

**U**nder 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."

**E**ntirely 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 If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission.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.

**A**n 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.

**I**f 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*.

**A**n 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.

**I**f 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.

*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 rule for the Division of Weights and Measures for the method of sale of commodities shall incorporate by reference the section of the *NIST Handbook 130, [2002] 2006* edition, entitled "Regulation for the Method of Sale of Commodities," except for section 2.20 related to gasoline-oxygenate blends. ***NIST Handbook 130, 2006 Edition, is published by the Superintendent of Documents, U.S. Government Printing Office, October 2005. A copy of this material can be obtained from the U.S. Government Printing Office, Stop SSPO, Washington, DC 20402-0001, Internet: <http://bookstore.gpo.gov>, Phone: (202) 512-1800, Fax: (202) 512-2104. This regulation does not include any later amendments or additions to NIST Handbook 130.***

*AUTHORITY: section 413.065, RSMo [2000] Supp. 2004. Original rule filed May 9, 1984, effective Aug. 11, 1984. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 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 Department of Agriculture, Weights and Measures Division, Steve Gill, Program Administrator, PO Box 630, Jefferson City, MO 65102-0630. 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 2—DEPARTMENT OF AGRICULTURE Division 90—Weights and Measures Chapter 22—Packaging and Labeling

### PROPOSED AMENDMENT

**2 CSR 90-22.140 *NIST Handbook 130, "Uniform Packaging and Labeling Regulation."*** The director proposes to amend section (1).

*PURPOSE: This amendment will incorporate by reference the 2006 edition of NIST Handbook 130, "Uniform Regulations for the Method of Sale of Commodities."*

*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 rule for the Division of Weights and Measures for packaging and labeling shall incorporate by reference the section of the [2002] 2006 edition of *NIST Handbook 130*, entitled "Uniform Packaging and Labeling Regulation." ***NIST Handbook 130, 2006 Edition, is***

Proposed Amendment Text Reminder:  
**Boldface text indicates new matter.**

*[Bracketed text indicates matter being deleted.]*

## Title 2—DEPARTMENT OF AGRICULTURE Division 90—Weights and Measures Chapter 20—Method of Sale for Products

### PROPOSED AMENDMENT

**2 CSR 90-20.040 *NIST Handbook 130, "Uniform Regulations for the Method of Sale of Commodities."*** The director proposes to amend section (1).

*PURPOSE: This amendment will incorporate by reference the 2006 edition of NIST Handbook 130, "Uniform Regulations for the Method of Sale of Commodities."*

*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*

published by the Superintendent of Documents, U.S. Government Printing Office, October 2005. A copy of this material can be obtained from the U.S. Government Printing Office, Stop SSPO, Washington, DC 20402-0001, Internet: <http://bookstore.gpo.gov>, Phone: (202) 512-1800, Fax: (202) 512-2104. This regulation does not include any later amendments or additions to *NIST Handbook 130*.

*AUTHORITY:* section 413.065, RSMo Supp. [2002] 2004. Original rule filed May 9, 1984, effective Sept. 14, 1984. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Dec. 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 Department of Agriculture, Weights and Measures Division, Steve Gill, Program Administrator, PO Box 630, Jefferson City, MO 65102-0630. 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 2—DEPARTMENT OF AGRICULTURE  
Division 90—Weights and Measures  
Chapter 23—Inspection of Packaged Commodities**

**PROPOSED AMENDMENT**

**2 CSR 90-23.010 NIST Handbook 133, Technical Procedures and Methods for Measuring and Inspecting Packages or Amounts of Commodities.** The director proposes to amend section (1).

*PURPOSE:* This amendment will incorporate by reference the 2005 edition of *NIST Handbook 133*, "Checking the Net Contents of Packaged Goods."

