

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 If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission.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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 6—Wildlife Code: Sport Fishing: Seasons,
Methods, Limits**

PROPOSED RULE

3 CSR 10-6.533 Shovelnose Sturgeon

PURPOSE: This rule establishes seasons, methods and limits for taking shovelnose sturgeon.

(1) Daily Limit: Ten (10).

(2) Methods and Seasons.

(A) Shovelnose sturgeon may be taken by pole and line, trotline, throwline, limb line, bank line, jug line and falconry throughout the year.

(B) Shovelnose sturgeon may be taken by snagging, snaring or grabbing from March 15 through May 15 and from September 15 through January 31, except:

1. In the Osage River downstream from U.S. Highway 54 to its confluence with the Missouri River and in the impounded waters of Lake of the Ozarks and Truman Lake, shovelnose sturgeon may be taken by these methods only from March 15 through April 30.

2. In the Mississippi River, shovelnose sturgeon may be taken by these methods from March 15 through May 15 and from September 15 through December 15.

3. On Lake of the Ozarks and its tributaries, Osage River below U.S. Highway 54 and Truman Lake and its tributaries, no person shall continue to snag, snare or grab for any species after taking a daily limit of two (2) paddlefish.

(3) Length Limits: All shovelnose sturgeon more than thirty inches (30") in length, measured from the tip of snout to the fork of tail, must be returned to the water unharmed immediately after being caught.

(4) Shovelnose sturgeon, or parts thereof (including eggs), may not be used as bait.

(5) Shovelnose sturgeon must remain whole and intact while on waters of the state or adjacent banks.

(6) Extracted shovelnose sturgeon eggs may not be possessed while on waters of the state or adjacent banks, and may not be transported. Shovelnose sturgeon eggs may not be bought, sold or offered for sale.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. Original rule filed Dec. 30, 2003.

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 John W. Smith, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 6—Wildlife Code: Sport Fishing: Seasons,
Methods, Limits**

PROPOSED AMENDMENT

3 CSR 10-6.550 Other Fish. The commission proposes to amend sections (3) and (4).

PURPOSE: This amendment removes references to shovelnose sturgeon.

(3) Fish taken under this rule may be used as bait; except that bowfin [*and shovelnose sturgeon*], or parts thereof (including eggs), may not be used as bait.

(4) Bowfin [*and shovelnose sturgeon*] must remain whole and intact while on waters of the state or adjacent banks.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. Original rule filed June 13, 1994, effective Jan. 1, 1995. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 30, 2003.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with John W. Smith, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 9—Wildlife Code: Confined Wildlife:
Privileges, Permits, Standards**

PROPOSED AMENDMENT

3 CSR 10-9.353 Privileges of Class I and Class II Wildlife Breeders. The commission proposes to amend subsection (3)(C).

PURPOSE: This amendment will eliminate the “ramp-up” requirement for the intrastate movement of cervids.

(3) All elk, elk-hybrids, mule deer, and white-tailed deer, defined as Class I wildlife in 3 CSR 10-9.230, introduced into a Class I wildlife breeder operation shall meet the following requirements:

(C) Animals from within Missouri must come from a herd comprised of animals enrolled in a United States Department of Agriculture approved or state-sponsored chronic wasting disease monitoring program. *[Effective January 1, 2004, the minimum herd status requirement will annually increase by one (1) level until January 1, 2006 when all introduced animals shall come from herds that have achieved a status three (3) or higher—three (3) years of surveillance, advancement, and successful completion of program requirements.]*

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. This rule was previously filed as 3 CSR 10-10.755. Original rule filed Aug. 18, 1970, effective Dec. 31, 1970. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 30, 2003.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with John W. Smith, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 10—Wildlife Code: Commercial Permits:
Seasons, Methods, Limits**

PROPOSED RULE

3 CSR 10-10.722 Missouri River Shovelnose Sturgeon Commercial Harvest Permit

PURPOSE: This rule establishes a special permit required in addition to the Commercial Fishing Permit for residents of the state to harvest shovelnose sturgeon from the Missouri River.

Required in addition to the Commercial Fishing Permit to take shovelnose sturgeon from the Missouri River in accordance with 3 CSR 10-10.725. This permit is available only to residents of the state. Fee: Five hundred dollars (\$500).

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. Original rule filed Dec. 30, 2003.

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

PRIVATE COST: This proposed rule will cost commercial fishermen to purchase the permit approximately five thousand dollars (\$5,000) annually, or twenty-five thousand dollars (\$25,000) in the five (5)-year aggregate. Additionally, it is estimated that approximately twenty (20) fishermen will not purchase the permit and will forgo an annual income from harvest of two hundred fifty dollars (\$250) per year, or twenty-five thousand dollars (\$25,000) in the five (5)-year aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with John W. Smith, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**FISCAL NOTE
PRIVATE ENTITY COST**

I. RULE NUMBER

Title: **3 - Department of Conservation**

Division: **10 Conservation Commission**

Chapter: **10 Commercial Permits**

Type of Rulemaking: **Proposed Rule**

Rule Number and Name: **3 CSR 10-10.722 Missouri River Shovelnose Sturgeon Commercial Harvest Permit.**

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:
10	Resident commercial fishers who will continue to take shovelnose sturgeon by commercial methods	\$25,000
20	Resident commercial fishers who have taken sturgeon in the past, but will choose not to continue under this rule	\$25,000

III. WORKSHEET

It is estimated that approximately 10 commercial fishers will purchase these permits, at a cost of \$500 per year each. This figure of \$5000 per year is then multiplied by 5 years as an average life of the rule. See note below.

Approximately 20 commercial fishers who have taken small quantities of sturgeon in the past will not continue, because it will no longer be economically feasible for them. We estimate these 20 commercial fishers will forego an average income of approximately \$250/year for the same period.

IV. ASSUMPTIONS

Fewer than 30 licensed commercial fishers have reported taking shovelnose sturgeon in recent years. Through direct contact with all of these, it is our best estimate that approximately 10 of these licensed commercial fishers will buy the new permit to take sturgeon commercially.

Note: Based on an average five-year life cost. All permit fees are reviewed annually and adjustments made as needed, normally within five years.

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 10—Wildlife Code: Commercial Permits:
Seasons, Methods, Limits

PROPOSED AMENDMENT

3 CSR 10-10.725 Commercial Fishing: Seasons, Methods. The commission proposes to add subsection (1)(B) and section (5) and amend sections (3), (4), (6) and (7) and renumber the sections accordingly.

PURPOSE: This amendment establishes a season and minimum length limit for shovelnose sturgeon on a portion of the Missouri River, prohibits the commercial harvest of shovelnose sturgeon on the Missouri River from Carl R. Noren Access (Callaway County) to Chamois Access (Osage County), and prohibits the commercial harvest of shovelnose sturgeon on the St. Francis River.

(1) Commercial fish, and live bait for personal use, may be taken in any numbers by the holder of a commercial fishing permit from commercial waters with seines, gill nets, trammel nets, hoop nets with or without wings, trotlines, throwlines, limb lines, bank lines or jug or block lines and any number of hooks, except:

(A) *[on]* On the Missouri River upstream from U.S. Highway 169 where hooks may not be used.

(B) **On the Missouri River downstream from U.S. Highway 169 to Carl R. Noren Access and downstream from Chamois Access to its confluence with the Mississippi River, where shovelnose sturgeon twenty-four inches (24") to thirty inches (30") in length (measured from tip of snout to fork of tail) may be taken only from November 1 through May 15 and only by the holder of a Missouri River Shovelnose Sturgeon Commercial Harvest Permit. (Endangered species as listed in 3 CSR 10-4.111(3), including lake sturgeon and pallid sturgeon, may not be taken or possessed, and must be returned to the water unharmed immediately after being caught.)**

(3) On the Missouri River upstream from U.S. Highway 169 and downstream from Carl R. Noren Access to Chamois Access or banks thereof, game fish (including channel, blue and flathead catfish, *[and]* paddlefish and shovelnose sturgeon), *shovelnose sturgeon, pallid sturgeon and lake sturgeon* may not be possessed or transported while fishing by commercial methods or while possessing commercial fishing gear and shall be returned to the water unharmed immediately after being caught.

(4) ***[On]* From May 16 through October 30 on the Missouri River downstream from U.S. Highway 169 to Carl R. Noren Access and downstream from Chamois Access to its confluence with the Mississippi River or banks thereof, game fish (including channel, blue and flathead catfish, *[and]* paddlefish and shovelnose sturgeon), *shovelnose sturgeon more than thirty inches (30") in length (measured from tip of snout to fork of tail), pallid sturgeon and lake sturgeon* may not be possessed or transported while fishing by commercial methods or while possessing commercial fishing gear and shall be returned to the water unharmed immediately after being caught.**

(5) **From November 1 through May 15 on the Missouri River downstream from U.S. Highway 169 to Carl R. Noren Access and downstream from Chamois Access to its confluence with the Mississippi River or banks thereof, shovelnose sturgeon less than twenty-four inches (24") and more than thirty inches (30") in length (measured from tip of snout to fork of tail) and other game fish (including channel, blue and flathead catfish and paddlefish) may not be possessed or transported while fishing by commercial**

methods or while possessing commercial fishing gear and shall be returned to the water unharmed immediately after being caught.

[(5)](6) On that part of the St. Francis River which forms the boundary between the states of Arkansas and Missouri, channel, blue and flathead catfish less than fifteen inches (15") in total length, *[,]* and other game fish (including paddlefish and shovelnose sturgeon), *shovelnose sturgeon more than thirty inches (30") in length (measured from tip of snout to fork of tail), pallid sturgeon and lake sturgeon* may not be possessed or transported while fishing by commercial methods or while possessing commercial fishing gear and shall be returned to the water unharmed immediately after being caught.

[(6)](7) On the Mississippi River, except in Sand Chute below the mouth of Salt River in Pike County, and also on waters which exist temporarily through overflow from the Mississippi River east of the Missouri Pacific Railroad between Cape Girardeau and Scott City and east of the Mississippi River mainline and setback levees between Commerce and the Arkansas state line, channel, blue and flathead catfish less than fifteen inches (15") in total length, paddlefish less than twenty-four inches (24") in length (measured from eye to fork of tail), *[other game fish,]* shovelnose sturgeon more than thirty inches (30") in length (measured from tip of snout to fork of tail), *[pallid sturgeon and lake sturgeon]* and other game fish may not be possessed or transported while fishing by commercial methods or while possessing commercial fishing gear and shall be returned to the water unharmed immediately after being caught.

[(7)](8) While on waters of the state and adjacent banks, the head and tail must remain attached to all fish, bowfin and shovelnose sturgeon must remain whole and intact, and the ovaries of paddlefish must remain intact and accompany the fish from which they were removed.

[(8)](9) Commercial fishing gear may not be used or set within three hundred (300) yards of any spillway, lock, dam or the mouth of any tributary stream or ditch, or in waters existing temporarily through overflow outside the banks of the specified rivers except as provided in section (1) of this rule, and may not be used to take fish underneath or through the ice. Seines, gill nets and trammel nets having a mesh smaller than two inches (2") bar measure, measured when wet, may not be used. Hoop nets and wings having a mesh smaller than one and one-half inches (1 1/2") bar measure, measured when wet, may not be used. Hooks attached to trotlines or throwlines shall be staged not less than two feet (2') apart. All gear used for commercial fishing shall be labeled with tags furnished by the department and placed as indicated on the tags. Portions of trotlines and jug or block lines, throwlines, bank lines and limb lines must have the commercial tag number under which they are being fished attached to each line. Commercial fishing gear may not be possessed on waters of the state or adjacent banks that are not open to commercial fishing, except during transportation by boat from the nearest access location to commercial fishing waters as determined by the department.

[(9)](10) The possession of game fish while in the act of using commercial fishing gear or aboard a boat transporting fish taken by commercial fishing gear is prohibited.

[(10)](11) The possession of extracted eggs of any fish species, except as provided in section *[(7)] (8)* of this rule, is prohibited while on waters of the state and adjacent banks.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. Original rule filed Aug. 16, 1973, effective Dec. 31, 1973. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 30, 2003.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with John W. Smith, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 120—State Board of Embalmers and Funeral
Directors
Chapter 1—Organization and Description of Board**

PROPOSED AMENDMENT

4 CSR 120-1.010 General Organization. The board is proposing to delete section (3), renumber the remaining sections accordingly, amend the newly renumbered sections (4) and (7), and add new section (8).

PURPOSE: This rule is being amended to be consistent with section 333.221, RSMo and to make the text of the rule consistent with terminology currently used by the board. This amendment also moves language from 4 CSR 120-2.050 to this rule as it is more applicable to the general organization of the board.

[(3) The board consists of five (5) licensed embalmers or funeral directors and one (1) public member. The governor appoints the members of the board, with the advice and consent of the senate, from nominees submitted to the director of the Division of Professional Registration by the current president of the Missouri Funeral Directors Association. Each member's term of office is five (5) years.]

[(4)] (3) The board is authorized by section 333.111.1[.], RSMo to adopt rules necessary for the transaction of its business and for the standards of service and practice to be followed in the professions of embalming and funeral directing.

[(5)] (4) The board has at least two (2) regularly scheduled business meetings each year and such other meetings as determined by the board. The board has at least two (2) regularly scheduled examination meetings each year and such other examination meetings as determined by the board. The time and location for all board meetings and examinations may be obtained by contacting the board's executive secretary] office at P[.]O[.] Box 423, Jefferson City, MO 65102-0423.

[(6)] (5) All board meetings will be governed by Roberts' Rules of Order.

[(7)] (6) All board meetings will be open to the public except as provided by law.

[(8)] (7) Members of the public may obtain information from the board, or make submissions to the board, by writing the board's executive [secretary] director at P[.]O[.] Box 423, Jefferson City, MO 65102-0423.

(8) The rules in this division are declared severable. If any rule, or section of a rule, is held invalid by a court of competent jurisdiction or by the Administrative Hearing Commission, the remaining provisions shall remain in full force and effect unless otherwise determined by a court of competent jurisdiction or by the Administrative Hearing Commission.

AUTHORITY: sections 333.III.1], 333.151.1 and 536.023.3., RSMo 2000. Original rule filed Oct. 17, 1975, effective Oct. 28, 1975. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 31, 2003.

PUBLIC COST: This proposed amendment is estimated to cost state agencies or political subdivisions less than five hundred (\$500) dollars in the aggregate.

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Board of Embalmers and Funeral Directors, Becky Dunn, Executive Director, 3605 Missouri Boulevard, PO Box 423, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 120—State Board of Embalmers and Funeral
Directors
Chapter 1—Organization and Description of Board**

PROPOSED AMENDMENT

4 CSR 120-1.020 Board Member Compensation. The board is proposing to delete section (1), renumber the remaining sections accordingly, amend the newly renumbered section (2) and add a new section (4).

PURPOSE: This rule is being amended to delete obsolete information.

[(1) Each member of the State Board of Embalmers and Funeral Directors whose term of office began before September 28, 1981, shall receive the sum of twenty-five dollars (\$25) as compensation for each day that member devotes to the affairs of the board.]

[(2)] (1) Each member of the State Board of Embalmers and Funeral Directors [whose term of office begins on or after September 28, 1981,] shall receive the sum of fifty dollars (\$50) as compensation for each day that member devotes to the affairs of the board.

[(3)] (2) In addition to the compensation fixed in this rule, each member is entitled to reimbursement of his/her expenses necessarily incurred in the discharge of his/her official duties.

[(4)] (3) No request for compensation provided in this rule shall be processed for payment unless sufficient funds are available for that purpose within the appropriations for this board.

(4) The rules in this division are declared severable. If any rule, or section of a rule, is held invalid by a court of competent jurisdiction or by the Administrative Hearing Commission, the remaining provisions shall remain in full force and effect unless

otherwise determined by a court of competent jurisdiction or by the Administrative Hearing Commission.

AUTHORITY: sections 333.111.1, RSMo Supp. 1993] and 333.221, RSMo [1986] 2000. Emergency rule filed Sept. 17, 1981, effective Sept. 28, 1981, expired Dec. 28, 1981. Original rule filed Sept. 17, 1981, effective Feb. 11, 1982. Amended: Filed Dec. 31, 2003.

PUBLIC COST: This proposed amendment is estimated to cost state agencies or political subdivisions less than five hundred dollars (\$500) in the aggregate.

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Board of Embalmers and Funeral Directors, Becky Dunn, Executive Director, 3605 Missouri Boulevard, PO Box 423, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 120—State Board of Embalmers and Funeral Directors

Chapter 1—Organization and Description of Board

PROPOSED RULE

4 CSR 120-1.040 Definitions

PURPOSE: This rule defines terms used throughout the board's regulations consistent with the practice act.

(1) Apprentice embalmer—an individual who is being trained as an embalmer under the immediate direction and personal supervision of a Missouri licensed embalmer for the “practice of embalming,” the work of preserving, disinfecting and preparing by arterial embalming, or otherwise, of dead human bodies or the holding of oneself out as being engaged in such work and has met the requirements for registration pursuant to sections 333.041 and 333.042, RSMo and 4 CSR 120-2.010.

(2) Apprentice funeral director—an individual who is being trained as a funeral director in a Missouri licensed funeral establishment under the supervision of a Missouri licensed funeral director in the “practice of funeral directing,” the business of preparing, otherwise than by embalming, for the burial, disposal or transportation out of this state of, and the directing and supervising of the burial or disposal of, dead human bodies or engaging in the general control, supervision or management of the operations of a Missouri licensed funeral establishment and has met the requirements for registration pursuant to 4 CSR 120-2.060.

(3) Board—Missouri State Board of Embalmers and Funeral Directors created by the provisions of Chapter 333, RSMo.

(4) Corporation—a business entity incorporated under the laws of Missouri or any other state with authority to do business in the state of Missouri.

(5) Cremation log—a written record or log kept in the cremation area available at all times in full view for a board inspector, which shall include the following:

- (A) The name of the deceased to be cremated;
- (B) The name of the Missouri licensed establishment where the body is cremated;
- (C) The date and time the body arrived at the crematory;
- (D) The date and time the cremation took place;
- (E) The name and signature of the Missouri licensed funeral director supervising the cremation; and
- (F) The supervising Missouri licensed funeral director's license number.

(6) Disinterment—removal of dead human remains from the ground, grave or tomb.

(7) Embalmer—an individual holding an embalmer's license issued by the State Board of Embalmers and Funeral Directors.

(8) Embalmer examination—an examination consisting of the following:

- (A) National Board Funeral Service Arts Section developed and furnished by the International Conference of Funeral Service Examining Boards, Inc., or its designee;
- (B) National Board Funeral Service Science Section developed and furnished by the International Conference of Funeral Service Examining Boards, Inc., or its designee; and
- (C) Missouri Law Section.

(9) Embalming log—a written record or log kept in the preparation/embalming room of a Missouri licensed funeral establishment available at all times in full view for a board inspector, which shall include the following:

- (A) The name of deceased to be embalmed;
- (B) The Missouri licensed funeral establishment location;
- (C) The date and time the dead human body arrived at the funeral establishment;
- (D) The date and time the embalming took place;
- (E) The name and signature of the Missouri licensed embalmer; and
- (F) The Missouri licensed embalmer's license number.

(10) Executive director—executive secretary of the board.

(11) Function—the purpose for which a physical location may be used.

(12) Funeral ceremony—a religious service or other rite or memorial ceremony for a decedent.

(13) Funeral director—an individual holding a funeral director license issued by the State Board of Embalmers and Funeral Directors.

(14) Funeral director examination—an examination consisting of the following:

- (A) Missouri Law Examination; and
- (B) Missouri Funeral Service Arts Examination developed and furnished by the International Conference of Funeral Service Examining Boards, Inc., or its designee; or
- (C) National Board Funeral Service Arts Examination developed and furnished by the International Conference of Funeral Service Examining Boards, Inc., or its designee.

(15) Funeral director in-charge—an individual licensed as a funeral director by the State Board of Embalmers and Funeral Directors responsible for the general management and supervision of a Missouri licensed funeral establishment in the state of Missouri. Each Missouri licensed funeral establishment shall have a Missouri licensed funeral director designated as the funeral director-in-charge.

(16) Funeral establishment—a building, place or premises licensed by the Missouri State Board of Embalmers and Funeral Directors devoted to or used in the care and preparation for burial, cremation or transportation of the human dead and includes every building, place or premises maintained for that purpose or held out to the public by advertising or otherwise to be used for that purpose.

(17) Funeral service—any service performed in connection with the care of a dead human body from the time of death until final disposition including, but not limited to:

- (A) Removal;
- (B) Entering into contractual agreements for the provision of funeral services;
- (C) Arranging, planning, conducting and/or supervising visitations and funeral ceremonies;
- (D) Interment;
- (E) Cremation;
- (F) Disinterment;
- (G) Burial; and
- (H) Entombment.

(18) Interment—burial in the ground or entombment of dead human remains.

(19) Preparation room—refers to the room in a Missouri licensed funeral establishment where dead human bodies are embalmed, bathed, and/or prepared for cremation.

(20) Reciprocity examination—shall consist of the Missouri law examination.

(21) The rules in this division are declared severable. If any rule, or section of a rule, is held invalid by a court of competent jurisdiction or by the Administrative Hearing Commission, the remaining provisions shall remain in full force and effect unless otherwise determined by a court of competent jurisdiction or by the Administrative Hearing Commission.

AUTHORITY: sections 333.011 and 333.111, RSMo 2000. Original rule filed Dec. 31, 2003.

PUBLIC COST: This proposed rule is estimated to cost state agencies or political subdivisions less than five hundred (\$500) dollars in the aggregate.

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the State Board of Embalmers and Funeral Directors, Becky Dunn, Executive Director, 3605 Missouri Boulevard, PO Box 423, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 120—State Board of Embalmers and Funeral Directors

Chapter 2—General Rules

PROPOSED RESCISSION

4 CSR 120-2.010 Embalmer's Registration and Apprenticeship. This rule described the procedures to be used to secure an embalmer's license.

PURPOSE: This rule is being rescinded and readopted to provide clarification in obtaining an embalmer practicum or apprentice registration.

AUTHORITY: sections 333.041, RSMo Supp. 2001 and 333.091 and 333.111.1, RSMo 2000. Original rule filed Oct. 17, 1975, effective Oct. 28, 1975. For intervening history, please consult the Code of State Regulations. Rescinded: Filed Dec. 31, 2003.

PUBLIC COST: This proposed rescission is estimated to cost state agencies or political subdivisions less than five hundred (\$500) dollars in the aggregate.

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the State Board of Embalmers and Funeral Directors, Becky Dunn, Executive Director, 3605 Missouri Boulevard, PO Box 423, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 120—State Board of Embalmers and Funeral Directors

Chapter 2—General Rules

PROPOSED RULE

4 CSR 120-2.010 Embalmer's Registration and Apprenticeship

PURPOSE: This rule establishes the procedures to be used to secure an embalmer's license.

(1) Every person desiring to enter the profession of embalming dead human bodies within Missouri, and who is enrolled in an accredited institution of mortuary science, must complete a practicum as required by the accredited institution of mortuary science education.

(2) For every person desiring to enter the profession of embalming dead human bodies within Missouri the board may conduct a criminal history background check through the Missouri State Highway Patrol. Applicants shall submit to the board the applicable fee for the criminal history background check as determined by the Missouri State Highway Patrol.

(3) After registration with the board as a practicum student in an accredited institution of mortuary science education, the student may assist in a Missouri licensed funeral establishment preparation room only under the direct supervision of a Missouri licensed embalmer and may assist in the direction of funerals only under the direct supervision of a Missouri licensed funeral director. Each person desiring to be a practicum student shall register with the board as a practicum student on the form provided by the board in accordance with the requirements of the accredited institution of mortuary science prior to beginning the practicum. Applications must be accompanied by the applicable fee.

(4) During the period of the practicum, the certificate of registration issued to the practicum student shall be displayed in a conspicuous location accessible to the public at each funeral establishment where the practicum student is working.

(5) The practicum student registration authorizes the registrant to engage in the practice of embalming only at the Missouri licensed funeral establishment(s) designated on the certificate of registration and only under the direct supervision of a Missouri licensed embalmer. The practicum student may assist in the practice of funeral directing only under the direct supervision of a Missouri licensed funeral director and only at the Missouri licensed funeral establishment(s) designated on the certificate of registration. If during the course of the practicum, the practicum student wishes to work at a Missouri licensed funeral establishment other than as designated on the certificate of registration, the practicum student shall notify the board in writing of the name, location and Missouri licensed funeral establishment license number of the new Missouri licensed funeral establishment within ten (10) days of the change.

