,538) per year for the life of the rule with a combined total of five hundred thirty-one thousand seven hundred eighty-two dollars ($531,782) per year for the life of the rule.

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Elementary and Secondary Education, Attention: Becky Kemna, Coordinator, School Improvement and Accreditation, Division of School Improvement, PO Box 480, Jefferson City, MO 65102-0480. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

FISCAL NOTE
PUBLIC COST

I. RULE NUMBER

Title: Department of Elementary and Secondary Education

Division: School Improvement - 50

Chapter: Missouri School Improvement Program - 345

Type of Rulemaking: Proposed Rule

Rule Number and Name: 5 CSR 50-345.100 Missouri School Improvement Program

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Public Elementary & Secondary School Districts	$311,244 per year for the life of the rule
Department of Elementary & Secondary Education	$220,538 per year for the life of the rule

III. WORKSHEET

For the purposes of this fiscal note, districts are classified into four (4) categories based upon student population and staff size. Public entity cost for public school district is based upon estimates of district staff participation. The number of visits is estimated over the MSIP 4th Cycle, taking into consideration staff interviews and document preparation.

District Category Size	Visits	Team Size	District Cost	Yearly Cost
1	2	60	$13,320.00	$ 2,664.00
2	3	30	$ 6,660.00	$ 19,980.00
3	60	15	$ 3,330.00	$199,800.00
4	40	10	$ 2,220.00	$ 88,800.00
				$311,244.00

Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 50—Division of School Improvement
Chapter 345—Missouri School Improvement Program

PROPOSED RULE

5 CSR 50-345.200 Waivers of Regulations

PURPOSE: This rule establishes the criteria and procedures for annually identifying school district and/or school building eligibility for waivers in compliance with applicable state law and regulations. The student performance data will be reviewed, and the commissioner of education will notify districts if they are eligible for a waiver. Districts may respond to this notification by either accepting or rejecting such waiver.

(1) This rule contains four (4) types of Department of Elementary and Secondary Education (DESE) waivers of regulations which may be granted to school districts: Missouri School Improvement Program (MSIP) On-Site Review; Hold Harmless; A+ High School; and Exemplary School. This rule is to be effective July 1, 2006.

(A) MSIP On-Site Review.

1. Districts qualify for a waiver of the next scheduled MSIP review if they meet the following:

A. The district achieved accreditation in the most recent MSIP review and is accredited at the highest level as defined by MSIP based upon the two (2) latest DESE generated Annual Performance Reports (APR).

2. If a district fails to meet the waiver criteria or the district no longer complies with the specific laws and rules referred to in the Waiver Checklist, the district will be scheduled for an on-site review.

(B) Hold Harmless.

1. Districts that meet the financial qualifications identified in state law will be granted waivers as long as they qualify for a waiver of the MSIP On-Site Review.

(C) A+ High School.

1. High schools qualify for a waiver of the MSIP On-Site Review if they meet the following:

A. The school is currently designated as A+;

B. The school agrees to administer the MSIP Advance Questionnaire;

C. The school completes an annual A+ Waiver Plan which confirms the district's adherence to the specific laws and rules referred to in that plan; and

D. The school is not designated a Priority School.

(D) Exemplary School.

1. School buildings that meet the following student performance criteria will be designated as exemplary in compliance with state law and will be granted waivers when they meet the following:

A. The school meets at least one (1) more than half of the possible Missouri Assessment Program (MAP) scoring options at a high level for three (3) successive years;

B. The school meets at least one (1) more than half of all other MSIP performance indicators at a high level for three (3) successive years; and

C. The school is not designated a Priority School.

2. The school's exemplary designation will be valid until June 30 of the year in which the school is determined to not meet items listed above.

(2) Application. A district which meets the performance criteria for any of the above four (4) waivers will be so notified by the commissioner of education. The district must either accept or decline the waiver within four (4) weeks after notification; except those districts which qualify for the A+ High School waiver, which must accept or decline that waiver by October 1 of the year of the scheduled MSIP review.

(3) Waiver Checklist.

(A) School districts which meet certain student performance expectations may qualify for certain waivers related to the MSIP. The checklist below identifies the areas of MSIP which are eligible to be waived for qualifying districts.

1. All MSIP *Resource Standards and Indicators* found in the MSIP rule will be waived except the following:

A. The state high school graduation requirements; and

B. Regular instruction in *United States* and *Missouri Constitutions*, as well as American History and Institutions, must be provided, and all students must pass at least a half unit of credit course in the institutions, branches, and functions of federal, state and local governments and in the electoral process, as required by state law.

2. All MSIP *Process Standards and Indicators* found in the MSIP rule will be waived except the following:

A. The district must have cross-referenced all curricular areas to the Show-Me Standards;

B. The district reports school dropouts to the Missouri Literacy Hot Line;

C. The district meets state and federal special education requirements for students with disabilities, economically disadvantaged students, migratory children, students whose native or home language is other than English and homeless youth;

D. The district complies with all regulations of the state and federal categorical programs in which the district participates;

E. The district distributes a student code of conduct and provides a protected, orderly environment;

F. The district provides professional development programs and services as required by state law;

G. Board of education members must be trained as prescribed by state law;

H. The district meets the salary compliance and the minimum salary requirements as defined in state law. This does not apply to "hold harmless" districts;

I. The district's community, through the board of education, provides sufficient financial resources and the district is not identified as a "financially stressed district";

J. The district annually reviews its Comprehensive School Improvement Plan (CSIP) and updates it if necessary;

K. The district provides a safe physical environment for students;

L. The district implements effective and efficient fiscal management systems that ensure accountability of district funds;

M. The district maintains and regularly updates cumulative health records for all students, including immunizations as required by state law; and/or

N. The district complies with all laws related to the transportation of students.

3. No MSIP Performance Standards will be waived.

AUTHORITY: sections 160.518, 160.545 and 161.092, RSMo Supp. 2003 and 161.210 and 163.031, RSMo 2000. Original rule filed June 30, 2004.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Elementary and Secondary Education, Attention: Becky Kemna, Coordinator, School Improvement and Accreditation, Division of School Improvement, PO Box 480, Jefferson City, MO 65102-0480. To be considered, comments must be received within thirty (30) days

*after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 90—Vocational Rehabilitation
Chapter 5—Vocational Rehabilitation Services

PROPOSED AMENDMENT

5 CSR 90-5.400 Services. The State Board of Education is amending subsection (1)(A), section (4), adding a new section (3) and renumbering the existing section (3) to (4).

PURPOSE: This amendment adds self-employment to the list of services and clarifies the purchase of equipment.

(1) Vocational rehabilitation services as defined in the federal act and/or applicable regulations may be provided to individuals.

(A) Financial Need.

1. The following vocational rehabilitation services as defined in the federal act and/or applicable regulations may be provided to individuals based upon financial need:

A. Physical and/or mental restoration, including but not limited to hospitalization, medical treatment, surgery, dentistry, and prosthesis;

B. Training, including tuition, fees, books, supplies, training materials and other services associated with training;

C. Maintenance;

D. Transportation;

E. Placement tools, including initial stock and supplies associated with placement;

F. Self-employment;

*[F.]***G.** Rehabilitation technology service, including assistive technology devices and services to assist the individual to achieve an employment outcome;

*[G.]***H.** Home modification or remodeling;

*[H.]***I.** Vehicle modification;

*[I.]***J.** Services to family members to assist the individual to achieve an employment outcome;

*[J.]***K.** Personal attendant services;

*[K.]***L.** Note-taking services, not involving sign language interpretation; and/or

*[L.]***M.** Other goods and services not listed above to assist the individual to achieve an employment outcome.

2. Financial need is based upon the individual's adjusted gross income level of the most recent tax records less unreimbursed disability related expenses as approved by the Division of Vocational Rehabilitation (DVR) and compared to one hundred eighty-five percent (185%) of the U.S. Department of Health and Human Services poverty level for Missouri and the Consumer Price Index as updated on an annual basis.

3. Individuals who are below three hundred percent (300%) of the U.S. Department of Health and Human Services poverty level for Missouri and the Consumer Price Index as updated on an annual basis, and do not receive any services based upon financial need as listed in this subsection, may receive an annual fixed amount as determined by DVR, to be applied toward tuition costs or required fees for training services. This amount may be authorized by DVR for a twelve (12)-month period of time on an annual basis, beginning on the date of services listed on the Individualized Plan for Employment (IPE).

(3) DVR funds may not be used for the purchase of the following:

(A) Real property, defined as land, including land improvements, structures and appurtenances thereto, excluding moveable machinery or equipment; and/or

(B) Automobile, truck, van, airplane, boat, other powered vehicle, or trailer that requires title and/or licensing by the state.

*[(3)]***(4)** *[Division of Vocational Rehabilitation]* **DVR** will follow all Missouri procurement policies as specified in the *Revised Statutes of Missouri* for the purchase, retention, repossession and discarding of items including but not limited to prosthetic appliances; home modifications; vehicle modifications; initial tools, stock and equipment and/or rehabilitation technology/devices.

*AUTHORITY: sections 161.092, **RSMo Supp. 2003 and** 178.600, 178.610 and 178.620, RSMo 2000. Original rule filed Dec. 17, 1999, effective Aug. 30, 2000. Amended: Filed Dec. 7, 2000, effective July 30, 2001. Amended: Filed June 30, 2004.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Elementary and Secondary Education, Attention Dr. Jeanne Loyd, Assistant Commissioner, Division of Vocational Rehabilitation, 3024 Dupont Circle, Jefferson City, MO 65109. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 90—Vocational Rehabilitation
Chapter 5—Vocational Rehabilitation Services

PROPOSED AMENDMENT

5 CSR 90-5.460 Vehicle Modification. The State Board of Education is amending section (4).

PURPOSE: This amendment clarifies the purchasing of equipment.

(4) The eligible individual or immediate family member/guardian of the eligible individual must own the vehicle, capable of passing state inspection, prior to any vehicle modification. Division of Vocational Rehabilitation will not purchase an automobile, truck, van, *[or]* **airplane, boat,** other powered vehicle **or trailer** that requires **title and/or** licensing by the state.

*AUTHORITY: sections 161.092, **RSMo Supp. 2003 and** 178.600, 178.610 and 178.620, RSMo **[1994] 2000**. Original rule filed Dec. 17, 1999, effective Aug. 30, 2000. Amended: Filed June 30, 2004.*

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Elementary and Secondary Education, Attention Dr. Jeanne Loyd, Assistant Commissioner, Division of Vocational Rehabilitation, 3024 Dupont Circle, Jefferson City, MO 65109. To be considered, comments must be received within thirty (30) days

*after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 90—Vocational Rehabilitation
Chapter 5—Vocational Rehabilitation Services

PROPOSED RULE

5 CSR 90-5.470 Self-Employment

*PURPOSE: This rule establishes the standards for self-employment services provided by the Division of Vocational Rehabilitation, Department of Elementary and Secondary Education for individuals with disabilities pursuant to the Rehabilitation Act of 1973 as amended and the **Code of Federal Regulations**.*

(1) Self-employment is a business operated by the client in which that individual performs, supervises or subcontracts the major part of the product or service to be produced. Self-employment is a vocational option that may be considered in the wide array of employment outcomes. Self-employment services must be agreed to by the eligible individual and approved by the Division of Vocational Rehabilitation (DVR).

(2) Individualized Plans for Employment (IPE) that have an objective of self-employment require a DVR approved business plan.

(3) Self-employment businesses must comply with all applicable federal, state, local regulations and statutory requirements.

(4) DVR may only contribute in purchasing of required business equipment, supplies, rent (up to six (6) months) or other start-up costs identified in an approved business plan for self-employment.

(A) The client should contribute toward the cost of the planned services to the maximum of their abilities. The client must make application for all available comparable services, such as micro enterprise grants, Small Business Administration assistance and Rural Missouri Incorporated assistance.

(B) The percentage of DVR's contribution will depend upon comparable services or client contributions toward the self-employment plan as well as the overall cost of the planned services. DVR may contribute as follows:

1. Identified start-up costs from one dollar to five thousand dollars ($1 to $5,000)—up to one hundred percent (100%) DVR's contribution;

2. Identified start-up costs from five thousand one dollars to ten thousand dollars ($5,001 to $10,000)—up to an additional fifty percent (50%) beyond DVR's initial contribution of five thousand dollars ($5,000);

3. Identified start-up costs from ten thousand one dollars to twenty thousand dollars ($10,001 to $20,000)—up to an additional twenty-five percent (25%) of twenty thousand dollars ($20,000) beyond DVR's contribution listed above; and/or

4. All self-employment plans which exceed DVR's total contribution of ten thousand dollars ($10,000) must be reviewed and approved by the Self-Employment Review Team.

(5) DVR funds may not be used for the purchase of the following:

(A) Real property, defined as land, including land improvements, structures and appurtenances thereto, excluding moveable machinery or equipment; and/or

(B) Automobile, truck, van, airplane, boat, other powered vehicle, or trailer that requires title and/or licensing by the state.

(6) DVR will follow all Missouri procurement policies as specified in the *Revised Statutes of Missouri* for the purchase, retention, repossession and discarding of items including but not limited to prosthetic appliances; home modifications; vehicle modifications; initial tools, stock and equipment and/or rehabilitation technology/devices.

AUTHORITY: sections 161.092, RSMo Supp. 2003 and 178.600, 178.610 and 178.620, RSMo 2000. Original rule filed June 30, 2004.

PUBLIC COST: This proposed rule is estimated to cost the Department of Elementary and Secondary Education one hundred fifty-nine thousand seven hundred fifty dollars ($159,750) with that cost recurring annually over the life of the rule.

PRIVATE COST: This proposed rule is estimated to cost private entities two hundred ten thousand dollars ($210,000) with that cost recurring annually over the life of the rule.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Elementary and Secondary Education, Attention Dr. Jeanne Loyd, Assistant Commissioner, Division of Vocational Rehabilitation, 3024 Dupont Circle, Jefferson City, MO 65109. 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:	5 CSR 90-5.470 Self-Employment
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Affected agency or political subdivision:	Estimated cost of compliance in the aggregate:
Department of Elementary and Secondary Education Division of Vocational Rehabilitation	$159,750 cost recurring annually over the life of the rule

III. WORKSHEET

$691,187 paid in FY03 for 114 clients with successful employment outcomes
Federal: $543,964; State GR: $147,223

It is anticipated that in FY04 there will be a 5% increase in the number of self-employment plans. 114 clients X 5% is approximately 120 clients.

A total of 120 clients will seek self-employment plans.

60% of the self-employment plans will cost up to $5,000.
120 clients X 60% with self-employment plans = 72 clients will have plans costing up to $5,000.
72 clients will have plans of $5,000 = $360,000 VR cost.

30% of the self-employment plans will cost up to $10,000 with VR paying up to $7,500.
120 clients X 30% with self-employment plans = 36 clients will have plans costing up to $10,000.
36 clients will have plans of $7,500 = $270,000 VR cost.

10% of self-employment plans will cost up to $20,000 with VR paying up to $10,000.
120 clients X 10% with self-employment plans = 12 clients will have plans costing up to $20,000.
12 clients will have plans of $10,000 = $120,000 VR cost.

Total Cost: $750,000 = $360,000 + $270,000 + $120,000
State contribution is 21.3% (Remainder are federal dollars)
$750,000 X 21.3% = $159,750

IV. ASSUMPTIONS

- 5% growth in the number of self-employment plans will occur from FY03 to FY04 and will remain constant each successive year.
- 60% of self-employment plans will have start up costs $5,000 or under
- 30% of the plans have start-up costs of $5,001 - $10,000
- 10% of the plans will have costs exceeding $10,001
- Maximum cost calculated for each category of contribution
- Vocational Rehabilitation is funded at 78.7% federal dollars and 21.3% state dollars

FISCAL NOTE
PRIVATE COST

I. RULE NUMBER

Rule Number and Name:	5 CSR 90-5.470 Self-Employment
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the 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:
120	Individuals with disabilities - Vocational Rehabilitation clients	$210,000 cost recurring annually over the life of the rule

III. WORKSHEET

$691,187 paid in FY03 for 114 clients with successful employment outcomes
Federal: $543,964; State GR: $147,223

It is anticipated that in FY04 there will be a 5% increase in the number of self-employment plans. 114 clients X 5% is approximately 120 clients.

