

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

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 If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission.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

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

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

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

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

These additional requirements will be lifted as soon as all affected premises are released from quarantine.

(A) In addition to all other requirements in 2 CSR 30-2 and 2 CSR 30-6, all domestic and exotic ungulates (hoofed animals) entering Missouri must be accompanied by a Certificate of Veterinary Inspection stating that—

1. "All animals identified on this Certificate of Veterinary Inspection, and included with this shipment, have been examined and found to be free from clinical signs of Vesicular Stomatitis, have not been exposed to Vesicular Stomatitis, and within the past thirty (30) days, have not been within ten (10) miles of any site under quarantine for Vesicular Stomatitis"; and

2. An entry permit is required and shall be listed on the Certificate of Veterinary Inspection for animals originating from states with active quarantines.

AUTHORITY: section 267.645, RSMo 2000. Emergency rule filed July 14, 1995, effective July 24, 1995, expired Nov. 20, 1995. Original rule filed Aug. 15, 2005.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Agriculture, Division of Animal Health, Shane Brookshire, D.V.M., State Veterinarian, PO Box 630, Jefferson City, MO 65102, by facsimile at (573) 751-6919 or via e-mail at Shane.Brookshire@mda.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title [4] 7—DEPARTMENT OF [ECONOMIC DEVELOPMENT] TRANSPORTATION
Division 265—[Division of] Motor Carrier and Railroad Safety
Chapter 10—Motor Carrier Operations**

PROPOSED AMENDMENT

[4] 7 CSR 265-10.020 Licensing of Vehicles. The commission is amending section (1) and subsections (1)(B), (1)(C), (1)(D), (1)(E), (1)(F), (1)(G), (1)(H) and (1)(I); section (2); section (3) and subsection (3)(C); section (4) and subsections (4)(B) and (4)(C); section (5) and subsections (5)(A) and (5)(E); section (6) and subsection (6)(B); and section (7) and subsections (7)(A) and (7)(B). and deleting the forms that follow this rule in the Code of State Regulations.

PURPOSE: This proposed amendment will eliminate the requirement that motor carriers who have properly registered their interstate operations, and have paid the Missouri regulatory license fee for each motor vehicle operated in interstate commerce within this state, must obtain and display an additional form of regulatory license when they operate the same vehicle in intrastate commerce. The rule currently requires interstate carriers to display a MoDOT license decal on each motor vehicle operated intrastate, in addition to the credentials they already must carry whenever they operate the same vehicle in Missouri interstate commerce. The amendment will not excuse any carriers from paying the same, annual, regulatory license fee of ten dollars (\$10) for each motor vehicle operated in Missouri,

Proposed Amendment Text Reminder:

Boldface text indicates new matter.

[Bracketed text indicates matter being deleted.]

**Title 2—DEPARTMENT OF AGRICULTURE
Division 30—Animal Health
Chapter 2—Health Requirements for
Movement of Livestock, Poultry and Exotic Animals**

PROPOSED RULE

2 CSR 30 2.005 Vesicular Stomatitis Restrictions on Domestic and Exotic Ungulates (Hoofed Animals) Entering Missouri

PURPOSE: This rule is necessary to restrict the movement of ungulates (hoofed animals) into Missouri if Vesicular Stomatitis has been diagnosed in the United States.

(1) The following requirements will become effective immediately upon quarantine of any premises in the United States for Vesicular Stomatitis by the United States Department of Agriculture (USDA).

but merely eliminates the provisions that currently require carriers to obtain dual interstate and intrastate credentials for the same vehicle. The proposed amendment also updates the current rule's obsolete references to: (1) the Federal Highway Administration, whose former motor carrier regulatory duties have been reassigned to the Federal Motor Carrier Safety Administration instead; and (2) the "division," i.e., the Division of Motor Carrier and Railroad Safety, whose former motor carrier regulatory duties have been transferred to the Missouri Highways and Transportation Commission, pursuant to Truly Agreed to and Finally Passed Senate Bill No. 1202, 91st General Assembly, 2nd Regular Session (effective July 11, 2002). In addition, the proposed amendment clarifies when MoDOT has discretion to replace regulatory license decals, stamps or registration receipts that are allegedly lost, stolen, damaged, destroyed, or removed from the vehicle.

(1) No motor carrier shall operate any motor vehicle on the public highways in Missouri intrastate or interstate commerce under any property carrier registration, certificate or permit issued by the *[division]* **Missouri Highways and Transportation Commission**, unless the vehicle is accompanied by a valid regulatory license, which shall be carried or displayed on the vehicle in compliance with this rule. As used in this rule, the terms "regulatory license" and "license" include a license sticker (decal), license stamp, or registration receipt issued in compliance with this rule. Except as otherwise provided in this rule or the *Single State Registration System (SSRS) Procedures Manual, prepared by the National Conference of State Transportation Specialists, and published by the National Association of Regulatory Utility Commissioners, 1101 Vermont Avenue, N.W., Washington, DC 20005, (revised June 16, 2004)*, which is incorporated by reference in this rule and which does not incorporate any subsequent amendments, the following requirements are applicable to all regulatory licenses, license fees and motor carriers within the jurisdiction of the *[division]* **commission**:

(B) Every application to the *[division]* **commission** for the issuance of regulatory licenses shall be accompanied by payment in conformity with the requirements of subsection (I) of this section, in the amount of the required regulatory license fees, which shall be as follows:

1. Annual license fee for each motor vehicle operated by a motor carrier on the public highways in Missouri, whether in intrastate commerce or interstate commerce, shall be ten dollars (\$10); and

2. Seventy-two (72)-hour license fee for each motor vehicle operated by a motor carrier on the public highways in Missouri, either in intrastate commerce, or in interstate commerce transporting property or passengers exempt from the economic jurisdiction of the Federal *[Highway]* **Motor Carrier Safety Administration** *[[FHWA]]* **(FMCSA)**, shall be five dollars (\$5);

(C) When a motor carrier has paid the annual regulatory license fee for a motor vehicle **used in interstate commerce and displays or carries the proper regulatory license as required**, and the carrier's use of that vehicle requires it to display or carry additional or different forms of regulatory licenses, then upon the carrier's application in conformity with the applicable provisions of this rule, the division shall issue to the motor carrier all the required forms of annual regulatory licenses for that vehicle without payment of any additional fee;] uses the vehicle in interstate commerce transporting property or passengers exempt from FMCSA economic jurisdiction, or in intrastate commerce, the provisions of this rule shall not require any additional payment or form of regulatory license;

(D) The *[division]* **commission** shall issue regulatory licenses under this rule only to motor carriers authorized under valid property carrier registrations, certificates or permits issued by this *[division]* **commission**, to motor carriers who have registered their Interstate Commerce Commission (ICC) or *[FHWA]* **FMCSA** authority in compliance with the SSRS Procedures Manual, or to

authorized employees or agents acting on behalf of these motor carriers. The motor carrier to whom these licenses are issued may use them as required in this rule for any motor vehicle operated under the carrier's property carrier registration, certificate or permit. However, the licenses shall not be transferable to any person or carrier other than the motor carrier's own employees, agents, or persons operating vehicles leased to or from the motor carrier in compliance with *[4]* **7 CSR 265-10.040**, except that after a motor carrier has paid the required regulatory license fee and has attached a valid license sticker to a particular vehicle as provided in this rule, that license shall remain with the vehicle, and no motor carrier shall be required to pay another regulatory license fee for the use of that vehicle for that license year, unless the motor carrier elects to remove the license in conformity with the provisions of subsection (4)(C) of this rule;

(E) The *[division shall not]* **commission may** replace license stickers, stamps or registration receipts which the carrier claims have been lost, stolen, damaged, destroyed, or removed from the vehicle to which it was affixed, *[except upon receipt by the division of the full license fee as provided in this rule; except that]* upon receipt of a verified statement of the motor carrier or its authorized representative, declaring in detail the facts and circumstances under which the license sticker, stamp or registration receipt was lost, stolen, damaged or destroyed, or declaring that the motor carrier has removed the license sticker from a motor vehicle which is to be permanently removed from service under the carrier's authority. *[, the division director]* **The commission may** waive the license fee for a replacement sticker, stamp or registration receipt where a refusal to do so would result in manifest injustice to the carrier. The motor carrier may use the form of *[verified statement set forth below.]* **Verified Statement for Free Replacement of Regulatory License Sticker or Stamp, published by the Missouri Department of Transportation, Motor Carrier Services Division, 1320 Creek Trail Drive, Jefferson City, MO 65109 (July, 2002), which is incorporated by reference in this rule. The referenced form does not include any later amendments or additions.** The *[division]* **commission** shall waive the fee for the replacement sticker if the carrier removed the original sticker because the vehicle was permanently removed from service, and the carrier has submitted along with the verified statement the remnants of the removed sticker, including that portion on which the serial number is imprinted. Registration receipts issued in compliance with section (2) of this rule shall not be replaced except as provided in the SSRS Procedures Manual;

(F) The *[division]* **commission** shall not pay any refunds of regulatory license fees for unused license stickers, stamps or registration receipts. Motor carriers should request only the regulatory licenses needed for their actual operations;

(G) All regulatory licenses issued by the *[division]* **commission**, including license stickers (decals), license stamps and registration receipts, shall be effective from January 1 through December 31 of the year for which they are issued, and shall expire at 12:01 A.M. on the first day of January in the next year succeeding the year for which they were issued.

(H) Registration receipts, license stickers, license stamps and cards accompanying any vehicle shall be exhibited by the driver, on demand, to any authorized *[division]* **commission** personnel, officers of the Missouri State Highway Patrol, or other law enforcement officers; and

(I) Payment of all required regulatory license fees shall be tendered to this *[division]* **commission** in the form of a certified check, money order or other guaranteed funds, payable to the Director of Revenue. However, in the discretion of the *[division director]* **commission**, a personal or company check, electronic funds transfer, or other negotiable instrument may be accepted by the *[division]* **commission** as payment of the regulatory license fees, and if accepted it shall be subject to the following conditions:

1. Every check, negotiable instrument or electronic funds transfer shall be made payable to the Director of Revenue;

2. By tendering payment in the form of a check or other negotiable instrument, the applicant or motor carrier gives its "Implied Consent" that the division may, at any time, request information from the financial institution on which the check or negotiable instrument was drawn (drawee), and the applicant/motor carrier "Further Consents" that the drawee institution may provide the *[division] commission* with additional information, including financial information concerning the applicant/motor carrier, or the financial institution, or both, sufficient to satisfy the *[division] commission* that the negotiable instrument will, in fact, be paid in due course by the drawee institution;

3. Receipt or deposit of any check or other negotiable instrument by the *[division] commission*, or by any other agency or official of the state of Missouri, shall not be deemed as payment of the instrument, but only payment in fact of the full face amount of the instrument by the drawee, in due course, shall constitute payment thereof; and

4. If actual payment of a check or other negotiable instrument received by the *[division] commission* from an applicant or motor carrier for any regulatory license fee is declined or refused by the drawee financial institution, then the *[division] commission* may immediately suspend every property carrier registration, certificate and permit issued to that applicant, in accordance with the *[division's] commission's* applicable procedures for suspension. Until the property carrier registration, certificate or permit is reinstated by order of the *[division] commission*, any further operation by the applicant or motor carrier of any motor vehicle bearing a regulatory license issued by this *[division] commission* upon the public highways in this state shall be an unlawful use of that regulatory license in violation of this rule. The *[division's general] commission's* chief counsel may prosecute a complaint or other action as provided by law, to recover the amount of the unpaid instrument, together with a civil penalty and interest thereon, or to obtain an injunction or mandamus to prohibit the unlawful use of the license or receipt, or both.

(2) Except as provided in **subsection (1)(C)** or section (7), motor carriers engaged in interstate transportation in Missouri under authority issued by the ICC or *[FHWA] FMCSA* shall pay the annual regulatory license fee for each vehicle operated within Missouri under that authority. The fees shall be paid to the registration state in which the carrier registers its ICC or *[FHWA] FMCSA* authority as required in the SSRS Procedures Manual before the vehicles begin operating within Missouri. The required regulatory license for these vehicles shall be a true copy of the registration receipt issued by the registration state, showing that the carrier has paid the required Missouri annual license fees, which shall be carried in each vehicle while operating under ICC or *[FHWA] FMCSA* authority in this state.

