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SALUS POPULI SUPREMA LEX ESTO

*"The welfare of the people shall be the supreme law."*



ROBIN CARNAHAN  
SECRETARY OF STATE

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REGISTER

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## IN THIS ISSUE:

### EMERGENCY RULES

**Department of Labor and Industrial Relations**  
 Workers' Compensation . . . . .2467

### EXECUTIVE ORDERS . . . . .2470

### PROPOSED RULES

**Office of Administration**  
 Design and Construction . . . . .2476  
 Division of Facilities Management . . . . .2478

**Department of Economic Development**  
 Division of Credit Unions . . . . .2479  
 Public Service Commission . . . . .2479

**Department of Labor and Industrial Relations**  
 Workers' Compensation . . . . .2486

**Department of Public Safety**  
 Missouri Gaming Commission . . . . .2488

**Department of Revenue**  
 Director of Revenue . . . . .2488

**Department of Social Services**  
 Division of Medical Services . . . . .2498

**Retirement Systems**  
 The Public School Retirement System of Missouri . . . . .2498

**Department of Health and Senior Services**  
 Division of Senior Services and Regulation . . . . .2499

**Department of Insurance**  
 Financial Examination . . . . .2502

### ORDERS OF RULEMAKING

**Department of Natural Resources**  
 Air Conservation Commission . . . . .2503

**Department of Public Safety**  
 Missouri Gaming Commission . . . . .2504

**Department of Revenue**  
 Director of Revenue . . . . .2505

**Department of Social Services**  
 Family Support Division . . . . .2505

**Elected Officials**  
 Secretary of State . . . . .2506

**Department of Insurance**  
 Licensing . . . . .2506

### IN ADDITIONS

**Department of Economic Development**  
 Division of Credit Unions . . . . .2508

### CONSTRUCTION TRANSIENT LIST . . . . .2509

### DISSOLUTIONS . . . . .2521

### SOURCE GUIDES

**RULE CHANGES SINCE UPDATE . . . . .2522**  
**EMERGENCY RULES IN EFFECT . . . . .2529**  
**EXECUTIVE ORDERS . . . . .2531**  
**REGISTER INDEX . . . . .2534**

Register Filing Deadlines	Register Publication Date	Code Publication Date	Code Effective Date
October 3, 2005 October 17, 2005	<b>November 1, 2005</b> <b>November 15, 2005</b>	November 30, 2005 November 30, 2005	December 30, 2005 December 30, 2005
November 1, 2005 November 15, 2005	<b>December 1, 2005</b> <b>December 15, 2005</b>	December 31, 2005 December 31, 2005	January 30, 2006 January 30, 2006
December 1, 2005 December 15, 2005	<b>January 3, 2006</b> <b>January 17, 2006</b>	January 29, 2006 January 29, 2006	February 28, 2006 February 28, 2006
January 3, 2006 January 17, 2006	<b>February 1, 2006</b> <b>February 15, 2006</b>	February 28, 2006 February 28, 2006	March 30, 2006 March 30, 2006
February 1, 2006 February 15, 2006	<b>March 1, 2006</b> <b>March 15, 2006</b>	March 31, 2006 March 31, 2006	April 30, 2006 April 30, 2006
March 1, 2006 March 15, 2006	<b>April 3, 2006</b> <b>April 17, 2006</b>	April 30, 2006 April 30, 2006	May 30, 2006 May 30, 2006
April 3, 2006 April 17, 2006	<b>May 1, 2006</b> <b>May 15, 2006</b>	May 31, 2006 May 31, 2006	June 30, 2006 June 30, 2006
May 1, 2006 May 15, 2006	<b>June 1, 2006</b> <b>June 15, 2006</b>	June 30, 2006 June 30, 2006	July 30, 2006 July 30, 2006
June 1, 2006 June 15, 2006	<b>July 3, 2006</b> <b>July 17, 2006</b>	July 31, 2006 July 31, 2006	August 30, 2006 August 30, 2006
July 3, 2006 July 17, 2006	<b>August 1, 2006</b> <b>August 15, 2006</b>	August 31, 2006 August 31, 2006	September 30, 2006 September 30, 2006
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Documents will be accepted for filing on all regular workdays from 8:00 a.m. until 5:00 p.m. We encourage early filings to facilitate the timely publication of the *Missouri Register*. Orders of Rulemaking appearing in the *Missouri Register* will be published in the *Code of State Regulations* and become effective as listed in the chart above. Advance notice of large volume filings will facilitate their timely publication. We reserve the right to change the schedule due to special circumstances. Please check the latest publication to verify that no changes have been made in this schedule. To review the entire year's schedule, please check out the website at <http://www.sos.mo.gov/adrules/pubsched.asp>