Cost: 120 clients X 60% with self-employment plans = 72 clients
72 clients X $0 maximum contribution to start up cost = $0

120 clients X 30% with self-employment plans = 36 clients
36 clients X $2,500 maximum contribution for start up cost = $90,000

120 clients X 10% with self-employment plans = 12 clients
12 clients X $10,000 maximum cost = $120,000

Total Private Estimate = $210,000 = $0 + $90,000 + $120,000

IV. ASSUMPTIONS

- 5% growth in the number of self-employment plans will occur from FY03 to FY04 and will remain constant each successive year.
- 60% of self-employment plans will have no start up costs for clients
- 30% of the plans ($5,001 - $10,000) will have client maximum start up cost of $2,500
- 10% of the plans ($10,000 - $20,000) will have client maximum start up cost of $10,000
- Maximum cost calculated for each category of contribution.
- Vocational Rehabilitation is funded at 78.7% federal dollars and 21.3% state dollars

Title 8—DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
Division 30—Labor Standards
Chapter 3—Prevailing Wage Law Rules

PROPOSED AMENDMENT

8 CSR 30-3.060 Occupational Titles of Work Descriptions. The division is amending section (8).

PURPOSE: This amendment revises the work description language of the Electrician—Inside Wireman so that it is the same as that adopted by order of the Labor and Industrial Relations Commission.

(8) The occupational titles of work descriptions set forth here are as follows:

(G) Electrician—Encompasses two (2) subclassifications as follows, Inside Wireman and Outside-Line Construction/Lineman:

1. Inside wireman—Applies to workers who are responsible for installation, assembly, construction, inspection, operation and repair of all electrical work within the property lines of any given property (manufacturing plants, commercial buildings, schools, hospitals, power plants, parking lots). This scope of work shall begin at the secondary site of the transformer when the transformer is furnished by the local utility and the service conductors are installed underground. When service conductors are installed overhead in open air from wooden poles, this scope of work shall start immediately after the first point of attachment to the buildings or structures. The work falling within this occupational title of work description includes:

A. Planning and layout of electrical systems that provide power and lighting in all structures. This includes cathodic protection systems utilized to protect structural steel in buildings and parking structures;

B. **All** *[H]***h**andling *[and]***,** moving**, loading and unloading** of any electrical materials, **materials used in association with an electrical system, electrical** equipment**,** and **electrical** apparatus on the job site**, whether by hand or** where power equipment and rigging are required;

C. Welding, burning, brazing, bending, drilling and shaping of all copper, silver, aluminum, angle iron and brackets to be used in connection with the installation and erection of electrical wiring and equipment;

D. Measuring, cutting, bending, threading, forming, assembling and installing of all electrical raceways (conduit, wireways, cable trays), using tools, such as hacksaw, pipe threader, power saw and conduit bender;

E. Installing wire in raceways (conduit, wireways, troughs, cable trays). This wire may be service conductors, feeder wiring, subfeeder wiring, branch circuit wiring;

F. Chasing and channeling necessary to complete any electrical work, including the fabrication and installation of duct banks and manholes incidental to electrical, electronic, data, fiber optic and telecommunication installation;

G. Splicing wires by stripping insulation from terminal leads with knife or pliers, twisting or soldering wires together and applying tape or terminal caps;

H. Installing and modifying of lighting fixtures. This includes athletic field lighting when installed on stadium structures or supports other than wooden poles, or both;

I. Installing and modifying of all electrical/fiber optic equipment (AC-DC motors, variable frequency drives, transformers, reactors, capacitors, motor generators, emergency generators, UPS equipment, data processing systems, and annunciator systems where sound is not a part thereof);

J. Installing of raceway systems utilizing conduit, conduit bodies, junction boxes, device boxes for switches and receptacles. This also may include wiring systems utilizing other methods and materials approved by the *National Electrical Code* (MC cable, AC cable, BX or flexible metal tubing or electrical nonmetallic tubing);

K. Installing of main service equipment, distribution panels, subpanels, branch circuit panels, motor starters, disconnect switches and all other related items;

L. Installing and wiring of instrumentation and control devices as they pertain to heating, ventilating, air conditioning (HVAC) temperature control and energy management systems, building automation systems, and electrically or fiber optic operated fire/smoke detection systems where other building functions or systems are controlled;

M. Installing conduit or other raceway greater than ten feet (10') when used for the following: fire alarm systems, security systems, sound systems, closed circuit television systems or cable television systems, or any system requiring mechanical protection or metallic shielding (telephone systems);

N. Testing continuity of circuit to insure electrical compatibility and safety of components. This includes installation, inspecting and testing of all grounding systems including those systems designed for lighting protection; and

O. Removing electrical systems, fixtures, conduit, wiring, equipment, equipment supports or materials involved in the transmission and distribution of electricity within the parameters of the building property line if reuse of any of the existing electrical system is required. This may include the demolition and removal and disposal of the electrical system;

2. Outside-line construction/lineman—Applies to workers who erect and repair transmission poles (whether built of wood, metal or other material), fabricated metal transmission towers, outdoor substations, switch racks, or similar electrical structures, electric cables and related auxiliary equipment for high-voltage transmission and distribution powerlines used to conduct energy between generating stations, substations and consumers. The work (overhead and underground) falling within this occupational title of work description includes:

A. Construction, repair or dismantling of all overhead and underground electrical installations. The handling and operation of all equipment used to transport men, tools and materials to and from the job site. The framing, trenching, digging and backfilling of vaults, holes and poles and anchors (by hand or mechanical equipment), guying, fastening to the stub-in on concrete footings or pads, assembling of the grillage, grounding of all structures, stringing overhead wire, installing underground wire, splicing and installation of transformers;

B. Construction and repair of highway and street lighting and traffic signal systems, cathodic protection systems and ball field lighting systems;

C. Lineman operator—Operates equipment used on the outside line portion of a project. The lineman operator assists linemen in the performance of their work but does not climb or work out of any type of aerial lift equipment. The lineman operator does not perform any work that requires the use of hand tools; and

D. Groundman—Work performed on the ground to assist the journeymen outside-line construction/lineman on work not energized. Groundmen use jack hammers, air drills, shovels, picks, tamps, trenching equipment and other such tools for excavating and/or compacting dirt or rock on the outside line portion of a project but do not use hand tools; and

3. The occupational title of electrician may include in a particular wage determination the subclassifications of lineman operator, groundman powder man, groundman, or any combination of these, pursuant to section (6). The description of work and corresponding wage rates shall be established pursuant to the proceedings set forth in section (6);

*AUTHORITY: section 290.240.2, RSMo [1994] **2000**. Original rule filed Sept. 15, 1992, effective May 6, 1993. Emergency amendment filed April 30, 1993, effective May 10, 1993, expired Aug. 28, 1993.*

Amended: Filed Aug. 13, 1996, effective Feb. 28, 1997. Amended: Filed Jan. 22, 1997, effective Sept. 30, 1997. Amended: Filed June 17, 2004.

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Labor Standards; Attn: Colleen White, Director, PO Box 449, Jefferson City, MO 65102-0449. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

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

PROPOSED AMENDMENT

10 CSR 10-6.061 Construction Permit Exemptions. The commission proposes to amend paragraphs (3)(A)2. and (3)(A)3. If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency to be included in the Missouri State Implementation Plan. The evidence supporting the need for this proposed rulemaking is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address and phone number listed in the Notice of Public Hearing at the end of this rule. More information concerning this rulemaking can be found at the Missouri Department of Natural Resources' Environmental Regulatory Agenda website, www.dnr.mo.gov/regs/regagenda.htm.

PURPOSE: This rule lists specific construction or modification projects that are not required to obtain permits to construct under 10 CSR 10-6.060. This amendment will raise the insignificant emission levels for construction permit exemptions. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, are the Missouri Air Conservation Commission meeting minutes for February 3, 2004; the memorandum from the Missouri Department of Natural Resources' Air Pollution Control Program to the Missouri Air Conservation Commission dated January 20, 2004; and the letter from The Boeing Company to the Department of Natural Resources' Air Pollution Control Program dated April 23, 2004.

(3) General Provisions. The following construction or modifications are not required to obtain a permit under 10 CSR 10-6.060:

(A) Exempt Emission Units.

1. The following combustion equipment is exempt from 10 CSR 10-6.060 if the equipment emits only combustion products, and the equipment produces less than one hundred fifty (150) pounds per day of any air contaminant:

A. Any combustion equipment using exclusively natural gas or liquefied petroleum gas or any combination of these with a capacity of less than ten (10) million British thermal units (Btus) per hour heat input;

B. Any combustion equipment with a capacity of less than one (1) million Btus per hour heat input;

C. Drying or heat treating ovens with less than ten (10) million Btus per hour capacity provided the oven does not emit pollutants other than the combustion products and the oven is fired exclusively by natural gas, liquefied petroleum gas, or any combination thereof; and

D. Any oven with a total production of yeast leavened bakery products of less than ten thousand (10,000) pounds per operating day heated either electrically or exclusively by natural gas firing with a maximum capacity of less than ten (10) million Btus per hour.

2. The following establishments, systems, equipment and operations are exempt from 10 CSR 10-6.060:

A. Office and commercial buildings, where emissions result solely from space heating by natural or liquefied petroleum gas of less than twenty (20) million Btus per hour heat input. Incinerators operated in conjunction with these sources are not exempt unless the incinerator operations are exempt under another section of this rule;

B. Comfort air conditioning or comfort ventilating systems not designed or used to remove air contaminants generated by, or released from, specific units of equipment;

C. Equipment used for any mode of transportation;

D. Livestock markets and livestock operations, including animal feeding operations and concentrated animal feeding operations as those terms are defined by 40 CFR 122.23 and all manure storage and application systems associated with livestock markets or livestock operations, that were constructed on or before November 30, 2003. This exemption includes any change, installation, construction or reconstruction of a process, process equipment, emission unit, or air cleaning device after November 30, 2003, unless such change, installation, construction or reconstruction involves an increase in the operation's capacity to house or grow animals.

E. Any grain handling, storage and drying facility which—

(I) Is in noncommercial use only (used only to handle, dry or store grain produced by the owner if)—

(a) The total storage capacity does not exceed seven hundred fifty thousand (750,000) bushels;

(b) The grain handling capacity does not exceed four thousand (4,000) bushels per hour; and

(c) The facility is located at least five hundred feet (500') from any recreational area, residence or business not occupied or used solely by the owner;

(II) Is in commercial use and the total storage capacity of the new and any existing facility(ies) does not exceed one hundred ninety thousand (190,000) bushels; or

(III) The installation of additional grain storage capacity in which there is no increase in hourly grain handling capacity and existing grain receiving and loadout equipment are utilized;

F. Restaurants and other retail establishments for the purpose of preparing food for employee and guest consumption;

G. Any wet sand and gravel production facility that obtains its material from subterranean and subaqueous beds where the deposits of sand and gravel are consolidated granular materials resulting from natural disintegration of rock and stone and whose maximum production rate is less than five hundred (500) tons per hour. All permanent in-plant roads shall be paved and cleaned, or watered, or properly treated with dust-suppressant chemicals as necessary to achieve good engineering control of dust emissions. Only natural gas shall be used as a fuel when drying;

H. Equipment solely installed for the purpose of controlling fugitive dust;

I. Equipment or control equipment which eliminates all emissions to the ambient air;

J. Equipment, including air pollution control equipment, but not including an anaerobic lagoon, that emits odors but no regulated air pollutants;

K. Residential wood heaters, cookstoves or fireplaces;

L. Laboratory equipment used exclusively for chemical and physical analysis or experimentation, except equipment used for controlling radioactive air contaminants;

M. Recreational fireplaces;

N. Stacks or vents to prevent the escape of sewer gases through plumbing traps for systems handling domestic sewage only.

Systems which include any industrial waste do not qualify for this exemption;

O. Noncommercial incineration of dead animals, the on-site incineration of resident animals for which no consideration is received or commercial profit is realized as authorized in section 269.020.6, RSMo 2000;

P. The following miscellaneous activities:

(I) Use of office equipment and products, not including printing establishments or businesses primarily involved in photographic reproduction. This exemption is solely for office equipment that is not part of the manufacturing or production process at the installation;

(II) Tobacco smoking rooms and areas;

(III) Hand-held applicator equipment for hot melt adhesives with no volatile organic compound (VOC) in the adhesive formula;

(IV) Paper trimmers and binders;

(V) Blacksmith forges, drop hammers, and hydraulic presses;

(VI) Hydraulic and hydrostatic testing equipment; and

(VII) Environmental chambers, shock chambers, humidity chambers, and solar simulators provided no hazardous air pollutants are emitted by the process;

Q. The following internal combustion engines:

(I) Portable electrical generators that can be moved by hand without the assistance of any motorized or non-motorized vehicle, conveyance or device;

(II) Spark ignition or diesel fired internal combustion engines used in conjunction with pumps, compressors, pile drivers, welding, cranes, and wood chippers or internal combustion engines or gas turbines of less than two hundred fifty (250) horsepower rating; and

(III) Laboratory engines used in research, testing, or teaching;

R. The following quarries, mineral processing, and biomass facilities:

(I) Drilling or blasting activities;

(II) Concrete or aggregate product mixers or pug mills with a maximum rated capacity of less than fifteen (15) cubic yards per hour;

(III) Rip Rap production processes consisting only of a grizzly feeder, conveyors, and storage, not including additional hauling activities associated with Rip Rap production;

(IV) Sources at biomass recycling, composting, landfill, publicly owned treatment works (POTW), or related facilities specializing in the operation of, but not limited to tub grinders powered by a motor with a maximum output rating of ten (10) horsepower, hoggers and shredders and similar equipment powered by a motor with a maximum output rating of twenty-five (25) horsepower, and other sources at such facilities with a total throughput less than five hundred (500) tons per year; and

(V) Landfarming of soils contaminated only with petroleum fuel products where the farming beds are located a minimum of three hundred feet (300') from the property boundary;

S. The following kilns and ovens:

(I) Kilns with a firing capacity of less than ten (10) million Btus per hour used for firing ceramic ware, heated exclusively by natural gas, liquefied petroleum gas, electricity, or any combination thereof; and

(II) Electric ovens or kilns used exclusively for curing or heat-treating provided no Hazardous Air Pollutants (HAPs) or VOCs are emitted;

T. The following food and agricultural equipment:

(I) Any equipment used in agricultural operations to grow crops;

(II) Equipment used exclusively to slaughter animals. This exemption does not apply to other slaughterhouse equipment such as rendering cookers, boilers, heating plants, incinerators, and electrical power generating equipment;

(III) Commercial smokehouses or barbecue units in which the maximum horizontal inside cross-sectional area does not exceed twenty (20) square feet;

(IV) Equipment used exclusively to grind, blend, package, or store tea, cocoa, spices or coffee;

(V) Equipment with the potential to dry, mill, blend, grind, or package less than one thousand (1,000) pounds per year of dry food products such as seeds, grains, corn, meal, flour, sugar, and starch;

(VI) Equipment with the potential to convey, transfer, clean, or separate less than one thousand (1,000) tons per year of dry food products or waste from food production operations;

(VII) Storage equipment or facilities containing dry food products that are not vented to the outside atmosphere or which have the potential to handle less than one thousand (1,000) tons per year;

(VIII) Coffee, cocoa, and nut roasters with a roasting capacity of less than fifteen (15) pounds of beans or nuts per hour, and any stoners or coolers operated with these roasters;

(IX) Containers, reservoirs, tanks, or loading equipment used exclusively for the storage or loading of beer, wine, or other alcoholic beverages produced for human consumption;