*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 technical procedures and methods used by the Division of Weights and Measures for measuring and inspecting packages or amounts of commodities kept, offered, exposed for sale, sold or in the process of delivery, shall be those procedures and methods described and specified in the *National Institute of Standards and Technology (NIST) Handbook 133, Checking the Net Contents of Packaged Goods*, Fourth Edition (January [2002] 2005) as incorporated by reference in this rule. *NIST Handbook 133, 2005 Edition*, is published by the Superintendent of Documents, U.S. Government Printing Office, December 2004. A copy of this material can be obtained from the U.S. Government Printing Office, Stop SSPO, Washington, DC 20402-0001, Internet: <http://bookstore.gpo.gov>, Phone: (202) 512-1800, Fax: (202) 512-2104. This regulation does not include any later amendments or additions to *NIST Handbook 133*.

*AUTHORITY:* section 413.065, RSMo Supp. [2002] 2004. Original rule filed Sept. 14, 1981, effective Dec. 15, 1981. Amended: Filed Sept. 12, 2002, effective March 30, 2003. Amended: Filed Dec. 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 Department of Agriculture, Weights and Measures Division, Steve Gill, Program Administrator, PO Box 630, Jefferson City, MO 65102-0630. 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 2—DEPARTMENT OF AGRICULTURE  
Division 90—Weights and Measures  
Chapter 25—Price Verification**

**PROPOSED AMENDMENT**

**2 CSR 90-25.010 Price Verification Procedures.** The director proposes to amend section (1).

*PURPOSE:* This amendment will incorporate by reference the 2006 edition of *NIST Handbook 130*, "Examination Procedure for Price Verification."

*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 Division of Weights and Measures shall follow the examination procedure for price verification incorporated by reference in the section of *NIST Handbook 130*, [2002] 2006 edition, entitled "Examination Procedure for Price Verification." *NIST Handbook 130, 2006 Edition*, is published by the Superintendent of Documents, U.S. Government Printing Office, October 2005. A copy of this material can be obtained from the U.S. Government Printing Office, Stop SSPO, Washington, DC 20402-0001, Internet: <http://bookstore.gpo.gov>, Phone: (202) 512-1800, Fax: (202) 512-2104. This regulation does not include any later amendments or additions to *NIST Handbook 130*.

*AUTHORITY:* section 413.065, RSMo Supp. [2002] 2004. Original rule filed Aug. 13, 1996, effective Feb. 28, 1997. Amended: Filed April 9, 1998, effective Oct. 30, 1998. Amended: Filed Feb. 25, 2000, effective Sept. 30, 2000. Amended: Filed Sept. 12, 2002, effective March 30, 2003. Amended: Filed Dec. 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 Department of Agriculture, Weights and Measures Division, Steve Gill, Program Administrator, PO Box 630, Jefferson City, MO 65102-0630. 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 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

### Division 15—Division of Senior and Disability Services Chapter 8—Consumer-Directed Services

#### PROPOSED AMENDMENT

**19 CSR 15-8.100 Definitions.** The Department of Health and Senior Services is amending the division title, Purpose, section (1), and the authority section.

*PURPOSE: This amendment adds definitions required by Senate Bill 539 and Senate Bill 74/49, 93rd General Assembly, First Regular Session (2005).*

*PURPOSE: [This rule establishes the standards and procedures for the provision of state-funded participant-directed personal care assistance services to eligible clients subject to legislative appropriations through eligible vendors under guidelines established by the Division of Vocational Rehabilitation.] This rule defines terms used in establishing procedures for the provision of consumer-directed services under the Department of Health and Senior Services to eligible consumers through eligible vendors, subject to legislative appropriations.*

(1) *[Definitions.]* As used in this rule and other rules established for consumer-directed services (CDS), except as otherwise required for the context, the following terms shall have the meanings ascribed:

(A) *[After-tax income. The sum of all income from all sources to an individual including, but not limited to, salary, wages, tips, interest, dividends, annuities, pensions and disability payments, less the sum of all federal, state and local taxes on this income;]* Adjusted gross income. The amount reported to the Internal Revenue Service (IRS) as adjusted gross income on the previous calendar year's income tax return for the consumer and the consumer's spouse;