(6) Upon successful completion of the practicum, the practicum student registration shall become null and void. A practicum shall be deemed successfully completed when the practicum student has achieved a passing grade on the practicum from the institution of mortuary science at which the practicum student is enrolled.

(7) After graduating from an accredited institution of mortuary science education, the applicant then must file, with the board, an official transcript of his/her embalming school grades showing s/he is a graduate of that school. In addition, the applicant shall ensure that his/her national board examination results are provided to the board in writing by the International Conference of Funeral Service Examining Boards, Inc., or its designee.

(8) Effective June 1, 2004 the Missouri State Board embalmers' examination shall consist of the National Board Funeral Service Arts section, the National Board Funeral Service Science section, and Missouri Law section. Application and payment for the national board examinations will be made directly through the International Conference of Funeral Service Examining Boards, Inc., or its designee. Application and administration fees for the Missouri Law section shall be made directly to the board. Scheduling and payment for the Missouri Law section will be made directly to the International Conference of Funeral Service Examining Boards, Inc., or its designee. An applicant shall be exempt from the requirement of successful completion of the Missouri Law section if the applicant has successfully completed the Missouri Law section for another license within twelve (12) months of the date that the board receives the new application.

(9) The embalming examination shall cover knowledge of the subjects of embalming, anatomy, pathology, bacteriology, mortuary administration, chemistry, restorative arts, together with statutes, rules and regulations governing the care, custody, shelter and disposition of dead human bodies and the transportation thereof.

(10) An applicant must submit proof of having satisfied the requirements of the National Board Funeral Service Arts section and the National Board Funeral Service Science section of the examination by having his/her scores from the International Conference of Funeral Service Examining Boards, Inc., or its designee transmitted to the board from the Conference.

(11) Those applicants achieving seventy-five percent (75%) on each of the three (3) sections of the embalming examination will be deemed to have passed the board's embalming examination. Any applicant who scores less than seventy-five percent (75%) on any section of the embalming examination may retake the failed section, upon application and payment of the administration and reexamination fees. On any reexamination of a single failed section, the applicant must score at least seventy-five percent (75%) to pass.

(12) After the applicant has made a passing grade on the National Board Funeral Service Arts section and the National Board Funeral Service Science section of the embalming examination s/he then may apply for registration as an apprentice embalmer. This application must contain the name(s) of the Missouri licensed embalmer(s) under whom s/he will serve. Each supervisor must be registered with and approved by the board. Any change in supervisor shall also be registered and approved within ten (10) business days after the change has been made. Applications must be submitted on the forms provided by the board and must be accompanied by the applicable fee. Application forms are available from the board office or the board's website at <http://pr.mo.gov/embalmers.asp>.

(13) Each apprentice embalmer shall provide to the board, on the application provided by the board, the name(s), location(s) and license number(s) of the Missouri licensed funeral establishment(s) where s/he is serving as an apprentice. If the apprentice embalmer begins work at any other Missouri licensed funeral establishment during the period of apprenticeship, the apprentice embalmer shall notify the board, on the form provided by the board, within ten (10) business days after the change has been made.

(14) The period of apprenticeship under this rule must be at least twelve (12) consecutive months. The apprentice embalmer must devote at least thirty (30) hours per week to his/her duties as an apprentice embalmer. During the period of the apprenticeship, the certificate of registration issued to the apprentice shall be displayed in a conspicuous location accessible to the public at each funeral establishment where the apprentice is working.

(15) Prior to completion of the period of apprenticeship, the apprentice embalmer must achieve a grade of seventy-five percent (75%) or greater on the Missouri Law exam administered by the board. This exam may be taken any time after graduating from an accredited institution of mortuary science, but must be successfully completed prior to appearing before the board for oral examination. The Missouri Law exam covers knowledge of Chapter 333, RSMo and the rules governing the practice of embalming, funeral directing and funeral home licensing, along with government benefits, statutes and rules governing the care, custody, shelter, disposition and transportation of dead human bodies. The Missouri Law section also contains questions regarding Chapter 436, RSMo relating to pre-need statutes and Chapter 193 and 194, RSMo relating to the Missouri Department of Health statutes, as well as questions regarding Federal Trade Commission rules and regulations and OSHA requirements as they apply to Missouri licensees. Notification of intent to take this section of the examination must be received by the board at least forty-five (45) days prior to the date of the next regularly scheduled examination.

(16) An affidavit provided by the board, signed by both the apprentice and the supervisor(s) verifying that the applicant has successfully completed the embalming of twenty-five (25) dead human bodies, must be submitted to the board at the time of completion of the apprenticeship period and prior to the oral examination.

(17) After successful completion of the embalmer's examination and the embalmer apprenticeship as provided in these rules, the embalmer applicant shall appear for the oral examination. To appear for the oral examination, the embalmer applicant shall:

(A) Submit an application on a form supplied by the board and pay the applicable fees to the board; and

(B) Successfully pass the oral examination administered by the board for licensure.

(18) The oral examination shall be conducted by one (1) or more board members who hold a Missouri state embalmer license, or a member of the board staff that is a licensed embalmer, and shall be

conducted in person at a place and time established by the board. The oral examination shall consist of no fewer than five (5) substantive questions related to the practice of embalming and/or the statutes, rules, and regulations governing embalming practice in the state of Missouri. Whether the applicant satisfactorily completes the oral examination shall be in the sole discretion of the board.

(19) After satisfactory completion of these requirements, an embalmer's license shall be issued to an apprentice embalmer upon payment of the applicable fee and subject to the provisions of section 333.121, RSMo.

(20) An applicant shall meet the requirements of the board for licensure within five (5) years of his/her graduation from an accredited institution of mortuary science. If the applicant fails to meet the requirements of the board within the required time, a new application and applicable fees shall be filed with the board and the applicant shall be required to appear for the oral examination within five (5) years of the new date of application. No previous practicum, apprenticeship, application or examination will be considered for a new application. However, the successful examination results of the National Board Funeral Service Arts and the National Board Funeral Service Science, or its designee will be accepted.

(21) A Missouri licensed embalmer may engage in the practice of embalming in the state of Missouri only in Missouri licensed funeral establishments. Each embalmer shall inform the board in writing of each funeral establishment name(s), location(s) and license number(s) where the embalmer is performing embalming.

(22) A Missouri licensed embalmer has the ongoing obligation to keep the board informed if the licensee has been finally adjudicated or found guilty, or entered a plea of guilty or *nolo contendere*, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under Chapter 333, RSMo, for any offense an essential element of which is fraud, dishonesty, or an act of violence, or for any offense involving moral turpitude, whether or not sentence was imposed. This information must be provided to the board within thirty (30) days of being finally adjudicated or found guilty.

(23) Any embalmer licensed by the board in the state of Missouri who wishes to become a licensed funeral director shall be required to comply with all requirements necessary for licensure as a funeral director, except, the Missouri licensed embalmer shall be exempt from the requirement of a funeral director apprenticeship.

(24) Should an individual desire to obtain a Missouri embalmer's license after his/her license has become void under section 333.081.3, RSMo, the individual shall be required to make application, obtain a passing grade on the embalmer examination and shall be required to complete a six (6) consecutive month period of apprenticeship during which time s/he shall be required to embalm at least twelve (12) dead human bodies under the supervision of a Missouri licensed embalmer. The applicant shall be required to pay the current applicable apprenticeship, application, administration and examination fees to obtain a new embalmer's license under this section. No previous apprenticeship, application or examination will be considered for a new application under this section. However, the successful examination results of the National Board Funeral Service Arts section and the National Board Funeral Science section will be accepted.

(25) All documents filed with the board under this rule shall become a part of its permanent files.

(26) All certificates, registrations, and licenses, or duplicate copies thereof, issued by the State Board of Embalmers and Funeral Directors shall be displayed at all times in a conspicuous location accessible to the public in each office or place of business where they work, for inspection by any duly authorized agent of the board.

(27) The rules in this division are declared severable. If any rule, or section of a rule, is held invalid by a court of competent jurisdiction or by the Administrative Hearing Commission, the remaining provisions shall remain in full force and effect unless otherwise determined by a court of competent jurisdiction or by the Administrative Hearing Commission.

AUTHORITY: sections 333.041 and 333.081, RSMo Supp. 2003 and 333.091 and 333.111, and 333.121, RSMo 2000. Original rule filed Oct. 17, 1975, effective Oct. 28, 1975. For intervening history, please consult the Code of State Regulations. Rescinded and readopted: Filed Dec. 31, 2003.

PUBLIC COST: This proposed rule is estimated to cost public entities an estimated one hundred fifty-seven thousand three hundred twenty-five dollars and ninety-two cents (\$157,325.92) annually for the life of the rule. 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. A detailed fiscal note, which estimates the cost of compliance with this rule, has been filed with the secretary of state.

PRIVATE COST: This proposed rule is estimated to cost private entities an estimated eleven thousand six hundred six dollars and sixty-four cents (\$11,606.64) annually for the life of the rule. It is anticipated that the total costs 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. A detailed fiscal note, which estimates the cost of compliance with this rule, has been filed with the secretary of state.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the State Board of Embalmers and Funeral Directors, Becky Dunn, Executive Director, 3605 Missouri Boulevard, PO Box 423, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

PUBLIC ENTITY FISCAL NOTE

I. RULE NUMBER

Title 4 - Department of Economic Development

Division 120 - State Board of Embalmers and Funeral Directors

Chapter 2 - General Rules

Proposed Rule - 4 CSR 120-2.010 Embalmer Registration and Apprenticeship

Chapter 2 - General Rules

Prepared October 23, 2003 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Annual Cost of Compliance
State Board of Embalmers and Funeral Directors (Practicum Registrations)	\$26,916.52
State Board of Embalmers and Funeral Directors (Emblamer Apprenticeships)	\$70,440.74
State Board of Embalmers and Funeral Directors (Change Locations)	\$1,274.67
State Board of Embalmers and Funeral Directors (Oral Examinations)	\$58,693.99
Total Annual Cost of Compliance for the Life of the Rule	\$157,325.92

III. WORKSHEET

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.

STAFF	ANNUAL SALARY	SALARY TO INCLUDE FRINGE BENEFIT	HOURLY SALARY	COST PER MINUTE
Executive Director	\$52,498.80	\$70,400.89	\$33.85	\$0.56
Funeral Establishment Inspector	\$32,592.00	\$43,705.87	\$21.01	\$0.35
Administrative Support Office Assistant	\$25,239.60	\$33,846.30	\$16.27	\$0.27
Licensure Technician II	\$22,975.20	\$30,809.74	\$14.81	\$0.25

Expense and Equipment Breakdown

Embalmer Practicum Expense and Equipment

\$0.25 Application
 \$0.16 Envelope
 \$0.35 Postage
 \$0.15 Practicum Registration
 \$0.16 Envelope
 \$0.35 Postage

\$1.42 Total Per Applicant

Embalmer Apprenticeship Expense and Equipment Costs

\$1.37 Application Packet
 \$0.07 Envelope to Mail Packet
 \$1.98 Postage to Mail Application Packet
 \$0.05 Affidavits
 \$0.16 Envelope to Mail Affidavit
 \$0.35 Postage to Mail Affidavit
 \$75.00 Missouri Law Examination (see #4 below)
 \$0.25 Letter of Notification
 \$0.16 Envelope to Mail Letter of Notification
 \$0.35 Postage to Mail Passing Letter
 \$0.50 License
 \$0.10 Envelope to Mail License and Wall Certificate
 \$0.83 Mail License

\$78.98 Total Per Applicant

Change of Location Expense and Equipment Costs	
	\$0.25 Application
	\$2.50 Notary
	\$0.16 Envelope
	\$0.35 Postage
	<u>\$3.26</u> Total Per Applicant

Oral Examination Expense and Equipment	
	\$0.20 Oral Examination and Board Member Attestation Sheet
	<u>\$0.20</u> Total Per Applicant

Practicum Registration:

The Licensure Technician II spends approximately 29 hours and 45 minutes annually answering applicant's inquiries, preparing and mailing application packets, processing the application and supporting documentation and issuing the practicum registration. The Executive Director spends approximately 1 hour and 45 minutes annually performing a final review of the application and signing the practicum registration. The board receives approximately 48 applications a year. A summary of the expenses and equipment costs are provided above. Based on the data presented, the board estimates the following costs associated with issuing and regulating practicum registrations:

Licensure Technician II:	\$438.45
Executive Director:	\$54.15
Expense and Equipment Costs:	\$68.16

Embalmer Apprenticeship:

The Licensure Technician II spends approximately 58 hours and 45 minutes annually answering applicant's inquiries, preparing and mailing application packets, processing the application and supporting documentation, preparing for the examination, setting up for and assisting with the administration of the examination, preparing examination booklets for mailing to the testing service, reviewing examination results, notifying applicants of the examination score, updating the licensing system and issuing licenses. The Executive Director spend approximately 3 hours and 45 minutes annually performing a final review of the application, affidavits and examination results and signing letters prepared by the Licensure Technician II. The board receives approximately 24 applications a year. A summary of the expenses and equipment costs are provided above. Based on the data presented, the board estimates the following costs associated with issuing and regulating embalmer apprenticeships:

Licensure Technician II:	\$865.04
Executive Director:	\$121.85
Expense and Equipment Costs:	\$1,948.14

Change Locations

The Licensure Technician spends approximately 6 hours annually answering applicant's inquiries, preparing and mailing application packets, reviewing the application and supporting document, updating the licensing system and issuing the new affidavits. The Executive Director spends approximately 30 minutes annually performing a final review of the application. The board receives approximately 10 applications a year. A summary of the expenses and equipment costs are provided above. Based on the data presented, the board estimates the following costs associated with apprentices' change of locations.

Licensure Technician II:	\$86.41
Executive Director:	\$8.46
Expense and Equipment Costs:	\$32.60

Oral Examinations

The Licensure Technician spends approximately 12 hours annually preparing for the examination, reviewing examination results, updating the licensing system, issuing the license and printing the wall certificate. The Executive Director spends approximately 1 hour and 45 minutes annually assisting the examination. The Funeral Establishment Inspector spends approximately 9 hours and 30 minutes annually assisting with the administration of the examination. A member of the board who is a licensed embalmer administers the examination and is paid \$50 a day per diem and is reimbursed for hotel expense, mileage and meals. The board administers approximately 19 oral examinations per year. A summary of the expenses and equipment costs are provided above. Based on the data presented, the board estimates the following costs associated with administering oral examinations.

Licensure Technician II:	\$177.75
Executive Director:	\$53.59
Funeral Establishment Inspector:	\$199.62
Board Member Expenses:	\$2,654.40
Expense and Equipment Costs:	\$3.80

IV. ASSUMPTION

1. The above figures were based on FY03 actuals. The board currently licenses 1,237 active embalmers, 48 students enrolled in a school of mortuary science, and 48 applicants enrolled in an embalmer apprenticeship. The board estimates they process 10 changes of location and administer 19 oral examinations annually. The estimates contained in this fiscal note represent costs associated with new applicants unless otherwise specified.
2. Due to the number of changes in the rule's organizational structure, the rule is being rescinded and readopted. The only substantial change to the rule's provisions is related to requiring embalmers to take and pass the Missouri Law examination. The Missouri Law examination is currently only administered to funeral directors pursuant to 4 CSR 120-2.060. Because the examinations will be administered simultaneously to embalmers and funeral directors and the board anticipates no additional costs will be incurred to administer the examinations to embalmers, costs associated with the administration of the examination is reported in the fiscal note for 4 CSR 120-2.060. Other than this substantial change, the rescission and readoption should not impose any greater burden on the State Board of Embalmers and Funeral Directors than those currently being incurred and reported in this fiscal note.
3. The division's central investigative unit assists the board with the investigation of complaints as well as annual inspections. Because the number of complaints for embalmers and funeral directors vary from year to year and the division does not track the percentage of time spent per profession for the board, it is impossible to estimate the exact dollar amount the board spends on each rule related to the investigative/inspection services.
4. Examination fees for the Missouri Law examination are considered pass through fees for the board. The board enters a contract with the International Conference of Funeral Service Examining Boards on an annual basis, therefore, the examination fee may vary depending on the contractual amount. Upon the effective date of the amendment to 4 CSR 120-2.160, applicants will pay the board a \$75 examination fee plus a \$25 processing fee. The board will then pay the International Conference of Funeral Service Examining Boards \$75 per examination administered.
5. The oral examinations are administered 12 times a year. For the purpose of this fiscal note, costs associated with a board member attending the examination was calculated using costs for mileage, meals and per diem pursuant to the guidelines of the Office of Administration. Although, mileage will vary depending on the board member's home domicile, an average of 240 miles per round trip was used for the fiscal note. Hotel expenses were calculated in this fiscal note using the CONUS guidelines for Jefferson City.
6. 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 120 - State Board of Embalmers and Funeral Directors
Chapter 2 - General Rules
Proposed Rule - 4 CSR 120-2.010 Embalmer Registration and Apprenticeship

Prepared October 23, 2003 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Estimate the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by type of the business entities which would likely be affected:	Estimated cost of compliance with the rule by affected entities:
48	Practicum Students (Application @ \$25)	\$1,200.00
48	Practicum Students (Notary @ \$2.50)	\$120.00
48	Practicum Students (Postage @ \$.37)	\$17.76
24	Apprentice Embalmer (Application @ \$200)	\$4,800.00
24	Apprentice Embalmer (Apprentice Application Notary @ \$2.50)	\$60.00
24	Apprentice Embalmer (Missouri Law Exam @ \$75)	\$1,800.00
24	Apprentice Embalmer (Missouri Law Examination Processing Fee @ \$25)	\$600.00
24	Apprentice Embalmer (Oral Examination @ \$125)	\$3,000.00
24	Applicants (Postage @ \$.37)	\$8.88
	Estimated Annual Cost of Compliance for the Life of the Rule	\$11,606.64

III. WORKSHEET

See table above.

IV. ASSUMPTION

1. The estimated number of applicants affected by this rule are based on FY03 figures.
2. Due to the variances in applicant's preferences in hotels and restaurants and locations in the state it is not possible to estimate all costs, (i.e., gas, meals, and lodging) that a applicant could incur in traveling to the examination sites.
3. Due to the number of changes in the rule's organizational structure, the rule is being rescinded and readopted. The only substantial change to the rule's provisions is related to requiring embalmer's to take and pass the Missouri Law examination. Therefore, the only substantial burden to private entities is related to cost associated with the Missouri Law examination, all other costs related to the rescission and readoption will not cause any greater burden on private entities than those currently being incurred.
4. 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 120—State Board of Embalmers and Funeral
Directors**

Chapter 2—General Rules

PROPOSED AMENDMENT

4 CSR 120-2.020 Biennial License Renewal. The board is proposing to amend sections (1), (3) and (5) and add a new section (6).

PURPOSE: This amendment updates the requirements and procedures for the renewal of embalmer's, funeral director's and funeral establishment's licenses.

(1) Each **Missouri** licensed embalmer or **Missouri** licensed funeral director shall notify the board within thirty (30) days of each address change of the **Missouri** licensed funeral establishment at which s/he is practicing and shall notify the board within thirty (30) days of any termination or creation of an employment relationship with a **Missouri** licensed funeral establishment. Each holder of a **Missouri** licensed funeral establishment license shall notify the board at least sixty (60) days prior to any change of address of the **Missouri** licensed funeral establishment, sale of the **Missouri** licensed funeral establishment or termination of business of the **Missouri** licensed funeral establishment.

(3) The holders of expired **Missouri** embalmer's and funeral director's licenses which are not renewed will be notified that their licenses have expired. The holder of an expired license shall be issued a new license by the board within two (2) years of the renewal date after the proper reactivation fees have been paid. Any **Missouri** embalmer's license and **Missouri** funeral director's license not renewed within two (2) years shall be void.

(5) The biennial license renewal date for **Missouri** licensed embalmers and **Missouri** licensed funeral directors shall be designated as June 1. The biennial license renewal date for **Missouri** licensed funeral establishments shall be designated as January 1.

(6) The rules in this division are declared severable. If any rule, or section of a rule, is held invalid by a court of competent jurisdiction or by the Administrative Hearing Commission, the remaining provisions shall remain in full force and effect unless otherwise determined by a court of competent jurisdiction or by the Administrative Hearing Commission.

AUTHORITY: sections 333.081, RSMo Supp. [2001] 2003 and 333.III.1, RSMo 2000. Original rule filed Oct. 17, 1975, effective Oct. 28, 1975. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 31, 2003.*

PUBLIC COST: This proposed amendment is estimated to cost state agencies or political subdivisions less than five hundred (\$500) dollars in the aggregate.

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Board of Embalmers and Funeral Directors, Becky Dunn, Executive Director, 3605 Missouri Boulevard, PO Box 423, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT**

**Division 120—State Board of Embalmers and Funeral
Directors**

Chapter 2—General Rules

PROPOSED AMENDMENT

4 CSR 120-2.022 Retired License. The board is proposing to amend sections (1) and (2) and add a new section (3).

PURPOSE: This amendment clarifies the requirements to retire from the practice of funeral directing and/or embalming.

(1) Any person licensed to practice as a funeral director and/or embalmer in **Missouri** who is over sixty-five (65) years of age *[in this state]* and who retires from such practice, shall file with the board an affidavit, on a form to be furnished by the board, which states the date on which s/he retired from such practice, that s/he will not practice such profession and such other facts as tend to verify the retirement as the board may deem necessary; but if s/he thereafter wishes to reengage in the practice, s/he shall renew his/her registration with the board as provided in section 333.081.1, RSMo.

(2) For purposes of this section, a retired **Missouri** licensed funeral director and/or **Missouri** licensed embalmer is one who is neither engaged in the active practice of funeral directing/embalming nor holds him/herself out as an actively practicing funeral director/embalmer and has executed and filed with the board a retirement affidavit. A retired **Missouri** licensed funeral director/embalmer may keep his/her wall-hanging certificate after execution of a retirement affidavit but shall surrender, upon retirement, all other indicia of licensure.

(3) The rules in this division are declared severable. If any rule, or section of a rule, is held invalid by a court of competent jurisdiction or by the Administrative Hearing Commission, the remaining provisions shall remain in full force and effect unless otherwise determined by a court of competent jurisdiction or by the Administrative Hearing Commission.

AUTHORITY: sections 333.081, RSMo Supp. 2003 and 333.III.1, RSMo [Supp. 1995 and 536.023.3, RSMo 1994] 2000. Original rule filed July 15, 1996, effective Jan. 30, 1997. Amended: Filed Dec. 31, 2003.

PUBLIC COST: This proposed amendment is estimated to cost state agencies or political subdivisions less than five hundred (\$500) dollars in the aggregate.

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Board of Embalmers and Funeral Directors, Becky Dunn, Executive Director, 3605 Missouri Boulevard, PO Box 423, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT**

**Division 120—State Board of Embalmers and Funeral
Directors**

Chapter 2—General Rules

PROPOSED AMENDMENT

4 CSR 120-2.030 Registration of Licensees with Local Registrars of Vital Statistics. The board is proposing to amend sections (1) and (4) and add a new section (6).

PURPOSE: This amendment clarifies the placement of the embalmer's signature on death certificates.

(1) Pursuant to section 333.091, RSMo every holder of a[n] Missouri embalmer's or funeral director's license, upon receiving his/her initial or renewal license(s), shall register his/her signature, name, address and license number with the local registrar of vital statistics for the registration district in which the licensee practices.

(4) Each licensed embalmer who embalms a dead human body shall state on [the reverse side of] the death certificate that s/he embalmed the dead human body described on the [face of the] death certificate. Each statement must be signed by the licensed embalmer. If the body was not embalmed, the fact that the body was not embalmed shall be stated on the [reverse side of the] death certificate prior to the filing of the death certificate by the licensed funeral director.

(6) The rules in this division are declared severable. If any rule, or section of a rule, is held invalid by a court of competent jurisdiction or by the Administrative Hearing Commission, the remaining provisions shall remain in full force and effect unless otherwise determined by a court of competent jurisdiction or by the Administrative Hearing Commission.