(X) Brewing operations at facilities with the potential to produce less than three (3) million gallons of beer per year; and

(XI) Fruit sulfuring operations at facilities with the potential to produce less than ten (10) tons per year of sulfured fruits and vegetables;

U. Batch solvent recycling equipment provided the recovered solvent is used primarily on-site, the maximum heat input is less than one (1) million Btus per hour, the batch capacity is less than one hundred fifty (150) gallons, and there are no solvent vapor leaks from the equipment which exceed five hundred (500) parts per million;

V. The following surface coating and printing operations:

(I) Batch mixing of inks, coatings, or paints provided good housekeeping is practiced, spills are cleaned up as soon as possible, equipment is maintained according to manufacturer's instruction and property is kept clean. In addition, all waste inks, coating, and paints shall be disposed of properly. Prior to disposal all liquid waste shall be stored in covered container. This exemption does not apply to ink, coatings, or paint manufacturing facilities;

(II) Any powder coating operation, or radiation cured coating operation where ultraviolet or electron beam energy is used to initiate a reaction to form a polymer network;

(III) Any surface-coating source that employs solely nonrefillable handheld aerosol cans; and

(IV) Surface coating operations utilizing powder coating materials with the powder applied by an electrostatic powder spray gun or an electrostatic fluidized bed;

W. The following metal working and handling equipment:

(I) Carbon dioxide (CO_2) lasers, used only on metals and other materials that do not emit a HAP or VOC in the process;

(II) Laser trimmers equipped with dust collection attachments;

(III) Equipment used for pressing or storing sawdust, wood chips, or wood shavings;

(IV) Equipment used exclusively to mill or grind coatings and molding compounds in a paste form provided the solution contains less than one percent (1%) VOC by weight;

(V) Tumblers used for cleaning or deburring metal products without abrasive blasting;

(VI) Batch mixers with a rated capacity of fifty-five (55) gallons or less provided the process will not emit hazardous air pollutants;

(VII) Equipment used exclusively for the mixing and blending of materials at ambient temperature to make water-based adhesives provided the process will not emit hazardous air pollutants;

(VIII) Equipment used exclusively for the packaging of lubricants or greases;

(IX) Platen presses used for laminating provided the process will not emit hazardous air pollutants;

(X) Roll mills or calendars for rubber or plastics provided the process will not emit hazardous air pollutants;

(XI) Equipment used exclusively for the melting and applying of wax containing less than one percent (1%) VOC by weight;

(XII) Equipment used exclusively for the conveying and storing of plastic pellets; and

(XIII) Solid waste transfer stations that receive or load out less than fifty (50) tons per day of nonhazardous solid waste;

X. The following liquid storage and loading equipment:

(I) Storage tanks and vessels having a capacity of less than five hundred (500) gallons; and

(II) Tanks, vessels, and pumping equipment used exclusively for the storage and dispensing of any aqueous solution which contains less than one percent (1%) by weight of organic compounds. Tanks and vessels storing the following materials are not exempt:

(a) Sulfuric or phosphoric acid with an acid strength of more than ninety-nine percent (99.0%) by weight;

(b) Nitric acid with an acid strength of more than seventy percent (70.0%) by weight;

(c) Hydrochloric or hydrofluoric acid with an acid strength of more than thirty percent (30.0%) by weight; or

(d) More than one liquid phase, where the top phase contains more than one percent (1%) VOC by weight;

Y. The following chemical processing equipment or operations:

(I) Storage tanks, reservoirs, pumping, and handling equipment, and mixing and packaging equipment containing or processing soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions, provided appropriate lids and covers are utilized; and

(II) Batch loading and unloading of solid phase catalysts;

Z. Body repair and refinishing of motorcycle, passenger car, van, light truck and heavy truck and other vehicle body parts, bodies, and cabs, provided—

(I) Good housekeeping is practiced; spills are cleaned up as soon as possible, equipment is maintained according to manufacturers' instructions, and property is kept clean. In addition, all waste coatings, solvents, and spent automotive fluids including, but not limited to, fuels, engine oil, gear oil, transmission fluid, brake fluid, antifreeze, fresh or waste fuels, and spray booth filters or water wash sludge are disposed of properly. Prior to disposal, all liquid waste shall be stored in covered containers. All solvents and cleaning materials shall be stored in closed containers;

(II) All spray coating operations shall be performed in a totally enclosed filtered spray booth or totally enclosed filtered spray area with an air intake area of less than one hundred (100) square feet. All spray areas shall be equipped with a fan which shall be operated during spraying, and the exhaust air shall either be vented through a stack to the atmosphere or the air shall be recirculated back into the shop through a carbon adsorption system. All carbon adsorption systems shall be properly maintained according to the manufacturer's operating instructions, and the carbon shall be replaced at the manufacturer's recommended intervals to minimize solvent emissions; and

(III) Spray booth, spray area, and preparation area stacks shall be located at least eighty feet (80') away from any residence, recreation area, church, school, child care facility, or medical or dental facility;

AA. Sawmills processing no more than twenty-five (25) million board feet, green lumber tally of wood per year, in which no mechanical drying of lumber is performed, in which fine particle emissions are controlled through the use of properly engineered baghouses or cyclones, and which meet all of the following provisions:

(I) The mill shall be located at least five hundred feet (500') from any recreational area, school, residence, or other structure not occupied or used solely by the owner of the facility or the owner of the property upon which the installation is located;

(II) All sawmill residues (sawdust, shavings, chips, bark) from debarking, planing, saw areas, etc., shall be removed or contained to minimize fugitive particulate emissions. Spillage of wood residues shall be cleaned up as soon as possible and contained such that dust emissions from wind erosion and/or vehicle traffic are minimized. Disposal of collected sawmill residues must be accomplished in a manner that minimizes residues becoming airborne. Disposal by means of burning is prohibited unless it is conducted in a permitted incinerator; and

(III) All open-bodied vehicles transporting sawmill residues (sawdust, shavings, chips, bark) shall be covered with a tarp to achieve maximum control of particulate emissions;

BB. Internal combustion engines and gas turbine driven compressors, electric generator sets, and water pumps, used only for portable or emergency services, provided that the maximum annual operating hours shall not exceed five hundred (500) hours. Emergency generators are exempt only if their sole function is to provide back-up power when electric power from the local utility is interrupted. This exemption only applies if the emergency generators are operated only during emergency situations and for short periods of time to perform maintenance and operational readiness testing. The emergency generator shall be equipped with a non-resettable meter; *[and]*

CC. Commercial dry cleaners*[.]*; **and**

DD. Operations such as carving, cutting, routing, turning, drilling, machining, sawing, sanding, planing, buffing, or polishing solid materials, other than materials containing any asbestos, beryllium or lead greater than one percent (1%) by weight, where equipment—

(I) Directs a stream of liquid at the point where material is processed;

(II) Is used only for maintenance or support activity not conducted as part of the installation's primary business activity;

(III) Is exhausted inside a building; or

(IV) Is ventilated externally to an operating cyclonic inertial separator (cyclone), baghouse, or dry media filter. Other particulate control devices such as electrostatic precipitators or scrubbers are subject to construction permitting or a permit-by-rule, unless otherwise exempted.

3. *[At installations, previously issued a permit under 10 CSR 10-6.060, c]***C**onstruction or modifications are exempt from 10 CSR 10-6.060 if they meet the requirements of subparagraphs (3)(A)3.A.**,** *[or]* (3)(A)3.B.**, (3)(A)3.C. or (3)(A)3.D.** of this rule *[for criteria pollutants, except lead, and subparagraph (3)(A)3.C. for hazardous air pollutants]*. The director may require review of construction or modifications otherwise exempt under *[subparagraphs]* **paragraph** *[(3)(A)3.A., (3)(A)3.B., or (3)(A)3.C.]***(3)(A)3.** of this rule if the emissions of the proposed construction or modification will appreciably affect air quality or the air quality standards are appreciably exceeded or complaints involving air pollution have been filed in the vicinity of the proposed construction or modification.

A. *[For proposed construction or modification located less than five hundred feet (500') from the property boundary, at]* **At** maximum design capacity, the proposed construction or modification shall emit each *[criteria]* pollutant at a rate of no more than *[one-half (0.5) pound per hour. For proposed construction or modification located more than five hundred feet (500') from the property boundary, at a maximum design capacity the proposed construction or modification shall emit no more than 0.91 pound per hour]* **the amount specified in Table 1**.

TABLE 1. Insignificant Emission Exemption Levels

Pollutant	Insignificance Level (lbs per hr)
Particulate Matter 10 Micron (PM_{10}) (Emitted solely by equipment)	1.0
Sulfur Oxides (SO_x)	2.75
Nitrogen Oxides (NO_x)	2.75
Volatile Organic Compounds (VOCs)	2.75
Carbon Monoxide (CO)	6.88

B. *[Actual emissions of each criteria pollutant will be no more than eight hundred seventy-six (876) pounds per year]* **At maximum design capacity, the proposed construction or modification will emit a hazardous air pollutant at a rate of no more than one-half (0.5) pound per hour, or the hazardous emission threshold as established in subsection (12)(J) of 10 CSR 10-6.060, whichever is less**.

C. *[At maximum design capacity, the proposed construction or modification will emit a hazardous air pollutant at a rate of no more than one-half (0.5) pound per hour, or the hazardous emission threshold as established in subsection (12)(J) of 10 CSR 10-6.060, whichever is less]* **Actual emissions of each criteria pollutant, except lead, will be no more than eight hundred seventy-six (876) pounds per year**.

D. Actual emissions of volatile organic compounds that do not contain hazardous air pollutants will be no more than four (4) tons per year. The operator shall maintain records in sufficient detail to show compliance with this exemption.

AUTHORITY: section 643.050, RSMo 2000. Original rule filed March 5, 2003, effective Oct. 30, 2003. Amended: Filed July 1, 2004.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed amendment will begin at 9:00 a.m., September 30, 2004. The public hearing will be held at the Holiday Inn Sports Complex, 1st Base Conference Room, 4011 Blue Ridge Cutoff, Kansas City, MO 64133. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Air Pollution Control Program, 205 Jefferson Street, PO Box 176, Jefferson City, MO 65102-0176, (573) 751-4817. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., October 7, 2004. Written comments shall be sent to Chief, Operations Section, Missouri Department of Natural Resources' Air Pollution Control Program, 205 Jefferson Street, PO Box 176, Jefferson City, MO 65102-0176.

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

PROPOSED AMENDMENT

10 CSR 10-6.120 Restriction of Emissions of Lead From Specific Lead Smelter-Refinery Installations. The commission proposes to amend original sections (1), (2) and (3); add new sections (2) and (5); and renumber and reformat the rule from three into five sections. If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency to replace the current rule in the Missouri State Implementation Plan. The evidence supporting the need for this proposed rulemaking is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address and phone number listed in the Notice of Public Hearing at the end of this rule. More information concerning this rulemaking can be found at the Missouri Department of Natural Resources' Environmental Regulatory Agenda website, www.dnr.mo.gov/regs/regagenda.htm.

PURPOSE: This rule establishes maximum allowable rates of emissions of lead from lead-smelter installations and also provides for the operation and maintenance of equipment and procedures specific to controlling lead emissions to the ambient air at these installations. This amendment deletes references to Doe Run, Glover because the stack emission and throughput limitations in the rule have been incorporated in a settlement agreement with Doe Run as part of the maintenance plan and are no longer needed. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is the September 23, 2003 Missouri Air Conservation Commission Public Hearing transcript, page 9, where the department stated that this rule would be revised to eliminate the stack requirements.

(1) *[General Provisions]* **Applicability**.

(A) *[Application.]* This rule shall apply to existing installations in Missouri engaged in specific smelting and refining for the production of lead.

(B) Operation and Maintenance of Lead Emissions Control Equipment and Procedures. The owner or operator of any specific lead smelter shall operate and maintain all lead emissions control equipment and perform all procedures as required by this rule.

(2) Definitions. Definitions of certain terms specified in this rule, other than those specified in this rule section, may be found in 10 CSR 10-6.020.

(3) General Provisions.

*[(C)]***(A)** Methods of Measurement of Lead Emissions.

1. The method of determining the concentration of visible emissions from stack sources shall be as specified in 10 CSR 10-6.030(9).

2. The method of measuring lead in stack gases shall be the sampling method as specified in 10 CSR 10-6.030(12).

3. The method of quantifying the determination of compliance with the emission limitations from stacks in this rule shall be as follows:

A. Three (3)-stack samplings shall be planned to be conducted for any one (1) stack within a twenty-four (24)-hour period in accordance with paragraph (1)(C)2. If this cannot be done due to weather, operating or other preventative conditions that develop during the twenty-four (24)-hour period, then the remaining samplings may be conducted in a reasonable time determined by the director following the twenty-four (24)-hour period;

B. Each stack sample shall have a sampling time of at least one (1) hour;

C. The process(es) producing the emissions to that stack being tested shall be operating at a minimum of ninety percent (90%) of capacity of the process(es) for the full duration of the samplings; and

D. The emission rate to be used for compliance determination shall be quantified by using the following formula:

Ec = T avg lbs per hour × 24 hours = lbs per 24 hours

Where:
Ec = 24-hour emission rate extrapolated from stack sampling results used for compliance determination; and
T avg = Summation of hourly emission rates of three (3) stack sampling results, divided by three (3) for the average hourly rate.

4. The method of measuring lead in the ambient atmosphere shall be the reference method as specified in 10 CSR 10-6.040(4)(G).

*[(D)]***(B)** Operational Malfunction.

1. The owner or operator shall maintain a file which identifies the date and time of any significant malfunction of plant process operations or of emission control equipment which results in increased lead emissions. The file also shall contain a description of any corrective action taken, including the date and time. 10 CSR 10-6.050 Start-Up, Shutdown and Malfunction Conditions shall apply.

2. All of these files relating to operational malfunction shall be retained for a minimum of two (2) years and, upon request, shall be made available to the director.

*[(2)]***(C)** Provisions Pertaining to Limitations of Lead Emissions from Specific Installations.

[(A) Doe Run Primary Lead Smelter-Refinery at Glover, Missouri.

1. This installation shall limit lead emissions into the atmosphere to the allowable amount as shown in Table IA.

Table IA

Stack Name	*Emissions Limitation*
	(lbs per 24 hours)
Main Ventilation Baghouse	*125.4*
Blast Furnace	*82.3*

2. Fugitive lead emissions from lead production processes.

A. This installation shall limit production of lead from processes that emit lead to the ambient air to the allowable amount as shown in Table IB and Table IC.

Table IB

Process Name	*Throughput*
	(tons per calendar quarter)
Sinter Plant—Material across Sinter Machine	*202,000*
Blast Furnace—Lead Bearing Material	*75,000*

Table IC

Process Name	*Throughput*
	(tons per day)
Sinter Plant–Material across Sinter Machine	*3120*

B. Record keeping. The operator shall keep records of daily process throughput corresponding with the process in Table IB in subparagraph (2)(A)2.A. These records shall be maintained on-site for at least three (3) years and made available upon request of the director.]

*[(B)]***1.** Doe Run *[P]***p**rimary *[L]***l**ead *[S]***s**melter-*[R]***r**efinery in Herculaneum, Missouri. This installation shall limit lead emissions into the atmosphere to the allowable amount as shown in Table *[II]***I**.

Table *[II]I*

Stack Name	**Emissions Limitation**
	(lbs per 24 hours)
Main Stack Number 7 & 9 Baghouse Stack	794.0
Number 8 Baghouse Stack	56.6
	8.2

*[(C)]***2.** Doe Run Resource *[Recyling]* **Recycling** Division **in Boss, Missouri**. The following applies to Doe Run's 1998 and ongoing lead producing operations at this installation.

*[1.]***A.** Lead emissions from stacks. This installation shall limit lead emissions into the atmosphere to the allowable amount as shown in Table *[III]***II**.

Table *[III]II*

Stack Name	**Emissions Limitation**
	(lbs per 24 hours)
Main Stack	540.0

*[2.]***B.** Fugitive lead emissions from lead production processes. This installation shall limit production from processes that emit lead to the ambient air to the allowable amount as shown in Table *[IV]***III**.