(3) *[Every]* Except as provided in **subsection (1)(C)**, every motor carrier operating in intrastate commerce, or interstate commerce transporting property or passengers exempt from *[FHWA] FMCSA* economic jurisdiction, or both, under a property carrier registration, certificate or permit issued by this *[division] commission*, shall apply to the *[division] commission* for the issuance of regulatory licenses no earlier than the first day of August, for each motor vehicle which it intends to operate on the public highways in Missouri during the ensuing year. Applications for these annual licenses shall be in writing and shall contain the following information:

(C) The property carrier registration, certificate or permit number issued to applicant by this *[division] commission*; and

(4) *[Motor]* Except as provided in **subsection (1)(C)**, motor carriers shall display on each motor vehicle operated in intrastate commerce *[only, or both intrastate commerce and interstate commerce transporting property or passengers under ICC or*

FHWA authority,] an annual license in the form of a license sticker (decal) issued by this *[division] commission*.

(B) The sticker shall be securely fastened to a permanent part of the vehicle. Any sticker which is affixed to any removable device upon the vehicle, or which has been altered or reinforced with tape, paper or cardboard or any other substances, shall be deemed void and any vehicle bearing a sticker in this condition will not be considered licensed, except that this shall not prohibit the application of a clear shellac or similar substance to the sticker after it has been securely affixed to the vehicle. A returned license sticker shall not be replaced by the *[division] commission* if it appears that it was attached with any removable device, or has been altered or reinforced other than as allowed in this subsection.

(C) After a motor carrier has paid the required regulatory license fee and has attached a valid license sticker to a particular vehicle as provided in this rule, if that vehicle is to be sold, assigned or otherwise transferred to another owner, then the transferor may leave the license sticker affixed to the vehicle when it is sold, assigned or transferred, and while the sticker remains affixed to that vehicle no motor carrier shall be required to pay another regulatory license fee for the use of that vehicle for that license year. In the alternative, the transferor may elect to remove the sticker from the vehicle to be transferred, taking care to preserve that portion of the sticker on which the serial number was imprinted. The transferor may then return the removed sticker to the *[division] commission*, along with an affidavit explaining the facts and circumstances in conformity with the provisions of subsection (E) of section (1) of this rule, and the *[division] commission* shall waive the license fee and issue a replacement license sticker to the carrier.

(5) *[Motor]* Except as provided in **subsection (1)(C)**, motor carriers shall *[display]* carry on each motor vehicle operated in Missouri interstate commerce transporting property or passengers exempt from *[FHWA] FMCSA* economic jurisdiction an annual license in the form of a license stamp issued by this *[division] commission*. These stamps shall be issued and displayed as follows:

(A) Upon the filing of the required application, and payment by a qualified applicant of the required annual license fee in conformity with the payment requirements of subsection (1)(I) of this rule, the *[division] commission* shall issue a license stamp which shall be permanently attached to a Form D-1-Uniform Cab Card which shall *[accompany]* be carried in the licensed vehicle. *[If the regulatory license fee for the particular vehicle to operate in Missouri has already been paid to the registration state in compliance with the SSRS Procedures Manual, the division shall issue to the motor carrier an annual license sticker for that vehicle without payment of any additional fee;]* **The Form D-1 Uniform Identification Cab Card for Vehicle or Driveaway Operation Exempt from ICC Regulation, published by the National Association of Regulatory Utility Commissioners, 1101 Vermont Avenue, N.W., Washington, DC 20005 (May 1968), which is incorporated by reference in this rule. The referenced form does not include any later amendments or additions;**

(B) Each motor carrier shall apply to the National Association of Regulatory Utility Commissioners, *[P.O. Box 684, Washington, D.C. 20044]* for the issuance of a sufficient supply of Form D-1—Uniform Cab Cards for use with the vehicles which it intends to license and operate, or driveaway operations which it intends to conduct, within Missouri during the ensuing year;

(E) A typewriter or indelible ink shall be used in entering information in the blank spaces on a cab card. Any erasure or improper alteration of a cab card shall render it void. If a cab card is lost or destroyed, the motor carrier shall apply for a new license stamp and shall pay with the application the same fee prescribed for the original issuance of the cab card. If a new license stamp is issued by the *[division] commission*, the carrier shall prepare a new cab card and shall attach the new stamp to it as provided in this section; and

(6) A seventy-two (72)-hour license will be issued by the [division] **commission** or at any state weigh station to a motor carrier authorized to operate in intrastate commerce, or in interstate commerce transporting property or passengers which are exempt from the economic jurisdiction of the [FHWA] **FMCSA**, upon request, for use in case of emergency, temporary, unusual or peak demand for transportation. Applications for seventy-two (72)-hour licenses shall show the correct name, address and the certificate or permit number of the applicant. The application shall state the number of the licenses desired and shall be accompanied by payment of the required regulatory license fee in conformity with the payment requirements of subsection (1)(I) of this rule.

(B) Upon compliance with this section by the motor carrier, and at the carrier's request and expense, the [division] **commission** will transmit seventy-two (72)-hour licenses by telephone facsimile transmission.

(7) Any motor vehicle, trailer or semi-trailer operated by a nonresident motor carrier under proper interstate permits issued by this [division] **commission**, or under ICC or [FHWA] **FMCSA** interstate authority which has been registered in the carrier's registration state as required by the SSRS Procedures Manual, may traverse the highways of this state in interstate commerce without being

accompanied by a license issued by this [division] **commission**, if the vehicle is fully licensed and the motor carrier has paid full regulatory fees applicable to the vehicle in the state of residence of the motor carrier and the state of residence has entered into a contract with this state by which like reciprocal privileges are extended by that state to resident motor carriers of this state. Any vehicle operated on Missouri highways in interstate commerce by a nonresident carrier pursuant to a reciprocal agreement with its state of residence shall be accompanied by evidence of qualification as required by its state of residence.

(A) Motor carriers shall follow the procedures provided in the SSRS Procedures Manual on reciprocal exemptions from regulatory license fees relating to vehicles used in interstate commerce as authorized by the ICC or [FHWA] **FMCSA**.

(B) In lieu of issuing the license stamp for vehicles used in interstate commerce which is exempt from the economic jurisdiction of [FHWA] **FMCSA**, if the motor carrier meets all qualifications required by its state of residence, the motor vehicle operator shall show the number of the permit issued to it by this [division] **commission** in the square bearing the name of this state on the back of the Uniform Cab Card, and the Uniform Cab Card shall be carried on the vehicle as the regulatory license.

AUTHORITY: sections 622.027, [RSMo Supp.1997] 390.041(1) and 390.138, RSMo 2000, and 226.008 and 390.136, RSMo Supp. 2004. This rule was previously filed as 4 CSR 265-10.020. Emergency rule filed June 14, 1985, effective July 1, 1985, expired Oct. 28, 1985. Original rule filed Aug. 1, 1985, effective Oct. 29, 1985. For intervening history, please consult the Code of State Regulations. Moved to 7 CSR 265-10.020, effective July 11, 2002. Emergency amendment filed Aug. 15, 2005, effective Aug. 26, 2005, expires Feb. 23, 2006. Amended: Filed Aug. 15, 2005.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate. By eliminating the requirement that MoDOT must issue an additional form of regulatory license to properly registered interstate motor carriers, for motor vehicles they operate in Missouri intrastate commerce, MoDOT estimates that this amendment will reduce public entity costs by approximately four thousand five hundred twenty-seven dollars (\$4,527) annually. These are the estimated annual costs that MoDOT currently pays for the production of thirty-five thousand six hundred seventy (35,670) intrastate license decals, and for the envelopes and postage needed to send those

decals, to two thousand one hundred seventy-one (2,171) interstate motor carriers who obtained dual credentials under the present rule. The amendment will also allow MoDOT to reassign its employees' labor (worth an estimated thirty-one thousand four hundred thirty-four dollars (\$31,434) annually) to perform other departmental functions, instead of issuing dual forms of regulatory licenses to motor carriers, for vehicles on which they have already paid Missouri's annual license fees.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate. By eliminating the requirement that properly registered interstate motor carriers must obtain and display an additional form of regulatory license upon motor vehicles they also operate in Missouri intrastate commerce, MoDOT estimates that this amendment will reduce private entity costs by approximately two hundred twenty-seven thousand ten dollars (\$227,010) annually. These are estimated annual costs of compliance with this dual licensing requirement, which are incurred by two thousand one hundred seventy-one (2,171) motor carriers, whose employees obtain, handle, and display intrastate license decals upon thirty-five thousand six hundred seventy (35,670) motor vehicles, for which these carriers have also obtained interstate credentials.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Highways and Transportation Commission, Attn: Mari Ann Winters, Commission Secretary, PO Box 270, 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 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 80—Teacher Quality and Urban Education
Chapter 860—Scholarships and Financial Aid**

PROPOSED AMENDMENT

5 CSR 80-860.010 Robert C. Byrd Honors Scholarship Program.
The State Board of Education is amending the Purpose adding a new section (1) and renumbering and amending the original section (1).

PURPOSE: This proposed amendment will enable the department to more equally compare student transcripts in the case of a tie.

PURPOSE: The Department of Elementary and Secondary Education has the authority to receive and expend federal funds for educational programs and to establish regulations for the administration of the programs in accordance with controlling federal statutes and regulations. This rule sets forth the general administrative procedures for the department's implementation of the federally funded Robert C. Byrd Honors Scholarship Program, which is a federally funded program authorized under Title IV, Part A, Subpart 6 of the Higher Education Act of 1965].

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) The provisions of 34 CFR part 654, the Robert C. Byrd Honors Scholarship Program, promulgated (59 FR 32657) June

24, 1994, are hereby incorporated by reference in this rule, as published by the Office of the Federal Register, U.S. National Archives and Records, 700 Pennsylvania Avenue NW, Washington, D.C. 20408. This rule does not incorporate any subsequent amendments or additions.

[(1)] (2) The following procedures will be used in the administration of the program:

(A) *[January—] September:* Applications mailed to all high school (public and private) principals and counselors;

(B) January through March/*—*: Applications *[blanks]* received and student data entered into computer by congressional district;

(C) April/*—*;

1. Winners are selected on the basis of American College Test *[test]* (ACT) or Scholastic Aptitude Test (SAT) scores. **In the event of a tie, the applicant's unweighted cumulative grade point average (GPA) will be used. A transcript evaluation will be conducted for further ties.** In instances when the number of scholarships is not evenly divisible by nine (9), an equal number will be awarded in each congressional district. The remaining scholarships will be declared at large scholarships. These will be used to provide awards to both students in the event of a tie in scores, *grade point average and class rank. In the event of a tie involving a general educational development student, both students would receive scholarships*. Any remaining scholarships will be awarded to the next highest scoring students statewide;

2. Winners are sent an award letter, status verification form and statement of registration status; **and**

3. Nonwinners are sent a letter of notification; *[and]*

[4. A meeting is held for an advisory committee of counselors, principals and financial aid officers to get input on administrative procedures and selection criteria;]

(D) *[May through September—]* Status verification forms are received **throughout the year**; and

(E) *[September through February—]* Scholarship checks are mailed directly to the students **upon receipt of status verification forms**.

AUTHORITY: sections 161.092, RSMo Supp. 2004 and 178.430, RSMo [1986] 2000. Original rule filed Oct. 15, 1990, effective March 14, 1991. Amended: Filed Aug. 15, 2005.

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

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

NOTICE TO SUBMIT COMMENTS: *Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Elementary and Secondary Education, Attention: Dr. Charles Brown, Assistant Commissioner, Division of Teacher Quality and Urban Education, PO Box 480, Jefferson City, MO 65102-0480. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 24—Design-Build Project Contracts**

PROPOSED RULE

7 CSR 10-24.010 Definitions

PURPOSE: *This rule provides definitions used throughout this chapter.*

(1) Unless otherwise specified, in addition to the definitions provided for in this rule, the definitions in 23 U.S.C. 101(a) are applicable to this chapter whether or not specifically restated, or revised herein, and in their unrevised form to the extent not in conflict with this chapter.