AUTHORITY: sections 194.119, RSMo Supp. 2003, 333.091 and 333.III.1, RSMo 2000. Original rule filed Oct. 17, 1975, effective Oct. 28, 1975. For intervening history, please consult the Code of State Regulations. Amended: Filed: Dec. 31, 2003.

PUBLIC COST: This proposed amendment is estimated to cost state agencies or political subdivisions less than five hundred (\$500) dollars in the aggregate.

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Board of Embalmers and Funeral Directors, Becky Dunn, Executive Director, 3605 Missouri Boulevard, PO Box 423, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 120—State Board of Embalmers and Funeral Directors
Chapter 2—General Rules
PROPOSED RESCISSION

4 CSR 120-2.040 Licensure by Reciprocity. This rule outlined the requirements and procedures for procuring a Missouri embalmer's or funeral director's license by reciprocity.

PURPOSE: This rule is being rescinded and readopted to provide clarification in obtaining an embalmer or funeral director license by reciprocity.

AUTHORITY: sections 43.543, 333.051, 333.091 and 333.III.1, RSMo 2000. Original rule filed Oct. 17, 1975, effective Oct. 28,

1975. For intervening history, please consult the Code of State Regulations. Rescinded: Filed Dec. 31, 2003.

PUBLIC COST: This proposed rescission is estimated to cost state agencies or political subdivisions less than five hundred (\$500) dollars in the aggregate.

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the State Board of Embalmers and Funeral Directors, Becky Dunn, Executive Director, 3605 Missouri Boulevard, PO Box 423, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 120—State Board of Embalmers and Funeral Directors
Chapter 2—General Rules

PROPOSED RULE

4 CSR 120-2.040 Licensure by Reciprocity

PURPOSE: This rule outlines procedures for obtaining an embalmer or funeral director license by reciprocity.

(1) Applications for a Missouri embalmer's or funeral director's license by reciprocity shall be made on the forms provided by the board and must be accompanied by the applicable fee. Application forms are available from the board office or the board's website at <http://pr.mo.gov/embalmers.asp>.

(2) Any person holding a valid unrevoked and unexpired license to practice embalming or funeral directing in another state or territory, is eligible to obtain licensure by reciprocity by submitting to the board the following:

(A) Evidence satisfactory to the board that the reciprocity applicant holds a valid, unrevoked, and unexpired license as an embalmer or funeral director in another state having substantially similar requirements to the requirements for licensure as either an embalmer or funeral director in this state including a copy of his/her original license issued by the other state;

(B) Proof of his/her educational and professional qualifications, which must be substantially equivalent to the requirements existing in Missouri at the time s/he was originally licensed;

(C) A certified statement for the examining board of the state or territory in which the applicant holds his/her license showing the grade rating upon which his/her license was granted, a statement whether the reciprocity applicant has ever been subject to discipline or if there are any complaints pending against the reciprocity applicant and a recommendation for licensure in Missouri;

(D) Evidence sufficient to the board that the applicant has achieved a score of seventy-five percent (75%) or better on the National Funeral Service Arts Examination and the National Funeral Service Science Examination provided by the International Conference of Funeral Service Examining Boards, Inc., or its designee, if applying for an embalmer license or an embalmer and funeral director license; or

(E) Evidence sufficient to the board that the applicant has achieved a score of seventy-five percent (75%) or better on the National Funeral Service Arts Examination provided by the International

Conference of Funeral Service Examining Boards, Inc., or its designee, if applying for only a funeral director license; and

(F) Evidence that the reciprocity applicant has successfully completed the reciprocity examination with a score of seventy-five percent (75%) or better within twenty-four (24) months after the board's receipt of the reciprocity application. If an applicant by reciprocity has received either an embalmer or funeral director license from the board within twelve (12) months prior to applying for a license for which the reciprocity examination is required, that applicant will be exempt from taking the reciprocity examination for the second license;

(G) A completed application for licensure for reciprocity provided by the board; and

(H) Payment of applicable fees including the fee charged by the Missouri State Highway Patrol for a criminal history background check, as required by the board.

(3) If the reciprocity applicant holds a license as an embalmer or funeral director in another state or territory with requirements less than those of this state, they may seek licensure in this state by submitting to the board the following:

(A) A copy of his/her original license by the other state board;

(B) Proof of his/her educational and professional qualifications;

(C) Evidence that the reciprocity applicant has successfully completed the reciprocity examination with a score of seventy-five percent (75%) or better within twenty-four (24) months after the board's receipt of the reciprocity application. If an applicant by reciprocity has received either an embalmer or funeral director license from the board within twelve (12) months prior to applying for a license for which the reciprocity examination is required, that applicant will be exempt from taking the reciprocity examination for the second license;

(D) Evidence that the reciprocity applicant has successfully completed the reciprocity examination with a score of seventy-five percent (75%) or better either within twelve (12) months prior to application or within twenty-four (24) months after the board's receipt of the reciprocity application;

(E) A completed application for licensure for reciprocity provided by the board; and

(F) Payment of applicable fees including the fee charged by the Missouri State Highway Patrol for a criminal history background check, as required by the board.

(4) Licensure by reciprocity may be given only for like license(s). An embalmer licensed in another state may obtain an embalmer license by reciprocity, but not a funeral director license unless that person is licensed as a funeral director in another state. A funeral director licensed in another state may obtain a funeral director license by reciprocity, but not an embalmer license unless that person is licensed as an embalmer in another state.

(5) Applications must be completed and received by the board at least forty-five (45) days prior to the date of the next regularly scheduled examination and must be accompanied by the applicable administration fee. Scheduling and payment for the examination will be made directly through the International Conference of Funeral Services Examining Boards, Inc., or its designee. Applications are deemed complete upon submission of any and all requisite forms required by the board, payment of requisite fees, and submission of all materials required by this rule or supplemental materials requested by the board. Application forms can be obtained from the board office or the board's website at <http://pr.mo.gov/embalmers.asp>.

(6) The board shall determine the sufficiency of the materials provided in the application for reciprocity and shall have the authority to make the final determination as to the standards and qualifications of the various states from which the applicants may be accepted by

reciprocity and may reject any applicant on any lawfully permitted grounds.

(7) All certificates, registrations, and licenses, or duplicate copies thereof, issued by the State Board of Embalmers and Funeral Directors shall be displayed at all times in a conspicuous location accessible to the public in the office(s) or place(s) of business, for inspection by any duly authorized agent of the board.

(8) The rules in this division are declared severable. If any rule, or section of a rule, is held invalid by a court of competent jurisdiction or by the Administrative Hearing Commission, the remaining provisions shall remain in full force and effect unless otherwise determined by a court of competent jurisdiction or by the Administrative Hearing Commission.

AUTHORITY: sections 333.051, 333.091 and 333.111, RSMo 2000. Original rule filed Oct. 17, 1975, effective Oct. 28, 1975. For intervening history, please consult the Code of State Regulations. Rescinded and readopted: Filed Dec. 31, 2003.

PUBLIC COST: This proposed rule is estimated to cost public entities an estimated one thousand five hundred seventeen dollars and fourteen cents (\$1,517.14) annually for the life of the rule. 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. A detailed fiscal note, which estimates the cost of compliance with this rule, has been filed with the secretary of state.

PRIVATE COST: This proposed rule is estimated to cost private entities an estimated fourteen thousand five hundred forty-seven dollars and fifty-eight cents (\$14,547.58) annually for the life of the rule. It is anticipated that the total costs 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. A detailed fiscal note, which estimates the cost of compliance with this rule, has been filed with the secretary of state.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the State Board of Embalmers and Funeral Directors, Becky Dunn, Executive Director, 3605 Missouri Boulevard, PO Box 423, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

PUBLIC ENTITY FISCAL NOTE

I. RULE NUMBER

Title 4 -Department of Economic Development
Division 120 - State Board of Embalmers and Funeral Directors
Chapter 2 - General Rules
Proposed Rule - 4 CSR 120-2.040 Licensure by Reciprocity

Prepared October 23, 2003 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Annual Cost of Compliance
State Board of Embalmers and Funeral Directors	\$1,517.14
Total Annual Cost of Compliance for the Life of the Rule	
	\$1,517.14

III. WORKSHEET

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.

STAFF	ANNUAL SALARY	SALARY TO INCLUDE FRINGE BENEFIT	HOURLY SALARY	COST PER MINUTE
Executive I	\$52,498.80	\$70,400.89	\$33.85	\$0.56
Funeral Establishment Inspector	\$32,592.00	\$43,705.87	\$21.01	\$0.35
Administrative Support Office	\$25,239.60	\$33,846.30	\$16.27	\$0.27
Licensure Technician II	\$22,975.20	\$30,809.74	\$14.81	\$0.25

Expense and Equipment Breakdown

Expense and Equipment Costs

- \$1.37 Reciprocity Application
- \$0.07 Envelope to Mail Application Packet
- \$1.98 Postage
- \$0.25 Letter of Notification
- \$0.16 Envelope
- \$0.35 Postage
- \$0.05 License
- \$0.10 Envelope to Mail License
- \$0.83 Postage to Mail License
- \$4.18 Total Per Applicant**

\$26.52 Certified Mail - The board estimates 6 individuals will not pass the examination. It currently cost \$4.42 to send a certified letter.

Reciprocity Application:

The Licensure Technician II spends approximately 81 hours and 15 minutes annually answering applicant's inquiries, preparing and mailing application packets and processing the application and supporting documentation, issuing and mailing licenses, processing verifications forms for licensure to other states. The Executive Director spends approximately 3 hours and 30 minutes performing a final review of the application, reviewing the examination results and signing letters prepared by the Licensure Technician II. The board receives approximately 34 applications a year. A summary of the expenses and equipment costs are provided above. Based on the data presented, the board estimates the following costs:

Licensure Technician II:	\$1,202.27
Executive Director:	\$112.82
Expense and Equipment Costs:	\$202.05

IV. ASSUMPTION

1. The above figures were based on FY03 actuals. The estimates contained in this fiscal notes represent costs associated with new applicants unless otherwise specified.
2. Due to the number of changes in the rule's organizational structure, the rule is being rescinded and readopted. The only substantial change to the rule's provisions is related to requiring embalmer's to take and pass the Missouri Law examination. The Missouri Law examination is currently only administered to funeral directors pursuant to 4 CSR 120-2.060. Because the examinations will be administered simultaneously to embalmers and funeral directors and the board anticipates no additional costs will be incurred to administer the examinations to embalmers, costs associated with the administration of the examination is reported in the fiscal note for 4 CSR 120-2.060. Other than this substantial change, the rescission and readoption should not impose any greater burden on the State Board of Embalmers and Funeral Directors than those currently being incurred and reported in this fiscal note.
3. The division's central investigative unit assists the board with the investigation of complaints as well as annual inspections. Because the number of complaints for embalmers and funeral directors vary from year to year and the division does not track the percentage of time spent per profession for the board, it is impossible to estimate the exact dollar amount the board spends on each rule related to the investigative/inspection services.
4. Examination fees for the Missouri Law examination are considered pass through fees for the board. The board enters a contract with the International Conference of Funeral Service Examining Boards on an annual basis, therefore, the examination fee may vary depending on the contractual amount. Upon the effective date of the amendment to 4 CSR 120-2.160, applicants will pay the board a \$75 examination fee plus a \$25 processing fee. The board will then pay the International Conference of Funeral Service Examining Boards \$75 per examination administered.
5. 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 120 - State Board of Embalmers and Funeral Directors
Chapter 2 - General Rules
Proposed Rule - 4 CSR 120-2.040 Licensure by Reciprocity
Chapter 2 - General Rules

Prepared October 23, 2003 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Estimate the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by type of the business entities which would likely be affected:	Estimated cost of compliance with the rule by affected entities:
34	Reciprocity Applicants (Application @ \$300)	\$10,200.00
34	Reciprocity Applicants (Missouri Law Exam @ \$75)	\$2,550.00
34	Reciprocity Applicants (Missouri Law Exam Processing Fee @ \$75)	\$850.00
34	Reciprocity Applicants (High School and College Transcripts @ \$15.00)	\$510.00
34	Reciprocity Applicants (Verification Form @ \$10)	\$340.00
34	Applicants (Notary @ \$2.50)	\$85.00
34	Applicants (Postage @ \$.37)	\$12.58
	Estimated Annual Cost of Compliance for the Life of the Rule	\$14,547.58

III. WORKSHEET

See table above.

IV. ASSUMPTION

- The estimated number of applicants affected by this rule are based on FY03 figures.
- Due to the variances in applicant's preferences in hotels and restaurants and locations in the state it is not possible to estimate all costs, (i.e., gas, meals, and lodging) that an applicant could incur in traveling to the examination sites.
- Due to the number of changes in the rule's organizational structure, the rule is being rescinded and readopted. The only substantial change to the rule's provisions is related to requiring embalmer's to take and pass the Missouri Law examination. Therefore, the only substantial burden to private entities is related to cost associated with the Missouri Law examination, all other costs related to the rescission and readoption will not cause any greater burden on private entities than those currently being incurred.
- 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 120—State Board of Embalmers and Funeral
Directors**

Chapter 2—General Rules

PROPOSED AMENDMENT

4 CSR 120-2.050 Miscellaneous Rules. The board is proposing to delete section (3).

PURPOSE: This amendment clarifies attorney representation before the board.

[(3) No temporary license authorized under section 333.041.7, RSMo will be issued until the board has been advised as to the location of the funeral establishment at which the temporary funeral director's license will be used. Any license issued under this section may be used only in connection with the operation of that funeral establishment. Violation of this rule will be deemed misconduct in the practice of funeral directing.]

AUTHORITY: section[s 333.041.7, RSMo Supp. 2001 and] 333.III[.1 and 333.121.2(6)], RSMo 2000. Original rule filed Oct. 17, 1975, effective Oct. 28, 1975. For intervening history, please consult the *Code of State Regulations*. Amended: Filed: Dec. 31, 2003.

PUBLIC COST: This proposed amendment is estimated to cost state agencies or political subdivisions less than five hundred dollars (\$500) in the aggregate.

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Board of Embalmers and Funeral Directors, Becky Dunn, Executive Director, 3605 Missouri Boulevard, PO Box 423, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT**

**Division 120—State Board of Embalmers and Funeral
Directors**

Chapter 2—General Rules

PROPOSED RESCISSION

4 CSR 120-2.060 Funeral Directing. This rule clarified the provisions governing the practice of funeral directing.

PURPOSE: This rule is being rescinded and readopted to provide clarification of the practice of funeral directing.

AUTHORITY: sections 333.041 and 333.042, RSMo Supp. 2001 and 333.091, 333.III.1 and 333.121, RSMo 2000. Original rule filed Oct. 17, 1975, effective Oct. 28, 1975. For intervening history, please consult the *Code of State Regulations*. Rescinded: Filed Dec. 31, 2003.

PUBLIC COST: This proposed rescission is estimated to cost state agencies or political subdivisions less than five hundred dollars (\$500) in the aggregate.

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the State Board of Embalmers and Funeral Directors, Becky Dunn, Executive Director, 3605 Missouri Boulevard, PO Box 423, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT**

**Division 120—State Board of Embalmers and Funeral
Directors**

Chapter 2—General Rules

PROPOSED RULE

4 CSR 120-2.060 Funeral Directing

PURPOSE: This rule outlines the provisions for the practice of funeral directing.

(1) Every person who desires to enter the profession of funeral directing in Missouri and who is not entitled to a license under section 333.051, RSMo shall provide the following to the board:

- (A) Proof of being at least eighteen (18) years of age;
- (B) Proof of possession of a high school diploma or equivalent;
- (C) Evidence of being a person of good moral character;
- (D) Proof of satisfactory completion of each section of the funeral director's examination;
- (E) Affidavit of completion of a twelve (12) consecutive month apprenticeship; or official transcript and documentation indicating s/he is a graduate of an institute of mortuary science accredited by the American Board of Funeral Service Education or any successor organization recognized by the United States Department for Funeral Service Education; or has successfully completed a course in funeral directing offered by a college accredited by a recognized national, regional or state accrediting body and approved by the State Board of Embalmers and Funeral Directors; or proof of being a Missouri licensed embalmer;
- (F) Completed application form provided by the board;
- (G) Proof of successful completion of the National Funeral Service Arts, if applicable;
- (H) Payment of all applicable fees;
- (I) Satisfactory criminal history background check as provided to the board by the Missouri State Highway Patrol. Applicants shall submit to the board the applicable fee for the criminal history background check as determined by the Missouri State Highway Patrol; and
- (J) Any other information the board may require.

(2) Every person who desires to enter the profession of funeral directing in Missouri and who is not entitled to a license under section 333.051, RSMo, shall make application with the board for a Missouri funeral director license on the forms provided by the board and shall pay the funeral director application and the administration fees for the Missouri law examination and Missouri Funeral Service Arts examination directly to the board. The scheduling and payment of the examinations will be made through the International Conference of Funeral Services Examining Boards, Inc., or designee. If the applicant has successfully completed the National Funeral Service Arts examination, no Missouri Funeral Service Arts examination is required, and no Missouri Funeral Services Arts examination fee may be applicable. Application forms can be

obtained from the board office or the board's website at <http://pr.mo.gov/embalmers.asp>.

(3) Effective June 1, 2004, the funeral director examination administered by the board shall consist of the Missouri Law section and the Missouri Funeral Service Arts section developed and furnished by the International Conference of Funeral Service Examining Boards, Inc., or its designee. In lieu of the Missouri Funeral Service Arts examination, successful completion of the National Funeral Service Arts examination results will be accepted.

(4) To serve as an apprentice funeral director, the applicant shall file with the board a completed funeral director application on the form prescribed by the board and also shall complete an application to be registered as an apprentice funeral director on the form prescribed by the board and pay all applicable fees. Application forms and a list of fees can be obtained from the board office or on the board's website at <http://pr.mo.gov/embalmers.asp>.

(5) Upon registration and payment in full of all applicable fees, the board shall issue the apprentice funeral director applicant a funeral director apprentice registration. This registration authorizes the apprentice registrant to engage in the practice of funeral directing under the supervision of a Missouri licensed funeral director. The funeral director apprentice registration, or a copy thereof, shall be displayed in a conspicuous location accessible to the public at each establishment where the apprentice is working.

(6) The funeral director apprentice registration authorizes the registrant to engage in the practice of funeral directing only during the period of apprenticeship. Once the apprenticeship is successfully completed as defined in this rule, the funeral director apprentice registration shall become null and void. Any Missouri licensed funeral director who allows a former apprentice who has completed his/her apprenticeship to engage in the practice of funeral directing before that apprentice is fully licensed shall be subject to discipline for misconduct under section 333.121.2, RSMo.

(7) Each registered funeral director apprentice shall provide to the board, on the application prescribed by the board, the name(s), location(s) and license number(s) of each funeral establishment(s) where they are serving as an apprentice. The funeral director apprenticeship may be served at a funeral establishment licensed by a state, other than Missouri, upon submission of proof to the board that the out-of-state funeral home is licensed for the care and preparation for burial and transportation of human dead in this state or another state which has established standards for admission to practice funeral directing equal to, or more stringent than, the requirement for admission to practice funeral directing in this state. If the funeral director apprentice changes funeral establishments during the course of the apprenticeship, the apprentice shall notify the board, on the form prescribed by the board, of the name(s), location(s) and funeral establishment(s) license number of the new apprenticeship location within ten (10) business days after the change has been made.

(8) Successful completion of a funeral director apprenticeship shall consist of the following:

(A) Completed service as an apprentice funeral director for a period consisting of at least twelve (12) consecutive months in a Function C funeral establishment; and

(B) Filing with the board a notarized affidavit(s) signed by the apprentice and his/her supervisor(s) that s/he has arranged for and conducted a minimum of ten (10) funeral ceremonies under the supervision of a Missouri licensed funeral director.

(9) An apprentice will be eligible to take the funeral director examination after completion of the twelve (12) consecutive month period of apprenticeship.

(10) An applicant will be deemed to have successfully completed the funeral director examination when a score of seventy-five percent (75%) or better is achieved on each section. If the applicant fails a section of the examination, the applicant shall be permitted to retake that section upon application and payment of the administration fee to the board. Scheduling and payment of the examination fee will be made through the International Funeral Service Examining Boards, Inc., or its designee.

(11) All notifications for the funeral director's examination must be in writing and received by the board at least forty-five (45) days prior to the date of the next regularly scheduled examination and must be accompanied by all applicable fees.

(12) A college accredited by a recognized national, state, or regional accrediting body may seek the approval of the State Board of Embalmers and Funeral Directors for a course of study in funeral directing by submitting a description of the program, the college catalog listing the course of study and evidence that the program has been approved to be offered in that institution by the administration of the college and the Missouri Coordinating Board for Higher Education.

(13) An applicant shall be exempt from the requirement of successful completion of the Missouri Law examination if the applicant has successfully completed the Missouri Law examination for another license within twelve (12) months of the date that the board receives the new application.

(14) It shall be considered misconduct in the practice of funeral directing for a Missouri licensed funeral director to permit any unlicensed person to engage in, or take charge of, the activities for which a license is required by law.

(15) A Missouri licensed funeral director shall be present and personally must supervise or conduct each funeral ceremony conducted by or from a Missouri licensed funeral establishment. A violation of this section will be considered misconduct in the practice of funeral directing.

(16) A Missouri licensed funeral director shall be present and personally must supervise any disinterment, interment, entombment, or cremation as defined in 4 CSR 120-1.040. If the disinterment does not require legal notification to the county coroner or medical examiner, a funeral director's presence may not be required. A violation of this section shall be deemed misconduct in the practice of funeral directing. Once the body has been delivered to a cemetery for the purpose of interment or to a crematory for the purpose of cremation and after any funeral ceremonies have been completed, the Missouri licensed funeral director is not required to stay with the body. Nothing in this rule shall be interpreted as requiring the Missouri licensed funeral director to leave the cemetery before disposition is complete. Furthermore, nothing in this rule shall be interpreted as relieving the Missouri licensed funeral director of any responsibilities s/he has under his/her contract with the person(s) having the right to control the incidents of burial.

(17) An unlicensed person may transport dead human bodies from the place of death to another location or may transport dead human bodies out of this state if these services are performed under the direction of a Missouri licensed funeral establishment.

(18) No person other than a Missouri licensed funeral director shall be allowed to make the following at-need arrangements with the person having the right to control the incidents of disposition:

(A) Removal of a dead human body, arrangements for final disposition, supervision of visitation and memorial ceremony, grave attendance, cremation, entering into a contractual relationship for performance of any other funeral services;

(B) Embalming, cremation, care, preparation, shipment or transportation of a dead human body; and

(C) Sale or rental to the public of funeral merchandise, services or paraphernalia from a Missouri licensed funeral establishment.

(19) The taking of preliminary information by an unlicensed person will not be construed as the making of at-need funeral arrangements under this rule.

(20) Whenever an unlicensed person makes other than at-need funeral arrangements on behalf of a Missouri licensed funeral director or Missouri licensed funeral establishment, the unlicensed person shall be under the supervision and control of a Missouri licensed funeral director at all times.

(21) No temporary Missouri funeral director license authorized under section 333.041.7, RSMo will be issued until the board has been advised as to the location of the Missouri licensed funeral establishment at which the temporary funeral director's license will be used. The holder of the temporary license shall be authorized to only work at the Missouri licensed funeral establishment(s) where the deceased was authorized to work. Violation of this rule will be deemed unauthorized practice of funeral directing.

(23) The business and practice of funeral directing may be conducted only from a fixed place or establishment which has been licensed by the board.

(24) Limited License.

(A) A person holding a limited license shall be allowed to work only in a funeral establishment licensed only as a Function B funeral establishment (cremation only). It shall be lawful for a limited licensee to engage in any act of funeral directing at a Function B funeral establishment including transportation of dead human bodies to and from the funeral establishment.

(B) Every person desiring a limited license shall provide the following to the board:

1. Proof of being at least eighteen (18) years of age;
2. Proof of possession of a high school diploma or its equivalent;
3. Evidence of being a person of good moral character;
4. Proof of successful completion by achieving a score of seventy-five percent (75%) or better on the Missouri Law examination;
5. Completed application form as provided by the board;
6. Payment of applicable fees;
7. Payment of any fee charged by the Missouri Highway Patrol for a criminal history background check; and
8. Any other information the board may require.