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**RULES**—Cite material in the *Missouri Register* by volume and page number, for example, Vol. 28, *Missouri Register*, page 27. The approved short form of citation is 28 MoReg 27.

The rules are codified in the *Code of State Regulations* in this system—

Title	Code of State Regulations	Division	Chapter	Rule
1	CSR	10-	1.	010
Department		Agency, Division	General area regulated	Specific area regulated

They are properly cited by using the full citation, i.e., 1 CSR 10-1.010.

Each department of state government is assigned a title. Each agency or division within the department is assigned a division number. The agency then groups its rules into general subject matter areas called chapters and specific areas called rules. Within a rule, the first breakdown is called a section and is designated as (1). Subsection is (A) with further breakdown into paragraph 1., subparagraph A., part (I), subpart (a), item I. and subitem a.

**RSMo**—The most recent version of the statute containing the section number and the date.

**R**ules appearing under this heading are filed under the authority granted by section 536.025, RSMo 2000. An emergency rule may be adopted by an agency if the agency finds that an immediate danger to the public health, safety or welfare, or a compelling governmental interest requires emergency action; follows procedures best calculated to assure fairness to all interested persons and parties under the circumstances; follows procedures which comply with the protections extended by the *Missouri* and the *United States Constitutions*; limits the scope of such rule to the circumstances creating an emergency and requiring emergency procedure, and at the time of or prior to the adoption of such rule files with the secretary of state the text of the rule together with the specific facts, reasons and findings which support its conclusion that there is an immediate danger to the public health, safety or welfare which can be met only through the adoption of such rule and its reasons for concluding that the procedure employed is fair to all interested persons and parties under the circumstances.

**R**ules filed as emergency rules may be effective not less than ten (10) days after filing or at such later date as may be specified in the rule and may be terminated at any time by the state agency by filing an order with the secretary of state fixing the date of such termination, which order shall be published by the secretary of state in the *Missouri Register* as soon as practicable.

**A**ll emergency rules must state the period during which they are in effect, and in no case can they be in effect more than one hundred eighty (180) calendar days or thirty (30) legislative days, whichever period is longer. Emergency rules are not renewable, although an agency may at any time adopt an identical rule under the normal rulemaking procedures.

**Title 8—DEPARTMENT OF LABOR AND  
INDUSTRIAL RELATIONS  
Division 50—Division of Workers' Compensation  
Chapter 5—Determination of Disability**

**EMERGENCY AMENDMENT**

**8 CSR 50-5.060 Evaluation of Hearing [Impairment] Disability.** The division proposes to delete sections (1), (23) and (24), to amend sections (2), (3), (5) through (7), (9) through (16), and (18) through (22), and renumber sections accordingly.

*PURPOSE: This amendment clarifies the decibel standards based upon the most current American National Standards Institute (ANSI) occupational hearing loss standards. Senate Bill 1 and 130 authorizes the division, by rule, to adopt any superseding ANSI occupational hearing loss standards with respect to frequencies and decibel standards for measuring hearing loss. This amendment adds the requirements for measuring work related hearing disability.*

*PURPOSE: The purpose of this rule is to establish the procedures to evaluate hearing [impairment] disability, setting forth methods for its measurement and calculation.*

*EMERGENCY STATEMENT: Pursuant to Senate Bill 1 and 130, the division is authorized, by rule, to adopt any superseding ANSI occu-*

*pational hearing loss standards with respect to frequencies and decibel standards for measuring hearing loss.*