(2) Adjusted low bid means a form of best value selection in which qualitative aspects are scored on a numerical scale expressed as a decimal; price is then divided by qualitative score to yield an "adjusted bid" or "price per quality point." Award is made to proposer with the lowest adjusted bid.

(3) Alternate technical concept (ATC) means alternative concepts to the technical design requirements in the Request for Proposal (RFP) that are equal or better in quality or effect as determined by the contracting agency in its sole discretion and which have successfully been used elsewhere under comparable circumstances. A concept is not an ATC if it merely seeks to reduce quantities, performance, or reliability, or seeks a relaxation of the contract requirements.

(4) Best value selection means any selection process in which proposals contain both price and qualitative components and award is based upon a combination of price and qualitative considerations.

(5) Clarifications means a written or oral exchange of information that takes place after the receipt of proposals when award without discussions is contemplated. The purpose of clarifications is to address minor or clerical revisions in a proposal.

(6) Commission means the Missouri Highways and Transportation Commission.

(7) Communications are exchanges, between the contracting agency and proposers, after receipt of proposals, which lead to the establishment of the competitive range.

(8) Competitive acquisition means an acquisition process that is designed to foster an impartial and comprehensive evaluation of proposers' proposals, leading to the selection of the proposal representing the best value to the contracting agency.

(9) Competitive range means a list of the most highly rated proposals based on the initial proposal rankings. It is based on the rating of each proposal against all evaluation criteria.

(10) Construction means the supervising, inspecting, actual building, and incurrence of all costs incidental to the construction or reconstruction of a highway, including bond costs and other costs relating to the issuance of bonds whether in accordance with 23 U.S.C. section 122 or other debt financing instruments and costs incurred by the state in performing project related audits that directly benefit the state highway program. Such term includes:

(A) Locating, surveying, and mapping (including the establishment of temporary and permanent geodetic markers in accordance with specifications of the National Oceanic and Atmospheric Administration of the Department of Commerce);

(B) Resurfacing, restoration, and rehabilitation;

(C) Acquisition of rights-of-way;

(D) Relocation assistance, acquisition of replacement housing sites, and acquisition and rehabilitation, relocation, and construction of replacement housing;

(E) Elimination of hazards of railway grade crossings;

(F) Elimination of roadside obstacles;

(G) Improvements that directly facilitate and control traffic flow, such as grade separation of intersections, widening of lanes, channelization of traffic, traffic control systems, and passenger loading and unloading areas; and

(H) Capital improvements that directly facilitate an effective vehicle weight enforcement program, such as scales (fixed and portable), scale pits, scale installation, and scale houses.

(11) Contracting agency means the public agency awarding and administering a design-build contract. The contracting agency may be the commission, MoDOT or another state or local public agency.

(12) Deficiency means a material failure of a proposal to meet a contracting agency requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level.

(13) Design-build contract means an agreement that provides for design and construction of improvements by a contractor or private developer.

(14) Design-builder means an individual, corporation, partnership, joint venture, limited liability company, limited liability partnership or other entity making a proposal to be contractually responsible to perform, or which is performing, the project design and construction under a design-build contract.

(15) Disadvantaged business enterprise (DBE) means a for-profit small business concern—

(A) That is at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation or other business entity, in which fifty-one percent (51%) of the stock or shares are owned by one or more socially and economically disadvantaged individuals; and

(B) Whose management and daily business operations are controlled by one or more of those socially and economically disadvantaged individuals who own the disadvantaged business enterprise.

(16) Discussions mean written or oral exchanges that take place after the establishment of the competitive range with the intent of allowing the proposers to revise their proposals.

(17) Division administrator means the division administrator, Missouri Division of the Federal Highway Administration, United States Department of Transportation (FHWA).

(18) Fixed price/best design means a form of best value selection in which contract price is established by the contracting agency and stated in the Request for Proposals document. Design solutions and other qualitative factors are evaluated and rated, with award going to the firm offering the best qualitative proposal for the established price.

(19) Highway includes:

(A) A road, street, and parkway;

(B) A right-of-way, bridge, railroad-highway crossing, tunnel, drainage structure, sign, guardrail, and protective structure, in connection with a highway; and

(C) A portion of any interstate bridge or tunnel and the approaches thereto, the cost of which is assumed by the commission.

(20) Intelligent Transportation System (ITS) services means services which provide for the acquisition of technologies or systems of technologies (e.g., computer hardware or software, traffic control devices, communications link, fare payment system, automatic vehicle location system, etc.) that provide or contribute to the provision of one or more ITS user services as defined in the National ITS Architecture.

(21) Interstate system means the Dwight D. Eisenhower National System of Interstate and Defense Highways described in 23 U.S.C. section 103(c).

(22) Modified design-build means a variation of design-build in which the contracting agency furnishes offerors with partially complete plans. The design-builders role is generally limited to the completion of the design and construction of the project.

(23) National Highway System (NHS) means the federal-aid highway system described in 23 U.S.C. section 103(b).

(24) Non-qualified project means a design-build project that does not meet the definition of a qualified project in 23 U.S.C. 112(b)(3)(C).

(25) Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the contracting agency, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

(26) Prequalification means the contracting agency's process for determining whether a firm is fundamentally qualified to compete for a certain project or class of projects. The prequalification process may be based on financial, management and other types of qualitative data. Prequalification should be distinguished from short listing.

(27) Price proposal means the price submitted by the offeror to provide the required design and construction services.

(28) Project manager means the person designated by the contracting agency whose specific authority will be set forth in the contract documents.

(29) Proposal modification means a change made to a proposal before the solicitation closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

(30) Proposal revision means a change to a proposal made after the solicitation closing date, at the request of or as allowed by a contracting agency, as the result of negotiations.

(31) Public-Private agreement means the formal instrument to be executed by the commission and the secretary as required by 23 U.S.C. section 106.

(32) Qualified project means any design-build project with a total estimated cost greater than fifty (50) million dollars or an intelligent transportation system project greater than five (5) million dollars as described in 23 U.S.C. 112(b)(3)(C).

(33) Request for Proposal (RFP) means a document that describes the procurement process, forms the basis for the final proposals and may potentially become an element in the contract. In any design-build contract, whether involving state or federal funds, the contracting agency shall require that each entity submitting a request for qualifications provide a detailed DBE participation plan. The plan shall provide information describing the experience of the entity in meeting DBE participation goals, how the entity will meet the DBE goal design-build project and such other qualifications that the commission considers to be in the best interest of the state.

(34) Request for Qualification (RFQ) means a document issued by the contracting agency describing the project in enough detail to let potential proposers determine if they wish to compete and forms the

basis for requesting qualifications submissions from which the most highly qualified proposers can be identified.

(35) Secretary means the Secretary of Transportation of the United States Department of Transportation.

(36) Short listing means the narrowing of the field of offerors through the selection of the most qualified proposers who have responded to an RFQ.

(37) Solicitation means a public notification of a contracting agency's need for information, qualifications, or proposals related to identified services.

(38) Standard design-build means a procurement process in which the first phase consists of short listing (based on qualifications submitted in response to an RFQ) and the second phase consists of the submission of price and technical proposals in response to an RFP.

(39) State means the state of Missouri, MoDOT or commission.

(40) State funds means funds raised under the authority of the state or any political or other subdivision thereof, and made available for expenditure under direct control of the commission or MoDOT.

(41) Stipend means a monetary amount paid to unsuccessful proposers.

(42) Technical *proposal* means that portion of a design-build proposal that contains design solutions and other qualitative factors that are provided in response to the RFP document.

(43) Tradeoff means an analysis technique involving a comparison of price and non-price factors to determine the best value when considering the selection of other than the lowest priced proposal.

(44) Transportation corporation means any transportation corporation organized under sections 238.300 to 238.367, RSMo.

(45) Transportation development district means a transportation development district organized under sections 238.200 to 238.275, RSMo.

(46) Weakness means a flaw in the proposal that increases the risk of unsuccessful contract performance. A significant weakness in the proposal is a flaw that appreciably increases the risk of unsuccessful contract performance.

(47) Weighted criteria process means a form of best value selection in which maximum point values are pre-established for qualitative and price components, and award is based upon high total points earned by the proposers.

AUTHORITY: sections 226.020, RSMo 2000 and 226.030 and 227.107, RSMo Supp. 2004. Original rule filed Aug. 15 2005.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*.

lication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission**

Chapter 24—Design-Build Project Contracts

PROPOSED RULE

7 CSR 10-24.020 General

PURPOSE: This rule sets forth the scope of the chapter.

(1) This chapter describes the commission's policies and procedures for approving design-build projects financed under Title 23, *United States Code* (U.S.C.) by use of state funds, by use of funds of local public agencies or counties, or any combination of fund sources. This chapter satisfies the requirement of 227.107, RSMo Supp. 2004. The contracting procedures of this chapter apply to all design-build projects undertaken by the commission.

(2) The provisions of this chapter apply to all design-build projects within the state highway system, interstate or National Highway System (NHS) highway or linked to a federal-aid highway project (i.e., the project would not exist without another federal-aid highway project).

(3) The commission is neither requiring nor promoting the use of the design-build contracting method. The design-build contracting technique is optional and its use limited by law.

(4) Relations of the National Environmental Protection Act (NEPA) review process to the design-build procurement process.

(A) A commission Request for Qualification (RFQ) solicitation may be released prior to the conclusion of the NEPA review process as long as the RFQ solicitation informs proposers of the general status of the NEPA process.

(B) A commission Request for Proposal (RFP) will not be released prior to the conclusion of the NEPA process. The NEPA review process is concluded with either a Categorical Exclusion (CE) classification, an approved Finding of No Significant Impact (FONSI), or an approved Record of Decision (ROD) as defined in 23 CFR 771.113(a).

(C) A commission RFP must address how environmental commitments and mitigation measures identified during the NEPA process will be implemented.

AUTHORITY: sections 226.020, RSMo 2000 and 226.030 and 227.107, RSMo Supp. 2004. Original rule filed Aug. 15 2005.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, 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 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 24—Design-Build Project Contracts**

PROPOSED RULE

7 CSR 10-24.030 Procedures for Solicitations and Receipt of Proposals

PURPOSE: This rule lists procedures appropriate for solicitation and receipt of proposals, provides for oral presentations during the procurement process and restricts team changes.

(1) The commission will give public notice of a Request for Qualifications in at least two (2) public newspapers that are distributed wholly or in part in this state and at least one (1) construction industry trade publication that is distributed nationally. In addition, the commission may use additional procedures deemed appropriate for the solicitation and receipt of proposals and information including the following:

- (A) Exchanges with industry before receipt of proposals;
- (B) Request for Qualification (RFQ), Request for Proposal (RFP) and contract format;
- (C) Solicitation schedules;
- (D) Lists of forms, documents, exhibits, and other attachments;
- (E) Representations and instructions;
- (F) Handling proposals and information; and
- (G) Submission, modification, revisions and withdrawal of proposals.

(2) All responses to the Request for Qualifications will be evaluated by the pre-qualification review/short listing team. This team will be comprised of the following Missouri Department of Transportation (MoDOT) staff or their designated representative: chief engineer, chief financial and administrative officer, controller, director of program delivery, one (1) or more district engineer(s), project manager for the given project, state construction and materials engineer, state bridge engineer and the state design engineer. An external partner(s) may be asked to act as an observer to the pre-qualification/short listing process.

(3) Use of Oral Presentations During the Procurement Process.

(A) Oral presentations as a substitute for portions of a written proposal may be used in streamlining the source selection process. Oral presentations may occur at any time in the acquisition process, however, the commission must comply with any appropriate federal and state procurement integrity standards.

(B) Oral presentations may augment written information. The commission or MoDOT will maintain a record of oral presentations to document what information was relied upon in making the source selection decision. The commission will decide the appropriate method and level of detail for the record (e.g., videotaping, audio tape recording, written record, contracting agency notes, copies of proposer briefing slides or presentation notes). A copy of the record will be placed in the contract file and may be provided to proposers upon request.