(C) Every limited licensee shall provide the board with the name, location and license number of each funeral establishment where she/he is employed.

(D) A limited licensee shall be obligated to comply with all Missouri laws governing funeral directors subject to the limitations imposed by this rule and section 333.042.2, RSMo.

(E) If a limited licensee desires to obtain a full funeral director's license, the licensee shall be required to complete an apprenticeship consisting of at least twelve (12) consecutive months as required by section 333.042.2, RSMo, and accompanying regulations OR fulfill the education requirements set forth in section 333.042.3, RSMo. The limited licensee shall also provide to the board proof of successful completion of the remaining sections of the funeral director examination as required by these regulations. The limited licensee shall not be required to retake the Missouri Law examination.

(24) All certificates, registrations, and licenses, or duplicate copies thereof, issued by the State Board of Embalmers and Funeral Directors shall be displayed at all times in a conspicuous location accessible to the public in each office(s) or place(s) of business

where they work, for inspection by any duly authorized agent of the board.

(25) Should an individual desire to obtain a Missouri funeral director's license after his/her license has become void under section 333.081.3, RSMo, the individual shall be required to make new application and pay all applicable fees to the board. No previous apprentice, application or examination will be considered for the new application. However, the board shall accept the successful completion of the National Funeral Service Arts examination for new application.

(26) A Missouri licensed funeral director may engage in the practice of funeral directing in the state of Missouri only in Missouri licensed funeral establishments. Each Missouri licensed funeral director shall inform the board in writing, in a timely manner, of each Missouri licensed funeral establishment name(s), location(s) and license number(s) where the Missouri licensed funeral director is engaged in funeral directing.

(27) A Missouri licensed funeral director has the ongoing obligation to keep the board informed if the licensee has been finally adjudicated or found guilty, or entered a plea of guilty or *nolo contendere*, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense an essential element of which is fraud, dishonesty, or an act of violence, or for any offense involving moral turpitude, whether or not sentence was imposed. This information must be provided to the board within thirty (30) days of being finally adjudicated or found guilty.

(28) The rules in this division are declared severable. If any rule, or section of a rule, is held invalid by a court of competent jurisdiction or by the Administrative Hearing Commission, the remaining provisions shall remain in full force and effect unless otherwise determined by a court of competent jurisdiction or by the Administrative Hearing Commission.

AUTHORITY: sections 333.041 and 333.042, RSMo Supp. [2001] 2003 and 333.091, 333.III and 333.121, RSMo 2000. Original rule filed Oct. 17, 1975, effective Oct. 28, 1975. For intervening history, please consult the Code of State Regulations. Rescinded and Readopted: Filed Dec. 31, 2003.

PUBLIC COST: This proposed rule is estimated to cost public entities an estimated eight thousand five dollars and ninety-seven cents (\$8,005.97) annually for the life of the rule. 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. A detailed fiscal note, which estimates the cost of compliance with this rule has been filed with the secretary of state.

PRIVATE COST: This proposed rule is estimated to cost private entities an estimated twenty-nine thousand four hundred forty-six dollars and eight cents (\$29,446.08) annually for the life of the rule. It is anticipated that the total costs 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. A detailed fiscal note, which estimates the cost of compliance with this rule has been filed with the secretary of state.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the State Board of Embalmers and Funeral Directors, Becky Dunn, Executive Director, 3605 Missouri Boulevard, PO Box 423, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

PUBLIC ENTITY FISCAL NOTE

I. RULE NUMBER

Title 4 -Department of Economic Development
Division 120 - State Board of Embalmers and Funeral Directors
Chapter 2 - General Rules
Proposed Rule - 4 CSR 120-2.060 Funeral Directing
Chapter 2 - General Rules

Prepared October 23, 2003 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Annual Cost of Compliance
State Board of Embalmers and Funeral Directors	\$8,005.97
Total Annual Cost of Compliance for the Life of the Rule	
	\$8,005.97

III. WORKSHEET

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.

STAFF	ANNUAL SALARY	SALARY TO INCLUDE FRINGE BENEFIT	HOURLY SALARY	COST PER MINUTE
Executive I	\$52,498.80	\$70,400.89	\$33.85	\$0.56
Funeral Establishment Inspector	\$32,592.00	\$43,705.87	\$21.01	\$0.35
Administrative Support Office Assistant	\$25,239.60	\$33,846.30	\$16.27	\$0.27
Licensure Technician II	\$22,975.20	\$30,809.74	\$14.81	\$0.25

Funeral Director Expense and Equipment Costs:
 \$1.37 Application Packet
 \$0.07 Envelope to Mail Packet
 \$1.98 Postage to Mail Application Packet
 \$0.05 Affidavits
 \$75.00 Missouri Law Exam
 \$0.16 Envelope
 \$0.35 Postage
\$75.51 Total Expense and Equipment Per Applicant

Change of Location Expense and Equipment Costs:
 \$0.25 Application
 \$2.50 Notary
 \$0.16 Envelope
 \$0.35 Postage
\$3.26 Total Expense and Equipment Per Applicant

Missouri Law Examination Expense and Equipment Costs:
 \$0.25 Application
 \$0.16 Envelope
 \$0.35 Postage
 \$100.00 Funeral Service Arts Examination
 \$0.25 Letter of Notification
 \$0.16 Envelope
 \$0.35 Postage
\$101.52 Total Expense and Equipment Per Applicant

\$106.08 Certified Mail - The board estimates 6 individuals will not pass the examination. It currently cost \$4.42 to send a certified letter.

Missouri Funeral Service Arts Examination Expense and Equipment
 \$100.00 Missouri Funeral Service Arts Exam
\$100.00 Total Expense and Equipment Per Applicant

Funeral Director Application:

The Licensure Technician II spends approximately 138 hours and 15 minutes annually answering applicant's inquiries, preparing and mailing application packets, processing the application and supporting documentation, reviewing affidavits and examination requests, scheduling and notifying applications of examination dates and location, updating the licensing system, issuing and mailing the licenses or failure packets. The Executive Director spend approximately 2 hours and 30 minutes performing a final review of the application and supporting documentation, reviewing examination results and signing letters prepared by the Licensure Technician II. The board receives approximately 74 applications a year. A summary of the expenses and equipment costs are provided above. Based on the data presented, the board estimates the following costs:

Licensure Technician II:	\$2,046.08
Executive Director:	\$83.49
Expense and Equipment Costs:	\$5,693.82

Change Locations:

The Licensure Technician spends approximately 7 hours and 30 minutes annually answering applicant's inquiries, preparing and mailing application packets, reviewing the application and supporting document, updating the licensing system and issuing the new affidavits. The Executive Director spends approximately 1 hour annually performing a final review of the application. The board receives approximately 12 applications a year. A summary of the expense and equipment costs are provided above. Based on the data presented, the board estimates the following costs associated with apprentices' change of locations:

Licensure Technician II:	\$109.61
Executive Director:	\$33.85
Expense and Equipment Costs:	\$39.12

Missouri Law Examination:

The Licensure Technician spends approximately 26 hours annually preparing, setting up for and assisting with the examination's administration. The Executive Director spends approximately 18 hours annually administering the administering and overseeing the examination. The Funeral Establishment Inspector spends approximately 3 hours annually assisting with the examination's administration, verifying candidate's identification, and notarizing examination documents. A summary of the expense and equipment costs are provided above. Based on the data presented, the board estimates the following costs associated with the Missouri Law Examination:

Licensure Technician II:	\$385.12
Executive Director:	\$406.16
Funeral Establishment Inspector:	\$63.04
Expense and Equipment Costs:	\$13,400.64

Missouri Funeral Service Arts Examination:

The Licensure Technician spends approximately 54 hours annually preparing, setting up for and assisting with the examination's administration. The Executive Director spends approximately 12 hours annually administering the administering and overseeing the examination. The Funeral Establishment Inspector spends approximately 12 hours annually assisting with the examination's administration, verifying candidate's identification, and notarizing examination documents. A summary of the expense and equipment costs are provided above. Based on the data presented, the board estimates the following costs associated with the Missouri Funeral Service Arts Examination:

Licensure Technician II:	\$799.87
Executive Director:	\$406.16
Funeral Establishment Inspector:	\$252.15
Expense and Equipment Costs:	\$100.00

IV. ASSUMPTION

1. The above figures were based on FY03 actuals. The estimates contained in this fiscal notes represent costs associated with new applicants unless otherwise specified.
2. Due to the number of changes in the rule's organizational structure, the rule is being rescinded and readopted. The rescission and readoption should not impose any greater burden on the State Board of Embalmers and Funeral Directors than is currently being incurred and is reported in this fiscal note.
3. The division's central investigative unit assists the board with the investigation of complaints as well as annual inspections. Because the number of complaints for embalmers and funeral directors vary from year to year and the division does not track the percentage of time spent per profession for the board, it is impossible to estimate the exact dollar amount the board spends on each rule related to the investigative/inspection services.
4. Examination fees for the Missouri Law examination are considered pass through fees for the board. The board enters a contract with the International Conference of Funeral Service Examining Boards on an annual basis, therefore, the examination fee may vary depending on the contractual amount. Upon the effective date of the amendment to 4 CSR 120-2.160, applicants will pay the board a \$75 examination fee plus a \$25 processing fee. The board will then pay the International Conference of Funeral Service Examining Boards \$75 per examination administered.
5. 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 120 - State Board of Embalmers and Funeral Directors
Chapter 2 - General Rules
Proposed Rule - 4 CSR 10-2.060 Funeral Directing
Chapter 2- General Rules

Prepared October 23, 2003 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Estimate the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by type of the business entities which would likely be affected:	Estimated cost of compliance with the rule by affected entities:
74	Applicants (Funeral Director Application @ \$200)	\$14,800.00
74	Applicants (Missouri Law Examination @ \$70)	\$5,550.00
74	Applicants (Missouri Law Examination Processing Fee @ \$25)	\$1,850.00
74	Applicants (Practical Examination @ \$95)	\$7,030.00
74	Applicants (Copy of High School Diploma @ \$.05)	\$3.70
74	Applicants (Notary @ \$2.50)	\$185.00
74	Applicants (Postage @ \$.37)	\$27.38
Estimated Annual Cost of Compliance for the Life of the Rule		\$29,446.08

III. WORKSHEET

See table above.

IV. ASSUMPTION

1. The estimated number of applicants affected by this rule are based on FY03 figures.
2. Due to the variances in applicant's preferences in hotels and restaurants and locations in the state it is not possible to estimate all costs, (i.e., gas, meals, and lodging) that a licensee could incur in traveling to the examination sites.
3. Due to the number of changes in the rule's organizational structure, the rule is being rescinded and readopted. The rescission and readoption should not impose any greater burden on private entities than is currently being incurred and is reported in this fiscal note.
4. 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 120—State Board of Embalmers and Funeral
Directors
Chapter 2—General Rules**

PROPOSED RESCISSION

4 CSR 120-2.070 Funeral Establishments. This rule provided clarification procedures for operating a funeral establishment.

PURPOSE: This rule is being rescinded and readopted to provide clarification of the provisions for operating funeral establishments.

AUTHORITY: sections 333.091, 333.III.1, 333.121 and 333.145, RSMo 2000. Original rule filed Oct. 17, 1975, effective Oct. 28, 1975. For intervening history, please consult the Code of State Regulations. Rescinded: Filed Dec. 31, 2003.

PUBLIC COST: This proposed rescission is estimated to cost state agencies or political subdivisions less than five hundred dollars (\$500) in the aggregate.

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the State Board of Embalmers and Funeral Directors, Becky Dunn, Executive Director, 3605 Missouri Boulevard, PO Box 423, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT**

**Division 120—State Board of Embalmers and Funeral
Directors
Chapter 2—General Rules**

PROPOSED RULE

4 CSR 120-2.070 Funeral Establishments

PURPOSE: This rule clarifies establishment license classifications, establishment names and the documents to be maintained by licensed funeral homes.

(1) Application for a Missouri licensed funeral establishment license shall be made on the forms provided by the board and must be accompanied by the appropriate fee. Applications are available from the board's office or the board's website at <http://pr.mo.gov/embalmers.asp>. Each application must indicate which license classification is being sought.

(2) There shall be the following license classifications:

(A) Function A establishments shall have authority to embalm dead human bodies and to transport dead human bodies to and from the funeral establishment.

(B) Function B establishments shall have authority to cremate dead human bodies and to transport dead human bodies to and from the funeral establishment. This establishment must have a cremation chamber.

(C) Function C establishments shall have authority for the care and preparation of dead human bodies, other than by embalming or cremating, authority to transport dead human bodies to and from the funeral establishment, make funeral arrangements, and furnish any

funeral services in connection with the disposition of dead human bodies or the sale of funeral merchandise.

(D) Function D establishments shall have authority to conduct visitations and funeral ceremonies only. A Function D license is dependent upon and must be operated under the supervision and ownership of a Function C establishment.

(3) If a Missouri licensed funeral establishment wishes to change or add to its classification, it shall file a new application for a Missouri licensed funeral establishment indicating its new classification. If a Missouri licensed funeral establishment desires to eliminate one (1) of its functions, other than a Function C, it must notify the board in writing of its intention to surrender the function, but is not required to file a new application for a new Missouri licensed funeral establishment.

(4) A Missouri licensed funeral establishment shall not be used for any other business purpose other than as a Missouri licensed funeral establishment. It shall be permissible for a Missouri licensed funeral establishment to be in the same building as another business so long as the Missouri licensed funeral establishment has a separate entrance and a separate street address.

(5) A Missouri licensed funeral establishment shall be used only for the function for which it is licensed.

(6) Each application for a funeral establishment shall be made in the name of the person or business entity authorized to conduct business in Missouri. No license shall be issued to an establishment that has no legal recognition.

(7) A funeral establishment application shall indicate the name and license number of the Missouri licensed funeral director-in-charge, as defined by 4 CSR 120-1.040. When the Missouri licensed funeral director-in-charge changes for a period of more than thirty (30) days, the new Missouri licensed funeral director-in-charge and the former Missouri licensed funeral director-in-charge, jointly or individually, shall notify the board of the change within thirty (30) days of the date when the change first occurs. Failure to notify the board shall be considered a violation of this rule on the part of each Missouri funeral director licensee and on the part of the Missouri licensed funeral establishment. A change in the Missouri licensed funeral director-in-charge does not require a new Missouri licensed funeral establishment license.

(8) Within thirty (30) days after an application for a Missouri licensed funeral establishment has been received in the board's office, the board shall cause the establishment to be inspected. The board shall act on the application and, within thirty (30) days after the application was received in the board's office, the applicant will be advised whether the license is granted or denied. If an applicant determines the establishment will not meet the qualifications for inspection or licensure within the thirty (30)-day application period, up to two (2) thirty (30)-day extensions of the application may be requested by the applicant in writing to the board before the application expires. Each request for an extension must be received by the board prior to the expiration of the application or extension period.

(9) The establishment license issued by the board is effective for a fixed place or establishment and for a specific name of a person or entity authorized to conduct business in Missouri and may include one (1) "doing business as" name. The license issued by the board shall be displayed in a conspicuous location accessible to the general public at that location. Whenever the ownership, location or name of the Missouri licensed establishment is changed, a new license must be obtained. If the Missouri licensed funeral establishment maintains a chapel, preparation room or other facility in a building or portion physically separated from and located at a place designated by an address differing from the office, chapel or other facilities

of the applicant, the chapel, preparation room or other funeral facility otherwise located shall be deemed to be a separate funeral establishment. Nothing contained in this rule shall be construed or interpreted to require a separate registration for a building if it is joined or connected by a private passage, walk or driveway existing between the registered establishment and the other building.

(A) If a change of ownership is caused by the elimination of one (1) or more owners, for whatever reason (death, sale of interest, divorce, etc.) without the addition of any new owner(s), it is not necessary to obtain a new establishment license. However, a new application for an establishment license form shall be filed as an amended application within thirty (30) days after the change of ownership. This form shall be filled out completely with correct, current information.

(B) A corporation is considered by law to be a separate person. If a corporation owns a Missouri licensed funeral establishment, it is not necessary to obtain a new establishment license or to file an amended application for an establishment license if the owners of the stock change. However, as a separate person, if a corporation begins ownership of a Missouri licensed funeral establishment or ceases ownership of a Missouri licensed funeral establishment, a new establishment license must be obtained regardless of the relationship of the previous or subsequent owner to the corporation.

(10) The professional business and practice of funeral directing shall be conducted only from a fixed place or establishment that has been licensed by the board except as permitted by section 333.071, RSMo. The Missouri licensed funeral establishment physical facility shall be under the general management and supervision of the Missouri licensed funeral director-in-charge. Every Missouri licensed funeral establishment must provide and allow access to any member or duly authorized agent of the board for the purpose of inspection as provided by sections 333.061 and 333.101, RSMo. If any representative of the Missouri licensed funeral establishment fails or refuses to provide or allow access, it shall be considered a violation of this rule by the Missouri licensed funeral establishment and by the Missouri licensed funeral director-in-charge of the Missouri licensed funeral establishment. Additionally, if the Missouri licensed funeral establishment representative who fails or refuses to provide or allow access holds any license or registration issued by this board, that person shall be in violation of this rule.

(11) No one licensed by this board may be employed in any capacity by an unlicensed funeral establishment. Violation of this section will be deemed misconduct in the practice of embalming or funeral directing.

(12) Only one (1) license will be issued by this board for any physical facility that is considered to be a Missouri licensed funeral establishment as defined by statute and rule. If a Missouri funeral establishment licensed by this board is destroyed by fire or some other disaster or act of God, the board, in its discretion, for a period of not more than six (6) months, may allow the Missouri licensed funeral establishment to continue its operation from another Missouri licensed funeral establishment or from a facility that has not been licensed as a funeral establishment if the facility meets the minimum requirements for the functions outlined in section (2) of this rule.

(13) A Missouri licensed funeral establishment may use only its registered name in any advertisement or holding out to the public.

(A) All signs, stationery and any advertising in newspapers, publications or otherwise, must include the name(s) of the Missouri licensed funeral establishment registered with the board. Advertisements that do not comply with this section shall be deemed misleading for the purposes of section 333.121, RSMo.

(B) It shall not be deemed to be misleading if a listing appears in a telephone directory or national directory if the name of the

Missouri licensed funeral establishment changes after the listing has been placed, but before a new directory is published.

(14) The interior and exterior of the Missouri licensed funeral establishment physical plant shall be kept free and clean of litter, dirt, debris and clutter or other objects or conditions which present a potential or actual hazard to the health, safety or welfare of the public.

(15) The interior and exterior of the Missouri licensed funeral establishment physical plant shall be maintained in a manner that does not present a potential or actual hazard to the health, safety or welfare of the public.

(16) Each Missouri licensed funeral establishment used solely or partially for embalming shall contain a preparation room that shall be devoted to activities incident or related to the preparation or the embalming, or both, of dead human remains and shall be equipped and maintained as described in 4 CSR 120-2.090.

(17) No person shall be permitted in a preparation room during the course of embalming a dead human body except the employees of the Missouri licensed funeral establishment in that the human body is being embalmed, members of the family of the deceased, and persons authorized by the members of the family of the deceased, or any person otherwise authorized by law.

(18) Each Missouri licensed funeral establishment which is used solely or partially for cremations shall be equipped and maintained as described in 4 CSR 120-2.071.

(19) Each Function C establishment shall contain a separate area for the care and custody of dead human remains and a separate area for confidential conferences to arrange funeral services. The Function C establishment shall have on-site equipment necessary for arranging funeral services including tables or desks and chairs for funeral service arrangement conferences and file cabinets for the confidential storage of funeral records.

(20) Each Function C or Function D establishment shall contain a restroom, available drinking water, and an area where funeral ceremonies or visitations may be conducted. The establishment must be equipped with seating for visitations or funeral ceremonies, casket bier, register book stand, officiate stand, flower display stands and music-producing equipment.

(21) According to section 333.121.2(17), RSMo, the State Board of Embalmers and Funeral Directors may impose disciplinary action for failure to obtain authorization to embalm from the person entitled to custody or control of the body, if the body is embalmed. If the body is not embalmed, a Missouri licensed funeral establishment shall not hold the unembalmed body for any longer than twenty-four (24) hours unless the unembalmed body is refrigerated in a cooling unit at a temperature of forty degrees Fahrenheit (40° F) or cooler or encased in an airtight metal or metal-lined burial case, casket or box that is closed and hermetically sealed. If the deceased gave written authorization to embalm and did not revoke the authorization, the authorization shall satisfy this requirement. If the deceased did not give written authorization to embalm, the next of kin of the deceased may give authorization to embalm. Authorization to embalm may be given by the next of kin prior to the death of the person whose body is to be embalmed. Authorization to embalm given prior to death may be in any written document, including a preneed contract.

(A) The next of kin, for purposes of this rule, shall be as defined in section 194.119.2, RSMo.

(B) Any person or friend who assumes responsibility for the disposition of the deceased's remains if no next of kin assumes such responsibility may authorize to embalm the deceased;

(C) The county coroner or medical examiner pursuant to the provisions of Chapter 58, RSMo may authorize to embalm the deceased;

(D) If the body is required to be buried at public expense, the body shall be disposed of according to the terms of section 194.150, RSMo;

(E) If the Missouri licensed funeral establishment receives no authorization to embalm from any of the persons identified in subsections (21)(A), (B), or (C) of this rule, the Missouri licensed funeral establishment may proceed with embalming if it has attempted to locate a person from whom authorization to embalm may be obtained for at least six (6) hours and it has a written statement from city, county, or state law enforcement officials that they have assisted the Missouri licensed funeral establishment in attempting to locate such a person. However, the Missouri licensed embalmer may proceed to embalm sooner if the condition of the body is such that waiting for six (6) hours would substantially impair the ability to effectively embalm the body or if the deceased died as a result of a communicable disease, was subject to isolation at the time of death; and

(F) If a Missouri licensed embalmer proceeds to embalm a body under the provisions of subsection (21)(E), the Missouri licensed funeral establishment which employs the Missouri licensed embalmer shall not require payment for the embalming unless the funeral arrangements that are subsequently made authorized the embalming.

(22) Each Missouri licensed funeral establishment shall maintain documentation of the following information regarding authorization to embalm a body which is embalmed by or on behalf of the Missouri licensed funeral establishment:

(A) When authorization to embalm is given in writing—

1. The name and signature of the person who is authorizing embalming;
2. The relationship of that person to the deceased;
3. The time and date authorization to embalm was given; and
4. The name and title of the person receiving authorization to embalm on behalf of the Missouri licensed funeral establishment; and

(B) Authorization to embalm must be given in writing if the person authorizing embalming is present in the Missouri licensed funeral establishment or in the physical presence of the person receiving authorization to embalm on behalf of the Missouri licensed funeral establishment. If verbal authorization to embalm is given, the Missouri licensed funeral establishment shall document—

1. The name of the person who is actually authorizing embalming, if different from the person who is verbally communicating authorization to embalm to the Missouri licensed funeral establishment;
2. The relationship of that person to the deceased;
3. The name of the person who is verbally communicating authorization to embalm and that person's relationship to the person who is actually authorizing embalming;
4. The time and date authorization to embalm was given; and
5. The name and title of the person receiving authorization to embalm on behalf of the Missouri licensed funeral establishment.

(23) Each Function C funeral establishment shall maintain on the premises the following documents:

- (A) General price list;
- (B) Preneed contracts which have been cancelled or fulfilled;
- (C) Purchase agreements; and
- (D) Authorizations to embalm or cremate.

(24) Each Function A funeral establishment licensed for embalming shall maintain on the premises in the preparation room an embalming log.

(25) Each Function B funeral establishment licensed for cremation shall maintain on the premises in the cremation area a cremation log.

(26) All documents required by this rule to be maintained, must be maintained on the premises for a minimum of the current calendar year and the previous calendar year. All documents required to be maintained by this rule may be maintained electronically, but all documents shall be stored in such a manner to allow access by the board and so the board, or its assignee, may easily and timely obtain hard copies or electronic copies in a format easily readable by the board, or its assignee.

(27) No dead human body shall be buried, disinterred, interred, cremated, or removed from this state, unless the burial, disinterment, interment, cremation, removal, or other authorized disposition, is performed under the direction of a Missouri licensed funeral establishment or Missouri licensed funeral director, unless otherwise authorized by law. If the disinterment does not require legal notification to the county coroner or medical examiner, a funeral director's presence may not be required.