(B) **Assets.** Any tangible, real, or personal property as would be reported to the Department of Social Services (DSS), Family Support Division (FSD) for the purpose of determining eligibility for Medicaid;

*[(B)]* (C) *[Client/c]* Consumer. A physically disabled person determined by the *[Division of Vocational Rehabilitation (DVR)]* Department of Health and Senior Services (DHSS) to be eligible to receive *[personal care assistance (PCA)]* consumer-directed services (CDS);. Consumer does not include any individual with a legal limitation of his or her ability to make decisions, including the appointment of a guardian or conservator, or who has an effective power of attorney that authorizes another person to act as the agent or on behalf of the individual for any of the duties required by the CDS program;

*[(C)]* Counselor. An employee of DVR responsible for determining eligibility for PCA services and for developing and implementing a PCA services plan (plan of care);

*[(D)]* Employment. A minimum of sixteen (16) hours per week for which an individual receives remuneration;

(D) **Consumer-directed.** The hiring, training, supervising, and directing of the personal care attendant (attendant) by the physically disabled person;

(E) **Consumer-directed services (CDS).** All services that are required or may be provided as part of the CDS program;

(F) **Disability-related medical expenses.** Any medical expense, as defined and approved by the IRS, that is directly related to the consumer's disability;

(G) **Health care coverage.** Any insurance policy that provides personal care assistance benefits;

(H) **Income.** Any income as would be reported to DSS/FSD for the purpose of determining eligibility for Medicaid;

*[(E)]* (I) **Live independently.** To reside and perform routine tasks of daily living and activities of daily living and activities in the community in a noninstitutional or unsupervised residential setting;

*[(F)]* **Participant-directed.** Hiring, training, supervising and directing of the personal care attendant by the physically disabled person; excluding, but not limited to, the following:

1. Any individual with a legal designation, including guardianship, conservator, power of attorney, etc., that involves the authorization of another person to act as the agent for any of the duties required by the participant-directed program;]

(J) **Non-Medicaid eligible (NME).** Has been found by DSS/FSD not to be eligible to participate under guidelines established by the Medicaid state plan;

(K) **Non-Medicaid eligible (NME) program.** Financial assistance for CDS through eligible vendors for individuals who are NME consumers;

*[(G)]* (L) **Personal care assistance (PCA) services.** Those *[services]* routine tasks provided to meet the unmet needs required by a physically disabled person to enable him *[/her]* to perform those routine tasks and activities of daily living necessary to enter and maintain employment] or her to live independently;

*[(H)]* (M) **Personal care attendant (attendant).** A person, other than the consumer's spouse, who performs PCA *[tasks]* services for a physically disabled person;

*[(I)]* (N) **Physically disabled.** Loss of, or loss of use of, all or part of the neurological, muscular or skeletal functions of the body to the extent that person requires the assistance of another person to accomplish routine tasks;

*[(J)]* (O) **Routine tasks.** Routine tasks and instrumental activities of daily living include, but are not limited to, the following:

1. Bowel and bladder elimination;
2. Dressing and undressing;
3. Moving into and out of bed;
4. Preparation and consumption of food and drink;
5. Bathing and grooming;
6. Shopping/transportation;
7. Maintenance and use of prostheses, aids, equipment and other similar devices; and/or

8. Ambulation, **housekeeping**, or other functions of daily living based on an independent living philosophy as specified in state law and regulation;

(P) **Undue hardship.** The result of a significantly difficult circumstance experienced by the disabled consumer that creates a situation of burden, risk or harm to the consumer. Undue hardship includes, but is not limited to, the following:

1. Loss of consumer's income;
2. Overall disintegration of the family;
3. Abuse and neglect;
4. Misuse of child labor; and/or
5. Presence of physical contraindication(s);

(Q) **Unit of service.** One unit equals fifteen (15) minutes;

(R) **Unmet needs.** Routine tasks and activities of daily living which cannot be reasonably met by members of the consumer's household or other current support systems without causing undue hardship; and