(4) Restrictions on team changes after response to an RFQ where the proposer's qualifications are a major factor in the selection of the successful design-builder, team member switching (adding or switching team members) is discouraged after submission of response to an RFQ. However, the commission may use its discretion in reviewing team changes or team enhancement requests on a case-by-case basis. Any specific project rules related to changes in team members or changes in personnel within teams will be explicitly stated in a project solicitation.

AUTHORITY: sections 226.020 RSMo 2000 and 226.030 and 227.107, RSMo Supp. 2004. Original rule filed Aug. 15, 2005.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, 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 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 24—Design-Build Project Contracts**

PROPOSED RULE

7 CSR 10-24.040 Applicability to Public-Private Agreements

PURPOSE: This rule describes how design-build applies to a project developed under a public-private partnership.

(1) In order for a project being developed under a public-private agreement to be eligible for federal-aid funding (including traditional federal-aid funds, direct loans, loan guarantees, lines of credit, or some other form of credit assistance), the commission must have awarded the contract to the public-private entity through a competitive process that complies with federal requirements causing the project to be federal-aid eligible, and applicable state and local laws.

(2) If the commission or the public-private entity wishes to utilize traditional federal-aid funds in a project under a public-private agreement, the applicability of federal-aid procurement procedures will depend on the nature of the public-private agreement.

(A) If the public-private agreement establishes price and an assignment of risk, then all subsequent contracts executed by the public-private entity are considered to be subcontracts and are not subject to federal-aid procurement requirements.

(B) If the public-private agreement does not establish price and an assignment of risk, the project's developer is considered to be an agent of the commission, and the public-private entity and each of them is responsible to and must follow the appropriate federal-aid procurement requirements (23 CFR part 172 for engineering service contracts, 23 CFR part 635 for construction contracts and the requirements of 23 CFR part 636 for design-build contracts) for all prime contracts (not subcontracts) from initiation of the project and throughout the development of the project at each stage.

(3) The commission will ensure such public-private projects comply with all nonprocurement requirements of Title 23 *United States Code*, regardless of the form of the Federal Highway Administration (FHWA) funding (traditional federal-aid funding or credit assistance). This includes compliance with all FHWA policies such as environmental and right-of-way requirements and compliance with such construction contracting requirements as Buy America, Davis-Bacon minimum wage rate requirements, for federally funded construction or design-build contracts under the public-private agreement.

(4) The parties to the public-private entity agreement are in turn responsible to learn of and have affirmative responsibility to comply with all applicable procurement and nonprocurement requirements of Title 23 *United States Code*, 23 CFR, other applicable federal and state laws and regulations. The parties to the public-private entity agreement may be required by the commission to provide written assurances, opinions of counsel and certifications of compliance with those laws from time-to-time. It will not be the responsibility of the commission to structure a public-private agreement to comply with or to engage in efforts to detect noncompliance by the public-private agreement parties with applicable laws and regulations.

AUTHORITY: sections 226.020, RSMo 2000 and 226.030 and 227.107, RSMo Supp. 2004. Original rule filed Aug. 15, 2005.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, 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 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 24—Design-Build Project Contracts**

PROPOSED RULE

7 CSR 10-24.050 Types of Projects in Which Design-Build Contracting May Be Used

PURPOSE: This rule provides for the design-build method used in determining a project “qualified” and how it applies to Intelligent Transportation System (ITS) projects.

(1) Subject to the provisions of 227.107, RSMo Supp. 2004, the design-build contracting technique may be used for any qualified or nonqualified project which the commission deems to be appropriate on the basis of project delivery time, cost, construction schedule and/or quality.

(2) The use of the term “qualified project” does not limit the use of design-build contracting by the commission. It merely determines the Federal Highway Administration’s (FHWA’s) procedures for approval. The division administrator may approve the design-build method for a “qualified project” which meets the requirements of this chapter.

(3) The FHWA division administrator may also approve other design-build projects (which do not meet the “qualified projects” definition) by using Special Experimental Projects No. 14 (SEP-14), “Innovative Contracting Practices,” provided the project meets the requirements of this chapter. Projects that do not meet the requirements of this chapter, (either “qualified or nonqualified” projects) must be submitted to the FHWA for conceptual approval.

(4) As a consequence of these differences in FHWA procedures, Missouri Department of Transportation (MoDOT) procedures will vary to comply with FHWA procedures.

(5) For the purpose of this chapter, a federal-aid ITS design-build project meets the criteria of a “qualified project” if:

(A) A majority of the scope of services provides ITS services (at least fifty percent (50%) of the scope of work is related to ITS services); and

(B) The estimated contract value exceeds five (5) million dollars.

AUTHORITY: sections 226.020, RSMo 2000 and 226.030 and 227.107, RSMo Supp. 2004. Original rule filed Aug. 15, 2005.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, 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 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 24—Design-Build Project Contracts
PROPOSED RULE**

7 CSR 10-24.060 Stipends

PURPOSE: This rule provides for the payment of stipends, if elected by the commission, and the criteria used in determining the amount of stipend.

(1) The commission will pay a reasonable stipend to unsuccessful proposers who have submitted responsive proposals.

(2) On federal-aid projects stipends are eligible for federal-aid participation. Proposers will cooperate in providing such records and complying with such process as required for the commission to obtain federal participation.

(3) Stipend amount determination may consider:

(A) Project scope;

(B) Substantial opportunity for innovation;

(C) The cost of submitting a proposal;

(D) Encouragement of competition;

(E) Compensate unsuccessful proposers for a portion of their costs (usually one-third to one-half (1/3 to 1/2) of the estimated proposal development cost); and

(F) Ensure that smaller companies are not put at a competitive disadvantage.

(4) The commission will retain the right to use ideas from both successful and unsuccessful proposers, if the stipend is accepted. The Request for Proposal (RFP) will describe the process for distributing the stipend to qualifying proposers and transfer of ownership of ideas in intellectual property of both the successful and qualifying unsuccessful proposers.

AUTHORITY: sections 226.020, RSMo 2000 and 226.030 and 227.107, RSMo Supp. 2004. Original rule filed Aug. 15, 2005.

PUBLIC COST: This proposed rule might cost state agencies or political subdivisions nine (9) million dollars to twelve (12) million dollars in the aggregate from FY 2005 to FY 2012. These costs will already be included in the amounts originally programmed for these projects and do not represent additional expenditures by the department.

PRIVATE COST: This proposed rule might cost private entities thirteen and one-half (13.5) million dollars to eighteen (18) million dollars in the aggregate from FY 2005 to FY 2012. These costs will already be included in the amounts originally programmed for these projects and do not represent additional expenditures by the private entities.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.

**FISCAL NOTE
PUBLIC ENTITY COST**

I. RULE NUMBER 7 CSR 10-24

Title: 7 - Department of Transportation

Division: 10 - Missouri Highways and Transportation Commission

Chapter: 24 - Design Build Project Contracts

Rule Number and Name:	7 CSR 10-24.060 Stipends
Type of Rulemaking	Proposed Rulemaking

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost in the Aggregate.
Missouri Department of Transportation	<p>Costs for FY 2005 to FY 2012</p> <p style="text-align: right;">\$9,000,000.00 to \$12,000,000.00</p>

III. WORKSHEET

IV. ASSUMPTIONS

1. Section 227.107 RSMo Supp. 2002 requires a stipend to be paid by the Department to unsuccessful offerors. The Missouri Department of Transportation and the Missouri Highway and Transportation Commission assume there may be a cost greater than \$500 annually in the aggregate to the Department if Design Build Contracts are awarded and stipends are required to be paid to the unsuccessful offeror.
2. The Missouri Department of Transportation assumes there will be at most 3 unsuccessful offerors for each project offered under this rule.
3. Section 227.107 RSMo Supp. 2002 allows the Missouri Department of Transportation to award up to three (3) projects prior to the end of FY 2012. The Missouri Department of Transportation assumes that if three (3) projects are awarded, and stipends are required to be paid for each of the three (3) projects, the cost to the Department could total \$9,000,000.00 to \$12,000,000.00 for all projects
4. The Missouri Department of Transportation assumes these costs entail Request for Qualification (RFQ), Request for Proposal (RFP) and stipends.
5. These costs will already be included in the amounts originally programmed for these projects and do not represent additional expenditures by the Department.

**FISCAL NOTE
 PRIVATE ENTITY COST**

I. RULE NUMBER 7 CSR 10-24

Title: 7 - Department of Transportation

Division: 10 - Missouri Highways and Transportation Commission

Chapter: 24 - Design Build Project Contracts

Rule Number and Name:	7 CSR 10-24.060 Stipends
Type of Rulemaking	Proposed Rulemaking

II. SUMMARY OF FISCAL IMPACT

Affected Private Entities by Class	Estimated Cost in the Aggregate.
Unsuccessful Responsive Offerors	Costs for FY 2005 to FY 2012
	\$13,500,000.00 to
	\$18,000,000.00

III. WORKSHEET

IV. ASSUMPTIONS

1. Section 227.107 RSMo Supp. 2002 requires a stipend to be paid by the Department to unsuccessful offerors. The Missouri Department of Transportation and the Missouri Highway and Transportation Commission assume there may be a cost greater than \$500 annually in the aggregate to the Department if Design Build Contracts are awarded and stipends are required to be paid to the unsuccessful offeror.
2. The costs to Private Entities are being reimbursed at no more than half the estimated proposal development cost and are not intended to fully reimburse the Private Entities. The Missouri Department of Transportation assumes this will induce Private Entities to keep down costs of responding to the Request for Proposal.
3. The Missouri Department of Transportation assumes there will be at most 3 unsuccessful offerors for each project offered under this rule.
4. Section 227.107 RSMo Supp. 2002 allows the Missouri Department of Transportation to award up to three (3) projects prior to the end of FY 2012. The Missouri Department of Transportation assumes that if three (3) projects are awarded, and stipends are required to be paid for each of the three (3) projects, the cost to the Department could total \$13,500,000.00 to \$18,000,000.00 for all projects
5. The Missouri Department of Transportation assumes these costs entail Request for Qualification (RFQ), Request for Proposal (RFP) and stipends.
6. These costs will already be included in the amounts originally programmed for these projects and do not represent additional expenditures by the private entities.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 24—Design-Build Project Contracts**

PROPOSED RULE

7 CSR 10-24.070 Risk Allocation

PURPOSE: This rule provides for factors to be considered in risk allocation.

(1) The commission will consider, identify, and allocate the risks in the Request for Proposal (RFP) document and define these risks in the contract. Risk will be allocated with consideration given to the party who is in the best position to manage and control a given risk or the impact of a given risk.

(2) Risk allocation will vary according to the type of project and location, however, the following factors should be considered and will be used to the extent the commission considers them appropriate:

(A) Governmental risks, including the potential for delays, modifications, withdrawal, scope changes, or additions that result from multi-level federal, state, and local participation and sponsorship;

(B) Regulatory compliance risks, including environmental and third-party issues, such as permitting, railroad, and utility company risks;

(C) Construction phase risks, including differing site conditions, traffic control, interim drainage, public access, weather issues, and schedule which good engineering and contracting practice would take into account in determining site investigation plan and design, which reflect sub-surface or latent physical conditions which are known, discoverable or which a reasonable person would be on notice to investigate or expect or which are inherent in the type of work and geographic location of the work;

(D) Post-construction risks, including public liability and meeting stipulated performance standards; and

(E) Right-of-way risks including acquisition costs, appraisals, relocation delays, condemnation proceedings, including court costs and others.

(3) Information exchange with industry at an early project stage will occur if it will facilitate understanding of the capabilities of potential proposers. However, any exchange of information must be consistent with state procurement integrity requirements. Information exchanges may take place with potential proposers, end users, acquisition and supporting personnel, and others involved in the conduct or outcome of the acquisition.

(4) The purpose of exchanging information is to improve the understanding of the commission requirements and industry capabilities, thereby allowing potential proposers to judge whether or how they can satisfy those requirements, and enhancing commission's ability to obtain quality supplies and services, including construction, at reasonable prices, and increase efficiency in proposal preparation, proposal evaluation, negotiation, and contract award.