Table *[IV]III*

Process Name	**Throughput**
	(tons per day)
Blast Furnace	786 Charge
Reverb Furnace	500 Charge
Rotary Melt	300 Charge
Refinery	648 Lead Cast

[3. Record keeping. The operator shall keep records of daily process throughput corresponding with the processes in Table IV in paragraph (2)(C)2. of this rule. These records shall be maintained on-site for at least three (3) years and made available upon the request of the director.]

*[(3)]***(D)** Provisions Pertaining to Limitations of Lead Emissions From Other Than Stacks at All Installations.

*[(A)]***1.** The owner or operator shall control fugitive emissions of lead from all process and area sources at an installation by measures described in a work practice manual identified in *[subsection (3)(B)]* **paragraph (3)(D)2.** It shall be a violation of this rule to fail to adhere to the requirements of these work practices.

*[(B)]***2.** Work *[P]***p**ractice *[M]***m**anual.

*[1.]***A.** The owner or operator shall prepare, submit for approval and then implement a process and area-specific work practice manual that will apply to locations of fugitive lead emissions at the installation.

*[2.]***B.** The manual shall be the method of determining compliance with the provisions of this section. Failure to adhere to the work practices in the manual shall be a violation of this rule.

*[3.]***C.** Any change to the manual proposed by the owner or operator following the initial approval shall be requested in writing to the director. Any proposed change shall demonstrate that the change in the work practice will not lessen the effectiveness of the fugitive emission reductions for the work practice involved. Written approval by the director is required before any change becomes effective in the manual.

*[4.]***D.** If the director determines a change in the work practice manual is necessary, the director will notify the owner or operator of that installation. The owner or operator shall revise the manual to reflect these changes and submit the revised manual within thirty (30) days of receipt of notification. These changes shall become

effective following written approval of the revised manual by the director.

*[(C)]***(4) Reporting and** Record Keeping.

*[1.]***(A)** The operator shall keep records and files generated by the work practice manual's implementation.

*[2.]***(B)** The work practice manual shall contain the requirement that records of inspections made by the operator of fugitive emissions control equipment such as hoods, air ducts and exhaust fans be maintained by the operator.

(C) The Doe Run Resource Recycling Division, Boss, Missouri operator shall keep records of daily process throughput corresponding with the processes in Table III in subparagraph (3)(C)2.B. of this rule. These records shall be maintained on-site for at least three (3) years and made available upon the request of the director.

*[3.]***(D)** Records shall be kept for a minimum of two (2) years at the installation and shall be made available upon request of the director for purposes of determining compliance.

(5) Test Methods. ***(Not applicable)***

AUTHORITY: sections 643.050 and 643.055, RSMo 2000. Original rule filed Aug. 4, 1988, effective Dec. 29, 1988. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed July 1, 2004.*

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed amendment will begin at 9:00 a.m., September 30, 2004. The public hearing will be held at the Holiday Inn Sports Complex, 1st Base Conference Room, 4011 Blue Ridge Cutoff, Kansas City, MO 64133. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Air Pollution Control Program, 205 Jefferson Street, PO Box 176, Jefferson City, MO 65102-0176, (573) 751-4817. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., October 7, 2004. Written comments shall be sent to Chief, Planning Section, Missouri Department of Natural Resources' Air Pollution Control Program, 205 Jefferson Street, PO Box 176, Jefferson City, MO 65102-0176.

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 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 15—Acupuncturist Advisory Committee
Chapter 1—General Rules

ORDER OF RULEMAKING

By the authority vested in the Acupuncturist Advisory Committee under sections 324.481, 324.487, 324.490 and 324.493, RSMo 2000, the board amends a rule as follows:

4 CSR 15-1.030 Fees **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2004 (29 MoReg 627–628). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 15—Acupuncturist Advisory Committee
Chapter 2—Acupuncturist Licensure Requirements

ORDER OF RULEMAKING

By the authority vested in the Acupuncturist Advisory Committee under sections 324.481, 324.490, 324.493, and 324.496, RSMo 2000, the board amends a rule as follows:

4 CSR 15-2.020 License Renewal, Restoration and Continuing Education **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2004 (29 MoReg 629). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 15—Acupuncturist Advisory Committee
Chapter 3—Standards of Practice, Code of Ethics, Professional Conduct

ORDER OF RULEMAKING

By the authority vested in the Acupuncturist Advisory Committee under sections 324.481 and 324.496, RSMo 2000, the board amends a rule as follows:

4 CSR 15-3.010 Standards of Practice **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2004 (29 MoReg 629). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 15—Acupuncturist Advisory Committee
Chapter 4—Supervision of Auricular Detox Technicians and Acupuncturist Trainees

ORDER OF RULEMAKING

By the authority vested in the Acupuncturist Advisory Committee under sections 324.481 and 324.487, RSMo 2000, the board amends a rule as follows:

4 CSR 15-4.020 Supervision of Acupuncturist Trainees **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2004 (29 MoReg 630–631). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 30—Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects
Chapter 11—Renewals

ORDER OF RULEMAKING

By the authority vested in the Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects under sections 327.041, RSMo Supp. 2003 and 41.946 and 327.171, RSMo 2000, the board adopts a rule as follows:

4 CSR 30-11.025 Continuing Education for Architects **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on April 15, 2004 (29 MoReg 632–635). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The board received one (1) comment in support of the rule.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 110—Missouri Dental Board
Chapter 3—Well-Being Rules

ORDER OF RULEMAKING

By the authority vested in the Missouri Dental Board under sections 332.031.3, RSMo 2000 and 332.327, RSMo Supp. 2003, the board adopts a rule as follows:

4 CSR 110-3.010 Definitions **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on April 15, 2004 (29 MoReg 636). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 110—Missouri Dental Board
Chapter 3—Well-Being Rules

ORDER OF RULEMAKING

By the authority vested in the Missouri Dental Board under sections 332.031.3, RSMo 2000 and 332.327, RSMo Supp. 2003, the board adopts a rule as follows:

4 CSR 110-3.020 Membership and Organization **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on April 15, 2004 (29 MoReg 636). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 110—Missouri Dental Board
Chapter 3—Well-Being Rules

ORDER OF RULEMAKING

By the authority vested in the Missouri Dental Board under sections 332.031.3, RSMo 2000 and 332.327, RSMo Supp. 2003, the board adopts a rule as follows:

4 CSR 110-3.030 Well-Being Committee/Contractor Duties **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on April 15, 2004 (29 MoReg 636–639). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 110—Missouri Dental Board
Chapter 3—Well-Being Rules

ORDER OF RULEMAKING

By the authority vested in the Missouri Dental Board under sections 332.031.3, RSMo 2000 and 332.327, RSMo Supp. 2003, the board adopts a rule as follows:

4 CSR 110-3.040 Confidentiality **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on April 15, 2004 (29 MoReg 640). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 110—Missouri Dental Board
Chapter 3—Well-Being Rules

ORDER OF RULEMAKING

By the authority vested in the Missouri Dental Board under sections 332.031.3, RSMo 2000 and 332.327, RSMo Supp. 2003, the board adopts a rule as follows:

4 CSR 110-3.050 Committee Administrator **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on April 15, 2004 (29

MoReg 640–641). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 165—Board of Examiners for Hearing Instrument Specialists
Chapter 2—Licensure Requirements

ORDER OF RULEMAKING

By the authority vested in the Board of Examiners for Hearing Instrument Specialists under sections 346.070, 346.075, 346.080 and 346.115.1(7), RSMo 2000, the board amends a rule as follows:

4 CSR 165-2.010 Hearing Instrument Specialist in Training (Temporary Permits) **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2004 (29 MoReg 641). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 200—State Board of Nursing
Chapter 4—General Rules

ORDER OF RULEMAKING

By the authority vested in the State Board of Nursing under sections 335.036(2) and (7), 335.046 and 335.051, RSMo 2000, the board amends a rule as follows:

4 CSR 200-4.020 Requirements for Licensure **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2003 (29 MoReg 641–642). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 210—State Board of Optometry
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the State Board of Optometry under sections 336.160 and 336.200, RSMo 2000, the board amends a rule as follows:

4 CSR 210-2.080 Certification of Optometrists to Use Pharmaceutical Agents **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2004 (29 MoReg 642–643). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 210—State Board of Optometry
Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the State Board of Optometry under sections 336.160 and 336.200, RSMo 2000, the board rescinds a rule as follows:

4 CSR 210-2.081 Examinations of Optometrists for Certification to Use Pharmaceutical Agents **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on April 15, 2004 (29 MoReg 643). No changes have been made to the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 235—State Committee of Psychologists
Chapter 1—General Rules

ORDER OF RULEMAKING

By the authority vested in the State Committee of Psychologists under sections 337.030, RSMo Supp. 2003 and 337.050, RSMo 2000, the committee amends a rule as follows:

4 CSR 235-1.020 Fees **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2004 (29 MoReg 643–644). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 235—State Committee of Psychologists
Chapter 1—General Rules

ORDER OF RULEMAKING

By the authority vested in the State Committee of Psychologists under sections 337.030, RSMo Supp. 2003 and 337.050, RSMo 2000, the committee amends a rule as follows:

4 CSR 235-1.050 Renewal of License **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2004 (29 MoReg 644–645). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 263—State Committee for Social Workers
Chapter 1—General Rules

ORDER OF RULEMAKING

By the authority vested in the State Committee for Social Workers under sections 337.612 and 337.677, RSMo Supp. 2003 and 337.627, RSMo 2000, the committee amends a rule as follows:

4 CSR 263-1.035 Fees **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2004 (29 MoReg 651–652). 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: Two (2) comments were received in support of the proposed amendment.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 263—State Committee for Social Workers
Chapter 2—Licensure Requirements

ORDER OF RULEMAKING

By the authority vested in the State Committee for Social Workers under sections 337.627, RSMo 2000 and 337.600, 337.612, 337.615, 337.650 and 337.677, RSMo Supp. 2003, the committee amends a rule as follows:

4 CSR 263-2.032 Registration of Supervised Social Work Experience **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2004 (29 MoReg 653). 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: One (1) comment was received in support of the proposed amendment.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 263—State Committee for Social Workers
Chapter 2—Licensure Requirements

ORDER OF RULEMAKING

By the authority vested in the State Committee for Social Workers under sections 337.627 and 337.630, RSMo 2000 and 337.600 and 337.615, RSMo Supp. 2003, the committee amends a rule as follows:

4 CSR 263-2.045 Provisional Licensed Clinical Social Worker **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2004 (29 MoReg 653). 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: One (1) comment was received in support of the proposed amendment.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 263—State Committee for Social Workers
Chapter 2—Licensure Requirements

ORDER OF RULEMAKING

By the authority vested in the State Committee for Social Workers under sections 337.650, 337.653 and 337.677, RSMo Supp. 2003, the committee amends a rule as follows:

4 CSR 263-2.047 Provisional Licensed Baccalaureate Social Worker **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2004 (29 MoReg 653–654). 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: One (1) comment was received in support of the proposed amendment.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 263—State Committee for Social Workers
Chapter 2—Licensure Requirements

ORDER OF RULEMAKING

By the authority vested in the State Committee for Social Workers under sections 337.627 and 337.630, RSMo 2000 and 337.600, 337.612 and 337.615, RSMo Supp. 2003, the committee amends a rule as follows:

4 CSR 263-2.060 Licensure by Reciprocity as a Licensed Clinical Social Worker **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2004 (29 MoReg 654). 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: One (1) comment was received in support of the proposed amendment.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 263—State Committee for Social Workers
Chapter 2—Licensure Requirements

ORDER OF RULEMAKING

By the authority vested in the State Committee for Social Workers under sections 337.650 and 337.677.1, RSMo Supp. 2003, the committee amends a rule as follows:

4 CSR 263-2.062 Licensure by Reciprocity as a Licensed Baccalaureate Social Worker **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2004 (29 MoReg 654). 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: One (1) comment was received in support of the proposed amendment.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 263—State Committee for Social Workers
Chapter 2—Licensure Requirements

ORDER OF RULEMAKING

By the authority vested in the State Committee for Social Workers under sections 337.627 and 337.650, RSMo 2000 and 337.600, 337.612, 337.618, 337.650, 337.662 and 337.677, RSMo Supp. 2003, the committee amends a rule as follows:

4 CSR 263-2.085 Restoration of License **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2004 (29 MoReg 655). 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: One (1) comment was received in support of the proposed amendment.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 263—State Committee for Social Workers
Chapter 2—Licensure Requirements

ORDER OF RULEMAKING

By the authority vested in the State Committee for Social Workers under sections 620.150, RSMo 2000 and 337.600 and 337.677, RSMo Supp. 2003, the committee amends a rule as follows:

4 CSR 263-2.090 Inactive Status **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2004 (29 MoReg 655). 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: One (1) comment was received in support of the proposed amendment.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 263—State Committee for Social Workers
Chapter 3—Ethical Standards/Disciplinary Rules

ORDER OF RULEMAKING

By the authority vested in the State Committee for Social Workers under sections 337.600, 337.615, 337.650, 337.665, 337.677 and 337.680, RSMo Supp. 2003 and 337.627 and 337.630, RSMo 2000, the committee amends a rule as follows:

4 CSR 263-3.020 Moral Standards **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2004 (29 MoReg 655–656). 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: One (1) comment was received in support of the proposed amendment.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 263—State Committee for Social Workers
Chapter 3—Ethical Standards/Disciplinary Rules

ORDER OF RULEMAKING

By the authority vested in the State Committee for Social Workers under sections 337.600 and 337.615, RSMo Supp. 2003 and 337.627 and 337.630, RSMo 2000, the committee amends a rule as follows:

4 CSR 263-3.040 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2004 (29 MoReg 656–657). 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: Two (1) comments were received in support of the proposed amendment. One (1) supporting the proposed amendment and one (1) opposing the proposal.

COMMENT: The National Association of Social Workers (NASW) submitted comments opposing sections (6), (7) and (11). NASW suggested the word "clinical" be removed in sections (6), (7) and (11) to be applicable to both the clinical and baccalaureate social work licensure scope of practice. NASW further suggested the term "therapist" as used in section (6) be changed to the word "practitioner."
RESPONSE AND EXPLANATION OF CHANGE: The State Committee for Social Workers agreed with NASW and the changes have been made.

4 CSR 263-3.040 Client Relationships

(6) Licensed social workers, provisional licensed social workers, temporary permit holders and registrants should be knowledgeable about the services available in the community and make appropriate referrals for their clients. When a licensed social worker, provisional licensed social worker, temporary permit holder or registrant has a relationship, particularly of an administrative, supervisory and/or evaluative nature, with an individual seeking counseling services, the licensed social worker, provisional licensed social worker, temporary permit holder or registrant shall not serve as the practitioner for such individual but shall refer the individual to another professional.

(7) A licensed social worker, provisional licensed social worker, temporary permit holder and registrant must inform clients about electronic recording of sessions, how such sessions will be used and provide specific information about any specialized or experimental activities in which they may be expected to participate as a condition of service.

(11) A licensed social worker, provisional licensed social worker, temporary permit holder and registrant rendering services to a client shall maintain professional records that include:

(F) A copy of a written communication with the client identifying the date and reason for termination of professional service if the licensed social worker is in private practice.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 263—State Committee for Social Workers
Chapter 3—Ethical Standards/Disciplinary Rules

ORDER OF RULEMAKING

By the authority vested in the State Committee for Social Workers under sections 337.600, 337.615, 337.618, 337.650, 337.662, 337.665, 337.677 and 337.680, RSMo Supp. 2003 and 337.627 and 337.630, RSMo 2000, the committee amends a rule as follows:

4 CSR 263-3.140 Competence **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2004 (29 MoReg 657–658). 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: One (1) comment was received in support of the proposed amendment.