*[(K)]* (S) **Vendor.** Any person, firm or corporation *[certified by DVR as eligible to provide evaluation, training and administrative services]* having a written agreement with DHSS to provide services, including monitoring and oversight of the attendant, orientation and training of the consumer, and fiscal conduit services necessary for delivery of CDS to physically disabled persons. *[For purposes of this rule, the term "provider" is used synonymously with the term "vendor";]*

(L) *Unmet need.* Unmet needs are those routine tasks and activities of daily living as allowable by Medicaid but not adequately met by current support systems without causing undue hardships to the client/consumer and/or caregiver;

(M) *Undue hardship.* An undue hardship is the result of a significantly difficult circumstance experienced by the caregiver who is currently meeting the needs of the person with a disability that creates a situation of burden, risk or harm to the caregiver or client/consumer. Undue hardship includes, but is not limited to, the following:

1. Loss of income;
2. Overall disintegration of the family;
3. Abuse and neglect;
4. Misuse of child labor;
5. Inadequacy of training; and/or
6. Physically contraindicated;

(N) *Non-Medicaid eligible (NME) program.* The NME program provides PCA services through state funding sources for the NME clients/consumers and serves clients/consumers with physical disabilities who are "employed or ready for employment" to maintain or seek such employment or "live independently";

(O) *Medicaid state plan (MSP) program.* The MSP program provides PCA services, through a combination of federal and state funding sources, for the Medicaid-eligible client/consumers with physical disabilities who are "employed or ready for employment" to maintain or seek such employment or "live independently"; and/or

(P) *Cost Neutral.* Overall cost of services to receiving agency should not exceed cost of services from transferring agency.]

*AUTHORITY:* sections [161.092] 208.900, 208.927 and 208.930, RSMo Supp. [2003] 2005, [178.661 and 178.673, RSMo 2000.] This rule originally filed as 5 CSR 90-7.010. Original rule filed Jan. 10, 1985, effective May 13, 1985. For intervening history, please consult the **Code of State Regulations**. Emergency amendment filed Dec. 15, 2005, effective Dec. 25, 2005, expires June 23, 2006. Amended: Filed Dec. 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 Department of Health and Senior Services, Division of Senior and Disability Services, Brenda F. Campbell, Deputy Director, PO Box 570, 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 19—DEPARTMENT OF HEALTH  
AND SENIOR SERVICES  
Division 15—Division of Senior and Disability Services  
Chapter 8—Consumer-Directed Services**

**PROPOSED AMENDMENT**

**19 CSR 15-8.200 Eligibility.** The Department of Health and Senior Services is amending the division title, Purpose, sections (1)–(8), the authority section, and adding sections (9) and (10).

*PURPOSE:* This amendment incorporates changes in the consumer-directed services required by Senate Bill 539, 93rd General Assembly, First Regular Session (2005).

*PURPOSE:* This rule establishes the criteria and procedures for determining an applicant eligible to receive [personal care assistance program] consumer-directed services.

(1) Subject to legislative appropriations, the [Division of Vocational Rehabilitation (DVR)] **Department of Health and Senior Services (DHSS)** shall provide financial assistance for [the personal care assistance (PCA) program] consumer-directed services (CDS) through eligible [providers] vendors to each [client/consumer selected] consumer determined eligible to participate [and meeting the criteria:] in the CDS program.

(A) All [clients/] consumers must meet the following general criteria for eligibility under the [PCA] CDS program:

1. Be at least eighteen (18) years of age;
2. Able to direct their own care ([participant] consumer-directed);
3. [Employed, ready for employment, or c]Capable of living independently with [PCA] CDS; [and]
4. Physically disabled;
5. Require at least a nursing facility level of care under regulations established by DHSS;
6. Unmet needs must be safely met at a cost that shall not exceed the average monthly Medicaid cost of nursing facility care as determined by the Department of Social Services (DSS);
7. Document proof of Medicaid eligibility under Title XIX of the Social Security Act pursuant to federal and state laws and regulations; and
8. Participate in an assessment and/or evaluation conducted by DHSS to assign point values pursuant to federal and state laws and regulations.