(5) An early exchange of information may identify and resolve concerns regarding the acquisition strategy, including proposed contract type, terms and conditions, and acquisition planning schedules. This also includes the feasibility of the requirement, including performance requirements, statements of work, and data requirements; the suitability of the proposal instructions and evaluation criteria, including the approach for assessing past performance information; the availability of reference documents; and any other industry concerns or questions. Some techniques that may be used to promote early exchanges of information are:

- (A) Industry or small business conferences;
- (B) Public hearings;
- (C) Market research;
- (D) One-on-one meetings with potential proposers (except that any meetings that are substantially involved with potential contract terms and conditions will include the Missouri Department of Transportation (MoDOT) project manager designated for the project and are subject to the restrictions on disclosure of information set out in section (5) of this rule);
- (E) Pre-solicitation notices;
- (F) Draft RFPs;
- (G) Request for Information (RFI) ;
- (H) Pre-solicitation or pre-proposal conferences; and
- (I) Site visits.

(6) RFIs may be used when the commission does not intend to award a contract, but wants to obtain price, delivery, other market information, or capabilities for planning purposes. Responses to these notices are not offers and cannot be accepted to form a binding contract. There is no required format for an RFI.

(7) When specific information about a proposed acquisition that would be necessary for the preparation of proposals is disclosed to one or more potential proposers, that information shall be made available to all potential proposers as soon as practicable, but no later than the next general release of information, in order to avoid creating an unfair competitive advantage. Information provided to a particular proposer in response to that proposer's request must not be disclosed if doing so would reveal the potential proposer's confidential business strategy. When a pre-solicitation or pre-proposal conference is conducted, materials distributed at the conference will be made available to all potential proposers, upon request.

AUTHORITY: sections 226.020, RSMo 2000 and 226.030 and 227.107, RSMo Supp. 2004. Original rule filed Aug. 15, 2005.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, 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 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 24—Design-Build Project Contracts**

PROPOSED RULE

7 CSR 10-24.080 Organizational Conflicts of Interest

PURPOSE: This rule describes the conflict of interest policy applicable to design-build projects.

(1) State statutes, regulations or policies concerning organizational conflict of interest will be specified or referenced in the design-build Request for Qualification (RFQ) or Request for Proposal (RFP) document as well as any contract for engineering services, inspection or

technical support in the administration of the design-build contract. All design-build solicitations will address the following situations as appropriate:

(A) Consultants and sub-consultants who assist the commission in the preparation of a RFP document will not be allowed to participate as an proposer or join a team submitting a proposal in response to the RFP. However, the commission may determine there is not an organizational conflict of interest for a consultant or sub-consultant where:

1. The role of the consultant or sub-consultant was limited to provision of preliminary design, reports, or similar "low-level" documents that will be incorporated into the RFP, and did not include assistance in development of instructions to proposers or evaluation criteria; or

2. Where all documents and reports delivered to the commission by the consultant or sub-consultant are made available to all offerors.

(B) All solicitations for design-build contracts, including related contracts for inspection, administration or auditing services, must include a provision which:

1. Directs proposers attention to this section;

2. States the nature of the potential conflict as seen by the commission;

3. States the nature of the proposed restraint or restrictions, and duration, upon future contracting activities, if appropriate;

4. Depending on the nature of the acquisition, states whether or not the terms of any proposed clause and the application of this section to the contract are subject to negotiation; and

5. Requires proposers to provide information concerning potential organizational conflicts of interest in their proposals. The apparent successful proposers must disclose all relevant facts concerning any past, present or currently planned interests that may present an organizational conflict of interest. Such firms must state how their interests, or those of their chief executives, directors, key project personnel, or any proposed consultant, contractor or subcontractor may result, or could be viewed as, an organizational conflict of interest. The information may be in the form of a disclosure statement or a certification.

(C) Based upon a review of the information submitted, the commission will make a written determination of whether the proposer's interests create an actual or potential organizational conflict of interest and identify any actions that must be taken to avoid, neutralize, or mitigate such conflict. There should be an award of the contract to the apparent successful proposer unless an organizational conflict of interest is determined to exist that cannot be avoided, neutralized, or mitigated, in the judgment of the commission.

(2) The organizational conflict of interest provisions in this section provide minimum standards for the commission to identify, mitigate or eliminate apparent or actual organizational conflicts of interest. To the extent that state developed organizational conflict of interest standards are less stringent than those contained in any applicable federal statute, regulation or policy, the latter standards prevail.

(3) State laws and procedures governing improper business practices and personal conflicts of interest will apply to the commission selection team members. In the absence of such state provisions, the requirements of 48 CFR Part 3, Improper Business Practices and Personal Conflicts of Interest, will apply to selection team members.

AUTHORITY: sections 226.020, RSMo 2000 and 226.030 and 227.107, RSMo Supp. 2004. Original rule filed Aug. 15, 2005.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, 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 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 24—Design-Build Project Contracts**

PROPOSED RULE

7 CSR 10-24.100 Selection Procedures and Award Criteria

PURPOSE: This rule provides the criteria used to determine whether standard design-build or modified design-build procedures will be used.

(1) The commission will use a two (2)-phase selection procedure for all design-build projects. If it is determined by the commission that the design build procedure is not appropriate for a given project, based on the criteria in 7 CSR 10-24.130 the modified design-build contracting method may be utilized.

(2) The following criteria will be used to decide whether design-build or modified design-build selection procedures are appropriate:

(A) The number of offers anticipated;

(B) Proposers are expected to perform substantial design work before developing price proposals;

(C) Proposers will incur a substantial expense in preparing proposals; and

(D) Commission has sufficiently defined and analyzed other contributing factors, including:

1. The requirements of the project;

2. The time constraints for delivery of the project;

3. The capability and experience of potential contractors;

4. Commission capabilities to manage the standard design-build selection process; and

5. Any other criteria that the commission may consider appropriate.

(3) The commission will identify the selection procedure and award criteria in the Request for Qualification (RFQ). The following will determine the type of selection procedure and award criteria used by the commission:

Selection procedure	Award criteria options
Standard Design-Build Selection Procedures	Lowest price, adjusted low bid (price per quality point), meets criteria/low bid, weighted criteria process, fixed price/best design, best value.
Modified Design-Build	Lowest price technically acceptable.

(4) Commission will base the source selection decision on a comparative assessment of proposals against all selection criteria in the solicitation. Commission may use reports and analyses prepared by

others, however, the source selection decision shall represent commission's independent judgment.

(5) The source selection decision will be documented, and the documentation will include the rationale for any business judgments and tradeoffs made or relied on, including benefits associated with additional costs. Although the rationale for the selection decision must be documented, that documentation need not quantify the tradeoffs that led to the decision.

(6) A minimum of two (2) to a maximum of five (5) firms will be short-listed. If the commission fails to receive offers from at least two (2) responsive proposers, the offers will not be opened; and the commission may re-advertise the project.

AUTHORITY: sections 226.020, RSMo 2000 and 226.030 and 227.107, RSMo Supp. 2004. Original rule filed Aug. 15, 2005.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, 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 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 24—Design-Build Project Contracts**

PROPOSED RULE

7 CSR 10-24.110 Solicitation Procedures for Competitive Proposals

PURPOSE: This rule provides the elements included in phase one and phase two solicitation procedures.

(1) The first phase shall consist of a short listing based on a Request for Qualification (RFQ).

(2) The second phase shall consist of the receipt and evaluation of price and technical proposals in response to a Request for Proposal (RFP).

(3) The commission will include the following items in any phase one solicitation:

- (A) The scope of the work;
- (B) The cost estimate of the design-build project;
- (C) The project completion date; and
- (D) The requirement of a detailed disadvantaged business enterprise (DBE) participation plan including:
 1. Information describing the experience of the proposer in meeting DBE participation goals;
 2. How the proposer will meet the commission DBE participation goal; and
 3. Such other qualifications that the commission considers to be in the best interest of the state as stated in the RFQ.

(E) The phase one evaluation factors and their relative weights, including:

1. Technical approach (but not detailed design or technical information);

2. Technical qualifications, such as:

A. Specialized experience and technical competence;

B. The capability of proposers to perform, including key personnel; and

C. Past performance of the members of the proposer's team, including the architect-engineer and construction members;

3. Other appropriate factors, excluding cost or price related factors which are not permitted in phase one; and

(F) Phase two evaluation factors; and

(G) A statement of the maximum number of proposers that will be short-listed to submit phase two proposals.

(4) The commission will include the requirements for separately submitted sealed technical proposals and price proposals in the phase two solicitation. All factors and significant subfactors that will affect contract award and their relative importance will be stated clearly in the solicitation. The commission will use its own procedures for the solicitation as long as it complies with the requirements of this section.

(5) The commission may allow proposers to submit alternate technical concepts in their proposals as long as these alternate concepts do not conflict with criteria agreed upon in the environmental decision making process. Alternate technical concept proposals may supplement, but not substitute for base proposals that respond to the RFP requirements.

AUTHORITY: sections 226.020, RSMo 2000 and 226.030 and 227.107, RSMo Supp. 2004. Original rule filed Aug. 15, 2005.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, 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 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 24—Design-Build Project Contracts**

PROPOSED RULE

7 CSR 10-24.120 Past Performance

PURPOSE: This rule provides for the use of past performance information in evaluating contractor during either phase one or phase two solicitations.

(1) If the commission elects to use past performance criteria as an indicator of a proposer's ability to perform the contract successfully, the information may be used as evaluation criteria in either phase one

or phase two solicitations. The currency and relevance of the information, source of the information, context of the data, and general trends in contractor's performance may be considered.

(2) For evaluating proposers with no relevant performance history, the commission will provide proposers an opportunity to identify past or current contracts, including federal, state, and local government and private, for efforts similar to the current solicitation.

(3) If the commission elects to request past performance information, the solicitation will also authorize proposers to provide information on problems encountered on the identified contracts and the proposer's corrective actions. The commission may consider this information, as well as information obtained from any other sources, when evaluating the proposer's past performance.

(4) The commission may, at its discretion, determine the relevance of similar past performance information.

(5) The evaluation will take into account past performance information regarding predecessor companies, key personnel who have relevant experience, or subcontractors that will perform major or critical aspects of the requirement when such information is relevant to the current acquisition.

(6) In the case of an proposer without a record of relevant past performance or for whom information on past performance is not available, the proposer may not be evaluated favorably or unfavorably on past performance.

(7) The commission may use any existing prequalification procedures for either construction or engineering design firms as a supplement to the procedures in this section.

AUTHORITY: sections 226.020, RSMo 2000 and 226.030 and 227.107, RSMo Supp. 2004. Original rule filed Aug. 15, 2005.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, 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 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 24—Design-Build Project Contracts**

PROPOSED RULE

7 CSR 10-24.130 Modified Design-Build Procedures

PURPOSE: This rule describes the modified design-build selection procedures.

(1) Modified design-build selection procedures, the lowest price technically acceptable source selection process, may be used for any project.

(2) The Request for Proposal (RFP) will clearly state the following:

(A) The identification of evaluation factors and significant subfactors that establish the requirements of acceptability; and

(B) That award will be made on the basis of the lowest evaluated price of proposals meeting or exceeding the acceptability standards for noncost factors.

(3) Tradeoffs will not be permitted, unless the tradeoff is in accordance with 7 CSR 10-24.110. However, the commission may incorporate cost-plus-time (A+B) bidding procedures, lane rental, or other cost-based provisions in such contracts.

(4) Proposals will be evaluated for acceptability but not ranked using the noncost/price factors.

(5) Exchanges may occur in accordance with 7 CSR 10-24.300 through 7 CSR 10-24.330.

AUTHORITY: sections 226.020, RSMo 2000 and 226.030 and 227.107, RSMo Supp. 2004. Original rule filed Aug. 15, 2005.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, 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 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 24—Design-Build Project Contracts**

PROPOSED RULE

7 CSR 10-24.140 Tradeoffs in Design-Build Contracting

PURPOSE: This rule describes when and how tradeoffs should be used in awarding a design-build contract and documentation of the tradeoff decisions.