(28) Whenever a dead human body is donated to a medical or educational institution for medical and/or scientific study and arrangements for return of the body to the legal next of kin have not been made, then delivery of the body to the medical or educational institution shall constitute final disposition. If, however, arrangements for return of the body to the legal next of kin have been made, then final disposition shall be the burial, interment, cremation, or removal of the body out of this state, after the medical or educational institution has returned the body.

(29) The rules in this division are declared severable. If any rule, or section of a rule, is held invalid by a court of competent jurisdiction or by the Administrative Hearing Commission, the remaining provisions shall remain in full force and effect unless otherwise determined by a court of competent jurisdiction or by the Administrative Hearing Commission.

AUTHORITY: sections 333.061, RSMo Supp. 2003, 333.091, 333.111, 333.121 and 333.145, RSMo 2000. Original rule filed Oct. 17, 1975, effective Oct. 28, 1975. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 31, 2003.

PUBLIC COST: This proposed rule is estimated to cost public entities an estimated seven thousand three hundred six dollars and twenty-five cents (\$7,306.25) annually for the life of the rule. 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. A detailed fiscal note, which estimates the cost of compliance with this rule has been filed with the secretary of state.

PRIVATE COST: This proposed rule is estimated to cost private entities an estimated twelve thousand four hundred thirty-four dollars and eighty-nine cents (\$12,434.89) annually for the life of the rule. It is anticipated that the total costs 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. A detailed fiscal note, which estimates the cost of compliance with this rule has been filed with the secretary of state.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the State Board of Embalmers and Funeral Directors, Becky Dunn, Executive Director, 3605 Missouri Boulevard, PO Box 423, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

PUBLIC ENTITY FISCAL NOTE

I. RULE NUMBER

Title 4 -Department of Economic Development
Division 120 - State Board of Embalmers and Funeral Directors
Chapter 2 - General Rules
Proposed Rule - 4 CSR 10-2.070 Funeral Establishments
Chapter 2 - General Rules

Prepared October 23, 2003 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Annual Cost of Compliance
State Board of Embalmers and Funeral Directors	\$7,306.25
Total Annual Cost of Compliance for the Life of the Rule	
	\$7,306.25

III. WORKSHEET

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.

STAFF	ANNUAL SALARY	SALARY TO INCLUDE FRINGE BENEFIT	HOURLY SALARY	COST PER MINUTE
Executive I	\$52,498.80	\$70,400.89	\$33.85	\$0.56
Funeral Establishment Inspector	\$32,592.00	\$43,705.87	\$21.01	\$0.35
Administrative Support Office	\$25,239.60	\$33,846.30	\$16.27	\$0.27
Licensure Technician II	\$22,975.20	\$30,809.74	\$14.81	\$0.25

Expense and Equipment Breakdown

Expense and Equipment Costs

- \$1.37 Application Packet
- \$0.07 Envelope to Mail Packet
- \$1.98 Postage for Mailing Packet
- \$0.05 Inspection Sheets
- \$0.16 Envelope
- \$0.35 Postage

\$3.98 Total Expense and Equipment Per Applicant

Funeral Establishment Application:

The Licensure Technician II spends approximately 4 hours and 45 minutes annually answering inquiries and assisting the Funeral Establishment Inspector with processing the application. The Executive Director spends approximately 1 hour and 30 minutes performing a final review of the application, signs letters prepared by the Licensing Technician II and reviews all inspection sheets. The Funeral Establishment Inspector spends approximately 71 hours and 45 minutes annually answering inquiries, mailing application packets, reviewing applications and supporting documentation, reviewing inspection reports, prepare violations, updating licensing system, performing inspections, preparing licensure letters and issuing licenses. The board receives approximately 36 new establishment applications a year. The board currently licensed 714 active establishments. A summary of the expenses and equipment costs are provided above. Based on the data presented, the board estimates the following costs:

Licensure Technician II:	\$70.85
Executive Director:	\$46.26
Funeral Establishment Inspector	\$1,507.64
Expense and Equipment Costs:	\$5,681.50

IV. ASSUMPTION

1. The above figures were based on FY03 actuals. The estimates contained in this fiscal notes represent costs associated with new applicants unless otherwise specified.
2. Due to the number of changes in the rule's organizational structure, the rule is being rescinded and readopted. The rescission and readoption should not impose any greater burden on the State Board of Embalmers and Funeral Directors than is currently being incurred and is reported in this fiscal note.
3. The division's central investigative unit assists the board with the investigation of complaints as well as annual inspections. Because the number of complaints for embalmers and funeral directors vary from year to year and the division does not track the percentage of time spent per profession for the board, it is impossible to estimate the exact dollar amount the board spends on each rule related to the investigative/inspection services.
4. 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 120 - State Board of Embalmers and Funeral Directors
Chapter 2 - General Rules
Proposed Rule - 4 CSR 10-2.070 Funeral Establishments
Chapter 2 - General Rules

Prepared October 23, 2003 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Estimate the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by type of the business entities which would likely be affected:	Estimated cost of compliance with the rule by affected entities:
41	Applicants (Funeral Establishment Application @ \$300)	\$12,300.00
41	Applicants (Correspondence to the Board @ \$.05)	\$2.05
41	Applicants (Notary @ \$2.50)	\$102.50
41	Applicants (Postage @ \$.37 x 2)	\$30.34
Estimated Annual Cost of Compliance for the Life of the Rule		\$12,434.89

III. WORKSHEET

See table above.

IV. ASSUMPTION

1. The estimated number of applicants affected by this rule are based on FY03 figures.
2. Due to the number of changes in the rule's organizational structure, the rule is being rescinded and readopted. The rescission and readoption should not impose any greater burden on private entities than is currently being incurred and is reported in this fiscal note.
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.

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 120—State Board of Embalmers and Funeral
Directors**

Chapter 2—General Rules

PROPOSED AMENDMENT

4 CSR 120-2.071 Funeral Establishments Containing a Crematory Area. The board is proposing to amend sections (2) and (3), add new sections (4), (5), (8) and (28), renumber the remaining sections accordingly, and amend the newly renumbered sections (6), (9)–(13), (15), (24) and (25).

PURPOSE: This amendment provides clarification of the requirements of an establishment containing a crematory and amends language based on changes in the Department of Health and Senior Services' laws relating to the next of kin.

(2) No body shall be cremated in this state *[unless a license has been issued previously by this board for the facility in which the body is cremated to be operated as a funeral establishment] except in a funeral establishment licensed by the board as a Function B establishment.*

(3) Each Missouri licensed funeral establishment *[which] that* contains a crematory area shall maintain permanent records which shall include:

(B) Information regarding the cremation which shall include:

1. The full name of the deceased;
2. The last place of residence of the deceased;
3. The place of death of the deceased;
4. The place of birth of the deceased;
5. The date and place of the funeral;
6. The name of the Missouri licensed funeral director with whom the arrangements were made;
7. The name of the person(s) who made the arrangements with the Missouri licensed funeral director and the relationship to the deceased;
8. The date and time when cremation was begun;
9. The name and address of the person to whom the cremated remains were released or the location where the cremated remains were placed; and
10. If the cremated remains were delivered or placed other than by an employee of the Missouri licensed funeral establishment, the name of the person who made the delivery or placement or the name of the business by which the cremated remains were shipped along with the receipt number.

(4) Cremation log—a written record or log kept in the cremation area available at all times in full view, which will include the following:

- (A) The name of the deceased to be cremated;
- (B) The name of the Missouri licensed establishment where the body is cremated;
- (C) The date and time the body arrived at the crematory;
- (D) The date and time the cremation took place;
- (E) The name and signature of the Missouri licensed funeral director supervising the cremation; and
- (F) The supervising Missouri licensed funeral director's license number.

(5) All records required to be maintained by this rule shall be maintained on the premises of the Missouri licensed funeral establishment for a minimum of the current calendar year and the preceding calendar year. All documents required to be maintained by this rule may be maintained electronically, but all documents shall be stored in such a manner to allow access by the

board, or its assignee, and so the board, or its assignee, may easily and timely obtain hard copies or electronic copies in a format easily readable by the board, or its assignee.

[(4)] (6) If the deceased gave written authorization to cremate and did not revoke the authorization, that authorization shall satisfy the requirement for authorization to cremate. If the deceased did not give written authorization to cremate, the next of kin of the deceased **or the county coroner or medical examiner pursuant to Chapter 58, RSMo**, may give authorization to cremate. Authorization to cremate given prior to the death may be in any written document, including a preneed contract.

[[A)] The next of kin, for purposes of this rule, shall be *[the following person(s), in the priority listed, if that person is over the age of eighteen (18) years and is mentally competent:]* as defined in section 194.119.2, RSMo.

1. Surviving spouse;
2. Any surviving child;
3. Any surviving parent. If the deceased was a minor, a surviving parent who had custody of the minor;
4. Any surviving brother or sister; or
5. Any surviving relative by blood or marriage;

(B) Any person or friend who assumes responsibility for the disposition of the deceased's remains if no next of kin assumes such responsibility;

(C) The county coroner or medical examiner pursuant to the provision of Chapter 58, RSMo; and

[(D)] (7) If the Missouri licensed funeral establishment receives no authorization for cremation from any of the persons identified in *[subsections (4)(A), (B), or (C)]* section (6) of this rule, the Missouri licensed funeral establishment may proceed with cremation if it has attempted to locate a person from whom authorization to cremate may be obtained for at least ten (10) days and it has a written statement from city, county, or state law enforcement officials that they have assisted the Missouri licensed funeral establishment in attempting to locate a person from whom authorization for cremation could be obtained but have been unable to locate such a person. However, the Missouri licensed funeral establishment may proceed with cremation prior to the elapse of twenty-four (24) hours if the deceased died as a result of a communicable disease, was subject to isolation at the time of death, and has not been properly embalmed in accordance with 19 CSR 20-24.010.

(8) If a Missouri licensed embalmer proceeds to embalm a body under the provisions in accordance with the provisions of 4 CSR 120-2.070(21), a Missouri licensed funeral establishment which employs the Missouri licensed embalmer shall not require payment for the embalming unless the funeral arrangements that are subsequently made authorized the embalming.

[(5)] (9) The cremation chamber shall be constructed specially to withstand high temperatures and protect the surrounding structure.

[(6)] (10) The crematory area shall include a work center area equipped with forced air ventilation adequate to protect the health and safety of the operator and any other person(s) present.

[(7)] (11) No person shall be permitted in the crematory area while any dead human body is in the crematory area awaiting cremation or being cremated or while the cremation remains are being removed from the cremation chamber except the Missouri licensed funeral director, employees of the Missouri licensed funeral establishment in which the body is being cremated, members of the family of the deceased and persons authorized by the members of the family of the deceased, or any other person authorized by law.

[(8)] (12) When there is no **Missouri licensed** funeral establishment employee in the **crematory** area, the crematory area shall be secure from entry by persons other than **Missouri licensed** funeral establishment employees.

[(9)] (13) Each body shall be delivered to the crematory in a cremation container, [or] **plastic pouch, cardboard cremation container, casket made of wood[,] or wood product or metal. If a metal container or casket is used the purchaser must be informed of the disposition of the metal container or casket after cremation.** The cremation container shall be composed of a combustible, nonexplosive, opaque material which is adequate to assure protection to the health and safety of any person in the crematory area. The casket or container shall be leak resistant if the body enclosed is not embalmed or if death was caused by a contagious disease.

[(10)] (14) The **Missouri licensed** funeral director with whom the arrangements are made shall make inquiry to determine the presence or existence of any body prosthesis, bridgework or similar items.

[(11)] (15) No body shall be cremated with a pacemaker in place. The **Missouri licensed** funeral director with whom the arrangements are made shall take all steps necessary to ensure that any pacemakers are removed prior to cremation.

[(12)] (16) No body shall be cremated until after a completed death certificate has been filed with the local registrar as required by section 193.175, RSMo.

[(13)] (17) Each cremation container or casket into which a body is placed shall be placed into the cremation chamber with the body and be cremated and each cremation box or urn into which the cremated remains are placed after removal from the cremation chamber shall be labeled clearly with the full name of the deceased and the name of the **Missouri licensed** funeral establishment with whom the arrangements were made.

[(14)] (18) The remains of only one (1) body shall be in the cremation chamber at one (1) time unless simultaneous cremation has been authorized in writing by the person(s) entitled to custody or control of each body.

[(15)] (19) Following the completion of the cremation process, all residual of the cremation process including the cremated remains and any other matter shall be thoroughly removed from the cremation chamber prior to placing another body in the cremation chamber.

[(16)] (20) If the cremated remains do not fill the interior of the cremation box adequately, the extra space may be filled with shredded paper or clean absorbent cotton.

[(17)] (21) If the cremated remains will not fit within the receptacle designated in the arrangements, the remainder shall be placed in a separate receptacle or, if written permission is obtained from the person entitled to custody or control of the body, disposed of in some other manner.

[(18)] (22) The cremation box shall be composed of rigid materials which shall be sealed in order to prevent the leakage of cremated remains or the entry of foreign objects.

[(19)] (23) If the cremated remains are to be shipped, the cremation box shall be packed securely in a corrugated cardboard box which is securely closed with tape acceptable to the shipper.

[(20)] (24) Cremated remains shall be shipped only by a method which has an internal tracing system available and which provides a receipt signed by the person accepting delivery.

[(21)] (25) Each urn into which cremated remains are placed shall be made of a durable material which shall enclose the cremated remains entirely.

[(22)] (26) Each **Missouri licensed** funeral establishment which comes into possession of cremated remains, whether or not it is the **Missouri licensed** funeral establishment at which the cremation occurred, shall retain the cremated remains until they are delivered, placed or shipped pursuant to the instructions of the person(s) entitled to custody or control of the body. However, nothing in this rule shall prohibit a **Missouri licensed** funeral establishment from disposing of cremated remains in another fashion if the **Missouri licensed** funeral establishment has obtained written permission for other disposition contingent upon the **Missouri licensed** funeral establishment attempting to dispose of the cremated remains according to instructions but being unable to do so through no fault of the **Missouri licensed** funeral establishment and provided that other disposition shall not occur prior to thirty (30) days after cremation.

[(23)] (27) Nothing in this rule shall be construed to prohibit a **Missouri licensed** funeral establishment which contains a crematory area from establishing more restrictive standards for its own operation.

(28) The rules in this division are declared severable. If any rule, or section of a rule, is held invalid by a court of competent jurisdiction or by the Administrative Hearing Commission, the remaining provisions shall remain in full force and effect unless otherwise determined by a court of competent jurisdiction or by the Administrative Hearing Commission.

AUTHORITY: sections 333.061, RSMo Supp. 2003, 333.111 [RSMo Supp. 1997] 333.121 and 333.145, RSMo [1994] 2000. Original rule filed May 29, 1987, effective Sept. 11, 1987. Amended: Filed Jan. 15, 1988, effective April 11, 1988. Amended: Filed April 16, 1990, effective Sept. 28, 1990. Amended: Filed Nov. 15, 1991, effective April 4, 1992. Amended: Filed Sept. 3, 1996, effective April 30, 1997. Amended: Filed Dec. 22, 1997, effective June 30, 1998. Amended: Filed Dec. 31, 2003.

PUBLIC COST: This proposed amendment is estimated to cost state agencies or political subdivisions less than five hundred dollars (\$500) in the aggregate.

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Board of Embalmers and Funeral Directors, Becky Dunn, Executive Director, 3605 Missouri Boulevard, PO Box 423, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 120—State Board of Embalmers and Funeral
Directors
Chapter 2—General Rules**

PROPOSED AMENDMENT

4 CSR 120-2.080 Written Statement of Charges. The board is proposing to amend sections (1), (2) and (4) and add new sections (3) and (5).

PURPOSE: This amendment clarifies the written statement of charges at the time of need.

(1) Every **Missouri licensed** funeral director *[in charge of arranging for any funeral service,]* **responsible for providing funeral services** or arranging for the delivery of any funeral merchandise, shall give or cause to be given to the person(s) making such arrangements a written statement of charges for the funeral merchandise and **funeral** services selected.

(2) The written statement of charges shall be completed and given to the person(s) making such arrangements at the time such arrangements are completed but prior to the time of rendering *[the]* **funeral** services or providing the merchandise and it shall contain, at a minimum, the following information:

(A) The name and address of the **Missouri licensed** funeral establishment in charge of the arrangements, **and/or** the name and address of the **Missouri licensed** funeral establishment in charge of providing the merchandise selected, including the name and signature of the **Missouri licensed** funeral director *[in charge of]* **making** the arrangements or providing the merchandise;

(C) The date of the purchaser's and **Missouri licensed** funeral director's signature;

(E) The price of the service(s) selected and the price of the supplemental (additional) items *[of service];*

(3) The written statement of charges required by this rule shall be signed and dated by the person making the at need arrangements and shall reflect current pricing that may be offset by a preneed contract. It shall be considered misconduct in the practice of funeral directing to use a preneed contract in lieu of the written statement of charges required by this rule.

[[3]] **(4)** Violations of this rule will be deemed misconduct in the practice of funeral directing.

(5) The rules in this division are declared severable. If any rule, or section of a rule, is held invalid by a court of competent jurisdiction or by the Administrative Hearing Commission, the remaining provisions shall remain in full force and effect unless otherwise determined by a court of competent jurisdiction or by the Administrative Hearing Commission.

AUTHORITY: sections 333.111, RSMo Supp. 1997] and 333.145, RSMo [1994] 2000. Original rule filed Oct. 17, 1975, effective Oct. 28, 1975. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 31, 2003.

PUBLIC COST: This proposed amendment is estimated to cost state agencies or political subdivisions less than five hundred dollars (\$500) in the aggregate.

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Board of Embalmers and Funeral Directors, Becky Dunn, Executive Director, 3605 Missouri Boulevard, PO Box 423, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 120—State Board of Embalmers and Funeral Directors

Chapter 2—General Rules

PROPOSED AMENDMENT

4 CSR 120-2.090 Preparation Rooms/Embalming Room. This board is proposing to amend section (1), add new sections (4), (14) and (15), renumber the remaining sections accordingly, amend the newly renumbered sections (5), (6), (10) and (12).

PURPOSE: This amendment clarifies requirements for an establishment relating to the preparation room.

(1) Whenever used in this rule, the phrase preparation room refers to that room in a **Missouri licensed** funeral establishment where dead human bodies are embalmed.

(4) Each Missouri licensed establishment shall comply with Missouri Department of Health and Senior Services rules and regulations, Missouri Department of Natural Resources rules and regulations, and all other applicable county, city, municipal and state rules and regulations relating to plumbing, sewage and liquid waste, solid waste disposal and disposal of body parts.

[[4]] **(5) Plumbing.**

(A) All plumbing must be sized, installed and maintained so as to carry adequate quantities of water throughout the **Missouri licensed** funeral establishment, prevent contamination of the water supply, properly convey sewage and liquid waste from the preparation room to the sewage disposal system and prevent creation of an unsanitary condition or nuisance.

(B) All plumbing must be sized, installed and maintained in accordance with local plumbing laws and ordinances. Where local codes are not in force, the *[BOCA National Plumbing Code published by Building Officials & Code Administrators International, Inc.]* **Missouri licensed funeral director shall contact the International Code Council (ICC), Chicago District Office, or its designee, 4051 West Flossmoor Road, Country Club Hills, IL 60478-5795 [shall apply] or current address, for additional requirements.**

[[5]] **(6) Sewage and Liquid Waste Disposal.**

(A) All sewage and water-carried wastes from the entire **Missouri licensed funeral** establishment, including the preparation room, must be disposed of in a public sewage system or an approved disposal system which is constructed, operated and maintained in conformance with the minimum standards of the Department of Health and Senior Services.

(B) The following aspirators are approved for preparation rooms:

1. Electric aspirators;

2. Water-operated aspirators. All water-operated aspirators shall be protected from back siphonage by the minimum of an atmospheric vacuum breaker approved by the American Society of Sanitary Engineering or by the *Uniform Plumbing Code* and installed a minimum of twelve inches (12") above the maximum possible height of the embalming table; and

3. Water-controlled unit. All water-controlled units shall be installed and maintained according to the *Uniform Plumbing Code*, and properly protected from back siphonage with a backflow prevention device approved by the American Society of Sanitary Engineering or the *Uniform Plumbing Code*.

[[6]] **(7) Solid Waste Disposal.**

(A) Refuse, bandages, cotton and other solid waste materials must be kept in leakproof, nonabsorbent containers which must be covered with tight-fitting lids prior to disposal.

(B) All waste materials, refuse, and used bandage and cotton must be destroyed by reducing to ashes through incineration or must be sterilized and buried. Sterilization may be accomplished by soaking for thirty (30) minutes in a solution of five percent (5%) formaldehyde, one (1) pint of formalin to seven (7) pints of water.

[[7]] (8) Disposal of Body Parts. Human body parts not buried within the casket must be disposed of by incineration in a commercial or industrial-type incinerator or buried to a depth which will insure a minimum of three feet (3') of compacted earth cover (overlay).

[[8]] (9) A mechanical exhaust system is required. Care must be taken to prevent the discharge of exhaust air into an area where odors may create nuisance problems.

[[9]] (10) All preparation rooms and all articles stored in them must be kept and maintained in a clean and sanitary condition. All embalming tables, hoppers, sinks, receptacles, instruments and other appliances used in embalming or other preparation of dead human bodies must be so constructed that they can be kept and maintained in a clean and sanitary condition. The following minimum standards shall apply:

(A) An eye wash kit (bank) *[must be present and operable]* or suitable facilities for quick drenching or flushing of the eyes shall be provided within the area for immediate emergency use;

(B) Facilities must exist for the proper *[sterilization]* disinfection of embalming instruments and the embalming table;

(C) Facilities for the proper storage of embalming instruments must be maintained. At a minimum, a chest or cabinet must be used for the storage of embalming instruments;

(D) All types of blocks used in positioning a dead human body on an embalming table must be made of nonabsorbent material. All wooden blocks must be sealed and painted with enamel; and

(E) When not in use, embalming tables must be cleaned, *[sterilized]* disinfected and covered with a sheet.

[[10]] (11) Food and Beverages.

(A) There may be no direct opening between the preparation room and any room where food and beverages are prepared or served.

(B) The Department of Health and Senior Services sanitation laws and rules governing food sanitation apply to the operation, construction and sanitation of food service facilities, where provided for the comfort and convenience of a funeral party; provided, however, that coffee service utilizing single-service cups and spoons and a coffee maker of easily cleanable construction shall be deemed acceptable where this service is the only food service offered.

(C) A Missouri licensed funeral home providing coffee service utilizing single-service items and coffeemakers of easily cleanable construction must provide a water supply faucet at a suitable sink of easily cleanable construction for the filling and cleaning of this equipment in an area separate from the preparation room and restrooms.

[[11]] (12) A separate wash sink (separate from slop drain sink) must be present or in close proximity to the preparation room for a personal hand wash facility for Missouri licensed embalmers and the disinfecting of embalming equipment. If the wash sink is not present in the preparation room, it shall be in a location close to the preparation room which is not accessible to the public and it shall be at a distance of no further than ten feet (10') from the door of the preparation room.

[[12]] (13) Preparation rooms shall contain only the articles, instruments, and items that are necessary for the preparation, embalming, and final disposition of dead human bodies.

(14) Preparation rooms shall be secured at all times to prevent entrance by unauthorized persons.

(15) The rules in this division are declared severable. If any rule, or section of a rule, is held invalid by a court of competent jurisdiction or by the Administrative Hearing Commission, the remaining provisions shall remain in full force and effect unless otherwise determined by a court of competent jurisdiction or by the Administrative Hearing Commission.

AUTHORITY: sections 192.020, [333.061.1(3)] and 333.III.1, RSMo [1994] 2000 and 333.061 [2(3)] RSMo Supp. 2003. Original rule filed Oct. 17, 1975, effective Oct. 28, 1975. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 31, 2003.

PUBLIC COST: This proposed amendment is estimated to cost state agencies or political subdivisions less than five hundred dollars (\$500) in the aggregate.