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

ORDER OF RULEMAKING

By the authority vested in the Missouri Air Conservation Commission under section 643.225, RSMo 2000, the commission rescinds a rule as follows:

10 CSR 10-6.240 Asbestos Abatement Projects—Registration, Notification and Performance Requirements **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on February 17, 2004 (29 MoReg 303). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No written or verbal comments were received concerning this proposed rescission during the public comment period.

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

ORDER OF RULEMAKING

By the authority vested in the Missouri Air Conservation Commission under section 643.225, RSMo 2000, the commission adopts a rule as follows:

10 CSR 10-6.241 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on February 17, 2004 (29 MoReg 303–306). 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 Department of Natural Resources' Air Pollution Control Program received seven (7) comments from seven (7) sources: Regulatory Environmental Group For Missouri (REGFORM), St. Louis Regional Chamber Growth Association (RCGA), University of Missouri-Columbia, AMEREN, the U.S. Environmental Protection Agency (EPA), Remediation Contractors, Inc., and an audience member during the public hearing testimony. Similar comments on this proposed rule are grouped together and responded to with one (1) response.

Due to similar concerns addressed in the following three (3) comments, one (1) response that addresses these concerns can be found at the end of these three (3) comments:

COMMENT: REGFORM and RCGA commented that the twenty (20) day notification period and ten (10) square/sixteen (16) linear feet threshold for asbestos abatement projects is stricter than federal requirements set in 40 CFR 61 subpart (M) and, therefore, violates section 643.055, *Revised Statutes of Missouri* (RSMo).

COMMENT: RCGA also commented that the Missouri Supreme Court finding on the Corvera lawsuit would also prevent the Missouri Air Conservation Commission from promulgating regulations stricter than federal regulations.

COMMENT: The University of Missouri-Columbia and AMEREN commented that the twenty (20) day notification period and ten (10) square/sixteen (16) linear feet threshold for asbestos abatement projects would impose significant additional burden on industry without compelling environmental benefit.

RESPONSE AND EXPLANATION OF CHANGE: Any exposure to asbestos is a potential health concern. The department's Air Pollution Control Program strongly believes that the lower limits established in sections 643.225–643.250, RSMo are more protective of human health and the environment. However, in response to industry's comments and after further discussions with legal counsel, it appears that the Missouri Supreme Court, in the *Corvera vs. the Missouri Air Conservation Commission* court case, determined that the legislature repealed, in effect, the 1989 enactment of the definition of—asbestos abatement projects—and the notice requirements. Since the legislature has not taken any action to restore the notice requirements or the definition of asbestos abatement projects, the

rule language has been changed. Throughout the rule, including the rule title, the term—asbestos abatement project—has been changed to—asbestos project—which is defined in 10 CSR 10-6.020 as an activity to remove or encapsulate one hundred sixty (160) square feet or two hundred sixty (260) linear feet of asbestos-containing material. This definition is consistent with the federal requirements set forth in 40 CFR 61 subpart (M). In addition to the project size requirement changes, the twenty (20) day reporting requirement has been changed to the ten (10) working day requirement for consistency with the 40 CFR 61 subpart (M) federal requirement.

COMMENT: REGFORM provided comment supporting the rule provisions adding the inspection fee collection and authorizing the administration of an examination to credential asbestos abatement contractors.
RESPONSE: The department's Air Pollution Control Program appreciates this support. No wording changes have been made to the proposed rulemaking as a result of this comment.

COMMENT: The U.S. Environmental Protection Agency (EPA) commented that the waiver provision in subsection (3)(E) should be clarified to insure it does not include projects which are subject to the Asbestos National Emission Standards for Hazardous Air Pollutants (40 CFR 61 subpart (M)).
RESPONSE AND EXPLANATION OF CHANGE: As a result of this comment, subsection (3)(E) has been reworded to clarify the waiver provision.

COMMENT: Remediation Contractors, Inc., commented that the Missouri issued certificates have an expiration date that coincides with the individual's training certificate expiration date. The expiration date on the Missouri certificate should be changed to one (1) year from the issue date on the certificate to allow time for renewal and issuance of a renewed certificate without having a period of time where an individual is unable to work while waiting for a new certificate to be issued.
RESPONSE: Currently the one (1) year certification start date is the date the applicant has passed the asbestos training course. After review of this comment, the department's Air Pollution Control Program will begin issuing the license for one (1) year from the date the applicant is approved for certification by the department, provided the applicant has applied for a license within thirty (30) days of the date they take and pass their initial or refresher training class. This program action will address the concern raised in this comment. Therefore, no wording changes were made to the proposed rulemaking as a result of this comment.

COMMENT: A member of the audience commented during the public hearing that a few years ago, EPA released a policy document notifying regulatory agencies that they had been misinterpreting the one hundred sixty (160) square feet and two hundred sixty (260) linear feet threshold limits. If an installation has multiple structures, the limit applies cumulatively to all structures at that location.
RESPONSE: The department's Air Pollution Control Program is aware of the EPA policy. The enforcement section of the department's Air Pollution Control Program applies the policy when enforcing federal requirements. Therefore, no wording changes have been made to the proposed rulemaking as a result of this comment.

10 CSR 10-6.241 Asbestos Projects—Registration, Notification and Performance Requirements

PURPOSE: This rule requires asbestos contractors to register with the department, to notify the department of each asbestos project, to allow the department to inspect asbestos projects and to pay inspection fees. Each person who intends to perform asbestos projects in Missouri must register annually with the Missouri Department of Natural Resources, Air Pollution Control Program. Each asbestos contractor must submit a notification to the appropriate agency of the department for each asbestos project. Each notification for projects exceeding a certain size must be accompanied by a fee. Asbestos contractors must allow representatives of the department to conduct inspections of projects and must pay inspection fees. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is the decision of the Cole County Circuit Court case number CV 197-985 CC that found rule 10 CSR 10-6.240 void from inception and state statute 643.242, RSMo that authorizes the commission to assess a fee of one hundred dollars ($100) for each on-site inspection of asbestos projects.

(1) Applicability.
(A) This rule shall apply to—
1. All persons that authorize, design, conduct and work in asbestos projects; and
2. All persons that monitor air-borne asbestos and dispose of asbestos waste as a result of asbestos projects.
(B) Exemptions. The department may exempt a person from registration, certification and certain notification requirements provided the person conducts asbestos projects solely at the person's own place of business as part of normal operations in the facility and also is subject to the requirements and applicable standards of the United States Environmental Protection Agency (EPA) and United States Occupational Safety and Health Administration (OSHA) 29 CFR 1926.1101. This exemption shall not apply to asbestos contractors, to those subject to the requirements of the Asbestos Hazard Emergency Response Act (AHERA) and to those persons who provide a service to the public in their place(s) of business as the economic foundation of the facility. These shall include, but not be limited to, child daycare centers, restaurants, nursing homes, retail outlets, medical care facilities, hotels and theaters. Business entities that have received state approved exemption status shall comply with all federal air sampling requirements for their planned renovation operations.

(3) General Provisions.
(A) Registration.
1. Any person that conducts an asbestos project shall register with the department. Business entities that qualify for exemption status from the state must reapply for exemption from registration.
2. The person shall apply for registration renewal on an annual basis, and two (2) months before the expiration date shall send the application to the department for processing.
3. Annually, the person submitting a registration application to the department shall remit a nonrefundable fee of one thousand dollars ($1,000) to the department.
4. To determine eligibility for registration and registration renewal, the department may consider the compliance history of the applicant as well as that of all management employees and officers. The department may also consider the compliance record of any other entity of which those individuals were officers and management employees.
(B) Abatement Procedures and Practices.
1. Asbestos project contractors shall use only individuals that have been certified by the department in accordance with 10 CSR 10-6.250 and Chapter 643, RSMo on asbestos projects.
2. At each asbestos project site the person shall provide the following information for inspection by the department:
A. Proof of current departmental registration;
B. Proof of current departmental occupational certification for those individuals on the project;
C. Most recent available air sampling results;
D. Current photo identification for all applicable individuals engaged in the project; and
E. Proof of passage of the training course for the air sampling technicians and photo identifications for air sampling technicians.
(C) Revocation of Registration. The director may deny, suspend or revoke any person's registration obtained under section (3) of this

rule if the director finds the person in violation of sections 643.225–643.250, RSMo or Missouri rules 10 CSR 10-6.241 or 10 CSR 10-6.250 or any applicable federal, state or local standard for asbestos projects.

(D) Any person that authorizes an asbestos project, asbestos inspection or any AHERA-related work shall ensure that Missouri registered contractors and certified workers are employed, and that all post-notification procedures on the project are in compliance with this rule and 10 CSR 10-6.250 and Chapter 643, RSMo. Business entities that have exemption status from the state are exempt from using registered contractors and from post-notification requirements, when performing in-house asbestos projects.

(E) Asbestos Project Notification. Any person undertaking an asbestos project shall submit a notification to the department for review at least ten (10)-working days prior to the start of the project. Business entities with state-approved exemption status are exempt from notification except for those projects for which notification is required by the EPA's National Emission Standards for Hazardous Air Pollutants (NESHAPS). The department may waive the ten (10)-working day review period upon request for good cause. To apply for this waiver, the person shall complete Part B, number 2 of the notification form provided by the department. After the effective date of this rule, any revision to the department-supplied forms will be presented to the regulated community for a forty-five (45)-day comment period. The person who applies for the ten (10)-working day waiver must obtain approval from the department before the project can begin.

1. The person shall submit the notification form provided by the department.

2. If an amendment to the notification is necessary, the person shall notify the department immediately by telephone or FAX. The department must receive the written amendment within five (5) working days following verbal agreement.

3. Asbestos project notifications shall state actual dates and times of the project, the on-site supervisor and a description of work practices. If the person must revise the dates and times of the project, the person shall notify the department and the regional office or the appropriate local delegated enforcement agency at least twenty-four (24) hours in advance of the change by telephone or FAX and then immediately follow-up with a written amendment stating the change. The department must receive the written amendment within five (5) working days of the phone or FAX message.

4. A nonrefundable notification fee of one hundred dollars ($100) will be charged for each project constituting one hundred sixty (160) square feet, two hundred sixty (260) linear feet, or thirty-five (35) cubic feet or greater. If an asbestos project is in an area regulated by an authorized local air pollution control agency, and the person is required to pay notification fees to that agency, the person is exempt from paying the state fees. Persons conducting planned renovation projects determined by the department to fall under EPA's 40 CFR part 61 subpart M must pay this fee and the inspection fees required in subsection (3)(F) of this rule.

5. Emergency project. Any person undertaking an emergency asbestos project shall notify the department by telephone and must receive departmental approval of emergency status. The person must notify the department within twenty-four (24) hours of the onset of the emergency. Business entities with state-approved exemption status are exempt from emergency notification for state-approved projects that are part of a NESHAPS planned renovation annual notification. If the emergency occurs after normal working hours or weekends, the person shall contact the Environmental Services Program. The notice shall provide—

A. A description of the nature and scope of the emergency;

B. A description of the measures immediately used to mitigate the emergency; and

C. A schedule for removal. Following the emergency notice, the person shall provide to the director a notification on the form provided by the department and the person shall submit it to the director within seven (7) days of the onset of the emergency. The amendment requirements for notification found in subsection (3)(E) of this rule are applicable to emergency projects.

(F) Inspections. There shall be a charge of one hundred dollars ($100) per inspection for the first three (3) inspections of any asbestos project. The department or the local delegated enforcement agency shall bill the person for that inspection(s) and the person shall submit the fee(s) according to the requirements of the department or of the local delegated enforcement agency.

(4) Reporting and Record Keeping.

(A) Post-Notification.

1. Any person undertaking an asbestos project that requires notification according to subsection (3)(E) of this rule, on the department-provided form shall notify the department within sixty (60) days of the completion of the project. This notice shall include a signed and dated receipt for the asbestos waste generated by the project issued by the landfill named on the notification. This notice also shall include any final clearance air monitoring results. The technician performing the analysis shall sign and date all reports of analysis.

2. Business entities are exempt from post-notification requirements, but shall keep records of waste disposal for department inspection.

REVISED PRIVATE COST: This proposed rule will cost nine thousand two hundred twenty-five dollars ($9,225) in FY 2005 and the total annualized aggregate cost is twelve thousand three hundred dollars ($12,300) in each subsequent fiscal year for the life of this rule. Note attached fiscal note for assumptions that apply.

REVISED FISCAL NOTE
PRIVATE ENTITY COST

I. RULE NUMBER

Title: 10-Department of Natural Resources

Division: 10-Air Conservation Commission

Chapter: 6-Air Quality Standards, Definitions, Sampling and Reference Methods and Air Pollution Control Regulations For the Entire State of Missouri

Type of Rulemaking: Proposed Rule

Rule Number and Name: 10 CSR 10-6.241 Asbestos Projects-Registration, Notification and Performance Requirements

II. 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:
<200	Asbestos Removal Contractors	$123,000

III. WORKSHEET

Public Entity Costs	FY2005	FY2006 – FY 2014 (yearly cost)	FY2015	Total Cost for Life of Rule
Asbestos Contractor Inspections	$9,225	$12,300	$3,075	$123,000

IV. ASSUMPTIONS

1. For the convenience of calculating this fiscal note over a reasonable time frame, the life of the rule is assumed to be 10 years although the duration of the rule is indefinite. If the life of the rule extends beyond ten years, the annual costs for additional years will be consistent with the assumptions used to calculate annual costs as identified in this fiscal note.

2. The number of inspections performed during calendar year 2002 is assumed to be representative of all future years. 123 were conducted during that year.

3. The cost of the inspection fees is set at $100 each, and will not increase.

4. The FY2005 costs are for the last 9 months of the fiscal year.

5. The FY2015 costs are for the first 3 months of the fiscal year.

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

ORDER OF RULEMAKING

By the authority vested in the Missouri Air Conservation Commission under section 643.225, RSMo 2000, the commission amends a rule as follows:

10 CSR 10-6.250 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 17, 2004 (29 MoReg 307–310). 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 Department of Natural Resources' Air Pollution Control Program received five (5) comments from three (3) sources: St. Louis Regional Chamber Growth Association (RCGA), an asbestos abatement contractor and an audience member during the public hearing testimony. Similar comments on this proposed amendment are grouped together and responded to with one (1) response.

Due to similar concerns addressed in the following two (2) comments, one (1) response that addresses these concerns can be found at the end of these two (2) comments:

COMMENT: RCGA commented that the twenty (20)-day notification period and ten (10) square/sixteen (16) linear feet threshold for asbestos abatement projects is stricter than federal requirements set in 40 CFR 61 subpart (M) and, therefore, violates section 643.055, *Revised Statutes of Missouri* (RSMo).
COMMENT: RCGA also commented that the Missouri Supreme Court finding on the Corvera lawsuit would also prevent the Missouri Air Conservation Commission from promulgating regulations stricter than federal regulations.
RESPONSE AND EXPLANATION OF CHANGE: Any exposure to asbestos is a potential health concern. The department's Air Pollution Control Program strongly believes that the lower limits established in sections 643.225–643.250, RSMo are more protective of human health and the environment. However, in response to industry's comments and after further discussions with legal counsel, it appears that the Missouri Supreme Court, in the *Corvera vs. the Missouri Air Conservation Commission* court case, determined that the legislature repealed, in effect, the 1989 enactment of the definition of—asbestos abatement projects—and the notice requirements. Since the legislature has not taken any action to restore the notice requirements or the definition of asbestos abatement projects, the rule language has been changed. Throughout the rule, including the rule title, the term—asbestos abatement project—has been changed to—asbestos project—which is defined in 10 CSR 10-6.020 as an activity to remove or encapsulate one hundred sixty (160) square feet or two hundred sixty (260) linear feet of asbestos-containing material. This definition is consistent with the federal requirements set forth in 40 CFR 61 subpart (M).

COMMENT: The contractor commented that previously certified license holders should be grandfathered.
RESPONSE: Asbestos occupational certifications are required to be updated yearly by the federal Asbestos Hazard Emergency Response Act (AHERA) regulations. These federal regulations have no provisions for grandfathering previously certified license holders. Therefore, no wording changes have been made to the proposed amendment as a result of this comment.