(1) At its discretion, the commission may consider the tradeoff technique when it is desirable to award to other than the lowest priced proposer or other than the highest technically rated proposer.

(2) If the commission uses a tradeoff technique, the following will apply:

(A) All evaluation factors and significant subfactors that affect contract award and the factor's relative importance must be clearly stated in the solicitation; and

(B) The solicitation must also state, at a minimum, whether all evaluation factors other than cost or price, when combined, are:

1. Significantly more important than cost or price; or
2. Approximately equal in importance to cost or price; or
3. Significantly less important than cost or price.

(3) When tradeoffs are performed, the source selection records must include the following:

(A) An assessment of each proposer's ability to accomplish the technical requirements; and

(B) A summary, matrix, or quantitative ranking, along with appropriate supporting narrative, of each technical proposal using the evaluation factors.

AUTHORITY: sections 226.020, RSMo 2000 and 226.030 and 227.107, RSMo Supp. 2004. Original rule filed Aug. 15, 2005.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, 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 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 24—Design-Build Project Contracts**

PROPOSED RULE

7 CSR 10-24.150 Use of a Competitive Range to Limit Competition

PURPOSE: This rule provides for establishing a competitive range to limit competition.

(1) The solicitation may notify proposers that a competitive range can be used for purposes of efficiency. The commission may limit the number of proposals to a number that will permit efficient competition. The commission will provide written notice of elimination to any proposer whose proposal is not within the competitive range. Proposers eliminated from the competitive range may request a debriefing according to procedure approved by the commission. The commission may provide for pre-award or post-award debriefings.

AUTHORITY: sections 226.020, RSMo 2000 and 226.030 and 227.107, RSMo Supp. 2004. Original rule filed Aug. 15, 2005.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, 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 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 24—Design-Build Project Contracts**

PROPOSED RULE

7 CSR 10-24.200 Proposal Evaluation Factors

PURPOSE: This rule describes the selection of the proposal evaluation factors and the limitations on the selection and the possible inclusion of prequalification standards.

(1) The commission will select proposal evaluation factors for each design-build and modified design-build project.

(A) The proposal evaluation factors and significant subfactors will be tailored to the acquisition.

(B) Evaluation factors and significant subfactors will:

1. Represent the key areas of importance and emphasis to be considered in the source selection decision; and
2. Support meaningful comparison and discrimination between and among competing proposals.

(2) Limitations on the Selection and Use of Proposal Evaluation Factors Are as Follows:

(A) The selection of the evaluation factors, significant subfactors and their relative importance are within the commission's broad discretion subject to the following:

1. The commission will evaluate price in every source selection where construction is a significant component of the scope of work;
2. The commission will evaluate the quality of the product or service through consideration of one (1) or more nonprice evaluation factors. These factors may include (but are not limited to) such criteria as:

A. Compliance with solicitation requirements;

B. Completion schedule (contractual incentives and disincentives for early completion may be used where appropriate); or

C. Technical solutions;

3. The commission may evaluate past performance, technical experience and management experience;

4. The commission may include prequalification standards when the scope of the work involves very specialized technical expertise or specialized financial qualifications;

(B) All factors and significant subfactors that will affect contract award and their relative importance must be stated clearly in the solicitation;

(C) Disadvantaged Business Enterprise (DBE) commitments exceeding the commission's stated goal will not be used as a proposal evaluation factor in determining the successful proposer.

AUTHORITY: sections 226.020, RSMo 2000 and 226.030 and 227.107, RSMo Supp. 2004. Original rule filed Aug. 15, 2005.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, 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 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 24—Design-Build Project Contracts**

PROPOSED RULE

7 CSR 10-24.210 Process to Review, Rate and Score Proposals

PURPOSE: This rule describes the process used to rate and score proposals.

(1) Technical and price proposals will normally be reviewed independently by separate evaluation teams. However, there may be occasions where the same evaluators needed to review the technical proposals are also needed in the review of the price proposals. This may occur where a limited amount of technical expertise is available to review proposals. Price information may be provided to such evaluators in accordance with this chapter and the provisions of the Request for Proposal (RFP).

(2) Proposal evaluation is an assessment of the proposer's proposal and ability to perform the prospective contract successfully. The commission will evaluate proposals solely on the factors and subfactors specified in the solicitation.

(3) The commission may conduct evaluations using any rating method or combination of methods including color or adjectival ratings, numerical weights, and ordinal rankings. The relative strengths, deficiencies, significant weaknesses, and risks supporting proposal evaluation must be documented in the contract file.

AUTHORITY: sections 226.020, RSMo 2000 and 226.030 and 227.107, RSMo Supp. 2004. Original rule filed Aug. 15, 2005.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, 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 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 24—Design-Build Project Contracts**

PROPOSED RULE

7 CSR 10-24.300 Information Exchange, General

PURPOSE: This rule describes the types of information exchange that may take place either prior to or after the release of the Request for Proposal.

(1) Verbal or written information exchanges prior to the release of the Request for Proposal (RFP) document must be consistent with state and/or local procurement integrity requirements, as well as those provided in 23 CFR 636.115 and 7 CSR 10-24.070.

(2) Information exchange may be used at different points after the release of the RFP document. The following table summarizes the types of communications that will be discussed in 7 CSR 10-24.310 through 7 CSR 10-24.330. These communication methods are optional.

Type of Information Exchange	When	Purpose	Parties Involved
(1) Clarifications	After receipt of proposal	Used when award without discussions is contemplated. Used to clarify certain aspects of a proposal (resolve minor errors, obtain additional past performance information, etc.).	Any offeror whose proposal is not clear to the commission.
(2) Communications	After receipt of proposals, prior to the establishment of the competitive range	Used to address issues which might prevent a proposal from being placed in the competitive range.	Only those proposer s whose exclusion from, or inclusion in, the competitive range is uncertain. All proposer s whose past performance information is the determining factor preventing them from being placed in the competitive range.
(3) Discussions (see 7 CSR 10-24.400 through 24.413)	After receipt of proposals and after determination of the competitive range	Enhance commission understanding of proposals and proposer s understanding of scope of work. Facilitate the evaluation process.	Must be held with all proposer s in the competitive range.

- (3) Commission will not engage in information exchanges that:
- (A) Favor one proposer over another;
 - (B) Reveal an proposer's technical solution, including unique technology, innovative and unique uses of commercial items, or any information that would compromise an proposer's intellectual property to another proposer;
 - (C) Reveal an proposer's price without that proposer's permission;
 - (D) Reveal the names of individuals providing reference information about an proposer's past performance; or
 - (E) Knowingly furnish source selection information that could be in violation of Missouri procurement integrity standards applicable to the commission.

AUTHORITY: sections 226.020, RSMo 2000 and 226.030 and 227.107, RSMo Supp. 2004. Original rule filed Aug. 15, 2005.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, 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 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 24—Design-Build Project Contracts**

PROPOSED RULE

7 CSR 10-24.310 Clarifications

PURPOSE: This rule describes the "clarification" type of information exchange.

(1) The commission may clarify any aspect of proposals that would enhance the commission's understanding of an proposer's proposal. Clarification exchanges are discretionary. They do not have to be held with any specific number of proposers and do not have to address specific issues.

(2) Clarification may include information such as an proposer's past performance to which the proposer has not previously had an opportunity to respond.

(3) The commission may clarify and revise the Request for Proposal (RFP) document through an addenda process in response to questions from potential proposers.

AUTHORITY: sections 226.020, RSMo 2000 and 226.030 and 227.107, RSMo Supp. 2004. Original rule filed Aug. 15, 2005.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Transportation, Mari Ann Winters, Secretary to the

Commission, PO Box 270, 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 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 24—Design-Build Project Contracts**

PROPOSED RULE

7 CSR 10-24.320 Communications

PURPOSE: This rule describes the "communications" type of information exchange.

(1) Communications may be considered in rating proposals for the purpose of inclusion in the competitive range. Prior to determining inclusion in the competitive range, the commission may conduct communications to:

- (A) Enhance the commission's understanding of proposals;
- (B) Allow reasonable interpretation of the proposal; or
- (C) Facilitate the commission's evaluation process.

(2) Prior to establishing the competitive range, the commission will hold communications with proposers:

- (A) Whose past performance information is the determining factor preventing them from being placed within the competitive range and address adverse past performance information to which an proposer has not had a prior opportunity to respond; and
- (B) Whose exclusion from, or inclusion in, the competitive range is uncertain.

(3) Communications will not be used to:

- (A) Cure proposal deficiencies or material omissions;
- (B) Materially alter the technical or cost elements of the proposal; or
- (C) Otherwise revise the proposal.

(4) Communications may be used to address the following:

- (A) Ambiguities in the proposal or other concerns such as perceived deficiencies, weaknesses, errors, omissions, or mistakes; and
- (B) Information relating to relevant past performance.

AUTHORITY: sections 226.020, RSMo 2000 and 226.030 and 227.107, RSMo Supp. 2004. Original rule filed Aug. 15, 2005.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, 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 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 24—Design-Build Project Contracts**

PROPOSED RULE

7 CSR 10-24.330 Discussions

PURPOSE: This rule describes the “discussions” type of information exchange.

(1) After receipt of proposals and determination of the competitive range, the commission may use discussions to maximize its ability to obtain the best value, based on the requirements and the evaluation factors set forth in the solicitation.

(2) If discussions are held, they will be conducted with all proposers in the competitive range. If the commission wishes to hold discussions and did not formally establish a competitive range, then the commission will hold discussions with all responsive proposers.

(3) Discussions should be tailored to each proposer’s proposal. Discussions will cover significant weaknesses, deficiencies, and other aspects of a proposal (such as cost or price, technical approach, past performance, and terms and conditions) that could be altered or explained to enhance materially the proposal’s potential for award. The commission’s discretionary judgment will set limits for the scope and extent of discussions.

(4) In situations where the solicitation stated that evaluation credit would be given for technical solutions exceeding any mandatory minimums, the commission may hold discussions regarding increased performance beyond any mandatory minimums, and the commission may suggest to proposers that have exceeded any mandatory minimums (in ways that are not integral to the design), that their proposals would be more competitive if the excesses were removed and the offered price decreased.

(5) In a competitive acquisition, the commission may employ discussions that may include bargaining. The term bargaining may include: persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract.

(6) In competitive acquisitions, the solicitation will notify proposers of the commission’s intent to use or not use discussions. The solicitation will either:

(A) Notify proposers that discussions may or may not be held depending on the quality of the proposals received (except clarifications may be used as described in 7 CSR 10-24.300). Therefore, the proposer’s initial proposal should contain the proposer’s best terms from a cost or price and technical standpoint; or

(B) Notify proposers of commission’s intent to establish a competitive range and hold discussions.

(7) The commission may elect to hold discussions when circumstances dictate. The rationale for doing so will be documented in the contract file. Such circumstances may include situations where all proposals received have deficiencies, when fair and reasonable prices are not offered, or when the cost or price offered is not affordable.

(8) The commission may inform an proposer during discussion that its price is considered to be too high, or too low, and reveal the results of the analysis supporting that conclusion. At commission’s discretion, commission may indicate to all proposers the estimated cost for the project determined at a point subsequent to the cost esti-

mate published as part of the public notice of Request for Qualifications provided by section 227.107.18, RSMo.

(9) Final Proposal Revisions as a Result of Discussions.

(A) The commission may request or allow proposal revisions to clarify and document understandings reached during discussions. At the conclusion of discussions, each proposer shall be given an opportunity to submit a final proposal revision.

(B) The commission will establish a common cut-off date only for receipt of final proposal revisions. Requests for final proposal revisions shall advise proposers that the final proposal revisions shall be in writing and of the intent to make award without obtaining further revisions.

(10) The commission may further narrow the competitive range if an proposer originally in the competitive range is no longer considered to be among the most highly rated proposers being considered for award. That proposer may be eliminated from the competitive range whether or not all material aspects of the proposal have been discussed, or whether or not the proposer has been afforded an opportunity to submit a proposal revision. Commission will provide an proposer excluded from the competitive range with a written determination and notice that proposal revisions will not be considered.