*This emergency amendment is necessary to protect the public health, safety and welfare of all interested parties. The division believes this emergency amendment to be fair to all interested parties as it provides guidance to the stakeholders regarding the ANSI occupational hearing loss standards with respect to frequencies and decibel standards for measuring hearing loss. Equally important, the division believes that failure to promulgate an emergency amendment will present the stakeholders with outdated procedures not in compliance with section 287.197, RSMo, as amended by Senate Bill 1 and 130. The outdated procedures will create confusion about how to measure work related hearing disability and increase the time and expense to resolve legal disputes in such cases.*

*The division finds an immediate danger to the public health, safety and/or welfare and a compelling governmental interest, which requires this emergency action. This emergency amendment limits its scope to the circumstances creating the emergency and complies with the protections extended by the *Missouri* and *United States Constitutions*. A proposed amendment, which covers the same material, is published in this issue of the *Missouri Register*. This emergency amendment was filed October 20, 2005, effective October 30, 2005, expires on April 27, 2006.*

*[(1)] The Division of Workers' Compensation makes grateful acknowledgment for scientific advisory assistance in the preparation of this rule to the Central Institute for the Deaf, 818 South Euclid, St. Louis, Missouri, in particular to Dr. Hallowell Davis, its director of research, for his/her counsel and guidance, and to Dr. S. Richard Silverman, its director, who made available his/her own time and help and that of his highly qualified staff.]*

*[(2)] (1) The following are definitions relating to this matter and rule:*

*(A) Hearing loss—the general condition of reduced auditory sensitivity;*

*(B) Loss of hearing or threshold shift—a change for the worse in auditory sensitivity;*

*(C) Threshold—the weakest sound that can be heard;*

*(D) Decibel (dB)—a unit conventionally used to measure the magnitude of sound. In the testing of hearing, it is used to measure the threshold of a listener relative to the standard threshold (U.S. audiometers);*

*(E) Audiometer—a device for the measurement of the threshold of hearing in decibels relative to a standard;*

*(F) Hearing level or hearing threshold level—the reading on an audiometer in decibels corresponding to the threshold of hearing of the individual being tested;*

*(G) Frequency—the number of regular fluctuations made by a sound wave in one (1) second;*

*(H) Cycle—one (1) of a repeated series of regular fluctuations made by a sound wave;*

*(I) Audiogram—a chart showing hearing levels at different frequencies;*

*(J) Hearing [impairment] disability or [impairment] disability of hearing—a malfunction or abnormality of hearing of sufficient severity to constitute a practical handicap such as would justify compensation; particularly a reduction of efficiency in everyday communication by speech;*

*(K) Deafness—term reserved to designate very severe or total [impairment] disability of hearing; [and]*

*(L) Presbycusis—a loss of hearing occasioned by the aging process[.]; and*

*(M) "Hearing level" is a technical term that refers to the point (or threshold) in decibels when a testing sound is first detected by the listener. The "lowest hearing level," therefore, represents*

best hearing not worst hearing. The “lowest measured loss,” therefore, is reflected by the lowest decibel rating at which the listener heard the test tone.

[[3]] (2) Weeks of compensation for hearing loss due to a traumatic incident (that is, a single accident such as an explosion, a blast or a blow on the head) shall be those provided in items 27 and 28 of subsection 1 of section 287.190, RSMo. **(Complete deafness of both ears—one-hundred eighty (180) weeks; complete deafness of one (1) ear, the other being normal—forty-nine (49) weeks.)**

[[4]] (3) Weeks of compensation for hearing loss due to prolonged exposure to harmful noise in employment (that is, an occupational disease) shall be those provided in subsection 3 of section 287.197, RSMo.

[[5]] (4) *[Either t]* Traumatic occupational hearing loss(es) *[due to occupational disease]* shall be measured as prescribed in section 287.197, RSMo and this rule.

[[6]] (5) When both ears show hearing *[impairment]* disability, the computation of *[impairment]* disability shall be on the basis of binaural loss as provided in subsection 5 of section 287.197, RSMo.

[[7]] (6) Liability for occupational hearing loss occurs only when an employee has been exposed to the hazard of such loss for a period of ninety (90) days or longer and the loss becomes exclusively that of the employer in whose employment such exposure took place *[[section 287.063-5]]*.

[[8]] (7) Each employer is liable for all of the occupational hearing loss to which his/her employment contributed, subject to the limitations of the measurement of hearing loss provisions, but no employer is liable for hearing loss sustained prior to employment with him/her nor for any hearing loss for which compensation previously was awarded or paid (section 287.197[-].8).