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Board of Embalmers and Funeral Directors, Becky Dunn, Executive Director, 3605 Missouri Boulevard, PO Box 423, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 120—State Board of Embalmers and Funeral Directors
Chapter 2—General Rules**

PROPOSED AMENDMENT

4 CSR 120-2.100 Fees. The board is proposing to amend section (1).

PURPOSE: Since the embaler state board examination fees will be paid directly to the International Conference of Funeral Service Examination Boards, Inc. the board is removing this fee from their fee schedule. This rule is also being amended to change the title of the funeral director practical examination.

(1) The following fees hereby are established by the State Board of Embalmers and Funeral Directors:

- (B) Embalmer State Board Examination Administration Fee *[(per section) \$95.00]* \$ 25.00
- (C) Embalmer *[Apprenticeship Registration]* Application Fee \$200.00
- (G) Missouri Law Examination Administration Fee *[\$70.00]* \$ 25.00
- (I) Funeral Director Limited License Application Fee \$200.00

[[I]] (J) Funeral Director *[Practical]* Missouri Funeral Service Arts Section Examination Administration Fee *[\$95.00]* \$ 25.00

[[J]] (K) Funeral Director Reciprocity Application Fee \$300.00

[[K]] (L) Funeral Director Biennial Renewal Fee \$200.00

[[L]] (M) Reactivation Fee (up to one (1) year after lapse) \$100.00

[[M]] (N) Reactivation Fee (up to two (2) years after lapse) \$200.00

[[N]] (O) Establishment Application Fee \$300.00

<i>[(O)]</i> (P) Amended Establishment Application Fee	\$ 25.00
<i>[(P)]</i> (R) Establishment Biennial Renewal Fee	
<i>[Prior to January 1, 2002]</i>	\$ 190.00
<i>[Effective January 1, 2002]</i>	\$ 250.00
<i>[(Q)]</i> (S) Reciprocity Certification Fee	\$ 10.00
(T) Reciprocity Examination Administration Fee	\$ 25.00
<i>[(R)]</i> (U) Duplicate Wallhanging Fee	\$ 10.00
<i>[(S)]</i> (V) Collection Fee for Bad Checks	\$ 25.00
<i>[(T)]</i> (W) Law Book Requests	\$ 5.00*
<i>[(U)]</i> (X) Examination Review Fee	\$ 25.00
(Y) Background Check Fee	
(amount determined by the Missouri State Highway Patrol)	

*This fee will not apply to the initial copy of the law book which is automatically mailed to all applicants for licensure and to educational institutions of mortuary science. Furthermore, this fee will not be charged to licensees or any other individual, for additions or corrections to the law book after the initial copy is mailed.

AUTHORITY: section 333.111.1, RSMo 2000. Emergency rule filed June 30, 1981, effective July 9, 1981, expired Nov. 11, 1981. Original rule filed June 30, 1981, effective Oct. 12, 1981. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 31, 2003.

PUBLIC COST: This proposed amendment is estimated to cost state agencies or political subdivisions less than five hundred dollars (\$500) in the aggregate.

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Board of Embalmers and Funeral Directors, Becky Dunn, Executive Director, 3605 Missouri Boulevard, PO Box 423, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 120—State Board of Embalmers and Funeral Directors Chapter 2—General Rules

PROPOSED AMENDMENT

4 CSR 120-2.110 Public Complaint Handling and Disposition Procedure. The board is amending sections (1), (2), (4) and (6).

PURPOSE: This amendment changes the text of the rule to be consistent with the terminology used by the board.

(1) The State Board of Embalmers and Funeral Directors shall receive and process each complaint made against any licensee, permit holder, registrant of the board or unlicensed individual or entity, which complaint alleges certain acts or practices which may constitute one (1) or more violations of the provisions of Chapter 333, RSMo. Any member of the public or the profession, or any federal, state or local officials may make and file a complaint with the board. Complaints shall be received from sources outside Missouri and processed in the same manner as those originating within Missouri. No member of the State Board of Embalmers and Funeral Directors shall file a complaint with this board while s/he holds that office, unless that member excuses him/herself from further board deliber-

ations or activity concerning the matters alleged within that complaint. The executive *[secretary]* **director** or any staff member of the board may file a complaint pursuant to this rule in the same manner as any member of the public.

(2) Complaints should be mailed or delivered to the following address: Executive *[Secretary]* **Director**, State Board of Embalmers and Funeral Directors, 3605 Missouri Boulevard, P./O./ Box 423, Jefferson City, MO 65102-0423. However, actual receipt of the complaint by the board at its administrative offices in any manner shall be sufficient. Complaint may be made based upon personal knowledge, or upon information and belief, reciting information received from other sources.

(4) Each complaint received under this rule shall be logged in a book **and/or database** maintained by the board for that purpose. Complaints shall be logged in consecutive order as received. The logbook **and/or database** shall contain a record of each complainant's name and address; the name and address of the subject(s) of the complaint; the date each complaint is received by the board; a brief statement of the acts complained of, including the name of any person injured or victimized by the alleged acts or practices; a notation whether the complaint resulted in its dismissal by the board or informal charges being filed with the Administrative Hearing Commission; and the ultimate disposition of the complaint. This logbook **and/or database** shall be a closed record of the board.

(6) The chairman of the board, from time-to-time and as s/he deems necessary, may instruct the board inspector/investigator to investigate any complaint before the complaint has been considered at a regularly scheduled board meeting. The inspector/investigator shall **provide a report of** any actions taken to the board at its next regularly scheduled meeting.

AUTHORITY: sections [4.16(6) of the Omnibus State Reorganization Act of 1974, Appendix B, RSMo 1986] 333.111.1., RSMo [Supp. 1993] 2000 and 620.010.15(6), RSMo Supp. 2003. Original rule filed Jan. 13, 1982, effective April 11, 1982. Amended: Filed Dec. 4, 1989, effective March 11, 1990. Amended: Filed Dec. 31, 2003.

PUBLIC COST: This proposed amendment is estimated to cost state agencies or political subdivisions less than five hundred dollars (\$500) in the aggregate.

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Board of Embalmers and Funeral Directors, Becky Dunn, Executive Director, 3605 Missouri Boulevard, PO Box 423, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 120—State Board of Embalmers and Funeral Directors Chapter 2—General Rules

PROPOSED AMENDMENT

4 CSR 120-2.115 Procedures for Handling Complaints Against Board Members. The board is proposing to amend sections (11) and (12).

PURPOSE: This amendment clarifies a procedure for the receipt, handling and disposition of complaints filed against members of the board.

(11) The provisions of sections (1)–(10) of this rule shall apply to any complaint against a **Missouri licensed** funeral establishment at which a member of the board is employed or with which a member of the board is associated.

(12) The provisions of sections (1)–(10) of this rule shall apply to any complaint against any preneed registrant by which a member of the board is employed or with which a member of the board is associated, including, but not limited to, a complaint against a preneed seller who sells for a **Missouri licensed** funeral establishment with which a member of the board is associated. A board member will be considered to be employed by or associated with a preneed registrant if the board member receives a salary or wages from the preneed registrant or if a board member has an ownership interest in a preneed registrant. However, these procedures shall not apply to a board member who only receives commissions from the preneed registrant. Each member of the board shall keep the board's executive director notified of the preneed registrants by which the board member is employed and with which the board member is associated.

AUTHORITY: section 333.III[.1.], RSMo [Supp. 1993] 2000. Original rule filed Dec. 4, 1989, effective March 11, 1990. Amended: Filed April 16, 1990, effective Nov. 30, 1990. Amended: Filed April 2, 1992, effective Sept. 6, 1992. Amended: Filed Dec. 31, 2003.

PUBLIC COST: This proposed amendment is estimated to cost state agencies or political subdivisions less than five hundred dollars (\$500) in the aggregate.

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Board of Embalmers and Funeral Directors, Becky Dunn, Executive Director, 3605 Missouri Boulevard, PO Box 423, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 240—Public Service Commission

Chapter 36—Alternative Dispute Resolution Procedural Rules Governing Filings Made Pursuant to the Telecommunications Act of 1996

PROPOSED RULE

4 CSR 240-36.010 Definitions

PURPOSE: This rule defines terms used in the rules comprising Chapter 36. The terms defined in the Telecommunications Act of 1996 are generally applicable to these rules.

- (1) Commission means the Missouri Public Service Commission.
- (2) FCC means the Federal Communications Commission.
- (3) Act means the Telecommunications Act of 1996; unless noted otherwise, all references to sections and subsections are to the Communications Act of 1934 as amended by the 1996 Act.

(4) Mediation means a process in which the commission assists negotiating parties to reach their own solution.

(5) Arbitration means the submission of a dispute to a commission-appointed neutral third party for resolution.

(6) Petition means an application to the commission for relief under the Act.

(7) Request for negotiation means the first date on which an incumbent local exchange carrier receives a written request to negotiate pursuant to the Act.

(8) Arbitrated agreement means the entire agreement filed by the parties in conformity with the arbitrator's report.

(9) Unresolved issues means those issues submitted to be decided by the arbitrator in compliance with subsection 252(b)(4)(C) of the Act.

AUTHORITY: section 386.410, RSMo 2000. Original rule filed Dec. 30, 2003.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Dale Hardy Roberts, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices on or before March 5, 2004, and should include a reference to commission Case No. TX-2003-0487. If comments are submitted via a paper filing, an original and eight (8) copies of the comments are required. Comments may also be submitted via a filing using the commission's electronic filing and information system at <<http://www.psc.state.mo.us/efis.asp>>. A public hearing regarding this proposed rule is scheduled for March 12, 2004, at 10:00 a.m. in Room 310 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rule, and may be asked to respond to commission questions. Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or TDD Hotline 1-800-829-7541.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 240—Public Service Commission

Chapter 36—Alternative Dispute Resolution Procedural Rules Governing Filings Made Pursuant to the Telecommunications Act of 1996

PROPOSED RULE

4 CSR 240-36.020 Filing Procedures

PURPOSE: This rule generally provides for the practice and procedure used in filings made under this chapter.

(1) Except where superceded by rules in this chapter, all petitions filed under this chapter shall also comply with the commission's rules of practice and procedure codified in Chapter 2 of 4 CSR 240.

(2) Only telecommunications carriers, as defined in the Act, providing or in the process of enabling their provision of telecommunications service, as defined in the Act, in the state of Missouri may file petitions under this chapter. Each petition shall include the case number of each case in which the commission has granted to the petitioner a certificate to provide any telecommunications service together with a list of the telecommunications service(s) the petitioner offers in Missouri. In the event the petitioner does not have a certificate to provide telecommunications service in Missouri, the petitioner shall list each case before the commission in which an application for a certificate to provide telecommunications service is pending or, for each telecommunications service(s) it offers in the state of Missouri, a brief explanation of why the petitioner is not certificated by the commission.

AUTHORITY: section 386.410, RSMo 2000. Original rule filed Dec. 30, 2003.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Dale Hardy Roberts, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices on or before March 5, 2004, and should include a reference to commission Case No. TX-2003-0487. If comments are submitted via a paper filing, an original and eight (8) copies of the comments are required. Comments may also be submitted via a filing using the commission's electronic filing and information system at <<http://www.psc.state.mo.us/efis.asp>>. A public hearing regarding this proposed rule is scheduled for March 12, 2004, at 10:00 a.m. in Room 310 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rule, and may be asked to respond to commission questions. Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or TDD Hotline 1-800-829-7541.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 240—Public Service Commission

Chapter 36—Alternative Dispute Resolution Procedural Rules Governing Filings Made Pursuant to the Telecommunications Act of 1996

PROPOSED RULE

4 CSR 240-36.030 Mediation

PURPOSE: This rule provides the procedures for requesting and conducting mediations.

(1) Who May Request Mediation—A party engaged in a negotiation for interconnection, services, or unbundling of network elements

under section 252 of the Act may request that the commission mediate unresolved issues. The request shall identify all parties to the negotiation and any time constraints on resolution of the issues.

(2) Appointment of Mediator—Upon receipt of a request for mediation, the commission, or its designee, shall determine whether all parties to the negotiation agree to mediation. In the event all parties agree to mediation, the commission shall appoint a mediator. The mediator shall be a commissioner or employee of the commission unless the parties consent to the appointment of an outside mediator. The costs of an outside mediator shall be borne equally by the parties. The mediator shall be disqualified from participating as an arbitrator or presiding officer in subsequent proceedings regarding the same negotiation. Presiding officer is defined in 4 CSR 240-2.120.

(3) Parties' Statements—Within fifteen (15) days after the filing of a request for mediation, each party to the negotiation shall submit a written statement to the mediator summarizing the dispute, and shall furnish such other material and information it deems appropriate to familiarize the mediator with the dispute. The mediator may require any party to provide supplemental material or information.

(4) Initial Mediation Conference—Within ten (10) days after the filing of the parties' statements, the mediator shall convene an initial conference. At the initial conference, the parties and mediator shall discuss a procedural schedule, and attempt to identify, simplify and limit the issues to be resolved. Each party should be prepared to informally present its position and arguments to the mediator at the initial mediation conference.

(5) Conduct of the Mediation—The mediator, subject to the rules contained herein, shall control the procedural aspects of the mediation.

(6) Mediations Closed to the Public—To provide for effective mediation, participation in a mediation is strictly limited to the parties involved in the negotiation of the agreement contemplated by sections 251 and 252 of the Act that is the subject of the mediation. All mediation proceedings shall remain closed to the public.

(7) Caucusing—The mediator is free to meet and communicate separately with each party. The mediator shall decide when to hold such separate meetings. The mediator may request that there be no direct communication between the parties or between their representatives regarding the dispute without the concurrence of the mediator.

(8) Joint Meetings—The mediator shall decide when to hold joint meetings with the parties and shall fix the time and place of each meeting and the agenda thereof. Formal rules of evidence shall not apply to these meetings or any portion of the mediation proceeding.

(9) No Stenographic Record—No record, stenographic or otherwise, shall be taken of any portion of the mediation proceeding.

(10) Exchange of Additional Information—If any party has a substantial need for documents or other material in the possession of another party, the parties shall attempt to agree on the exchange of requested documents or other material. Should they fail to agree, either party may request a joint meeting with the mediator who shall assist them in their effort to reach an agreement. The parties may enter into nondisclosure agreements. At the conclusion of the mediation process, upon the request of the party that provided the documents or other material to one or more of the mediating parties the recipients shall return such documents or material to the originating party without retaining copies thereof.

(11) Request for Further Information by the Mediator—The mediator may request any mediating party to provide clarification and additional information necessary to assist in the resolution of the dispute.

(12) Responsibility of the Parties to Negotiate and Participate—Parties are expected to initiate proposals for resolution of the dispute, including proposals for partial resolution. Each party is expected to be able to provide to the mediator that party's justification for the terms of any resolution that it proposes.

(13) Authority of the Mediator—The mediator does not have authority to resolve the dispute, but the mediator shall help the parties attempt to reach a mutually satisfactory resolution. At any time during the mediation, the mediator may recommend to the parties only, oral or written proposals for resolution of the dispute, in whole or in part.

(14) Reliance by Mediator Upon Experts—The mediator may use the services of and rely on experts retained by, or employed by, the commission for purposes of the mediation. Other than subsequent mediations, if any, such experts shall not participate, directly or indirectly, in any subsequent proceedings regarding the same negotiation. The mediator shall disclose to the parties the identities of all experts that provide any services to the mediator for purposes of the mediation.

(15) Impasse and Recommended Resolution of Mediator—In the event that the parties fail to resolve their dispute, the mediator, before terminating the mediation, shall submit to all of the parties a final proposed resolution that addresses all or part of the disputed issues. Each party shall advise the mediator within ten (10) days of the date the mediator issues the proposed resolution as to whether the party accepts the mediator's proposed resolution.

(16) Termination of the Mediation—Any of the following events shall terminate the mediation:

- (A) The mediating parties execution of an agreement that resolves all disputed issues;
- (B) Written service by a party on the mediator and other parties of a declaration that the mediation proceedings are terminated; or
- (C) The mediator's submission to the parties and the commission of a written declaration that further mediation would be futile. Such a declaration shall be conclusory and neutrally worded to avoid any negative inference respecting any party to the mediation.

(17) Confidentiality—

(A) The entire mediation process shall be kept confidential, except for the terms of any final agreements reached during the mediation. The parties, the mediator and any experts used by the mediator, unless all parties agree otherwise, shall not disclose information obtained during the mediation process to anyone that did not participate in the mediation, including, but not limited to, commissioners, commission staff and third parties; provided, however, that the commissioners may be informed in writing, with a copy provided to each party to the mediation, of the identity of the participants and, in the most general manner, the progress of the mediation. Section 386.480, RSMo 2000 is applicable to mediations.

(B) Except as the parties otherwise agree, the mediator, and any experts used by the mediator, shall keep confidential all information contained in any written materials, the materials themselves and any other information submitted to the mediator. All records, reports, or other documents received by the mediator while serving in that capacity shall remain confidential. The mediating parties and their representatives are not entitled to receive or review any such materials or information submitted to the mediator by another party or representative, without the concurrence of the submitting party. At the conclusion of the mediation, the mediator shall return to the submitting party all written materials and other documents which that party provided the mediator.

(C) The mediator shall not divulge records, documents and other information submitted to him or her during the mediation proceeding, nor shall the mediator testify in regard to the mediation, in any

subsequent adversarial proceeding or judicial forum. The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitration, judicial or other proceeding, any of the following:

- 1. Views expressed or suggestions made by another party with respect to a possible resolution of the dispute;
- 2. Statements made by another party in the course of the mediation;
- 3. Proposals made or views expressed by the mediator; or
- 4. The fact that another party had or had not indicated willingness to accept a resolution proposed by the mediator.

(18) Post-Agreement Procedure—The parties shall present to the commission for approval any final agreements reached during mediation. Such proposed agreements, on the face of the agreement, shall:

- (A) Not discriminate against a telecommunications carrier not a party to the mediated agreement;
- (B) Be consistent with the public interest, convenience and necessity; and
- (C) Comply with the commission's service quality standards for telecommunications services as well as the requirements of all other rules, regulations, and orders of the commission.

AUTHORITY: section 386.410, RSMo 2000. Original rule filed Dec. 30, 2003.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Dale Hardy Roberts, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices on or before March 5, 2004, and should include a reference to commission Case No. TX-2003-0487. If comments are submitted via a paper filing, an original and eight (8) copies of the comments are required. Comments may also be submitted via a filing using the commission's electronic filing and information system at <<http://www.psc.state.mo.us/efis.asp>>. A public hearing regarding this proposed rule is scheduled for March 12, 2004, at 10:00 a.m. in Room 310 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rule, and may be asked to respond to commission questions. Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or TDD Hotline 1-800-829-7541.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 240—Public Service Commission
Chapter 36—Alternative Dispute Resolution Procedural
Rules Governing Filings Made Pursuant to the
Telecommunications Act of 1996**

PROPOSED RULE

4 CSR 240-36.040 Arbitration

PURPOSE: This rule provides the procedure for requesting and conducting arbitrations.

(1) Who May Petition for Arbitration—A party to a negotiation entered into pursuant to section 251 of the Act may file a petition for arbitration.

(2) Time to File—A petition for arbitration may be filed not earlier than the one hundred thirty-fifth day nor later than the one hundred sixtieth day following the date on which an incumbent local exchange carrier receives the request for negotiation. The arbitration shall be deemed to begin on the date that the petition for arbitration is filed with the commission. Regardless of proceedings in the arbitration, the parties may continue to negotiate unresolved issues. The party petitioning for arbitration shall provide a copy of the petition to the other party or parties not later than the day the commission receives the petition. If the incumbent local exchange carrier is a “rural carrier” subject to the rural exemption contained in 47 U.S.C. section 251(f), then a commission order terminating the rural exemption must precede any petition for arbitration.

(3) Content—A petition for arbitration must contain:

(A) A statement of each unresolved issue;

(B) A description of each party’s position on each unresolved issue;

(C) A statement of all resolved issues and the terms of resolution;

(D) A proposed agreement addressing all issues, including those upon which the parties have reached an agreement and those that are unresolved. In preparing the proposed agreement, the petitioner should rely on the fundamental organization of clauses and subjects contained in an agreement previously arbitrated and approved by this commission;

(E) Direct testimony that supports the petitioner’s position on each unresolved issue; and

(F) Documentation that the petition complies with the time requirements of 4 CSR 240-36.040(2) and the certificate requirement of 4 CSR 240-36.020(2).

(4) Appointment of Arbitrator—Upon receipt of a petition for arbitration, the commission, or its designee, shall appoint an arbitrator to facilitate resolution of the disputed issues raised by the petition and shall immediately notify the parties of the identity of the arbitrator. The commission, or its designee, may appoint an arbitrator from outside the commission’s employ only with the consent of all parties. The costs of an outside arbitrator shall be borne equally by the parties. The arbitrator shall attend all meetings, conferences and hearings as described in 4 CSR 240-36.040(9) and (10). The arbitrator shall not have participated as a mediator in a negotiation of any of the issues contained in the petition for arbitration.

(5) Style of Arbitration—An arbitrator, acting pursuant to the commission’s authority under section 252(e)(5) of the Act, shall use final offer arbitration, except as otherwise provided in this section:

(A) At the discretion of the arbitrator, final offer arbitration may take the form of either entire package final offer arbitration or issue-by-issue final offer arbitration. The arbitrator in the initial arbitration meeting shall set time limits for submission of final offers and time limits for subsequent final offers, which shall precede the date of a limited evidentiary hearing.

(B) Negotiations among the parties may continue, with or without the assistance of the arbitrator, after final arbitration offers are submitted. Parties may submit to the commission any settlements reached following such negotiations.

(C) To provide an opportunity for final post-offer negotiations, the arbitrator will not issue a decision for a set time after submission to the arbitrator of the final offers by the parties.

(D) Final offers submitted by the parties to the arbitrator shall be consistent with section 251 of the Act, including the rules prescribed by the commission pursuant to that section.

(E) Each final offer shall:

1. Meet the requirements of section 251 of the Act, including the rules prescribed by the commission pursuant to that section;

2. Establish rates for interconnection, services, or access to unbundled network elements according to section 252(d) of the Act, including the rules prescribed by the commission pursuant to that section; and

3. Provide a schedule for the parties to the agreement to implement the terms and conditions.

(F) If a final offer submitted by one (1) or more parties fails to comply with the requirements of this section or if the arbitrator determines in unique circumstances that another result would better implement the Act, the arbitrator has discretion to take steps designed to result in an arbitrated agreement that satisfies the requirements of section 252(c) of the Act, including requiring parties to submit new final offers within a time frame specified by the arbitrator, or adopting a result not submitted by any party that is consistent with the requirements of section 252(c) of the Act, and the rules prescribed by the commission pursuant to that section.

(6) Discovery—Discovery may begin after the filing of a petition for arbitration and may continue up until hearings begin, unless the arbitrator sets a later date. The parties may enter into nondisclosure agreements or request the commission issue a protective order. Unless otherwise provided, the commission’s rules for discovery, 4 CSR 240-2.090, apply to discovery in the arbitration and the arbitrator may permit further discovery procedures at the initial arbitration meeting, section 4 CSR 240-36.040(9). For good cause, the arbitrator may compel responses to data requests; in such cases, the response normally will be required in five (5) working days or less. Advisory staff, as provided in section (12) of this rule, may assist the arbitrator in resolving discovery disputes.

(7) Opportunity to Respond—Pursuant to subsection 252(b)(3) of the Act, any party to a negotiation, which did not file a petition for arbitration (“respondent”), shall file with the commission, within twenty-five (25) days of the date the petition for arbitration is filed with the commission, a response to the petition for arbitration. For each issue listed in the petition, the respondent shall restate the issue followed by the respondent’s position on that issue. The respondent shall also identify and present any additional issues for which the respondent seeks resolution and provide such additional information and evidence necessary for the commission’s review. The respondent shall include, in the response, a document containing the language upon which the parties agree and, show where the parties disagree, and provide both the petitioner’s proposed language (bolded) and the respondent’s proposed language (underscored). Finally, the response must contain direct testimony that supports the respondent’s position on each issue identified in the response that remains unresolved. On the same day that the respondent files a response with the commission, the respondent must serve a copy of the response, and all supporting documentation, on each other party to the negotiation.

(8) Revised Statement of Unresolved Issues—Within seven (7) days after a response is filed, the petitioner and respondent(s) shall jointly file a revised statement of unresolved issues. This statement shall reflect deletions from the list presented by the petitioner in the initial petition and add only issues that appear to be unresolved based on the response(s) to the initial petition.