COMMENT: The contractor commented that Missouri, like the U.S. Occupational Safety and Health Administration (OSHA), should recognize drywall joint compound as a separate building material.
RESPONSE: While OSHA recognizes the difference between drywall joint compound and sheetrock, the U.S. Environmental Protection Agency (EPA) considers joint compound to be an integral portion of the wall system. Since the EPA requires that drywall joint compound be sampled together with the sheetrock, no wording changes have been made to the proposed amendment as a result of this comment.

COMMENT: A member of the audience commented during the public hearing that a few years ago, EPA released a policy document notifying regulatory agencies that they had been misinterpreting the one hundred sixty (160) square feet and two hundred sixty (260) linear feet threshold limits. If an installation has multiple structures, the limit applies cumulatively to all structures at that location.
RESPONSE: The department's Air Pollution Control Program is aware of the EPA policy. The enforcement section of the department's Air Pollution Control Program applies the policy when enforcing federal requirements. Therefore, no wording changes have been made to the proposed rulemaking as a result of this comment.

10 CSR 10-6.250 Asbestos Projects—Certification, Accreditation and Business Exemption Requirements

PURPOSE: This rule requires individuals who work in asbestos projects to be certified by the Missouri Department of Natural Resources Air Pollution Control Program. This rule requires training providers who offer training for asbestos occupations to be accredited by the Missouri Department of Natural Resources Air Pollution Control Program. This rule requires persons who hold exemption status from certain requirements of this rule to allow the department to monitor training provided to employees. Each individual who works in asbestos projects must first obtain certification for the appropriate occupation from the department. Each person who offers training for asbestos occupations must first obtain accreditation from the department. Certain business entities who meet the requirements for state-approved exemption status must allow the department to monitor training classes provided to employees who perform asbestos projects.

(1) Applicability. This rule shall apply to—

(A) All persons who authorize, design, conduct and work in asbestos projects;

(B) Those who monitor airborne asbestos as a result of asbestos projects;

(3) General Provisions.

(A) Certification.

1. An individual must receive certification from the department before that individual participates in an asbestos project, inspection, AHERA management plan, abatement project design, or asbestos air sampling in the state of Missouri. This certification must be renewed annually with the exception of air sampling professionals. To become certified an individual must meet the qualifications in the specialty area as defined in the EPA's AHERA Model Accreditation Plan, 40 CFR part 763, Appendix C, subpart E. The individual must successfully complete a fully-approved EPA or Missouri-accredited AHERA training course and pass the training course exam and pass the Missouri asbestos examination with a minimum score of seventy percent (70%) and submit a completed department-supplied application form to the department along with the appropriate certification fees. After the effective date of this rule, any revision to the department-supplied forms will be presented to the regulated community for a forty-five (45)-day comment period. The department shall issue a certificate to each individual that meets the requirements for the job category.

2. In order to receive Missouri certification, individuals must be trained by Missouri accredited providers.

3. Qualifications. An individual shall present proof of these to the department with the application for certification. The following are the minimum qualifications for each job category:

A. An asbestos air sampling professional conducts, oversees or is responsible for air monitoring of asbestos projects. Air sampling professionals must satisfy one (1) of the following qualifications for certification:

(I) Bachelor of science degree in industrial hygiene plus one (1) year of field experience. The individual must provide a copy of his/her diploma, a certified copy of his/her transcript, and documentation of one (1) year of experience;

(II) Master of science degree in industrial hygiene. The individual must provide a copy of his/her diploma and a certified copy of his/her transcript;

(III) Certification as an industrial hygienist as designated by the American Board of Industrial Hygiene. The individual must provide a copy of his/her certificate and a certified copy of his/her transcript, if applicable;

(IV) Three (3) years of practical industrial hygiene field experience including significant asbestos air monitoring and completion of a forty (40)-hour asbestos course including air monitoring instruction. At least fifty percent (50%) of the three (3)-year period must have been on projects where a degreed or certified industrial hygienist or a Missouri certified asbestos air sampling professional was involved. The individual must provide to the department written reference by the industrial hygienist or the asbestos air sampling professional stating the individual's performance of monitoring was acceptable and that the individual is capable of fulfilling the responsibilities associated with certification as an asbestos air sampling professional. The individual must also provide documentation of his/her experience and a copy of his/her asbestos course certificate; or

(V) Other qualifications including but not limited to an American Board of Industrial Hygiene accepted degree or a health/safety related degree combined with related experience. The individual must provide a copy of his/her diploma and/or certification, a certified copy of his/her transcript, and letters necessary to verify experience.

B. An asbestos air sampling technician is an individual who has been trained by an air sampling professional to do air monitoring and who conducts air monitoring of asbestos projects. Air sampling technicians need not be certified but are required to pass a training course and have proof of passage of the course at the site along with photo identification. This course shall include:

(I) Air monitoring equipment and supplies;

(II) Experience with pump calibration and location;

(III) Record keeping of air monitoring data for asbestos projects;

(IV) Applicable asbestos regulations;

(V) Visual inspection for final clearance sampling; and

(VI) A minimum of sixteen (16) hours of air monitoring field equipment training by a certified air sampling professional;

C. An asbestos inspector is an individual who collects and assimilates information used to determine the presence and condition of asbestos-containing material in a building or other air contaminant source. An asbestos inspector must hold a diploma from a fully-approved EPA or Missouri-accredited AHERA inspector course and a high school diploma or its equivalent;

D. An AHERA asbestos management planner is an individual who, under AHERA, reviews the results of inspections, reinspections or assessments and writes recommendations for appropriate response actions. An AHERA asbestos management planner must hold diplomas from a fully-approved EPA or Missouri-accredited AHERA inspector course and a fully approved EPA or Missouri-accredited management planner course. The individual must also hold a high school diploma or its equivalent;

E. An abatement project designer is an individual who designs or plans asbestos abatement. An abatement project designer must hold a diploma from a fully-approved EPA or Missouri-accredited project designer course, must have an engineering or industrial hygiene degree, and must have working knowledge of heating, ventilation and air conditioning systems or an abatement project designer must hold a high school diploma or its equivalent, must have a diploma from a fully-approved EPA or Missouri-accredited project designer course, and must have at least four (4) years experience in building design, heating, ventilation and air conditioning systems. The department may require individuals with professional degrees for complex asbestos projects;

F. An asbestos supervisor is an individual who directs, controls or supervises others in asbestos projects. An asbestos supervisor shall hold a diploma from a fully-approved EPA or Missouri-accredited AHERA contractor/supervisor course and have one (1) year full-time prior experience in asbestos abatement work or in general construction work; and

G. An asbestos worker is an individual who engages in asbestos projects. An asbestos worker shall hold a diploma from a fully-approved EPA or Missouri-accredited AHERA worker training course.

(C) Certification/Recertification Fees. The department shall assess—

1. A seventy-five dollar ($75) application fee for each individual applying for certification except for asbestos workers;

2. A twenty-five dollar ($25) application fee for each asbestos worker;

3. No application fees for asbestos air sampling technicians;

4. A twenty-five dollar ($25) fee for each Missouri asbestos examination; and

5. A five dollar ($5) renewal fee for each renewal certificate.

(E) Business Exemptions. The department may exempt a person from registration, certification and certain notification requirements provided the person conducts asbestos projects solely at the person's own place(s) of business as part of normal operations in the facility and the person is also subject to the requirements and applicable standards of the EPA and United States Occupational Safety and Health Administration (OSHA) 29 CFR 1926.1101. The person shall submit an application for exemption to the department on the department-supplied form. After the effective date of this rule, any revision to the department-supplied forms will be presented to the regulated community for a forty-five (45)-day comment period. This exemption shall not apply to asbestos contractors, to those subject to the requirements of AHERA and to those persons who provide a service to the public in their place(s) of business as the economic foundation of the facility. These shall include, but not be limited to, child day-care centers, restaurants, nursing homes, retail outlets, medical care facilities, hotels and theaters. The department shall review the exemption application within one hundred eighty (180) days. State-exempted business entities shall comply with all federal air sampling requirements for planned renovation operations.

1. Training course requirements.

A. The person shall fill out the department-supplied form describing training provided to employees and an explanation of how the training meets the applicable OSHA and EPA standards. After the effective date of this rule, any revision to the department-supplied forms will be presented to the regulated community for a forty-five (45)-day comment period.

B. The person shall notify the department two (2) weeks before the person conducts training programs. This notification shall include the course title, start-up date, location and course instructor(s).

C. If the person cancels the course, the person shall notify the department at the same time the person notifies course participants. The person shall follow up with written notification to the department.

D. When regulations, policies or procedures change, the person must update the initial and refresher courses. The person must notify the department as soon as the person makes the changes.

E. When the person conducts hands-on training, the ratio of students to instructors shall not exceed ten-to-one (10:1).

F. The person must allow representative(s) of the department to attend the training course for purposes of determining compliance with this rule.

G. Exempted persons shall submit to the director changes in curricula, instructors and other significant revisions to the training program as they occur. The person must submit resumés of all new instructors to the department as soon as substitutions or additions are made.

H. The department may revoke or suspend an exemption if on-site inspection indicates that the training fails the exemption requirements. These include, but are not limited to, a decrease in course length, a change in course content or use of different instructors than those indicated in the application. The department, in writing, shall notify the person responsible for the training of deficiencies. The person shall have thirty (30) days to correct the deficiencies before the department issues final written notice of exemption withdrawal.

2. If the department finds an exemption application deficient, the person has sixty (60) days to correct the deficiencies. If, within sixty (60) days, the person fails to provide the department with the required information, the department may deny approval of the exemption.

3. The person shall submit a fee of two hundred fifty dollars ($250) with the application for exemption. This is a nonrefundable one (1)-time fee.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 40—Land Reclamation Commission
Chapter 10—Permit and Performance Requirements for Industrial Mineral Open Pit and In-Stream Sand and Gravel Operations

ORDER OF RULEMAKING

By the authority vested in the Land Reclamation Commission under sections 444.530, RSMo 2000 and 444.767, RSMo Supp. 2003, the commission amends a rule as follows:

10 CSR 40-10.020 Permit Application Requirements **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 2, 2004 (29 MoReg 204–205). 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*.

SPECIAL NOTE: Private individuals who mine for their personal use are exempt from these rules. Political subdivisions who mine sand and gravel for public projects and utilize their own personnel and equipment are also exempt from these rules. This exemption is provided in the law at section 444.770.5, RSMo. Nothing in this amendment changes these exemptions.

SUMMARY OF COMMENTS: The Missouri Land Reclamation Commission, through its staff in the Land Reclamation Program of the Missouri Department of Natural Resources, received comments on this proposed amendment from several parties representing various viewpoints both in written form during the comment period and during the public hearing. The comments ranged from persons stating there should be no mining allowed at all within any of Missouri's streams to persons stating there should be no regulation at all on the mining of sand and gravel from Missouri's rivers and streams. Comments were received from private individuals, stream user organizations, mining industry organizations, environmental organizations, private property rights organizations, county commissions and state legislators. Many of the written comments received stated an overall satisfaction with the proposed regulations and the statement that the regulations should not be further compromised. Some comments expressed a desire for stronger regulations while others expressed a desire to keep the proposed regulations as guidelines only. The formal public comment period ended on March 25, 2004 although the Land Reclamation Commission continued to invite informal input into the proposed amendment until April 30, 2004. A public hearing was held on this proposed amendment on March 25, 2004. Because the nature of the comments received both in writing and at the hearing are, in many instances, similar if not exactly alike, they are being grouped together according to their content for purposes of this summary of responses to comments. Where more than one (1) person or organization submitted the same comment, this is noted below.

COMMENT: One comment expressed the opinion that no mining of sand and gravel should be allowed at all in any of Missouri's stream courses.
RESPONSE: The current statutes which are known as the "Land Reclamation Act," allow for the excavation of sand and gravel from Missouri's streams and provide that, when not exempt, an operator must first secure a mining permit to engage in surface mining from the Land Reclamation Commission. The "Act" contains exemptions from the permitting requirement for political subdivisions and private individuals in certain situations. The permit application must state how the operator will extract sand and gravel from the stream in accordance with recognized guidelines which are designed to protect both water quality and the physical nature of the stream while allowing for the extraction of the mineral deposit.

COMMENT: One commenter, representing the industry involved in the rulemaking, stated that the proposed amendment is a good compromise that allows for mineral extraction while at the same time is protective of the stream. The statement was made that the industry finds the amendment to be acceptable.
RESPONSE: The Land Reclamation Commission agrees that the amendment is an acceptable compromise arrived at through extensive discussion and examination by all interested parties involved.

COMMENT: One commenter asked the question if the Land Reclamation Program had coordinated with the Water Protection Program concerning crossing a stream in order to access a mineral deposit.
RESPONSE: The department's Land Reclamation Program has coordinated with the Water Protection Program during the course of the development of the amendment and has worked closely with the Water Protection Program in order to assure the amendment does not conflict with that program's requirements. The Water Protection Program's requirements are separate from and in addition to the requirements set forth in the Land Reclamation Act and the Land Reclamation Commission's regulations.

COMMENT: One commenter asked the question that if an operator has a permit to mine sand and gravel from a floodplain, does the amendment allow for the crossing of the stream associated with the floodplain in order to access the minesite.
RESPONSE: The amendment will allow for the stream to be crossed as long as the crossing is made as perpendicular to the stream flow as possible and there is no fill placed in the stream in order to construct such a crossing. However, the amendment does not address whether and when a permit is required from the U.S. Army Corps of Engineers or the Water Protection Program of the Missouri Department of Natural Resources.

COMMENT: One commenter questioned what review standard would be used to determine if specific (permit) conditions are necessary to preserve stream reaches within "Outstanding State Resource Waters."
RESPONSE: The Land Reclamation Program will review all applications to mine within "Outstanding State Resource Waters" with a higher level review than is performed for permits outside of these stream reaches. The purpose will be to provide additional protective measures, if necessary, for these exemplary streams. This may include but not be limited to larger buffer zone requirements, further restrictions on depth of excavations than provided by the amendment, and limiting or negating any equipment operation in the flowing water of such streams for purposes of crossing such streams or any other purposes. The Water Protection Program may have separate rules or statutes that may restrict activities on Outstanding State Resource Waters that must be followed.

COMMENT: Several comments expressed their support for the amendment but also stated their desire to strengthen the amendment by requiring a twenty foot (20') buffer between the area of excavation and the flowing water instead of the ten feet (10') proposed; requiring a one hundred foot (100') buffer along the high bank of the stream to protect the riparian corridor instead of the twenty-five feet (25') proposed; requiring that no excavation be allowed below one foot (1') above the flowing water level instead of to the water level as proposed; and requiring a determination of the presence of endangered species instead of the consultation provision with the United States Fish and Wildlife Service and the Missouri Department of Conservation as proposed.
RESPONSE: The development of the amendment resulted from several years of discussions, meetings, hearings, and stakeholder input. The resulting amendment is seen by the program and the commission as the best that could be realized given the importance of the industry, the importance of the mineral commodity, and the importance of protecting the stream resource. While the comments above are noted and appreciated by the program and commission, the resulting amendment is generally recognized by all parties concerned to be a reasonable approach that balances the mining of this important resource with protection of Missouri's streams from undue damage and pollution.

COMMENT: Many comments were received that expressed satisfaction with the amendment as proposed and stated that the amendment is the minimum compromise acceptable to them and that no further compromise be considered. These same comments expressed the desire for the commission and program to proceed with implementation of the amendment as soon as possible.
RESPONSE: The Land Reclamation Program and the Land Reclamation Commission appreciate these comments and are in agreement with them.

COMMENT: Many comments were received that expressed support for the amendment and went on to state their desire to include city, county, and state entities within the amendment.
RESPONSE: Support for the amendment is appreciated. However, political subdivisions who use their own personnel and equipment to excavate sand and gravel from streams for use on their own projects are exempt from the permitting requirement by statute. Private individuals who mine for personal use are also exempt from the permitting requirement by statute. The current amendment cannot and does not do anything to alter these statutory exemptions.