(11) The commission may determine a need to hold more than one (1) round of discussions with proposers, but only at the conclusion of discussions will the proposers be requested to submit a final proposal revision, also called best and final offer (BAFO). Thus, regardless of the length or number of discussions, there will be only one (1) request for a revised proposal (i.e., only one (1) BAFO).

AUTHORITY: sections 226.020, RSMo 2000 and 226.030 and 227.107, RSMo Supp. 2004. Emergency rule filed Aug. 15, 2005, effective Aug. 26, 2005, expires Feb. 23, 2006. Original rule filed Aug. 15, 2005.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, 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 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 24—Design-Build Project Contracts**

PROPOSED RULE

7 CSR 10-24.413 Negotiations Allowed After Source Selection Prior to Contract Execution

PURPOSE: This rule describes when limited negotiations are allowed.

(1) After the source selection but prior to contract execution, commission may conduct limited negotiations with the selected design-builder to clarify any remaining issues regarding scope, schedule,

financing or any other information provided by that offeror. These limited negotiations will be subject to the provisions of 7 CSR 10-24.300 in the exchange of this information.

AUTHORITY: sections 226.020, RSMo 2000 and 226.030 and 227.107, RSMo Supp. 2004. Original rule filed Aug. 15, 2005.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, 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 8—DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

Division 60—Missouri Commission on Human Rights Chapter 2—Procedural Regulations

PROPOSED AMENDMENT

8 CSR 60-2.025 Complaint, Investigation and Conciliation Processes. The commission proposes to amend sections (7) and (9).

PURPOSE: The purpose of this amendment is to clarify that the Missouri Commission on Human Rights can administratively close cases that have been processed and closed by other civil or human rights agencies. It also adds language clarifying that the Missouri Commission on Human Rights can adopt the findings of other civil rights agencies as its investigation.

(7) Dismissal of Complaint.

(B) A complaint may be administratively closed by the executive director or his/her designee at any stage prior to setting the case for public hearing **and the commission's statutory duty to investigate shall be deemed to have been met**—

1. For failure of the complainant to cooperate with the commission;
2. Upon the commission's inability to locate the complainant;
3. For lack of jurisdiction;
4. In the absence of any remedy available to the complainant;
5. When the complainant files a suit in federal court on the same issues against the respondent named in the commission complaint;
6. When the commission has not completed its administrative processing within one hundred eighty (180) days from the filing of the complaint and the person aggrieved requests in writing a notice of the right to bring a civil action in state court, the executive director or his/her designee will administratively close the complaint and issue the notice; *or*

7. When the same complaint has been processed and closed by another civil or human rights agency; or

[7.] **8.** In any other circumstances where the executive director deems administrative closure to be appropriate.

(9) Investigation. As part of the investigation of any complaint not dismissed prior to service of the complaint upon the respondent, the respondent shall be given an opportunity to present an oral or written statement of its position. Investigations shall be accomplished by

methods including, but not limited to, fact-finding conferences, personal interviews, written interrogatories, tests, requests for production of documents, books or papers, or other materials and reviews of investigations of **or adoption of the findings** of other civil rights agencies. If a respondent refuses to cooperate with the investigation, information needed may be subpoenaed. The secretary to the commission shall issue subpoenas. Subpoenas shall be processed in accordance with the provisions of Chapter 536, RSMo. For complaints alleging violation of section 213.070, RSMo, as it relates to or involves alleged violations of section 213.040, 213.045 or 213.050, RSMo, or as it relates to or involves the alleged encouraging, aiding or abetting the violation of these sections and for complaints alleging violations of section/s/ 213.040, 213.045 or 213.050, RSMo, the following shall apply:

AUTHORITY: sections 213.030, [RSMo Supp. 1995] and 213.075, 213.077, 213.085 and 213.111, RSMo [1994] 2000. Original rule filed April 15, 1988, effective July 11, 1988. Amended: Filed Dec. 2, 1992, effective June 7, 1993. Amended: Filed July 1, 1996, effective Dec. 30, 1996. Amended: Filed Aug. 5, 2005.

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 Labor and Industrial Relations Commission, Attn: Donna Cavitte, Executive Director, PO Box 1129, Jefferson City, MO 65102-1129. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 8—DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

Division 60—Missouri Commission on Human Rights Chapter 2—Procedural Regulations

PROPOSED AMENDMENT

8 CSR 60-2.065 Pleadings. The commission proposes to amend sections (1) and (4) of this rule, delete section (2) and renumber the remaining sections.

PURPOSE: The purpose of this amendment is to remove the certified mail or personal service requirement on amended complaints, to remove the paper size requirements and to remove the requirement that depositions be filed with the presiding officer.

(1) After a contested case has been set for public hearing, the complaint may be amended by the commission or the complainant-intervenor within time limits set by the presiding officer, to cure technical defects or omissions, including to clarify and amplify allegations made in the complaint. Any amended complaint filed by the commission or the complainant-intervenor shall be *[served upon]* sent to the parties *[by certified mail or by personal service. Proof of service, as described in 8 CSR 60-2.035(2)]* and amended complaints, shall be filed with the presiding officer. The original complaint and all amendments shall be treated together as a single complaint. An answer to a complaint or amended complaint shall not be required. If no answer is filed, the allegations in the complaint or amended complaint shall be deemed denied. However, if an answer is filed, any allegation in the complaint not answered shall be deemed admitted. Any affirmative allegation and any allegation of

new matter contained in an answer shall be deemed denied without the necessity of a reply. Any answer filed must be within the time limits as may be established by the presiding officer.

[(2) All papers and copies for filing and service shall be type-written on good white paper eight and one-half by eleven inches (8 1/2 X 11") in approximate size. Copies may be reproduced by any printing or duplicating process providing a clear image.]

*[(3)] (2) Each document shall bear on the first page the caption, descriptive title and number of the matter in which it is filed and shall identify the party on whose behalf it is filed. Each document shall contain on the final page the name, address and telephone number and Missouri bar number of the attorney in active charge of the case, or name, address and telephone number of the party if appearing *pro se*.*

[(4)] (3) [The original of all depositions shall be filed with the presiding officer. A copy of interrogatories, answers to interrogatories, objections to interrogatories, if any, and responses to these objections, requests to produce, objections to requests to produce, if any, and responses to these objections, shall be filled with the presiding officer, with a copy being served on each party. The original and three (3) copies of all other pleadings and documents shall be filed with the presiding officer, with a copy being served on each party.] Copies of all written communications to the presiding officer shall be served on all other parties.

[(5)] (4) When service of any notice, rule, order, pleading, motion or other paper is required, proof of service shall be filed with the presiding officer. Proof of service, except when otherwise noted, may be shown by acknowledgement or receipt or by affidavit or by written certificate of counsel making that service.

[(6)] (5) Any document submitted by a party that is received by the presiding officer beyond the established number of days for submission may be disregarded by the presiding officer.

[(7)] (6) Where a party requires additional time to submit any document, a written request for the extension must be submitted to the presiding officer and shall include the positions of all parties to the request. The request shall be filed prior to the expiration of the time period for the document in question. The presiding officer may grant an extension of time only in situations where the need for more time is due to circumstances beyond the control of the party so requesting or where refusal to extend the time would create an undue hardship on the party so requesting. The presiding officer shall notify the party who requested the extension whether it will be allowed.

[(8)] (7) Where an extension of time is allowed, the presiding officer shall advise the participant who did not file the request of the extension and the new due date and that the participant shall have the same extension of time.

AUTHORITY: sections 213.030 and 213.075, RSMo [Supp. 1992] 2000. Original rule filed April 15, 1988, effective July 11, 1988. Amended: Filed Dec. 2, 1992, effective June 7, 1993. Amended: Filed Aug. 5, 2005.

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 Labor and Industrial Relations Commission, Attn: Donna Cavitte, Executive Director, PO Box 1129, Jefferson City, MO 65102-1129. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 8—DEPARTMENT OF LABOR AND
INDUSTRIAL RELATIONS
Division 60—Missouri Commission on Human Rights
Chapter 2—Procedural Regulations**

PROPOSED ADMENDMENT

8 CSR 60-2.100 Prehearing Discovery. The commission proposes to amend section (3).

PURPOSE: The purpose of this amendment is to remove the requirement that interrogatories be filed with the presiding officer and that the limit of thirty-five (35) interrogatories be lifted.

(3) Use of Interrogatories.

(A) Interrogatories. Any party may serve upon any other party written interrogatories to be answered by the party or an agent of the party. *[The party serving the interrogatories also shall file copies of the interrogatories with the presiding officer. No party shall serve on any other party more than thirty-five (35) interrogatories in the aggregate (including subsections) without leave of the presiding officer or the consent of opposing counsel. Any party desiring to serve additional interrogatories shall file a written motion setting forth the proposed additional interrogatories and reasons establishing good cause for the additional interrogatories. Any number of additional interrogatories may be filed and served if the written consent of counsel for the party to which interrogatories are directed is attached to the interrogatories.]*

AUTHORITY: sections 213.030 and 213.075, RSMo [Supp. 1992] 2000. Original rule filed April 15, 1988, effective July 11, 1988. Amended: Filed Dec. 2, 1992, effective June 7, 1993. Amended: Filed Aug. 5, 2005.

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 Labor and Industrial Relations Commission, Attn: Donna Cavitte, Executive Director, PO Box 1129, Jefferson City, MO 65102-1129. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 8—DEPARTMENT OF LABOR AND
INDUSTRIAL RELATIONS
Division 60—Missouri Commission on Human Rights
Chapter 2—Procedural Regulations**

PROPOSED AMENDMENT

8 CSR 60-2.130 Continuances. The commission proposes to amend section (1).

PURPOSE: The purpose of this amendment is to remove the certified mail or personal service requirement on orders granting continuances.

(1) The presiding officer may continue a public hearing or prehearing conference upon a showing of good cause. Before a party requests a continuance, the requesting party shall contact the other parties to determine whether they object to the continuance and to determine mutually acceptable dates to which the hearing or conference may be rescheduled and the information shall be included in the party's motion for continuance. When a public hearing is continued, the parties shall be notified in writing of the new hearing date within a reasonable time in advance of the new hearing date. *[Any order granting a continuance shall be served on the parties by certified mail or personal service.]*

AUTHORITY: sections 213.030 and 213.075, RSMo [Supp. 1992] 2000. Original rule filed April 15, 1988, effective July 11, 1988. Amended: Filed Aug. 5, 2005.

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 Labor and Industrial Relations Commission, Attn: Donna Cavitte, Executive Director, PO Box 1129, Jefferson City, MO 65102-1129. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 8—DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
Division 60—Missouri Commission on Human Rights
Chapter 2—Procedural Regulations**

PROPOSED AMENDMENT

8 CSR 60-2.150 Evidence. The commission proposes to delete sections (7), (8) and (9) and renumber the remaining section.

PURPOSE: The purpose of this amendment is to remove the size requirements of paper evidence.

[(7) All paper exhibits shall be no larger than eight and one-half by eleven inches (8 1/2 × 11") in size and the party presenting an exhibit must submit to the presiding officer the exhibit and three (3) copies of the exhibit and shall provide one (1) copy to each of the other parties at the time the exhibit is marked.

(8) Larger exhibits are allowed; however, in order to be included in the record, the information contained in the exhibit must be reduced to paper eight and one-half by eleven inches (8 1/2 × 11") in size by the party offering the exhibit.

(9) Variation from the requirements in sections (1)–(8) will be allowed only in cases where there is no reasonable alternative.]

[[10]] (7) The presiding officer may take notice of judicially recognizable facts and of general, technical or scientific facts. The parties shall be notified at any time during a proceeding of material officially noticed and they will be afforded the opportunity to contest the facts so noticed. The notice required by this section shall be given to the party prior to the issuance of decision and order in the matter.

AUTHORITY: sections 213.030 and 213.075, RSMo [Supp. 1992] 2000. Original rule filed April 15, 1988, effective July 11, 1988. Amended: Filed Aug. 5, 2005.