[(B) In addition to the above general criteria, persons eligible for non-Medicaid eligible (NME) PCA services shall meet the following:

1. Document need for a minimum of seven (7) or maximum of forty-two (42) hours per week of PCA. If more than forty-two (42) hours per week are required, substantial documentation may be used to support a request for additional time;
2. Demonstrate financial need based upon the client/consumer adjusted gross income level of the most recent tax records less living expenses as approved by DVR and compared to three hundred percent (300%) of the U.S. Department of Health and Human Services poverty level for Missouri and the Consumer Price Index as updated on an annual basis; and
3. Participate in an evaluation conducted by the assessment team to assess the individual's qualifications to be eligible for PCA services:

A. The initial evaluation shall be conducted in the individual's home or current place of residence at the time of application. If the individual is in the process of relocation, the assessment shall be conducted at the new residence; and

(C) In addition to the above general criteria, persons eligible for Medicaid PCA services shall meet the following:

1. Document proof of Medicaid eligibility under Title XIX of the Social Security Act pursuant to federal/state laws and regulations; and
2. Participate in an assessment with the assessment team or the Department of Health and Senior Services, Division of Senior Services (Division of Senior Services) that utilizes a level of care evaluation tool that is approved by the state Medicaid agency and assigns a point value pursuant to federal/state laws and regulations.

A. *The initial assessment shall be conducted in the individual's home or current place of residence at the time of application. If the individual is in the process of relocation, the assessment shall be conducted at the new residence.]*

(2) Individuals eligible for Medicaid under Title XIX of the Social Security Act who do not meet the above criteria for *[PCA] the CDS program* shall be referred to *[the Division of Senior Services or] other programs or agencies*, as appropriate, to determine eligibility for *[PCA] personal care services* pursuant to **federal and state laws** and regulations.

(3) *[The] Any assessments [team must consist of an independent living specialist, rehabilitation counselor, and a medical professional from physical therapy, occupational therapy, or a registered nurse. Other team members may include additional service providers, including Division of Senior Services personnel. When a client/consumer is currently receiving PCA services from another agency and wishes to transfer PCA services to DVR, the other agency's case manager should be consulted for planning purposes:] and/or evaluations shall be conducted by DHSS, using the common assessment tool utilized for assessment of other disabled and aged adults.*

*[(A) The independent living specialist will serve as a team member, consultant on independent living, and must be qualified as follows:*

1. *Understand basic principles of case management;*
2. *Possess previous experience in an independent living program or a related field (that is, case services, peer counseling, etc.);*
3. *Possess the ability to communicate effectively;*
4. *Possess skills in training others to live independently;*  
*and*
5. *Participate in assessment and evaluation training provided by DVR;*

*[(B) The medical professional will be contracted by DVR, serve as team leader, conduct the assessment, and must be qualified as follows:*

1. *If a physical therapist, the individual shall possess a valid and unencumbered license as a registered physical therapist, in accordance with state law and regulation, and be approved as a contractor with DVR;*
2. *If an occupational therapist, the individual shall possess a valid and unencumbered license as a registered occupational therapist, in accordance with state law and regulation, and be approved as a contractor with DVR; or*
3. *If a registered nurse, the individual shall possess a valid and unencumbered license as a registered nurse in accordance with state law and regulation, and be approved as a contractor with DVR; and*

*[(C) The rehabilitation counselor will serve as a team member, reviews and approves all assessments.]*

(4) The *[PCA services plan (] CDS plan of care [)]* is based on the assessment *[/ and/or evaluation performed by [the assessment team or Division of Senior Services] DHSS and determines the appropriateness and adequacy of services[,] and ensures [the] that services furnished are consistent with the nature and severity of the individual's disability. [If a client/consumer transfers from or is shared with the Division of Senior Services, a new evaluation and PCA services plan (POC) is required but must maintain cost neutrality through the next regularly scheduled assessment date, unless undue hardship is documented. The plan of care will be available for review upon proper release by the client's/consumer's physician:]*

(A) The **initial assessment and/or** evaluation *[and re-evaluation]* shall be conducted in the *[client's/] consumer's* home or place of residence and include, but not be limited to, the following:

1. The functions of daily living;
2. The frequency and duration of the routine task(s) or activity(ies) required to live independently; and
3. A description of met and/or unmet needs[;].