COMMENT: Several comments expressed concerns about the increased costs to commercial sand and gravel operators and the impacts to the resulting costs for production of concrete and road maintenance for county governments who do not own their own equipment and rely upon commercial operators for this product.
RESPONSE: This concern was expressed at least two (2) years ago and was in fact the reason that the Land Reclamation Commission ordered a workgroup to rewrite the proposed rules into their current form. The commission did not want to impose standards that would increase costs dramatically as the concerns expressed. The present form of the proposed rules was presented at the May 2003 meeting of the Land Reclamation Commission, and all parties including the industry representatives stated that they could live with these proposed rules. As a background summary, the amendment was derived from previous permitting and operational requirements of the Army Corps of Engineers general permit #GP-34M. These general permits were issued by the Corps to virtually all commercial mining operators during the mid to late 1990s. During that time period commercial operators were required to operate in compliance with those permit conditions. Operators were, at that time a part of the process that resulted in the GP-34M permit and openly expressed that those permit conditions did not result in an increased cost for production of the mineral commodity. The current amendment is, in fact, a reduced version of those same requirements which should also result in no significant increased costs to produce the important commodity of sand and gravel which is relied upon to produce concrete along with other valuable uses for this resource. Furthermore, the current regulations require that a commercial operator, in an application for a mining permit, state in the application how the mineral commodity will be removed from streams without impact to water quality or the stream itself. Currently, applications for permits to conduct surface mining of sand and gravel incorporate descriptions of the measures an operator will take to protect the stream and water quality, such as restricting excavation to the level of the flowing water at the time of excavation or, in the case of a dry stream, restricting excavation to the lowest point in the defined channel or to where water would flow in the case of a rainfall event. Applicants currently state that the banks of the stream will not be disturbed and the operations will not be conducted in the water of the stream. These permit applications statements are now simply being converted into a rule. Operators that are currently in compliance with their existing permits will not realize any impact on their method of operations and hence will not realize any increased costs of production. In fact, the program will be generating a new form of permit application for operators that will do away with the current necessity of filling out a "Stream Protection Plan" and replacing that part of the permit application with a standardized form that is filled in for the applicant. This form will then simply need to be signed and notarized by the applicant and the requirements for a permit application will then be met. This is seen as a cost reduction to the applicant which will save time and money for the applicant and result in a complete permit application simply by signing the standardized form. It will also assure that all operators know up front how they will be expected to operate and all operators will be then mining this resource with consistent requirements across the state of Missouri. However, should an operator prefer to write a site specific stream protection plan, this is still an option and will be evaluated by the program for its effect in protection of the stream resource if a request for variance is received.

COMMENT: Several comments objected to the amendment without scientific studies produced from the state of Missouri to show a need for the amendment.
RESPONSE: During the course of the development of this amendment, the Program has collected research studies from a variety of sources that address the impacts of sand and gravel mining from streams. While it is true that specific studies on streams within Missouri are minimal, there has been extensive research done on streams throughout the United States and elsewhere in the world. These studies have been provided to all interested parties and are available on the program's website. The studies clearly indicated that improper mining of sand and gravel from streams can and does result in overall stream degradation and impacts to water quality and aquatic life within those streams. It can be reasonably extrapolated that

these same impacts from improper mining elsewhere will also result in impacts to the streams of Missouri.

COMMENT: Several comments stated that the amendment will prohibit the excavation of sand and gravel and result in excess gravel buildup thereby causing an increase in erosion to the adjacent stream banks.
RESPONSE: The amendment does not in any way prohibit the excavation of sand and gravel. The amendment sets forth base requirements for this type of excavation however, provisions are made in the amendment for any applicant to apply for a variance from the base requirements if site specific conditions warrant the variance. The whole point of the variance provision in the amendment is to recognize the fact that streams can vary in their character and that there may very well be instances where site specific conditions would justify approval of a variance. The variance provisions of the amendment are viewed as an essential component of the amendment to allow for reasonable solutions to site specific conditions such as excessive gravel buildup.

COMMENT: Several comments asked the question of why regulations are needed.
RESPONSE: The amendment is designed for protection of streams and water quality in those streams while at the same time allowing for the mining of sand and gravel. The amendment also provides for all operators to clearly understand how they will conduct their mining operations and to provide for consistency in the permitting process for this industry.

COMMENT: Several comments stated that "Class C" streams and the mineral contained within them are the sole property of the owner of that stream and that any regulation of the mining and commercial use of the mineral in those streams is unconstitutional.
RESPONSE: The amendment is based upon current statutes known as the Land Reclamation Act, sections 444.760 to 444.790 of the *Revised Statutes of Missouri*. The Act does not provide for any exception based upon whether the stream is designated as a "Class C" stream in some other law. This amendment does not and cannot do anything to change the Land Reclamation Act. The Land Reclamation Commission and Land Reclamation Program believe, based upon advice of counsel, that the Act is constitutional.

COMMENT: Several comments expressed the opinion that private property owners will be next in line to be regulated for the extraction of sand and gravel from streams and oppose the amendment on that basis.
RESPONSE: This amendment, as stated earlier, does not and cannot change any exemptions currently in existence under the law. The amendment clearly states up front that it applies to non-exempt mining operations only.

COMMENT: One commenter stated that a private landowner cannot hire a contractor to remove gravel from his/her property for personal use without first obtaining a permit and becoming subject to the regulations.
RESPONSE: This is a question of interpretation of the Land Reclamation Act. As stated above, this amendment is not changing the scope of applicability of the Land Reclamation Act.

COMMENT: Several comments expressed the opinion that the amendment impinges upon a landowner's right to sell gravel mined from his/her property thereby infringing upon private property rights.
RESPONSE: The requirement to obtain a permit for surface mining of a mineral resource is not addressed by this amendment. That requirement is found in statutes known as the "Land Reclamation Act" and applies to all minerals identified in that "Act." Sand and gravel are two (2) of those minerals. This amendment cannot and does not add any permit requirement that is not already contained within the Act.

COMMENT: One commenter stated that the Regulatory Impact Report, prepared by the program as a part of the proposed rule process, contains many false and misleading statements.
RESPONSE: The Regulatory Impact Report was prepared by the Program using the best information available to it at the time of preparation and in the spirit of openness, honesty, and credibility, and the Program believed that it was accurate at the time it was prepared. Everyone involved with the process of crafting this amendment did so with their own points of view and expectations. The Program believes that what the commenter is referring to as false and misleading is actually just an expression of a different viewpoint than the viewpoint held by the commenter.

COMMENT: Several comments believe this amendment will prohibit the removal of sand and gravel from Missouri's streams.
RESPONSE: This amendment does not contain a prohibition on the removal of this important resource from streams. The amendment is designed, in fact, to allow for the removal of this mineral commodity while at the same time providing for protection of an equally valuable resource to the citizens and economy of Missouri, that of our rivers and streams.

COMMENT: Several comments stated that the Department of Natural Resources has failed to comply with the "Texas County–State of Missouri Land Management Plan" in the course of the development of this amendment.
RESPONSE: As stated at the beginning of this Order of Rulemaking in the Special Note, political subdivisions using their own personnel and equipment are exempt by law from the permitting requirements of the Act. Political subdivisions that contract for services are affected only indirectly because their contract operator has always been subject to the permitting requirements of the Land Reclamation Act. As stated in a previous response, this concern was expressed at least two (2) years ago and was in fact the reason that the Land Reclamation Commission ordered a workgroup to rewrite the proposed rules into their current form. The commission did not want to impose standards that would increase costs dramatically as the concerns expressed. The present form of the proposed rules was presented at the May 2003 meeting of the Land Reclamation Commission, and all parties including the industry representatives stated that they could live with these proposed rules. Moreover, representatives from Texas County participated extensively in the discussions regarding the amendment. Therefore, the Land Reclamation Commission does not agree that the department has failed to consider the interests of political subdivisions. The Land Reclamation Program has determined, based upon advice of counsel, that the commission's promulgation of this amendment is legally sound.

COMMENT: One commenter stated that it was totally inappropriate to allow for gravel mining in streams that are designated as "losing" streams.
RESPONSE: The amendment contains performance standards for conducting in-stream sand and gravel mining in a manner that protects stream resources of all kinds. Additional protections for losing streams may exist in the statutes and regulations that are enforced by the Clean Water Commission and the Water Protection Program of the Missouri Department of Natural Resources, and nothing in this amendment will interfere with enforcement of these statutes and regulations by the Clean Water Commission or the Water Protection Program.

COMMENT: One commenter stated that a distance prohibition should be established which would ban all stream gravel mining from occurring within a five (5)-mile radius of any state or national outstanding resource water.

RESPONSE: The amendment contains performance standards for conducting in-stream sand and gravel mining in a manner that protects stream resources of all kinds. Additional protections for outstanding state and national resource waters may exist in the statutes and regulations that are enforced by the Clean Water Commission and the Water Protection Program of the Missouri Department of Natural Resources, and nothing in this amendment will interfere with enforcement of these statutes and regulations by the Clean Water Commission or the Water Protection Program.

COMMENT: One commenter expressed his understanding that no right to mine within stream channels can be granted without first securing a 404/401 permit and certification to do so.
RESPONSE: The U.S. Army Corps of Engineers and the Water Protection Program should be consulted regarding the precise situations in which a 404/401 permit and certification are required, as this process is not handled by the Land Reclamation Commission or the Land Reclamation Program. However, it should be noted that the 404/401 permit and certification program does not cover all waterbodies in Missouri. Therefore, the existence of the 404/401 permit and certification process does not obviate the need for obtaining a permit and complying with regulations under the Land Reclamation Act.

COMMENT: Several county governments commented that the amendment, while at present does not apply to county governments or private individuals, it will only be a matter of time before the department will also require permits from them as well.
RESPONSE: The current amendment is based upon legislation which specifically exempts the above two (2) entities from the permitting requirements and therefore the terms of this amendment. There are no plans to change existing legislation and this amendment clearly does not.

COMMENT: Several county governments commented that while the amendment does not appear to apply to them, it will open the door for the department's Water Protection Program to enforce the permitting and performance requirements upon them and cause the issuance of violations to them from that program.
RESPONSE: The requirements of the Land Reclamation Act are generally enforced only by Land Reclamation Act personnel, and not Water Protection Program personnel. Occasionally, Water Protection Program personnel will refer an issue to the Land Reclamation Program, but then it is left to the Land Reclamation Program to determine whether a violation of the Act or the Land Reclamation Commission's regulations has occurred, and to take enforcement action if warranted.

COMMENT: Several county governments commented that the amendment will not improve protection for Missouri streams but will, in fact, harm them by restricting gravel removal.
RESPONSE: The amendment was designed with the fundamental concept in mind from the beginning to allow for gravel removal while at the same time offering basic protection for the stream being mined. Where there are extenuating circumstances such as excessive gravel buildup, bedrock stream bottoms adjacent or contiguous to the extraction area, or any other mitigating circumstance, a variance from the requirements of the amendment may be granted upon receipt of a complete variance application. This is stated up front in the amendment and is provided in order to meet the needs of operators whose specific situations require variance from the provisions of this amendment.

COMMENT: One county government commented that the amendment will ultimately result in a loss of tourism because people will no longer be able to float/fish in gravel choked streams.
RESPONSE: The amendment is designed to allow for gravel extraction while protecting stream resources, and in cases where the stream is choked with gravel, variances to the provisions of the amendment may be applied for and, if justified, approved.

COMMENT: One county government commented that restricting gravel removal will result in gravel choked streams that will, in turn, cause increased flooding.
RESPONSE: Where gravel choked streams exist, variances to the depth restriction may be applied for and, if justified, approved.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 40—Land Reclamation Commission
Chapter 10—Permit and Performance Requirements for Industrial Mineral Open Pit and In-Stream Sand and Gravel Operations

ORDER OF RULEMAKING

By the authority vested in the Land Reclamation Commission under sections 444.530, RSMo 2000 and 444.767, RSMo Supp. 2003, the commission amends a rule as follows:

10 CSR 40-10.050 Performance Requirements **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 2, 2004 (29 MoReg 205–206). 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*.

SPECIAL NOTE: Private individuals who mine for their personal use are exempt from these rules. Political subdivisions who mine sand and gravel for public projects and utilize their own personnel and equipment are also exempt from these rules. This exemption is provided in the law at section 444.770.5, RSMo. Nothing in this amendment changes these exemptions.

SUMMARY OF COMMENTS: The Missouri Land Reclamation Commission, through its staff in the Land Reclamation Program of the Missouri Department of Natural Resources, received comments on this proposed amendment from several parties representing various viewpoints both in written form during the comment period and during the public hearing. The comments ranged from persons stating there should be no mining allowed at all within any of Missouri's streams to persons stating there should be no regulation at all on the mining of sand and gravel from Missouri's rivers and streams. Comments were received from private individuals, stream user organizations, mining industry organizations, environmental organizations, private property rights organizations, county commissions and state legislators. Many of the written comments received stated an overall satisfaction with the proposed regulations and the statement that the regulations should not be further compromised. Some comments expressed a desire for stronger regulations while others expressed a desire to keep the proposed regulations as guidelines only. The formal public comment period ended on March 25, 2004 although the Land Reclamation Commission continued to invite informal input into the proposed amendment until April 30, 2004. A public hearing was held on this proposed amendment on March 25, 2004. Because the nature of the comments received both in writing and at the hearing are, in many instances, similar if not exactly alike, they are being grouped together according to their content for purposes of this summary of responses to comments. Where more than one (1) person or organization submitted the same comment, this is noted below.

COMMENT: One comment expressed the opinion that no mining of sand and gravel should be allowed at all in any of Missouri's stream courses.
RESPONSE: The current statutes which are known as the "Land Reclamation Act," allow for the excavation of sand and gravel from Missouri's streams and provide that, when not exempt, an operator must first secure a mining permit to engage in surface mining from the Land Reclamation Commission. The "Act" contains exemptions from the permitting requirement for political subdivisions and private individuals in certain situations. The permit application must state how the operator will extract sand and gravel from the stream in accordance with recognized guidelines which are designed to protect both water quality and the physical nature of the stream while allowing for the extraction of the mineral deposit.

COMMENT: One commenter, representing the industry involved in the rulemaking, stated that the proposed amendment is a good compromise that allows for mineral extraction while at the same time is protective of the stream. The statement was made that the industry finds the amendment to be acceptable.
RESPONSE: The Land Reclamation Commission agrees that the amendment is an acceptable compromise arrived at through extensive discussion and examination by all interested parties involved.

COMMENT: One commenter asked the question if the Land Reclamation Program had coordinated with the Water Protection Program concerning crossing a stream in order to access a mineral deposit.
RESPONSE: The department's Land Reclamation Program has coordinated with the Water Protection Program during the course of the development of the amendment and has worked closely with the Water Protection Program in order to assure the amendment does not conflict with that program's requirements. The Water Protection Program's requirements are separate from and in addition to the requirements set forth in the Land Reclamation Act and the Land Reclamation Commission's regulations.

COMMENT: One commenter asked the question that if an operator has a permit to mine sand and gravel from a floodplain, does the amendment allow for the crossing of the stream associated with the floodplain in order to access the minesite.
RESPONSE: The amendment will allow for the stream to be crossed as long as the crossing is made as perpendicular to the stream flow as possible and there is no fill placed in the stream in order to construct such a crossing. However, the amendment does not address whether and when a permit is required from the U.S. Army Corps of Engineers or the Water Protection Program of the Missouri Department of Natural Resources.