[[9]] (8) The date of disability of occupational hearing loss is the last day of a *[six (6)]* one (1)-month period following separation from the employment in which the employee was exposed to harmful noise (section 287.197[-].7).

[[10]] (9) Claim for compensation for occupational hearing loss, if maintained, must be made within *[one (1)]* two (2) years of the date of disability, as defined in section *[[9]]* (8) of this rule. The provision of medical attention and/or the payment of compensation will toll the statute, as in other workers' compensation cases (section 287.197[-].7).

[[11]] (10) Only pure-tone *[air-condition]* air-conduction audiometric instruments that meet the standards *[set by recognized authorities shall be used to measure hearing levels. The reference zero levels of the audiometer used for measuring hearing levels must be explicitly identified either as ASA-1951 (as given in USASI Standard for General Diagnostic Purposes, Z24.5-1951, United States of America Standards Institute, New York 1951) or as ISO (as given in International Organization of Standardization Recommendation R 389, Standard Reference Zero for the calibration of pure-tone audiometers). The corresponding identification must be attached to every decibel value of a hearing level employed in the evaluation of hearing impairment.]* calibrated to the American National Standards Institute (ANSI) occupational hearing loss reference level standards, including ANSI S 3.6, as referred to in section 287.197.2 shall be used for measuring hearing levels.

[[12]] (11) In the evaluation of hearing *[impairment]* disability, only the hearing levels at the frequencies of five hundred (500), one thousand (1,000) and two thousand (2,000) cycles per second shall be considered; provided, however, that if a subject does not hear the test tone at the ninety-five (95) decibel hearing level in any or all of the three (3) frequencies, the value of one hundred (100) decibels shall be used for such frequency(ies) in calculating the average hearing level.

[[13]] (12) Three (3) separate audiograms, each on different days, shall be made including at least the frequencies of five hundred (500), one thousand (1,000) and two thousand (2,000) cycles per second and the lowest hearing level measured at each of the three (3) frequencies shall be used for the computation of hearing *[impairment]* disability. The lowest hearing level at each of the three (3) frequencies shall be added together and the sum divided by three (3) to determine the average hearing level in decibels. If the audiograms show a lowest hearing level at any of these three (3) frequencies that is greater than one hundred (100) decibels, or else no response at all, the value of one hundred (100) dB shall be used for the level at such frequencies in calculating the average hearing level.

[[14]] (13) In order to allow for the average amount of hearing loss due to nonoccupational causes found in the population at any given age (including presbycusis), there shall be deducted from the average hearing level one-half (1/2) decibel for each year of the employee's age over forty (40) at the time of his/her *[[last exposure to industrial noise]* audiogram. The result shall be termed the corrected average hearing level.

[[15]] (14) For every decibel that the corrected average hearing level exceeds *[[fifteen (15) decibels based on the ASA-1951 reference levels or]* twenty-six (26) decibels based on the *[[ISO]* ANSI reference levels an allowance of one and one-half percent (1 1/2%) shall be made up to the maximum of one hundred percent (100%) which is reached at *[[eighty-two (82) decibels based on the ASA-1951 reference levels and at]* ninety-three (93) decibels based on the *[[ISO]* ANSI reference levels. The allowance thus calculated is the monaural percentage *[impairment]* disability of hearing in that ear.

[[16]] (15) Binaural *[impairment]* disability of hearing shall be determined by multiplying the percentage of *[impairment]* disability in the better ear by five (5), to which result is added the percentage of *[impairment]* disability in the poorer ear and dividing the sum of the two (2) by six (6). The result is the evaluation in percentage of binaural hearing *[impairment]* disability.

[[17]] (16) No consideration shall be given to the question of whether or not the ability of an employee to understand speech is improved by the use of a hearing aid.

[[18]] (17) An employee may work in successive employments where s/he is exposed to harmful noise and sustain an accumulated hearing loss, only a part of which may be the liability of the last employer. Section 287.197[-].8, RSMo provides that an employer is liable only for the hearing loss to which his/her employment contributed. *[which provision requires a rule for the calculation of such proportional liability. The rule applies only to the first employer in whose employ the employee develops a compensable hearing impairment.]* Each subsequent employer who hires an individual who already has some hearing *[impairment]* disability is liable only for the additional *[impairment]* disability that develops in *[[his/her employ]* its employment, subject to the correction according to age.