*[(B) The NME plan of care shall include, but not be limited to, the following:*

1. *The maximum number of hours of PCA to be provided;*
2. *The maximum amount of financial assistance to be provided by DVR for PCA services;*
3. *The date of evaluation, initiation of, and re-evaluation of the PCA services; and*
4. *Signatures of the client/consumer, rehabilitation counselor, and provider; and*

*[(C)] (B) The [Medicaid PCA services] CDS plan of care[, subject to DVR's approval,] shall include, but not be limited to, the following:*

1. The maximum number of *[hours] units of personal care assistance (PCA)* to be provided based on *[a client's/] the consumer's* unmet needs;
2. The description and frequency of services **to be provided** as documented on the assessment and/or evaluation;
3. *The type of provider who will furnish each service;*
4. *3. The starting date for PCA services;*
5. *4. The date for re-assessment or re-evaluation of [PCA] CDS services;*

**5. Documentation of the consumer's choice of vendor; and**

6. Consent signatures by the *[client/] consumer* and *[assessment team members and the approval signature by DVR; and] DHSS;*

**(C) Copies of the plan of care will be provided to the consumer and the vendor.**

*[(D)] (D) If a [client/]consumer is receiving services or transferring from another service provider or agency, [the provider] DHSS is responsible for collaborating and coordinating services through the plan of care.*

(5) The individual shall be notified *[by the provider of DVR] of DHSS's decision regarding eligibility for CDS* within *[thirty (30)] ten (10) days* of the date *[of application for eligibility for PCA services] of the decision.*

(6) *[PCA services] CDS* are *[participant] consumer-directed* and the *[client/] consumer* shall be responsible, at a minimum, for the following:

(A) Selection, hiring, training, and supervision of the *[client's/] consumer's [PCA] personal care attendant (attendant);*

(B) Preparation of biweekly time sheets, signed by both the *[client/] consumer* and *[PCA] the attendant*, which shall be submitted to the *[provider] vendor* in a timely manner;

**(C) Ensuring that units submitted for reimbursement do not exceed the amounts authorized by the CDS plan of care and/or those eligible for reimbursement through Medicaid;**

*[(C)] (D) Promptly [notification to DVR] notifying DHSS and/or the vendor within ten (10) days* of any changes in *[need for PCA services, that affect the amount of PCA received, financial status, and/or] circumstances affecting the CDS plan of care and/or changes in the consumer's* place of residence; **and**

*[(D)] (E) Prompt notification [of the provider] to the vendor* regarding any problems resulting from the quality of services rendered by the *[PCA] attendant*. **Any problems not resolved with assistance from the vendor shall be reported to DHSS. [; and]**

*[(E) Ensure that hours submitted for reimbursement do not exceed the amounts authorized by the plan of care.]*

(7) The *[client/]* needs of the consumer shall be reassessed and/or re-evaluated *[for Medicaid eligibility,]* at least annually, *for continued need of PCA services including financial need.]* by DHSS, and the amount of assistance authorized by DHSS shall be maintained, adjusted, or eliminated accordingly.