COMMENT: One commenter questioned what review standard would be used to determine if specific (permit) conditions are necessary to preserve stream reaches within "Outstanding State Resource Waters."
RESPONSE: The Land Reclamation Program will review all applications to mine within "Outstanding State Resource Waters" with a higher level review than is performed for permits outside of these stream reaches. The purpose will be to provide additional protective measures, if necessary, for these exemplary streams. This may include but not be limited to larger buffer zone requirements, further restrictions on depth of excavations than provided by the amendment, and limiting or negating any equipment operation in the flowing water of such streams for purposes of crossing such streams or any other purposes. The Water Protection Program may have separate rules or statutes that may restrict activities on Outstanding State Resource Waters that must be followed.

COMMENT: Several comments expressed their support for the amendment but also stated their desire to strengthen the amendment by requiring a twenty foot (20') buffer between the area of excavation and the flowing water instead of the ten feet (10') proposed; requiring a one hundred foot (100') buffer along the high bank of the stream to protect the riparian corridor instead of the twenty-five feet (25') proposed; requiring that no excavation be allowed below one foot (1') above the flowing water level instead of to the water level as proposed; and requiring a determination of the presence of endangered species instead of the consultation provision with the United States Fish and Wildlife Service and the Missouri Department of Conservation as proposed.
RESPONSE: The development of the amendment resulted from several years of discussions, meetings, hearings, and stakeholder input. The resulting amendment is seen by the program and the commission as the best that could be realized given the importance of the industry, the importance of the mineral commodity, and the importance of protecting the stream resource. While the comments above are noted and appreciated by the program and commission, the resulting amendment is generally recognized by all parties concerned to be a reasonable approach that balances the mining of this important resource with protection of Missouri's streams from undue damage and pollution.

COMMENT: Many comments were received that expressed satisfaction with the amendment as proposed and stated that the amendment is the minimum compromise acceptable to them and that no further compromise be considered. These same comments expressed the desire for the commission and program to proceed with implementation of the amendment as soon as possible.
RESPONSE: The Land Reclamation Program and the Land Reclamation Commission appreciate these comments and are in agreement with them.

COMMENT: Many comments were received that expressed support for the amendment and went on to state their desire to include city, county, and state entities within the amendment.
RESPONSE: Support for the amendment is appreciated. However, political subdivisions who use their own personnel and equipment to excavate sand and gravel from streams for use on their own projects are exempt from the permitting requirement by statute. Private individuals who mine for personal use are also exempt from the permitting requirement by statute. The current amendment cannot and does not do anything to alter these statutory exemptions.

COMMENT: Several comments expressed concerns about the increased costs to commercial sand and gravel operators and the impacts to the resulting costs for production of concrete and road maintenance for county governments who do not own their own equipment and rely upon commercial operators for this product.
RESPONSE: This concern was expressed at least two (2) years ago and was in fact the reason that the Land Reclamation Commission ordered a workgroup to rewrite the proposed rules into their current form. The commission did not want to impose standards that would increase costs dramatically as the concerns expressed. The present form of the proposed rules was presented at the May 2003 meeting of the Land Reclamation Commission, and all parties including the industry representatives stated that they could live with these proposed rules. As a background summary, the amendment was derived from previous permitting and operational requirements of the Army Corps of Engineers general permit #GP-34M. These general permits were issued by the Corps to virtually all commercial mining operators during the mid to late 1990s. During that time period commercial operators were required to operate in compliance with those permit conditions. Operators were, at that time a part of the process that resulted in the GP-34M permit and openly expressed that those permit conditions did not result in an increased cost for production of the mineral commodity. The current amendment is, in fact, a reduced version of those same requirements which should also result

in no significant increased costs to produce the important commodity of sand and gravel which is relied upon to produce concrete along with other valuable uses for this resource. Furthermore, the current regulations require that a commercial operator, in an application for a mining permit, state in the application how the mineral commodity will be removed from streams without impact to water quality or the stream itself. Currently, applications for permits to conduct surface mining of sand and gravel incorporate descriptions of the measures an operator will take to protect the stream and water quality, such as restricting excavation to the level of the flowing water at the time of excavation or, in the case of a dry stream, restricting excavation to the lowest point in the defined channel or to where water would flow in the case of a rainfall event. Applicants currently state that the banks of the stream will not be disturbed and the operations will not be conducted in the water of the stream. These permit applications statements are now simply being converted into a rule. Operators that are currently in compliance with their existing permits will not realize any impact on their method of operations and hence will not realize any increased costs of production. In fact, the program will be generating a new form of permit application for operators that will do away with the current necessity of filling out a "Stream Protection Plan" and replacing that part of the permit application with a standardized form that is filled in for the applicant. This form will then simply need to be signed and notarized by the applicant and the requirements for a permit application will then be met. This is seen as a cost reduction to the applicant which will save time and money for the applicant and result in a complete permit application simply by signing the standardized form. It will also assure that all operators know up front how they will be expected to operate and all operators will be then mining this resource with consistent requirements across the state of Missouri. However, should an operator prefer to write a site specific stream protection plan, this is still an option and will be evaluated by the program for its effect in protection of the stream resource if a request for variance is received.

COMMENT: Several comments objected to the amendment without scientific studies produced from the state of Missouri to show a need for the amendment.
RESPONSE: During the course of the development of this amendment, the Program has collected research studies from a variety of sources that address the impacts of sand and gravel mining from streams. While it is true that specific studies on streams within Missouri are minimal, there has been extensive research done on streams throughout the United States and elsewhere in the world. These studies have been provided to all interested parties and are available on the program's website. The studies clearly indicated that improper mining of sand and gravel from streams can and does result in overall stream degradation and impacts to water quality and aquatic life within those streams. It can be reasonably extrapolated that these same impacts from improper mining elsewhere will also result in impacts to the streams of Missouri.

COMMENT: Several comments stated that the amendment will prohibit the excavation of sand and gravel and result in excess gravel buildup thereby causing an increase in erosion to the adjacent stream banks.
RESPONSE: The amendment does not in any way prohibit the excavation of sand and gravel. The amendment sets forth base requirements for this type of excavation however, provisions are made in the amendment for any applicant to apply for a variance from the base requirements if site specific conditions warrant the variance. The whole point of the variance provision in the amendment is to recognize the fact that streams can vary in their character and that there may very well be instances where site specific conditions would justify approval of a variance. The variance provisions of the amendment are viewed as an essential component of the amendment to allow for reasonable solutions to site specific conditions such as excessive gravel buildup.

COMMENT: Several comments asked the question of why regulations are needed.
RESPONSE: The amendment is designed for protection of streams and water quality in those streams while at the same time allowing for the mining of sand and gravel. The amendment also provides for all operators to clearly understand how they will conduct their mining operations and to provide for consistency in the permitting process for this industry.

COMMENT: Several commenters stated that "Class C" streams and the mineral contained within them are the sole property of the owner of that stream and that any regulation of the mining and commercial use of the mineral in those streams is unconstitutional.
RESPONSE: The amendment is based upon current statutes known as the Land Reclamation Act, sections 444.760 to 444.790 of the *Revised Statutes of Missouri*. The Act does not provide for any exception based upon whether the stream is designated as a "Class C" stream in some other law. This amendment does not and cannot do anything to change the Land Reclamation Act. The Land Reclamation Commission and Land Reclamation Program believe, based upon advice of counsel, that the Act is constitutional.

COMMENT: Several comments expressed the opinion that private property owners will be next in line to be regulated for the extraction of sand and gravel from streams and oppose the amendment on that basis.
RESPONSE: This amendment, as stated earlier, does not and cannot change any exemptions currently in existence under the law. The amendment clearly states up front that it applies to non-exempt mining operations only.

COMMENT: One commenter stated that a private landowner cannot hire a contractor to remove gravel from his/her property for personal use without first obtaining a permit and becoming subject to the regulations.
RESPONSE: This is a question of interpretation of the Land Reclamation Act. As stated above, this amendment is not changing the scope of applicability of the Land Reclamation Act.

COMMENT: Several comments expressed the opinion that the amendment impinges upon a landowner's right to sell gravel mined from his/her property thereby infringing upon private property rights.
RESPONSE: The requirement to obtain a permit for surface mining of a mineral resource is not addressed by this amendment. That requirement is found in statutes known as the "Land Reclamation Act" and applies to all minerals identified in that "Act." Sand and gravel are two (2) of those minerals. This amendment cannot and does not add any permit requirement that is not already contained within the Act.

COMMENT: One commenter stated that the Regulatory Impact Report, prepared by the program as a part of the proposed rule process, contains many false and misleading statements.
RESPONSE: The Regulatory Impact Report was prepared by the Program using the best information available to it at the time of preparation and in the spirit of openness, honesty, and credibility, and the Program believed that it was accurate at the time it was prepared. Everyone involved with the process of crafting this amendment did so with their own points of view and expectations. The Program believes that what the commenter is referring to as false and misleading is actually just an expression of a different viewpoint than the viewpoint held by the commenter.

COMMENT: Several comments believe this amendment will prohibit the removal of sand and gravel from Missouri's streams.
RESPONSE: This amendment does not contain a prohibition on the removal of this important resource from streams. The amendment is designed, in fact, to allow for the removal of this mineral commodity while at the same time providing for protection of an equally

valuable resource to the citizens and economy of Missouri, that of our rivers and streams.

COMMENT: Several comments stated that the Department of Natural Resources has failed to comply with the "Texas County—State of Missouri Land Management Plan" in the course of the development of this amendment.
RESPONSE: As stated at the beginning of this Order of Rulemaking in the Special Note, political subdivisions using their own personnel and equipment are exempt by law from the permitting requirements of the Act. Political subdivisions that contract for services are affected only indirectly because their contract operator has always been subject to the permitting requirements of the Land Reclamation Act. As stated in a previous response, this concern was expressed at least two (2) years ago and was in fact the reason that the Land Reclamation Commission ordered a workgroup to rewrite the proposed rules into their current form. The commission did not want to impose standards that would increase costs dramatically as the concerns expressed. The present form of the proposed rules was presented at the May 2003 meeting of the Land Reclamation Commission, and all parties including the industry representatives stated that they could live with these proposed rules. Moreover, representatives from Texas County participated extensively in the discussions regarding the amendment. Therefore, the Land Reclamation Commission does not agree that the department has failed to consider the interests of political subdivisions. The Land Reclamation Program has determined, based upon advise of counsel, that the commission's promulgation of this amendment is legally sound.

COMMENT: One commenter stated that it was totally inappropriate to allow for gravel mining in streams that are designated as "losing" streams.
RESPONSE: The amendment contains performance standards for conducting in-stream sand and gravel mining in a manner that protects stream resources of all kinds. Additional protections for losing streams may exist in the statutes and regulations that are enforced by the Clean Water Commission and the Water Protection Program of the Missouri Department of Natural Resources, and nothing in this amendment will interfere with enforcement of these statutes and regulations by the Clean Water Commission or the Water Protection Program.

COMMENT: One commenter stated that a distance prohibition should be established which would ban all stream gravel mining from occurring within a five (5)-mile radius of any state or national outstanding resource water.
RESPONSE: The amendment contains performance standards for conducting in-stream sand and gravel mining in a manner that protects stream resources of all kinds. Additional protections for outstanding state and national resource waters may exist in the statutes and regulations that are enforced by the Clean Water Commission and the Water Protection Program of the Missouri Department of Natural Resources, and nothing in this amendment will interfere with enforcement of these statutes and regulations by the Clean Water Commission or the Water Protection Program.

COMMENT: One commenter expressed his understanding that no right to mine within stream channels can be granted without first securing a 404/401 permit and certification to do so.
RESPONSE: The U.S. Army Corps of Engineers and the Water Protection Program should be consulted regarding the precise situations in which a 404/401 permit and certification are required, as this process is not handled by the Land Reclamation Commission or the Land Reclamation Program. However, it should be noted that the 404/401 permit and certification program does not cover all waterbodies in Missouri. Therefore, the existence of the 404/401 permit and certification process does not obviate the need for obtaining a permit and complying with regulations under the Land Reclamation Act.

COMMENT: Several county governments commented that the amendment, while at present does not apply to county governments or private individuals, it will only be a matter of time before the department will also require permits from them as well.
RESPONSE: The current amendment is based upon legislation which specifically exempts the above two (2) entities from the permitting requirements and therefore the terms of this amendment. There are no plans to change existing legislation and this amendment clearly does not.

COMMENT: Several county governments commented that while the amendment does not appear to apply to them, it will open the door for the department's Water Protection Program to enforce the permitting and performance requirements upon them and cause the issuance of violations to them from that program.
RESPONSE: The requirements of the Land Reclamation Act are generally enforced only by Land Reclamation Act personnel, and not Water Protection Program personnel. Occasionally, Water Protection Program personnel will refer an issue to the Land Reclamation Program, but then it is left to the Land Reclamation Program to determine whether a violation of the Act or the Land Reclamation Commission's regulations has occurred, and to take enforcement action if warranted.

COMMENT: Several county governments commented that the amendment will not improve protection for Missouri streams but will, in fact, harm them by restricting gravel removal.
RESPONSE: The amendment was designed with the fundamental concept in mind from the beginning to allow for gravel removal while at the same time offering basic protection for the stream being mined. Where there are extenuating circumstances such as excessive gravel buildup, bedrock stream bottoms adjacent or contiguous to the extraction area, or any other mitigating circumstance, a variance from the requirements of the amendment may be granted upon receipt of a complete variance application. This is stated up front in the amendment and is provided in order to meet the needs of operators whose specific situations require variance from the provisions of this amendment.

COMMENT: One county government commented that the amendment will ultimately result in a loss of tourism because people will no longer be able to float/fish in gravel choked streams.
RESPONSE: The amendment is designed to allow for gravel extraction while protecting stream resources, and in cases where the stream is choked with gravel, variances to the provisions of the amendment may be applied for and, if justified, approved.

COMMENT: One county government commented that restricting gravel removal will result in gravel choked streams that will, in turn, cause increased flooding.
RESPONSE: Where gravel choked streams exist, variances to the depth restriction may be applied for and, if justified, approved.

Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 10—Adjutant General
Chapter 11—State Emergency Management Agency

ORDER OF RULEMAKING

By the authority vested in the director of public safety under sections 44.010 to 44.130, RSMo 2000 and Supp. 2003, the director amends a rule as follows:

11 CSR 10-11.020 Emergency Operations Plan (State) **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2004

(29 MoReg 658). 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 10—Adjutant General
Chapter 11—State Emergency Management Agency

ORDER OF RULEMAKING

By the authority vested in the director of public safety under section 44.032, RSMo 2000, the director amends a rule as follows:

11 CSR 10-11.070 Political Subdivision Assistance **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2004 (29 MoReg 658–659). 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 10—Adjutant General
Chapter 11—State Emergency Management Agency

ORDER OF RULEMAKING

By the authority vested in the director of public safety under section 44.032, RSMo 2000, the director amends a rule as follows:

11 CSR 10-11.080 Individual Assistance **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2004 (29 MoReg 659). 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 10—Adjutant General
Chapter 11—State Emergency Management Agency

ORDER OF RULEMAKING

By the authority vested in the director of public safety under section 44.032, RSMo 2000, the director amends a rule as follows:

11 CSR 10-11.100 Major Disasters, Presidentially Declared **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2004 (29 MoReg 659). 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 10—Adjutant General
Chapter 11—State Emergency Management Agency

ORDER OF RULEMAKING

By the authority vested in the director of public safety under section 44.032, RSMo 2000, the director amends a rule as follows:

11 CSR 10-11.110 Limitations **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2004 (29 MoReg 659–660). 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 10—Adjutant General
Chapter 11—State Emergency Management Agency

ORDER OF RULEMAKING

By the authority vested in the director of public safety under section 44.023, RSMo Supp. 2003, the director amends a rule as follows:

11 CSR 10-11.120 Volunteer Inspectors Administrative Plan (State) **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2004 (29 MoReg 660). 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 10—Adjutant General
Chapter 11—State Emergency Management Agency

ORDER OF RULEMAKING

By the authority vested in the director of public safety under section 292.613, RSMo 2000, the director amends a rule as follows:

11 CSR 10-11.210 General Organization Missouri Emergency Response Commission **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2004 (29 MoReg 660). 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.