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 Labor and Industrial Relations Commission, Attn: Donna Cavitte, Executive Director, PO Box 1129, Jefferson City, MO 65102-1129. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 8—DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
Division 60—Missouri Commission on Human Rights
Chapter 2—Procedural Regulations**

PROPOSED AMENDMENT

8 CSR 60-2.210 Orders. The commission proposes to amend section (5).

PURPOSE: The purpose of this amendment is to remove the certified mail or personal service requirement for orders.

(5) Copies of orders shall be *[served by certified mail or by personal service, or] sent* to the complainant, respondent and all intervenors or their attorneys, accompanied by a notice of the statutory right of judicial review.

AUTHORITY: sections 213.030, 213.075 and 213.085, RSMo [Supp. 1992] 2000. Original rule filed April 15, 1988, effective July 11, 1988. Amended: Filed Dec. 2, 1992, effective June 7, 1993. Amended: Filed Aug. 5, 2005.

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 Labor and Industrial Relations Commission, Attn: Donna Cavitte, Executive Director, PO Box 1129, Jefferson City, MO 65102-1129. 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 9—DEPARTMENT OF MENTAL HEALTH
Division 10—Director, Department of Mental Health
Chapter 5—General Program Procedures**

PROPOSED AMENDMENT

9 CSR 10-5.200 Report of Complaints of Abuse, Neglect and Misuse of Funds/Property. The director proposes to amend the Purpose and sections (1), (2), (5), (6) and (10).

PURPOSE: The amendment will amend the definitions of verbal abuse and sexual abuse and misuse of funds/property; add a definition of medication error; indicate which types of medication errors are subject to investigation as abuse or neglect; and limit the right to appeal findings of abuse and neglect to those which would result in placing a perpetrator's name on the DMH disqualification registry. The amendment also makes several updates in language and clarifications.

PURPOSE: This rule prescribes procedures for reporting and investigating complaints of abuse, neglect and misuse of funds/property in a residential facility, day program or specialized service that is licensed, certified or funded by the Department of Mental Health (department) as required by sections 630.135, 630.167, 630.168, 630.655 and 630.710, RSMo. The rule also sets forth due process procedures for persons who have been accused of abuse, neglect and misuse of funds/property.

(1) The following words and terms, as used in this rule, mean:

(D) Medications.

1. "Medication error," a mistake in prescribing, dispensing, or administering medications. A medication error occurs if a consumer receives an incorrect drug, drug dose, dosage form, quantity, route, concentration, or rate of administration. This includes failing to administer the drug or administering the drug on an incorrect schedule. Levels of medication errors are:

A. "Minimal," medication error is one in which the consumer experiences no or minimal adverse consequences and receives no treatment or intervention other than monitoring or observation is required;

B. "Moderate," medication error is one in which the consumer experiences short-term reversible adverse consequences and receives treatment and/or intervention in addition to monitoring or observation; and

C. "Serious," medication error is one in which the consumer experiences life-threatening and/or permanent adverse consequences or results in hospitalization or an emergency room episode of care.

2. "Serious" medication errors may be considered abuse or neglect and shall be subject to investigation by the Department of Mental Health;

[(D)](E) Misuse of funds/property, the misappropriation or conversion for any purpose of a consumer's funds or property by an employee *[for another person's benefit]* or employees with or without the consent of the consumer;

[(E)](F) Physical abuse—

1. An employee purposefully beating, striking, wounding or injuring any consumer; or

2. In any manner whatsoever, an employee mistreating or maltreating a consumer in a brutal or inhumane manner. Physical abuse includes handling a consumer with any more force than is reasonable for a consumer's proper control, treatment or management;

[(F)](G) Sexual abuse, any touching, directly or through clothing, of a consumer by an employee for sexual purpose or in a sexual manner. This includes but is not limited to:

1. Kissing;
2. Touching of the genitals, buttocks or breasts;

3. Causing a consumer to touch the employee for sexual purposes;

4. Promoting or observing for sexual purpose any activity or performance involving consumers including any play, motion picture, photography, dance, or other visual or written representation; or

5. Failing to intervene or attempt to stop, or *[prevent]* encouraging inappropriate sexual activity or performance between consumers; and

[(G)](H) Verbal abuse, an employee using profanity or speaking in a demeaning, nontherapeutic, undignified, threatening or derogatory manner to a consumer or about a consumer in the presence of a consumer.

(2) This section applies to any director, supervisor or employee *[or consumer]* of any residential facility, day program or specialized service, *[as defined under section 630.005, RSMo]* that is licensed, certified or funded by the Department of Mental Health. Facilities, programs and services that are operated by the department are regulated by the department's operating regulations and are not included in this definition.

(A) Any such *[employee who]* person shall immediately file a written or verbal complaint if that person has reasonable cause to believe that a consumer has been subjected to *[physical abuse, sexual abuse, misuse of funds/property, class I neglect, class II neglect or verbal abuse,]* any of the following misconducts while under the care of a residential facility, day program or specialized service: *[that is licensed, certified or funded by the department shall immediately make a verbal or written complaint.]*

1. Physical abuse;
2. Sexual abuse;
3. Misuse of funds/property;
4. Class I neglect;
5. Class II neglect;
6. Verbal abuse;
7. Serious medication error; or
8. Diversion of medication from intended use by the consumer for whom it was prescribed.

(B) A complaint under subsection (A) above shall be made to the head of the facility, day program or specialized service, and to the department's regional center, supported community living placement office or *[regional]* district administrator office.

(C) The head of the facility, day program or specialized service shall forward the complaint to—

1. The *[Division of Family Services]* Children's Division if the alleged victim is under the age of eighteen (18); or

2. The Division of Senior Services and Regulation if the alleged victim is a resident or client of a facility licensed by the Division of Senior Services and Regulation or receiving services from an entity under contract with the Division of Senior Services and Regulation.

(5) A *[board of inquiry, local investigator assigned by the division, or the department's central investigative unit]* department investigator shall gather facts and conduct an investigation regarding the alleged abuse or neglect. The investigation shall be conducted in accordance with the procedures and time frames established under the department's operating regulations. Upon completion of *[its]* the investigation, the *[board of inquiry, local]* investigator *[or central investigative unit]* shall present *[its]* written findings of facts to the head of the supervising facility.

(6) Within ten (10) working days of receiving the final report from the *[board of inquiry, local]* investigator *[or central investigative unit]*, if there is a preliminary determination of abuse, neglect or misuse of funds/property, the head of the supervising facility or department designee shall send to the alleged perpetrator a summary of the allegations and findings which are the basis for the alleged

abuse/neglect/misuse of funds or property; the provider will be copied. The summary shall comply with the constraints regarding confidentiality contained in section 630.167, RSMo and shall be sent by regular and certified mail.

(C) Within ten (10) working days of the meeting, or if no request for a meeting is received within ten (10) working days of the alleged perpetrator's receipt of the summary, the head of the supervising facility or department designee shall make a final determination as to whether abuse/neglect/misuse of funds or property took place. The perpetrator shall be notified of this decision by regular and certified mail; the provider will be copied. **If the charges do not meet the criteria in sections (11) and (12), the decision of the head of the supervising facility or department designee shall be the final decision of the department.**

(D) *[The]* **If the charges meet the criteria in sections (11) and (12),** the letter shall advise the perpetrator that they have ten (10) working days following receipt of the letter to contact the department's hearings administrator if they wish to appeal a finding of abuse, neglect or misuse of funds/property.

(F) The department's effort to notify the alleged perpetrator at his/her last known address by regular and certified mail shall serve as proper notice. The alleged perpetrator's refusal to receive certified mail does not limit the department's ability to make a final determination. **Evidence of the alleged perpetrator's refusal to receive certified mail shall be sufficient notice of the department's determination.**

(10) *[An]* **For those charges in sections (11) and (12),** an alleged perpetrator does not forfeit his/her right to an appeal with the department's hearings administrator when s/he declines to meet with the head of the supervising facility under subsections (6)(A) and (B) of this rule.

AUTHORITY: sections 630.050, 630.135, 630.168, 630.655 and 630.705, RSMo 2000 and 630.165, 630.167 and 630.170, RSMo Supp. [2003] 2004. Original rule filed Oct. 29, 1998, effective May 30, 1999. Emergency amendment filed March 29, 2002, effective May 2, 2002, terminated Oct. 30, 2002. Amended: Filed March 29, 2002, effective Oct. 30, 2002. Amended: Filed May 5, 2003, effective Dec. 30, 2003. Amended: Filed Aug. 11, 2005.

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

PRIVATE COSTS: 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 by writing to Michelle Yahnig, Office of the General Counsel, Department of Mental Health, PO Box 687, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 12—Liquor Control**

PROPOSED AMENDMENT

11 CSR 45-12.091 Controlled Access Liquor Cabinet Systems.
The commission is amending section (2).

PURPOSE: The commission proposes to amend this rule by clarifying that the commission is the sole liquor licensing authority for excursion gambling boats.

(2) Notwithstanding any other provision of this chapter to the contrary, any person who possesses the qualifications required by this chapter, and who now or hereafter meets the requirements of and complies with the provisions of this chapter, and who operates a qualified establishment and who is licensed to sell liquor by the drink at retail with respect to such qualified establishment, may apply for, and the *[supervisor of liquor control shall]* **commission may** issue, a license to sell intoxicating liquor in the rooms of such qualified establishment by means of a controlled access liquor cabinet system on and subject to the following terms and conditions:

(B) Prior to providing a key, magnetic card or other similar device required to attain access to the controlled access liquor cabinet in a particular room to the registered guest, the licensee shall verify that each such registered guest to whom such key, magnetic card or similar device is to be provided is not *[a minor, as defined by section 311.310, RSMo]* **under twenty-one (21) years of age;**

(C) All employees handling the intoxicating liquor to be placed in the controlled access liquor cabinet, including without limitation any employee who inventories and/or restocks and replenishes the intoxicating liquor in the controlled access liquor cabinet, shall be at least eighteen (18) years of age *[and shall obtain such employee permits as the city, county or other local governmental entity in which the qualified establishment is located requires to be obtained by employees of the restaurant operated at such qualified establishment; provided, however, that no such employee permits shall be required of any employee who handles the intoxicating liquor in the original case and who does not open such original case];*

AUTHORITY: sections 313.004 and 313.805, RSMo 2000 and 313.840, RSMo Supp. 2004. Original rule filed April 3, 2001, effective Oct. 30, 2001. Amended: Filed Aug. 3, 2005.

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: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Gaming Commission, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. A public hearing is scheduled for 10:00 a.m., October 18, 2005, in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.

**Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 30—Division of Health Standards and Licensure
Chapter 81—Certification
PROPOSED RESCISSION**

19 CSR 30-81.020 Prolong-Term Care Screening. This rule set forth the requirement and procedure for screening by the Division of Senior Services of Medicaid-eligible and potential Medicaid-eligible individuals considering long-term care, in order to acquaint them at the earliest possible time with all services available to them, to determine on a preliminary basis their level-of-care need and to permit an effective evaluation by a Division of Senior Services worker of the resources available in the home, family and community.

PURPOSE: This rule is being rescinded because the Division of Senior Services and Regulation, Section for Senior Services is discontinuing the prelong-term care screening component from the Missouri Care Options (MCO) program. Hospitals and nursing facilities will no longer be required to request an R# for screening purposes. Individuals considering long-term care will be apprised of their options regarding home and community based services through receipt of the department's pamphlet entitled Missouri's Guide to Home and Community Based Services, as required by 19 CSR 30-88.010(9).

AUTHORITY: sections 207.020 and 208.159, RSMo 1986 and 208.153, RSMo Supp. 1991. This rule was previously filed as 13 CSR 40-81.086 and 13 CSR 15-9.020. Emergency rule filed March 14, 1984, effective April 12, 1984, expired Aug. 8, 1984. Original rule filed March 14, 1984, effective Aug. 9, 1984. Amended: Filed Aug. 3, 1992, effective May 6, 1993. Moved to 19 CSR 30-81.020, effective Aug. 28, 2001. Rescinded: Filed Aug. 12, 2005.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with David S. Durbin J.D., M.P.A., Deputy Department Director Senior Services and Regulation, Department of Health and Senior Services, PO Box 570, Jefferson City, MO 65102-0570. 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.