*[(19)] (18)* The best level of hearing at each of the three (3) frequencies of five hundred (500), one thousand (1,000) and two thousand (2,000) cycles per second is determined by selection from all available audiogram(s) made within six (6) months prior to or three (3) months after the date of employment, *but in any case prior to work in a noisy environment*. Earlier audiogram(s) may be used for this purpose only if none is available that were made during that nine (9)-month period.

*[(20)] (19)* The pre-employment average hearing level for the three (3) frequencies is calculated for each ear (section *[(13)] (12)* of this rule). *[If the decibel values are based on the ISO reference, zero (0) levels eleven (11) decibels shall be subtracted from the average hearing level to convert it to its ASA-1951 equivalent. The remainder of this section remains as originally written in terms of the ASA-1951 reference levels.]*

*[(21)] (20)* The correction for nonoccupational hearing loss (section *[(14)] (13)* of this rule) is applied by subtracting from the average hearing level for each ear one-half (1/2) decibel for each year of the employee's age over forty (40) at the time of his/her *[employment] audiogram*.

*[(22)] (21) [Now if] If* the corrected average hearing level of the pre-employment audiogram(s) in either ear exceeds *[fifteen (15)] twenty-six (26)* decibels, the percentage of *[binaural impairment] disability* is calculated as in sections *(14) and (15) [and (16)]* of this rule. The employer is liable for the difference in percentage of *[impairment] disability* between this value and the percentage of *[binaural] hearing [impairment] disability* calculated from post-employment hearing tests.

*[(23) But if the corrected average hearing level of the pre-employment audiogram(s) does not exceed fifteen (15) decibels in either ear, the corrected pre-employment averages are subtracted from the corresponding corrected post-employment averages for each ear. The difference (that is, the threshold shift during employment corrected for the age factor) is divided by the corrected post-employment average hearing level for each ear. This fraction represents the employer's share of liability for the impairment of hearing in that ear at the date of disability.]*

*[(24) The percentage of impairment of hearing in each ear is multiplied by the fraction calculated for that ear to give the percentages of impairment in each ear for which the employer is liable. The binaural percentage of impairment for which the employer is liable is then calculated according to section (16) of this rule.]*

**AUTHORITY:** section 287.650, RSMo [1986] 2000. Original rule filed Sept. 11, 1959, effective Sept. 22, 1959. Amended: Filed Aug. 18, 1967, effective Aug. 29, 1967. Emergency amendment filed Oct. 20, 2005, effective Oct. 30, 2005, expires April 27, 2006. A proposed amendment covering this same material is published in this issue of the **Missouri Register**.

**T**he Secretary of State shall publish all executive orders beginning January 1, 2003, pursuant to section 536.035.2, RSMo Supp. 2004.

## EXECUTIVE ORDER 05-38

WHEREAS, I have been advised by the Director of the State Emergency Management Agency that the State of Florida is requesting assistance under the Emergency Management Assistance Compact (EMAC) in response to Hurricane Wilma which has the potential to cause significant damage and the corresponding threat to the health and safety of the citizens of the State of Florida; and

WHEREAS, the State of Florida requests that Missouri provide military support, both personnel and equipment, beginning October 21, 2005, and continuing; and

WHEREAS, on October 21, 2005, I directed the Missouri National Guard to initiate efforts to comply with the State of Florida's request and any other request for the National Guard resulting from the hurricane response pursuant to the EMAC; and

WHEREAS, the EMAC is designed to protect the safety and welfare of the citizens in the affected participating EMAC states; and

WHEREAS, protection of the safety and welfare of the citizens in the affected communities requires an invocation of the provisions of Section 44.415, RSMo, which provides for emergency mutual aid with other states, and Section 41.480, RSMo, which authorizes the Governor to call out the organized militia as he deems necessary to provide emergency relief to a distressed area in the event of earthquake, flood, tornado or other actual or threatened public catastrophe.