(8) A *[client's/]* consumer's *[PCA services]* CDS may be discontinued or denied by *[a provider]* DHSS in certain circumstances including, but not limited to, the following:

(A) *[The provider may request discontinuation of PCA services in the following situations:]* DHSS and/or the vendor

1. *If the provider]* learns of circumstances that require the denial or closure of a *[client's/]* consumer's case, including, but not limited to, death, *[entry into a nursing home,]* admission to a long-term care facility, consumer no longer needing services, and/or the inability of the consumer to *[participant]* self-direct *[PCA]* his or her services;

2. (B) *[If the client/]* The consumer has falsified records or committed fraud;

3. (C) *[If the client/]* The consumer is noncompliant with the plan of care. Noncompliance requires persistent actions by the *[client/]*consumer or his or her family/representative which negate the services provided in the plan of care;

4. (D) *[If the client/]* The consumer or *[client's/]* a member of the consumer's *[family/representative]* household threatens and/or abuses the *[PCA]* attendant and/or *[provider]* vendor to the point where the staff's welfare is in jeopardy; *[and corrective action has failed; and/or]*

5. (E) *[If a provider is unable to continue to meet the maintenance]* The consumer's needs *[of a client/consumer whose] exceed available* plan of care hours *[exceed availability]; and/or*

*[(B) The provider shall confer with DVR, the client/consumer and/or their representative prior to requesting termination of PCA services in writing. This may include discussion of alternatives, including but not limited to, a transfer to another agency, institutional placement, or other appropriate care;]*

(F) The attendant is not providing services as set forth in the CDS plan of care and attempts to remedy the situation have been unsuccessful.

*[(C)] (9) [Prior to] DHSS shall notify the consumer/applicant in writing regarding denial, reduction, or termination of [PCA] CDS services[.]. [the provider must notify DVR and client/consumer, in writing, listing the specific reasons, and request discontinuation of services; and]*

*[(D)] (10) The [client/] consumer may request a hearing under the rules promulgated by [the State Board of Education, informal review and/or a hearing] DHSS. [The provider] DHSS shall not suspend, reduce or terminate services provided to a [client/] consumer during this time period, unless the [client/] consumer [or their representative] requests in writing that services be suspended, reduced or terminated.*

*AUTHORITY: sections [161.092], 208.903, 208.906, 208.909, 208.921, 208.924 and 208.927, RSMo Supp. [2003] 2005 I, 178.662, 178.666 and 178.673, RSMo 2000]. This rule originally filed as 5 CSR 90-7.100. Original rule filed June 28, 2001, effective Jan. 30, 2002. Amended: Filed Sept. 12, 2003, effective April 30, 2004. Moved to 19 CSR 15-8.200, effective Aug. 29, 2005. Emergency amendment filed Dec. 15, 2005, effective Dec. 25, 2005, expires June 23, 2006. Amended: Filed Dec. 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 Department of Health and Senior Services, Division of Senior and Disability Services, Brenda F. Campbell, Deputy Director, PO Box 570, 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 19—DEPARTMENT OF HEALTH  
AND SENIOR SERVICES  
Division 15—Division of Senior and Disability Services  
Chapter 8—Consumer-Directed Services**

**PROPOSED RULE**

**19 CSR 15-8.300 Eligibility for Non-Medicaid Eligible Program**

*PURPOSE: This rule incorporates changes to the non-Medicaid eligible consumer-directed services program required by Senate Bill 74/49, 93rd General Assembly, First Regular Session (2005), to establish the criteria and procedures for determining eligibility for consumer-directed services through the non-Medicaid eligible program.*

(1) Subject to legislative appropriations, the Department of Health and Senior Services (DHSS) shall provide financial assistance for consumer-directed services (CDS) through eligible vendors, pursuant to applicable state law and regulation, to each person determined eligible to participate in the non-Medicaid eligible (NME) program. All consumers must meet the CDS requirements found in state law and regulations, except for proof of Medicaid eligibility under Title XIX of the Social Security Act. In addition, consumers must meet the following criteria for eligibility under the NME program:

(A) Participation in the NME program through the Department of Elementary and Secondary Education, Division of Vocational Rehabilitation, on June 30, 2005, and make application to DHSS;

(B) Demonstrate financial need and eligibility pursuant to the applicable rules and regulations;

(C) Provide proof of having been found by the Department of Social Services (DSS) ineligible to participate in the Medicaid state plan; and

(D) Does not have access to employer-sponsored or other health care coverage that includes personal care assistance, or the costs of such coverage exceed on a monthly basis one hundred thirty-three percent (133%) of the monthly average premium required in the state's current Missouri Consolidated Health Care Plan (MCHCP).