(9) Initial Arbitration Meeting—The arbitrator may call a mandatory initial meeting for purposes such as setting a procedural schedule, establishing a time limit for submission of final offers, allow the filing of rebuttal testimony and setting a time by which rebuttal testimony may be filed, simplifying issues, or resolving the scope and timing of discovery.

(10) Arbitration Conferences and Hearings—The arbitration shall consist of mark-up conferences and limited evidentiary hearings. At the mark-up conferences, the arbitrator shall hear the concerns of the parties, determine whether the parties can further resolve their differences, and identify factual issues that may require limited evidentiary hearings. The arbitrator shall also announce rulings at the conferences as the issues are resolved. The conduct of the conferences and hearings shall be noticed on the commission's hearings calendar and notice shall be provided to all parties on the service list. Parties are expected to respond to questions from the arbitrator, and the arbitrator's advisory staff. The parties shall be given the opportunity to present witnesses at an on-the-record evidentiary hearing, and to cross-examine the witnesses of the other party(ies) to the arbitration. These conferences and hearings shall commence no later than ten (10) days after all responses to the petition for arbitration are filed with the commission.

(11) Limitation of Issues—Pursuant to subsection 252(b)(4)(A) of the Act, the arbitrator shall limit the arbitration to the resolution of the unresolved issues raised in the petition, the response and the revised statement of unresolved issues (where applicable). However, in resolving these issues, the arbitrator shall ensure that such resolution meets the requirements of the Act.

(12) Arbitrator's Reliance on Experts—The arbitrator may appoint and rely upon advisory staff in the decision-making process. Advisory staff may be selected from commission staff or be retained outside experts. The arbitrator shall inform the parties of the names of the advisory staff members. The advisory staff's role is limited to providing legal advice and other analysis to the arbitrator. Persons that advised a mediator regarding the same negotiation are ineligible to serve as advisors to the arbitrator. Upon the arbitrator's request, and after notice to the parties to the arbitration, the arbitrator may pose technical questions to commission staff members or outside individuals who are not advisory staff. Anyone who answers a technical question is not to advocate a position, but merely to provide neutral input to assist the arbitrator. Technical questions shall be answered either in written form or at an arbitration session attended by both parties. The parties may submit written responses to answers to technical questions in a timely manner as determined by the arbitrator. Advisory staff shall not have *ex parte* contacts with any of the parties individually regarding the issues in the negotiation.

(13) Close of Arbitration—The conference and hearing process shall conclude within ten (10) days of the commencement of the first hearing, unless the arbitrator determines otherwise.

(14) Expedited Stenographic Record—An expedited stenographic record of each evidentiary hearing shall be made. The parties shall equally bear the costs of preparing the expedited transcript.

(15) Authority of the Arbitrator—In addition to authority granted elsewhere in this rule, the arbitrator shall have the same authority in conducting the arbitration as a presiding officer, as defined in 4 CSR 240-2.120, has in conducting hearings under the commission's rules of practice and procedure. Because of the short time frame mandated by the Act, the arbitrator shall have flexibility to set out procedures that may vary from those set out here; however, the arbitrator's procedures must substantially comply with the procedures listed herein. The arbitrator may vary from the schedule in this rule as long as the arbitrator complies with the deadlines contained in the Act.

(16) Participation in the Arbitration Conferences and Hearings—Participation in the arbitration conferences and hearings is strictly limited to the parties in a negotiation pursuant to sections 251 and 252 of the Act, the arbitrator, and the arbitrator's advisory staff. Only those parties involved in the negotiation shall be parties in the

arbitration. Others that formally request to be kept apprised of the arbitration proceeding will be placed on the "Information Only" portion of the service list.

(17) Arbitration Open to the Public—Though participation in arbitration conferences and hearings is strictly limited to the parties listed in the preceding subsection, arbitration hearings shall be held in a public forum, unless circumstances dictate that a hearing, or portion thereof, be conducted in closed session due to presentation or discussion of a party's confidential or proprietary information. Any party to an arbitration that seeks to close any part of an arbitration hearing from the public must make a written request to the arbitrator describing the circumstances that support that party's request for a closed session. The arbitrator shall consult with the commission and rule on such requests.

(18) Filing of Post-Hearing Briefs—Each party to the arbitration may file a post-hearing brief within seven (7) days of the end of the mark-up conferences and hearings. Post-hearing briefs shall present, for each disputed issue, the party's argument in support of adopting its recommended position, with all supporting evidence and legal authorities cited therein. The arbitrator may limit the length of post hearing briefs. The arbitrator shall also establish a time for the filing of reply briefs. The arbitrator may also permit or require the parties to file proposed arbitrator's reports or decisions.

(19) Filing of Arbitrator's Draft Report—Within fifteen (15) days following the hearings, the arbitrator shall file a draft report with the commission. The draft report shall include (a) a concise summary of each issue resolved by the arbitrator and (b) a reasoned articulation of the basis for the decision on each issue, including how the decision meets the standards set in sections 251 and 252 of the Act. The arbitrator shall issue a decision on the merits of the parties' positions on each issue raised by the petition for arbitration and response(s). Unless the result would be clearly unreasonable or contrary to the public interest, for each issue, the arbitrator shall select the position of one of the parties as the arbitrator's decision on that issue.

(20) Filing of Comments on the Arbitrator's Draft Report—Each party and any member of the public may file comments on the arbitrator's draft report within ten (10) days after it is filed with the commission. Such comments shall not exceed twenty (20) pages, unless otherwise authorized by the arbitrator, and shall be directed to perceived factual, legal or technical errors made in the draft report. Commenters shall make specific references to the record to support each claim of error. Comments that merely reargue positions taken in briefs will be accorded no weight. Reply comments, if permitted by the arbitrator, shall be limited to identifying misrepresentations of law, fact or condition of the record contained in comments.

(21) Filing of the Final Arbitrator's Report—The arbitrator shall file a final report with the commission no later than fifteen (15) days after the filing date for comments and not later than two hundred twenty (220) days after the request for negotiation. The final report shall include a statement of findings and conclusions and the reasons or basis therefore, on all the material issues of fact, law or discretion presented on the record. Upon filing, the secretary of the commission shall serve the final report on all parties to the arbitration.

(22) *Ex Parte* Rules Applicable to Arbitration Proceedings—the restrictions on *ex parte* communications contained in 4 CSR 240-4.020 apply to arbitration proceedings held under this rule.

(23) Submission Date—Arbitration proceedings shall be deemed to be submitted for decision with the filing of post-hearing briefs.

(24) Final Arbitrator's Report—The commission may conduct oral argument concerning comments on the arbitrator's final report and may conduct evidentiary hearings at its discretion. The commission

shall approve, reject or modify the arbitrator's final report no later than the two hundred seventieth day following the request for negotiation.

AUTHORITY: section 386.410, RSMo 2000. Original rule filed Dec. 30, 2003.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Dale Hardy Roberts, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices on or before March 5, 2004, and should include a reference to commission Case No.TX-2003-0487. If comments are submitted via a paper filing, an original and eight (8) copies of the comments are required. Comments may also be submitted via a filing using the commission's electronic filing and information system at <<http://www.psc.state.mo.us/efis.asp>>. A public hearing regarding this proposed rule is scheduled for March 12, 2004, at 10:00 a.m. in Room 310 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rule, and may be asked to respond to commission questions. Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or TDD Hotline 1-800-829-7541.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 240—Public Service Commission

Chapter 36—Alternative Dispute Resolution Procedural Rules Governing Filings Made Pursuant to the Telecommunications Act of 1996

PROPOSED RULE

4 CSR 240-36.050 Commission Approval of Agreements Reached by Arbitration

PURPOSE: This rule provides the procedure for commission approval of agreements reached by arbitration.

(1) Filing of Conformed Agreement—Within seven (7) days of the filing of a commission order approving, rejecting or modifying the arbitrator's final report, the parties shall file with the commission the entire agreement that was the subject of the negotiation. The agreement shall conform in all respects to the commission's order. Concurrently with the filing of the conformed agreement, the parties shall each file statements that indicate whether the agreement complies with the requirements of sections 251 and 252 of the Act, Missouri statutes, and the commission's rules.

(2) Within ten (10) days of the filing of the agreement, anyone may file comments concerning the agreement; however, such comments shall be limited to the standards for review provided in section 36.050(3) of this chapter. The commission, upon its own motion, may hold additional informal hearings and may hear oral argument from the parties to the arbitration.

(3) Commission Review of Arbitrated Agreement—Within thirty (30) days following the filing of the arbitrated agreement, the commission shall issue a decision approving or rejecting the arbitrated agreement (including those parts arrived at through negotiations) pursuant to subsection 252(e) of the Act and all its subparts.

(4) Standards for Review—Pursuant to subsection 252(e)(2)(B) of the Act, the commission may reject arbitrated agreements or portions thereof that do not meet the requirements of section 251 of the Act, the Federal Communications Commission's (FCC's) regulations prescribed under section 251 of the Act, or the pricing standards set forth in subsection 252(d) of the Act. Pursuant to subsection 252(e)(3) of the Act, the commission may also reject agreements or portions thereof that violate other requirements of the commission, including, but not limited to, quality of service standards.

(5) Written Findings—The commission's decision approving or rejecting an arbitration agreement shall contain written findings. In the event of rejection, the commission shall address the deficiencies of the arbitrated agreement in writing and may state what modifications of such agreement would make the agreement acceptable.

(6) Application for Rehearing—A party, as defined in section 36.040(15) of this chapter, that wishes to seek review of a commission decision that approves an arbitrated agreement may do so pursuant to section 252(e)(6) of the Act.

(7) Copies of Agreements Reached by Arbitration—Paper copies of arbitrated agreements that have been approved by the commission may be obtained from the commission by request. The commission may charge a reasonable amount for photocopying an agreement, as permitted by applicable law.

AUTHORITY: section 386.410, RSMo 2000. Original rule filed Dec. 30, 2003.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Dale Hardy Roberts, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices on or before March 5, 2004, and should include a reference to commission Case No.TX-2003-0487. If comments are submitted via a paper filing, an original and eight (8) copies of the comments are required. Comments may also be submitted via a filing using the commission's electronic filing and information system at <<http://www.psc.state.mo.us/efis.asp>>. A public hearing regarding this proposed rule is scheduled for March 12, 2004, at 10:00 a.m. in Room 310 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rule, and may be asked to respond to commission questions. Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or TDD Hotline 1-800-829-7541.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 240—Public Service Commission
Chapter 36—Alternative Dispute Resolution Procedural
Rules Governing Filings Made Pursuant to the
Telecommunications Act of 1996**

PROPOSED RULE

**4 CSR 240-36.060 Commission Approval of Agreements Reached
by Mediation or Negotiation**

PURPOSE: This rule provides the procedure for commission approval of agreements reached by mediation or negotiation.

(1) Content—A request for commission approval of an agreement reached by mediation or negotiation shall be filed with the commission and must state that the agreement is a voluntary agreement that is being filed for commission approval under section 252 of the Act. The request shall include a copy of the agreement and a statement of facts sufficient to show that the agreement meets the following: the standards contained in section 252(e) of the Act; requirements of Missouri state law; and the commission's intrastate telecommunications service quality standards or requirements. If applicable, the agreement shall itemize the charges for interconnection and each service or network element that is included in the agreement.

(2) Public Comments—Any member of the public (including the parties to the agreement and competitors) may file a protest concerning the negotiated agreement within thirty (30) days of the filing of the agreement with the commission. Such protest shall be limited to the standards for rejection provided in section 252(e) of the Act, including other state law requirements and compliance with intrastate telecommunications service quality standards or requirements established by the commission.

(3) Time for Commission Action—The commission shall reject or approve the agreement based on the standards contained in section 252(e) of the Act within ninety (90) days of submission of the agreement. Absent commission action within the specified ninety (90) days, the agreement is deemed approved by the commission.

(4) Written Findings—Unless deemed approved, the commission's decision to approve or reject an agreement reached by mediation or negotiation shall contain written findings. In the event of rejection, the commission shall address the deficiencies of the agreement in its decision and may state what modifications would cure the deficiencies.

(5) Copies of Agreements Reached by Mediation or Negotiation—Paper copies of mediated and negotiated agreements that have been approved by the commission may be obtained from the commission by request. The commission may charge a reasonable amount for photocopying an agreement, as permitted by applicable law.

AUTHORITY: section 386.410, RSMo 2000. Original rule filed Dec. 30, 2003.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed rule with the Missouri Public Service Commission,

Dale Hardy Roberts, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices on or before March 5, 2004, and should include a reference to commission Case No. TX-2003-0487. If comments are submitted via a paper filing, an original and eight (8) copies of the comments are required. Comments may also be submitted via a filing using the commission's electronic filing and information system at <<http://www.psc.state.mo.us/efis.asp>>. A public hearing regarding this proposed rule is scheduled for March 12, 2004, at 10:00 a.m. in Room 310 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rule, and may be asked to respond to commission questions. Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or TDD Hotline 1-800-829-7541.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 240—Public Service Commission
Chapter 36—Alternative Dispute Resolution Procedural
Rules Governing Filings Made Pursuant to the
Telecommunications Act of 1996**

PROPOSED RULE

**4 CSR 240-36.070 Commission Notice of Adoption of Previously
Approved Agreement**

PURPOSE: This rule provides the procedure for notifying the commission of the adoption of a previously approved agreement.

(1) Provision of Previously Approved Agreements—Carriers shall make available for a reasonable time any agreement approved under this section in accordance with section 252(i) of the Act and section 51.809 of the *Code of Federal Regulations*. A carrier may request that the commission take notice of the adoption of a previously approved agreement, and the requesting carrier is not required to have prior approval or signature of the carrier from whom it received the agreement. The carrier shall serve the incumbent local exchange carrier with its request for adoption when it submits the request to the commission. If the incumbent local exchange carrier wishes to object to the commission, it must do so within ten (10) days of the date the request is submitted to the commission, and its objection must be based on, and allege facts that support, one or both of the following grounds:

(A) The costs of providing a particular interconnection, service, or element to the requesting telecommunications carrier are greater than the costs of providing it to the telecommunication carrier that originally negotiated the agreement; or

(B) The provision of a particular interconnection, service, or element to the requesting carrier is not technically feasible.

AUTHORITY: section 386.410, RSMo 2000. Original rule filed Dec. 30, 2003.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Dale Hardy Roberts, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices on or before March 5, 2004, and should include a reference to commission Case No. TX-2003-0487. If comments are submitted via a paper filing, an original and eight (8) copies of the comments are required. Comments may also be submitted via a filing using the commission's electronic filing and information system at <<http://www.psc.state.mo.us/efis.asp>>. A public hearing regarding this proposed rule is scheduled for March 12, 2004, at 10:00 a.m. in Room 310 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rule, and may be asked to respond to commission questions. Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or TDD Hotline 1-800-829-7541.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 240—Public Service Commission Chapter 36—Alternative Dispute Resolution Procedural Rules Governing Filings Made Pursuant to the Telecommunications Act of 1996

PROPOSED RULE

4 CSR 240-36.080 Commission Approval of Amendments to Existing Commission-Approved Agreements

PURPOSE: This rule provides the process for commission approval of amendments to existing commission-approved agreements.

(1) Filing Requirements—The parties to an amendment to any agreement approved or adopted under the rules in this chapter shall jointly submit the amendment to the secretary of the commission.

(2) Amendment Approval Process—Absent commission action, such amendments shall be deemed approved thirty (30) days from the date the amendment is received by the secretary of the commission. The standards for rejection of an amendment will be those provided in sections 251 and 252 of the Act. The commission's staff shall have authority to require additional information explaining the contents of an amendment.

AUTHORITY: section 386.410, RSMo 2000. Original rule filed Dec. 30, 2003.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file comments in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Dale Hardy Roberts, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received at the commission's offices on or before March 5, 2004, and should include a reference to commission Case No. TX-2003-0487. If

comments are submitted via a paper filing, an original and eight (8) copies of the comments are required. Comments may also be submitted via a filing using the commission's electronic filing and information system at <<http://www.psc.state.mo.us/efis.asp>>. A public hearing regarding this proposed rule is scheduled for March 12, 2004, at 10:00 a.m. in Room 310 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rule, and may be asked to respond to commission questions. Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or TDD Hotline 1-800-829-7541.

Title 9—DEPARTMENT OF MENTAL HEALTH Division 30—Certification Standards Chapter 4—Mental Health Programs

PROPOSED AMENDMENT

9 CSR 30-4.195 Access Crisis Intervention Programs. The department proposes to amend section (4) and to delete the form which follows the rule in the *Code of State Regulations*.

PURPOSE: The purpose of this amendment is to remove reference to form number MO 650-8679N (6-01) and to remove this form, entitled *Access Crisis Intervention (ACI) Quarterly Report*, from the rule.

(4) Consumer Records.

(G) Agencies providing ACI services must submit to the department, reports and documentation as prescribed by the department according to the department's standardized form.

[1. The following form is included herein: MO 650-8679N (6-01).]

AUTHORITY: sections 630.050 and 630.655, RSMo 2000. Original rule filed Aug. 28, 2002, effective April 30, 2003. Amended: Filed Dec. 29, 2003.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Mental Health, Attn: Julie Carel, Division of Comprehensive Psychiatric Services, PO Box 687, Jefferson City, MO 65102. To be considered comments must be in writing and 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 40—Land Reclamation Commission Chapter 10—Permit and Performance Requirements for Industrial Mineral Open Pit and In-Stream Sand and Gravel Operations

PROPOSED AMENDMENT

10 CSR 40-10.020 Permit Application Requirements. The commission is amending subsection (2)(D) and deleting the forms that follow the rule in Code.

PURPOSE: This rulemaking will allow the state of Missouri to ensure that in-stream sand and gravel mining is conducted in a manner that will minimize the effects to the water resources of the state and help protect the stream corridor from accelerated erosion.

(2) As required by section 444.772, RSMo, an applicant shall provide a complete application package submitted which includes the following:

(D) A plan of operation and reclamation which meets the requirements of 444.760–444.790, RSMo.

1. The operation plan for surface mine operators shall include:

A. A brief description of topsoil availability, removal and storage as outlined in 10 CSR 40-10.050(6);

B. A brief description and location of spoil placement and disposal;

C. A brief description of handling of acid materials, if applicable; and

D. A brief description of the location and arrangement of the pit if not delineated clearly on the map submitted with the application.

2. All applications shall contain a reclamation and operation plan for the lands and water within the proposed permit area.

3. The reclamation plan shall include, at a minimum:

A. A list of species used for reclamation and the seeding/planting rates;

B. Methods and timing of seeding/planting;

C. If required by the commission, references to support revegetation methods;

D. A brief description of the grading, topsoiling and revegetation schedules as outlined in 10 CSR 40-10.050(10); and

E. The land use that area is to be reclaimed to and the acreage of each.

4. **Commercial** //in-stream operators must describe what measures will be taken to minimize impacts on the stream environment, that is, *[where possible, confining active mining operations to gravel bars rather than in flowing water, restricting haul roads through flowing water and restricting damage to stream banks or bank vegetation to the minimum required to transport the material out.]* how they will follow the requirements of 10 CSR 40-10.050(14), (15), and (16).

5. The applicant may provide either a short-term or long-term plan for operations and reclamation. A short-term plan shall describe, at a minimum, the activities required by the operation and reclamation plan outlined in this subsection, which will occur over the one (1)-year term of the permit. A long-term plan shall describe, at a minimum, the activities required by the operation and reclamation plan outlined in this subsection which will occur over more than one (1) year. Permits having long-term operation plans will be issued for one (1)-year terms, except that, upon renewal, the applicant is not required to resubmit an operation plan, provided that the operations will continue to be conducted in the manner originally proposed. Also, the operator only must acquire a permit for the portion of the area included in the long-term plan which will be affected over the upcoming one (1)-year term of the permit. But, in no instance shall the operator affect any area outside of the area included in the current approved permit;

AUTHORITY: section[s 444.767, 444.772 and 444.784, RSMo Supp. 2001] 444.530, RSMo 2000. Original rule filed Aug. 2, 1991, effective Feb. 6, 1992. Amended: Filed June 1, 1994, effective Nov. 30, 1994. Amended: Filed March 15, 2002, effective Oct. 30, 2002. Amended: Filed Dec. 16, 2003.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred (\$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 1:00 p.m., March 25, 2004. The public hearing will be held at 1738 E. Elm Street, Bennett Spring and Roaring River Conference rooms, Jefferson City, Missouri. 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' Land Reclamation Program, PO Box 176, Jefferson City, MO 65102-0176, (573) 751-4041. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., March 24, 2004. Written comments should be sent to Staff Director, Land Reclamation Program, PO Box 176, Jefferson City, MO 65102.

**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**

PROPOSED AMENDMENT

10 CSR 40-10.050 Performance Requirements. The commission is adding new sections (14)–(16).

PURPOSE: This rulemaking will allow the state of Missouri to ensure that in-stream sand and gravel mining is conducted in a manner that will minimize the effects to the water resources of the state and help protect the stream corridor from accelerated erosion.

(14) In-Stream Gravel Removal Requirements.

(A) Commercial operations that conduct sand and/or gravel removal within the stream banks must comply with the following requirements.

(B) The following requirements are designed to protect water quality while allowing for the excavation of sand and gravel from riparian environments. Upon request of the applicant, the program may establish site-specific variances to address conditions that may occur at individual locations.

1. Excavation of sand or gravel deposits shall be limited to deposits in unconsolidated areas containing primarily smaller material (at least eighty-five percent (85%) of the material is less than three inches (3") in diameter) that is loosely packed and contains no woody perennial vegetation greater than one and one-half inches (1 1/2") in diameter, measured at breast height four and one-half feet (4.5').

2. An undisturbed buffer of ten foot (10') width shall be left between the excavation area and the water's edge of the flowing stream at the time of excavation. A buffer zone of adequate width to protect bank integrity should be left between the excavation area and the base of the high bank.

3. An undisturbed buffer of twenty-five feet (25') wide shall be maintained in an undisturbed condition landward of the high bank for the length of the gravel removal site. Disturbed areas in this riparian zone shall be limited to maintained access road(s) for ingress and egress only. No clearing within this riparian area is authorized in association with work authorized by this permit.

4. Sand or gravel shall not be excavated below water elevation at the time of removal, except:

A. If the stream is dry at the time of excavation, excavation shall not occur deeper than the lowest undisturbed elevation of the stream bottom adjacent to the site. Upon request of the applicant, excavation depth restriction may be modified if the

staff director determines that a variance would not significantly impact the stream resource.

B. For wet stream reaches, excavation depth restriction may be modified if it is determined by the staff director that a variance would not significantly impact the stream resource based on the presence of bedrock to prevent head cutting, excessive bedload, gravel rich areas or any other appropriate reason.

5. Stream channels shall not be relocated, straightened, cut off, shortened, widened, or otherwise modified. A stream channel is defined as that area between the high banks of the creek where water is flowing, or in the case of a dry stream, where water would flow after a rain event.

6. Within thirty (30) days of the removal of excavation equipment from the site, streambank areas disturbed by the removal operation shall be revegetated or otherwise protected from erosion. For long-term operations (longer than thirty (30) days) or for sites that will be periodically revisited as gravel is deposited, access points shall be appropriately constructed and maintained such that stream banks and access roads are designed and constructed to minimize erosion.

7. Any aggregate, fines, or oversized material removed from the site shall be placed beyond the high bank, on a non-wetland site that has been approved by the landowner. No material, including oversized material, that results from excavation activity may be stockpiled or otherwise placed into flowing water or placed against streambanks as bank stabilization unless specifically authorized by a state or federal permit.

8. All sand or gravel washing, gravel crushing, and gravel sorting shall be conducted beyond the high bank, in a non-wetland area and away from areas that frequently flood, such that gravel, silt, and wash water that is warm, stagnant, or contains silty material cannot enter the stream or any wetland.

9. Vehicles and other equipment shall be limited to removal sites and existing crossings. Water shall be crossed as perpendicular to the direction of the stream flow as possible.

10. Fuel, oil and other wastes and equipment containing such wastes shall not be stored or released at any location between the high banks or in a manner that would enter the stream channel. Such materials shall be disposed of at authorized locations.

(15) Outstanding Resource Waters (10 CSR 20-7.031).