NOW, THEREFORE, I, Matt Blunt, Governor of the State of Missouri, by virtue of the authority vested in me by Section 44.415, RSMo and Section 41.480, RSMo do hereby declare that Missouri will implement the EMAC with the State of Florida to provide assistance because Florida anticipates the potential for significant damage and the corresponding threat to the health and safety of the citizens of the State of Florida as a result of Hurricane Wilma, and I do hereby direct the Missouri State Emergency Management Agency to activate the EMAC plan. I further authorize the use of the Missouri National Guard to provide support to the State of Florida.

This order shall terminate on November 30, 2005, unless extended in whole or in part.

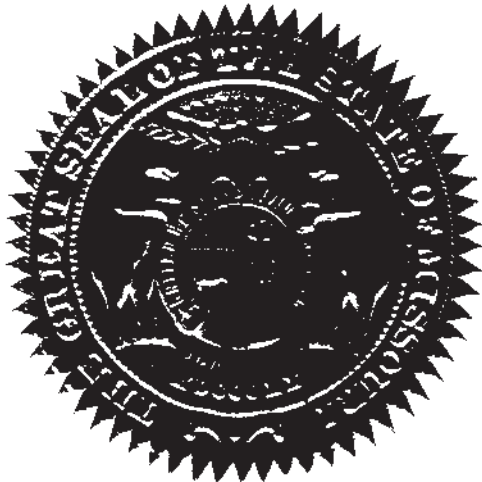


IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 21<sup>st</sup> day of October, 2005.



**Matt Blunt**  
Governor

**ATTEST:**



**Robin Carnahan**  
Secretary of State

**EXECUTIVE ORDER  
05-39**

WHEREAS, on August 30, 2005, Executive Order 05-23 was issued acknowledging the existence of a regional state of emergency, within the meaning of Title 49, Code of Federal Regulations, Section 390.23(a)(1), within the States of Alabama, Florida, Louisiana, and Mississippi, as a result of the severe damage and destruction to persons and property caused by Hurricane Katrina's extremely high winds, substantial tidal surges, heavy thunderstorms, and torrential rains and flooding; and

WHEREAS, on September 23, 2005, Executive Order 05-36 was issued acknowledging the existence of a regional state of emergency, within the meaning of Title 49, Code of Federal Regulations, Section 390.23(a)(1), within the States of Texas and Louisiana, as a result of the severe damage and destruction to persons and property caused by Hurricane Rita's extremely high winds, substantial tidal surges, heavy thunderstorms, and torrential rains and flooding; and

WHEREAS, on October 24, 2005, Hurricane Wilma reached mainland Florida resulting in severe damage and destruction to persons and property in the state of Florida due to extremely high winds, substantial tidal surges, heavy thunderstorms, and torrential rains and flooding; and

WHEREAS, this severe natural disaster has resulted in extensive economic and human damage across these affected states, including, loss of lives, destruction of private and public property in the amount of hundreds of millions of dollars, the widespread interruption of electrical power and water service to millions of utility customers across the affected states, and the evacuation and temporary relocation of thousands of persons from the coastal regions to inland destinations, which will eventually require the return of these displaced persons to their places of origin; and

WHEREAS, these extreme weather conditions, and the resulting destruction of property, interruption of essential human services, and continuing dangers to and loss of human life, now require and will continue to require a massive public and private response to provide immediate, emergency assistance and continuing emergency relief to individual persons, businesses, and federal, state and local governmental units in need of transportation for food, supplies, tools, equipment, medicine, public and private health care, law enforcement, security services, public utility services, sanitation and waste disposal, cleanup of debris, property restoration and reconstruction, and other necessities, which threatens to overload the available transportation systems to, from, and within these affected states; and

WHEREAS, the President of the United States of America has issued Declarations of Regional Emergency within the meaning of Section 390.23(a)(1) of Title 49, Code of Federal Regulations, as a result of these severe weather conditions, which continue to pose a threat to the public safety and health of persons residing within the affected states, thereby authorizing exemption to Title 49 of the Code of Federal Regulations, Parts 390-399; and