(A) In-stream sand and gravel operations are prohibited from those waters listed as "Outstanding National Resource Waters."

(B) In-stream sand and gravel operations are prohibited from those segments of "Outstanding State Resource Waters" that are owned or managed by a state or federal agency.

(C) All other applications for in-stream sand and gravel operations on "Outstanding State Resource Waters" shall be reviewed individually to determine if specific conditions are necessary to preserve these stream reaches during mining activity. These individual reviews would assist the applicant in focusing on issues of specific concern. The individual review shall include a site visit by Department of Natural Resources (DNR) staff prior to permit issuance, and annual site inspections by DNR staff during the life of the permit.

(16) The Land Reclamation Program shall consult with the appropriate agencies as to the presence of state and federal threatened and endangered species in the stream reach in order to avoid jeopardizing the species' continued existence or destroying or adversely modifying the habitat of such species.

AUTHORITY: sections 444.767 [RSMo Supp. 1993], 444.774 [and], 444.784, RSMo Supp. [1990] 2003 and 444.530, RSMo 2000. Original rule filed Aug. 2, 1991, effective Feb. 6, 1992. Amended: Filed June 1, 1994, effective Nov. 30, 1994. Amended: Filed Dec. 16, 2003.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred (\$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 1:00 p.m., March 25, 2004. The public hearing will be held at 1738 E. Elm Street, Bennett Spring and Roaring River Conference rooms, Jefferson City, Missouri. 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' Land Reclamation Program PO Box 176, Jefferson City, MO 65102-0176, (573) 751-4041. Interested persons, whether or not heard, may submit a written statement of their views until 5:00 p.m., March 24, 2004. Written comments should be sent to Staff Director, Land Reclamation Program, PO Box 176, Jefferson City, MO 65102.

**Title 12—DEPARTMENT OF REVENUE
Division 30—State Tax Commission
Chapter 4—Agricultural Land Productive Values**

PROPOSED AMENDMENT

12 CSR 30-4.010 Agricultural Land Productive Values

PURPOSE: Pursuant to section 137.021 requirements, the State Tax Commission proposes that there is no change in the existing agricultural land grades and values. The State Tax Commission proposes to implement the same use values which are in effect to date.

PURPOSE: This rule complies with the requirement of section 137.021, RSMo, to publish a range of productive values for agricultural and horticultural land for the ensuing tax year.

(1) Agricultural Land Grades and Values. The following are definitions of agricultural land grades and the productive values of each:

(A) Grade #1. This is prime agricultural land. Condition of soils is highly favorable with no limitations that restrict their use. Soils are deep, nearly level (zero to two percent (0-2%) slope) or gently sloping with low erosion hazard and not subject to damaging overflow. Soils that are consistently wet and poorly drained are not placed in Grade #1. They are easily worked and produce dependable crop yields with ordinary management practices to maintain productivity—both soil fertility and soil structure. They are adapted to a wide variety of crops and suited for intensive cropping. Use value: nine hundred eighty-five dollars (\$985);

(B) Grade #2. These soils are less desirable in one (1) or more respects than Grade #1 and require careful soil management, including some conservation practices on upland to prevent deterioration. This grade has a wide range of soils and minimum slopes (mostly zero to five percent (0-5%)) that result in less choice of either crops or management practices. Primarily bottomland and best upland soils. Limitations—

1. Low to moderate susceptibility to erosion;
2. Rare damaging overflows (once in five to ten (5-10) years); and
3. Wetness correctable by drainage. Use value: eight hundred ten dollars (\$810);

(C) Grade #3. Soils have more restrictions than Grade #2. They require good management for best results. Conservation practices are generally more difficult to apply and maintain. Primarily good upland and some bottomland with medium productivity. Limitations—

1. Gentle slope (two to seven percent (2–7%));
2. Moderate susceptibility to erosion;
3. Occasional damaging overflow (once in three to five (3–5) years) of Grades #1 and #2 bottomland; and

4. Some bottomland soils have slow permeability, poor drainage, or both. Use value: six hundred fifteen dollars (\$615);

(D) Grade #4. Soils have moderate limitations to cropping that generally require good conservation practices. Crop rotation normally includes some small grain (for example, wheat or oats), hay, or both. Soils have moderately rolling slopes and show evidence of serious erosion. Limitations—

1. Moderate slope (four to ten percent (4–10%));
2. Grade #1 bottomland subject to frequent damaging flooding (more often than once in two (2) years), or Grades #2 and #3 bottomland subject to occasional damaging flooding (once every three to five (3–5) years);
3. Poor drainage in some cases; and
4. Shallow soils, possibly with claypan or hardpan. Use value: three hundred eighty-five dollars (\$385);

(E) Grade #5. Soils are not suited to continuous cultivation. Crop rotations contain increasing proportions of small grain (for example, wheat or oats), hay, or both. Upland soils have moderate to steep slopes and require conservation practices. Limitations—

1. Moderate to steep slopes (eight to twenty percent (8–20%));
2. Grades #2 and #3 bottomland subject to frequent damaging flooding (more than once in two (2) years) and Grade #4 bottomland subject to occasional damaging flooding; and
3. Serious drainage problems for some soils. Use value: one hundred ninety-five dollars (\$195);

(F) Grade #6. Soils are generally unsuited for cultivation and are limited largely to pasture and sparse woodland. Limitations—

1. Moderate to steep slopes (eight to twenty percent (8–20%));
2. Severe erosion hazards present;
3. Grades #3 and #4 bottomland subject to frequent damaging flooding (more than once in two (2) years), and Grade #5 bottomland subject to occasional damaging flooding (once every three to five (3–5) years); and
4. Intensive management required for crops. Use value: one hundred fifty dollars (\$150);

(G) Grade #7. These soils are generally unsuited for cultivation and may have other severe limitations for grazing and forestry that cannot be corrected. Limitations—

1. Very steep slopes (over fifteen percent (15%));
2. Severe erosion potential;
3. Grades #5 and #6 bottomland subject to frequent damaging flooding (more than once in two (2) years);
4. Intensive management required to achieve grass or timber productions; and
5. Very shallow topsoil. Use value: seventy-five dollars (\$75);

(H) Grade #8. Land capable of only limited production of plant growth. It may be extremely dry, rough, steep, stony, sandy, wet or severely eroded. Includes rivers, running branches, dry creek and swamp areas. The lands do provide areas of benefit for wildlife or recreational purposes. Use value: thirty dollars (\$30); and

(I) Definitions. The following are definitions of flooding for purposes of this rule:

1. Damaging flooding. A damaging flood is one that limits or affects crop production in one (1) or more of the following ways:
 - A. Erosion of the soil;
 - B. Reduced yields due to plant damage caused by standing or flowing water;
 - C. Reduced crop selection due to extended delays in planting and harvesting; and
 - D. Soil damage caused by sand and rock being deposited on the land by flood waters;
2. Frequent damaging flooding. Flooding of bottomlands that is so frequent that normal row cropping is affected (reduces row crop selection); and

3. Occasional damaging flooding. Flooding of bottomland that is so infrequent that producing normal row crops is not compromised in most years.

(2) Forest Land and Horticultural Land. The following prescribes the treatment of forest land and horticultural land:

(A) Forest land, whose cover is predominantly trees and other woody vegetation, should not be assigned to a land classification grade based on its productivity for agricultural crops. Forest land of two (2) or more acres in area, which if cleared and used for agricultural crops, would fall into land grades #1–#5 should be placed in land grade #6; or if land would fall into land grades #6 or #7 should be placed in land grade #7. Forest land may or may not be in use for timber production, wildlife management, hunting, other outdoor recreation or similar uses; and

(B) Land utilized for the production of horticultural crops should be assigned to a land classification grade based on productivity of the land if used for agricultural crops. Horticultural crops include fruits, ornamental trees and shrubs, flowers, vegetables, nuts, Christmas trees and similar crops which are produced in orchards, nurseries, gardens or cleared fields.

AUTHORITY: section 137.021, RSMo [Supp. 1999] 2000. Original rule filed Dec. 13, 1983, effective March 12, 1984. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 29, 2003.

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

PRIVATE COST: Because this proposed amendment does not change the use value per acre placed on agricultural land, the assessed value of agricultural property remains the same, therefore there will be no increased cost to private entities as a result of this proposed amendment.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Tax Commission of Missouri, Rosemary P. Kaiser, Administrative Secretary, 621 East Capitol Avenue, Jefferson City, MO 65101, (573) 751-2414. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 20—DEPARTMENT OF INSURANCE

Division 600—Statistical Reporting

Chapter 1—Reports Other Than Annual Statement and Credit Insurance

PROPOSED AMENDMENT

20 CSR 600-1.020 Dram Shop Cost Data Reporting. The director is amending subsection (2)(A).

PURPOSE: This amendment deletes the requirement that surplus lines licensees must file the report required by this regulation.

(2) Report.

(A) Every insurer providing dram shop liability coverage within the state shall submit to the director a report of all costs associated with coverage of its dram shop liability policies during the preceding year. [With respect to any insurer transacting business pursuant to Chapter 384, RSMo, filing the report required by this regulation shall be the obligation of the surplus lines licensee originating or accepting the insurance.]

AUTHORITY: sections 374.045 and 536.016, RSMo 2000 and 375.1730, RSMo Supp. [2002] 2003. Original rule filed Oct. 1, 2002, effective March 30, 2003. Amended: Filed Dec. 19, 2003.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed amendment at 10:00 a.m. on Tuesday, March 9, 2004. The public hearing will be held at the Harry S Truman State Office Building, Room 530, 301 West High Street, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to this proposed amendment, until 5:00 p.m. on March 9, 2004. Written statements shall be sent to Carolyn H. Kerr, Department of Insurance, PO Box 690, Jefferson City, MO 65102.

SPECIAL NEEDS: If you have any special needs addressed by the Americans With Disabilities Act, please notify us at (573) 751-6798 or (573) 751-2619 at least five (5) working days prior to the hearing.

**Title 22—MISSOURI CONSOLIDATED
HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 1—General Organization**

PROPOSED AMENDMENT

22 CSR 10-1.010 General Organization. The board is amending section (5).

PURPOSE: This amendment includes changes to the contact information for the Missouri Consolidated Health Care Plan.

[[5] Anyone wishing to obtain information may do so by contacting the plan's executive director at 311 Ellis Boulevard, Jefferson City, MO 65101 or by calling (314) 751-8881.] Anyone wishing to obtain information may do so by contacting the plan's executive director at any of the following:

- (A) 832 Weathered Rock Court, Jefferson City, MO 65101;
- (B) P.O. Box 104355, Jefferson City, MO 65110;
- (C) (573) 751-8881; or
- (D) (800) 701-8881.

AUTHORITY: section 103.059, RSMo [Supp. 1992] 2000. Original rule filed Dec. 16, 1993, effective July 30, 1994. Amended: Filed Dec. 19, 2003.

PUBLIC COST: The fiscal impact of this proposed amendment is estimated to be less than five hundred dollars (\$500) in the aggregate for state agencies or political subdivisions.

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 Consolidated Health Care Plan, Ron Meyer, PO Box 104355, Jefferson City, MO 65110. 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 22—MISSOURI CONSOLIDATED
HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 1—General Organization**

PROPOSED RULE

22 CSR 10-1.020 Public Records

PURPOSE: This rule establishes standards of compliance with Chapter 610, RSMo, as it relates to public records of the Missouri Consolidated Health Care Plan.

(1) All public records of the Missouri Consolidated Health Care Plan, except for those records closed pursuant to the Health Insurance Portability and Accountability Act and section 610.021, RSMo, shall be open for inspection and copying at the plan's office during the plan's regular business hours, holidays excepted. The plan's regular business hours are 8:30 a.m. until 4:30 p.m., Central Standard Time. All public meetings of the Missouri Consolidated Health Care Plan shall be open to the public, other than those meetings closed pursuant to provisions of section 610.021, RSMo.

(2) The Missouri Consolidated Health Care Plan establishes the executive director as the custodian of its records as required by section 610.023, RSMo. The executive director is responsible for maintaining the plan's records and for responding to requests for access to public records. The executive director may appoint deputy custodians as necessary for the efficient operation of the plan.

(3) When the custodian determines that requested access is not required under Chapter 610, RSMo, the custodian shall inform the requestor of such determination citing the specific sections of Chapter 610, RSMo, under which the records are to remain closed. The custodian shall inform the requesting party that s/he may appeal directly to the board for access to the records requested. The appeal and all pertinent information shall be placed on the agenda for the board's next regularly scheduled meeting. If the board reverses the decision of the custodian, the board shall direct the custodian to advise the requestor and supply access to the information during the plan's regular business hours at the requestor's convenience.

(4) The custodian shall maintain a file containing copies of all written requests for access to records and responses to such requests. The requests shall be maintained on file with the board for a period of one (1) year and will be maintained as a public record of the board open for inspection by any member of the general public during the plan's regular business hours.

(5) Whenever a request for inspection of public records is made and the individual inspecting the records requests copies of such records, the plan may charge a reasonable fee for the cost of inspecting and copying the records. The fee charged by the plan shall be as follows:

- (A) A fee for copying public records shall not exceed the actual cost of the document search, duplication, and any necessary postage; and
- (B) The plan may require payment for these fees prior to making the copies.

AUTHORITY: section 103.059, RSMo 2000. Original rule filed Dec. 19, 2003.

PUBLIC COST: The fiscal impact of this proposed rule is estimated to be less than five hundred dollars (\$500) in the aggregate for state agencies or political subdivisions.

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 Consolidated Health Care Plan, Ron Meyer, PO Box 104355, Jefferson City, MO 65110. 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 22—MISSOURI CONSOLIDATED
HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 2—Plan Options**

PROPOSED AMENDMENT

22 CSR 10-2.010 Definitions. The board is amending section (1).

PURPOSE: This amendment includes changes in the definitions made by the board of trustees regarding the key terms within the Missouri Consolidated Health Care Plan.

(1) When used in these rules or the plan document, these words and phrases have the meaning—

(YY) Subscriber—The employee or member who elects coverage under the plan;

(ZZ) Survivor—A member who meets the requirements of 22 CSR 10-2.020(7)(A);

/(YY)/(AAA) Unemancipated child(ren)—A natural child(ren), a legally adopted child(ren) or a child(ren) placed for adoption, and a dependent disabled child(ren) over twenty-three (23) years of age (during initial eligibility period only and appropriate documentation may be required by the plan), and the following:

1. Stepchild(ren);
2. Foster child(ren) for whom the employee is responsible for health care;

3. Grandchild(ren) for whom the employee has legal custody and is responsible for providing health care;

4. Other child(ren) for whom the employee is legal custodian subject to specific approval by the plan administrator. Except for a disabled child(ren) as described in subsection (1)(GG) of this rule, an unemancipated child(ren) is eligible from birth to the end of the month in which s/he is emancipated, as defined here, or attains age twenty-three (23) (twenty-five (25) if attending school full-time and the public entity joining the plan had immediate previous coverage allowing this provision) (see 22 CSR 10-2.020(5)(D)2. for continuing coverage on handicapped child(ren) beyond age twenty-three (23)); and

5. Stepchild(ren) who are not domiciled with the employee, provided the natural parent who is legally responsible for providing coverage is also covered as a dependent under the plan; *[and]*

/(ZZ)/(BBB) Usual, customary, and reasonable charge.

1. Usual—The fee a physician most frequently charges the majority of his/her patients for the same or similar services;

2. Customary—The range of fees charged in a geographic area by physicians of comparable skills and qualifications for the same performance of similar service;

3. Reasonable—The flexibility to take into account any unusual clinical circumstances involved in performing a particular service; and

4. A formula is used to determine the customary maximum. The customary maximum is the usual charge submitted by ninety percent (90%) of the doctors for ninety percent (90%) of the procedures reported./; **and**

(CCC) Vested subscriber—A member who meets the requirements of 22 CSR 10-2.020(7)(B).

AUTHORITY: section 103.059, RSMo 2000. Emergency rule filed Dec. 16, 1993, effective Jan. 1, 1994, expired April 30, 1994.

Emergency rule filed April 4, 1994, effective April 14, 1994, expired Aug. 11, 1994. Original rule filed Dec. 16, 1993, effective July 10, 1994. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 19, 2003.

PUBLIC COST: The fiscal impact of this proposed amendment is estimated to be less than five hundred dollars (\$500) in the aggregate for state agencies or political subdivisions.

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 Consolidated Health Care Plan, Ron Meyer, PO Box 104355, Jefferson City, MO 65110. 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 22—MISSOURI CONSOLIDATED
HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 2—Plan Options**

PROPOSED AMENDMENT

22 CSR 10-2.020 Membership Agreement and Participation Period. The board is amending subsections (4)(B), (4)(D) and (7)(D) and paragraphs (4)(B)4. and (7)(B)3.

PURPOSE: This amendment includes changes in the membership agreement and participation period made by the board of trustees regarding the Missouri Consolidated Health Care Plan.

(4) The effective date of participation shall be determined, subject to the effective date provision in subsection (4)(C), as follows:

(B) Dependent Coverage. Dependent participation cannot precede the *[employee's]* subscriber's participation. Application for participants must be made in accordance with the following provisions. For family coverage, once *[an employee]* a subscriber is participating with respect to dependents, newly acquired dependents are automatically covered on their effective dates as long as the plan administrator is notified within thirty-one (31) days of the person becoming a dependent. **First eligible dependents must be added within thirty-one (31) days of such qualifying event.** The employee is required to notify the plan administrator on the appropriate form of the dependent's name, date of birth, eligibility date and Social Security number, if available. Claims will not be processed until the required information is provided;

1. If an employee makes concurrent application for dependent participation on or before the date of eligibility or within thirty-one (31) days thereafter, participation for dependent will become effective on the date the employee's participation becomes effective;

2. When an employee participating in the plan first becomes eligible with respect to a dependent child(ren), coverage may become effective on the eligibility date or the first day of the month coinciding with or following the date of eligibility if application is made within thirty-one (31) days of the date of eligibility and provided any required contribution for the period is made; *[and]*

3. Unless required under federal guidelines—

A. An emancipated dependent who regains his/her dependent status is immediately eligible for coverage if an application is submitted within thirty-one (31) days of regaining dependent status; and

B. An eligible dependent that is covered under a spouse's health plan who loses eligibility under the criteria stipulated for dependent status under the spouse's health plan is not eligible for

coverage until the next open enrollment period. (Note: Subparagraphs (4)(B)3.A. and B. do not include dependents of retirees or long-term disability members covered under the plan./.); **and**

4. Survivors, retirees, vested subscribers and long-term disability subscribers may only add dependents to their coverage when the dependent is first eligible for coverage.

(D) Application for dependent coverage may be made at other times of the year when the spouse's, ex-spouse's (who is the natural parent providing coverage), or legal guardian's: 1) employment is terminated or is no longer eligible for coverage under his/her employer's plan, or 2) employer sponsored medical plan is terminated. With respect to dependent child(ren) coverage, application may also be made at other times of the year when the member receives a court order stating s/he is responsible for providing medical coverage for the dependent child(ren) or when the dependent loses Medicaid coverage. Dependents added under any of these exceptions must supply verification from the previous insurance carrier or the member's employer that they have lost coverage and the effective date of termination. Coverage must also be requested within sixty (60) days from the termination date of the previous coverage. Application must be made within sixty (60) days of the court order. (Note: This section does not include dependents of retirees, **survivors, vested subscribers**, or long-term disability [*recipients*] **subscribers** covered under the plan.)

(7) Continuation of Coverage.

(B) Employee Eligible for Retirement Benefits. Any employee who, at the time of termination of employment, met the following—Eligibility Criteria:

A. Coverage through MCHCP since the effective date of the last open enrollment period;

B. Other health insurance for the six (6) months immediately prior to the termination of state employment—proof of insurance is required; or

C. Coverage since first eligible;

2. Immediately eligible to receive a monthly retirement benefit from the Missouri State Employees' Retirement System, Public School Retirement System, the retirement system of a participating public entity, or the Highway Retirement System may elect to continue to participate in the plan by paying the cost of plan benefits as determined by the plan administrator. An employee must apply for continued coverage within thirty-one (31) days of the first day of the month following the date of retirement. An employee, continuing coverage under this provision, may also continue coverage for eligible dependents.

A. If a member participates in the MCHCP as a vested member, his/her dependents may also participate if they meet one of the following criteria:

(I) They have had coverage through MCHCP since the effective date of the last open enrollment period;

(II) They have had other health insurance for the six (6) months immediately prior to state employment termination—proof of insurance is required; or

(III) They have had coverage since they were first eligible;

3. In the case of the death of a retiree who was maintaining dependent coverage under this provision, the dependent of the deceased retiree may continue his/her participation under the plan. However, retirees, **survivors, vested subscribers** and long-term disability [*recipients*] **subscribers** and their dependents are not later eligible if they discontinue their coverage at some future time, except as noted in (7)(B)4.; **and**

4. A vested or retired member may elect to suspend their coverage upon entry into the armed forces of any country by submitting a copy of their activation papers within thirty-one (31) days of their activation date. Coverage will be suspended the first of the month following the month of activation. Coverage may be reinstated at the same level upon discharge by submitting a copy of their separation

papers and a completed enrollment form within thirty-one (31) days of their separation date. Coverage will be reinstated as of the first of the month following the month of separation.

(D) Leave of Absence. An employee on approved leave of absence may elect to retain eligibility to participate in the plan by paying the required contributions. The employing department must officially notify the plan administrator of the leave of absence and any extension of the leave of absence by submitting the required form. Any employee on an approved leave of absence who was a member of the Missouri Consolidated Health Care Plan when the approved leave began, but who subsequently terminated participation in the Missouri Consolidated Health Care Plan while on leave, may recommence his/her coverage in the plan at the same level (employee only, or employee and dependents) upon returning to employment directly from the leave, but they will be subject to preexisting limitations, when applicable. Preexisting limitations under this provision will not apply to HMO or POS members. However, eligibility is terminated for those members receiving a military leave of absence, as specified in subsection (5)(C). Coverage may be reinstated upon return from military leave without proof of insurability or preexisting conditions. However, the former member must complete an enrollment form. **Coverage under this provision is effective on the first of the month coinciding with or following the employee's return to work. Coverage will be continuous if the employee returns to work in the subsequent month following the initial leave date and timely requests reinstatement of coverage.**

AUTHORITY: section 103.059, RSMo 2000. Emergency rule filed Dec. 16, 1993, effective Jan. 1, 1994, expired April 30, 1994. Emergency rule filed April 4, 1994, effective April 14, 1994, expired Aug. 11, 1994. Original rule filed Dec. 16, 1993, effective July 10, 1994. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Dec. 19, 2003, effective Jan. 1, 2004, expires June 28, 2004. Amended: Filed Dec. 19, 2003.

PUBLIC COST: The fiscal impact of this proposed amendment is estimated to be less than five hundred dollars (\$500) in the aggregate for state agencies or political subdivisions.

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 Consolidated Health Care Plan, Ron Meyer, PO Box 104355, Jefferson City, MO 65110. 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 22—MISSOURI CONSOLIDATED
HEALTH CARE PLAN
Division 10—Health Care Plan
Chapter 2—Plan Options**

PROPOSED AMENDMENT

22 CSR 10-2.080 Miscellaneous Provisions. The board is amending section (4).

PURPOSE: This amendment includes changes made by the board of trustees regarding the miscellaneous provisions of the Missouri Consolidated Health Care Plan.

(4) Should any provision of this plan conflict with the requirements of federal or state law, including but not limited to the **Health Insurance Portability and Accountability Act**, Family and Medical Leave Act, the Americans with Disabilities Act or the Older Workers

Benefit Protection Act, the plan shall be administered in such a way as to comply with the requirements of law, and will be deemed amended to conform with law.

*AUTHORITY: section 103.059, RSMo 2000. Emergency rule filed Dec. 16, 1993, effective Jan. 1, 1994, expired April 30, 1994. Emergency rule filed April 4, 1994, effective April 14, 1994, expired Aug. 11, 1994. Original rule filed Dec. 16, 1993, effective July 10, 1994. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Dec. 19, 2003.*

PUBLIC COST: The fiscal impact of this proposed amendment is estimated to be less than five hundred dollars (\$500) in the aggregate for state agencies or political subdivisions.

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 Consolidated Health Care Plan, Ron Meyer, PO Box 104355, Jefferson City, MO 65110. 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.*