WHEREAS, the safety and welfare of the inhabitants of the affected states, as well as any other affected state identified in future regional emergency declarations by the President of the United States or a governor of the affected state, resulting from Hurricanes Katrina, Rita and Wilma require that operators of commercial motor carriers upon the public highways within Missouri, who are rendering assistance to the emergency efforts within the affected states should be allowed more rapid and efficient travel to meet this emergency need for transportation of passengers and property; and

WHEREAS, this requirement for more rapid and efficient transportation would be facilitated by the temporary suspension of certain usual and necessary regulatory requirements for the drivers of commercial motor vehicles while they are transporting property and passengers to assist in the relief efforts; and

WHEREAS, the expiration date of Executive Orders 05-23 is October 25, 2005 at 12:01 AM and the expiration date of Executive Order 05-36 is November 23, 2005 at 12:01 AM and the emergency assistance required to be provided to the affected states will likely be necessary long past these previously set expiration dates in order to assist in the recovery efforts in the affected states; and

WHEREAS, the emergency declaration by the President of the United States of America for the affected states remains in effect and has no expiration date.

NOW THEREFORE, I, MATT BLUNT, GOVERNOR OF THE STATE OF MISSOURI, by virtue of the authority vested in me by the Constitution and laws of the State of Missouri, hereby declare that I acknowledge the continuing existence of a regional state of emergency, within the meaning of Title 49, Code of Federal Regulations, Section 390.23(a)(1), within the States of Alabama, Mississippi, Florida, Texas and Louisiana, as well as any other state(s) identified in future regional emergency declarations by the President of the United States, or by the respective governor of an affected state, resulting from Hurricanes Katrina, Rita and Wilma as a result of the severe weather conditions described above; and

FURTHER, I direct that the commercial motor vehicle regulatory requirements regarding the purchase of trip permits for registration and fuel for commercial motor carriers engaged in interstate disaster relief efforts in any of the affected states identified by regional emergency declarations resulting from Hurricanes Katrina, Rita and Wilma shall be waived; and

FURTHER, I direct that the issuance of overdimension and overweight permits by the Missouri Department of Transportation for commercial motor carriers engaged in interstate disaster relief efforts in affected states identified by regional emergency declarations resulting from Hurricanes Katrina, Rita and Wilma shall be subject to the following interim application requirements in obtaining such a permit:

The permittee will be required to supply:

- Year, Make and License plate number of the power unit and trailer;
- Size, Make and Serial Number (last 4 digits) of commodity being hauled;
- Origin, Destination and Consecutive Routing;
- Overall Width, Height, Length and length of trailer and load only; and
- Date of Movement.

The permit process can be expedited by calling:

- 800-877-8499
- 573-526-5314; or
- 573-526-5312.

However, this Executive Order shall not suspend the applicability of the standard permit fee requirements; and

FURTHER, I hereby rescind Executive Orders 05-23 and 05-36 to be replaced with this Executive Order 05-39; and

FURTHER, I direct that the effective date of this Executive Order shall be retroactive to August 30, 2005 and shall continue in effect until the expiration of all Declarations of Regional Emergency issued by the President of the United States of America, as well as regional emergency declarations by the governor of an affected state resulting from Hurricanes Katrina, Rita, and Wilma or until December 31, 2005 at 12:01 AM, whichever later occurs.



**ATTEST:**

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 25<sup>th</sup> day of October, 2005.

**Matt Blunt**  
Governor

**Robin Carnahan**  
Secretary of State

**EXECUTIVE ORDER  
05-40**

WHEREAS, on November 12, 1986, Executive Order 86-26 established the Missouri State Park Advisory Board; and

WHEREAS, Executive Order 86-26 was amended by Executive Order 98-15 and the membership of the Board was increased from six to eight members; and

WHEREAS, at this time it is necessary to amend Executive Order 98-15 relating to the membership of the Board.

NOW, THEREFORE, I, MATT BLUNT, GOVERNOR OF THE STATE OF MISSOURI, pursuant to the authority vested in me by the Constitution and laws of the State of Missouri, hereby amend Executive Order 98-15, regarding the membership of the Missouri State Park Advisory Board, as follows:

The Missouri State Park Advisory Board membership shall be increased from eight to nine members.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 26th day of October, 2005.



**Matt Blunt  
Governor**

**ATTEST:**



**Robin Carnahan  
Secretary of State**