(2) Financial need and eligibility are based upon the adjusted gross income (AGI) of the applicant and the applicant's spouse and the assets of the applicant and/or the applicant's spouse.

(A) In order to demonstrate a financial need, an applicant and the applicant's spouse must have an AGI, less disability-related medical expenses as approved by DHSS, that is equal to or less than three hundred percent (300%) of the federal poverty level.

1. AGI is calculated on an annual basis by calendar year, using the AGI as reported to the Internal Revenue Service, less any disability-related medical expenses paid during the same year.

2. Disability-related medical expenses must be documented and proof of payment is required.

(B) Applicant and/or the applicant's spouse shall not have assets in excess of two hundred fifty thousand dollars (\$250,000).

1. Any assets of the applicant and/or the applicant's spouse transferred within twelve (12) months of the date of application shall be included in the calculation of assets.

(3) Consumers shall pay a monthly premium to DHSS.

(A) The premium shall be equal to the statewide average premium required for the MCHCP, but shall not exceed five percent (5%) of the consumer's and the consumer's spouse's AGI for the previous calendar year.

(B) Nonpayment of the required premium shall result in denial or termination of services, unless the person demonstrates good cause for such nonpayment by providing documentation of income and expenses that substantiates the inability to pay the premium.

1. Any consumer who is denied services for nonpayment of the premium shall not receive services until past due and current premiums are paid.

2. Any consumer who does not make any payments for past due premiums for sixty (60) consecutive days shall have their enrollment in the program terminated.

3. Any consumer who is terminated due to non-payment of premiums shall not be re-enrolled unless all past due and current premiums are paid prior to re-enrollment.

4. Nonpayment shall include payment with a returned, refused, or dishonored instrument.

(4) Continued participation in the NME program shall require that eligibility be reevaluated on an annual basis, pursuant to applicable state law and regulation.

(A) The amount of financial assistance shall be adjusted or eliminated based on the outcome of the reevaluation and shall be recorded in the consumer's plan of care.

(B) Consumers must respond and provide requested documentation within ten (10) days of DHSS's notice of reevaluation of eligibility.

(C) Failure by the consumer to provide requested documentation within ten (10) days will result in DHSS sending the consumer a notification letter that he or she has ten (10) days to file an appeal or services will be terminated.

(5) Applicants or consumers whose services are denied, reduced, or terminated have the right to request a hearing under the applicable rules of DHSS.

*AUTHORITY: section 208.930, RSMo Supp. 2005. Emergency rule filed Dec. 15, 2005, effective Dec. 25, 2005, expires June 23, 2006. Original rule filed Dec. 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 is estimated to cost consumers of the Non-Medicaid Eligible Program eighteen thousand three hundred twenty-one dollars (\$18,321) per year over the life of the rule.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Health and Senior Services, Division of Senior and Disability Services, Brenda F. Campbell, Deputy Director, PO Box 570, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

**FISCAL NOTE  
PRIVATE ENTITY COST**

**I. RULE NUMBER**

Title: 19 – Department of Health and Senior Services  
Division: 15 – Senior and Disability Services  
Chapter: 8 – Consumer–Directed Services  
Rule Number and Name: 19 CSR 15-8.300 – Non-Medicaid Eligible Program  
Type of Rulemaking: Proposed Rule

**II. SUMMARY OF FISCAL IMPACT**

Estimate the number of consumers for the Non-Medicaid Eligible Program which may be affected by the adoption of the proposed rule.	Classification of types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
23	Consumers of the Non-Medicaid Eligible Program who pay a monthly premium	Zero to \$18,321 per year for the life of a rule.

**III. WORKSHEET**

$\$66.38 \text{ monthly premium} \times 12 \text{ months} = \$796.56 \text{ per year} \times 23 \text{ consumers} = \$18,320.88/\text{per year, for the life of the rule.}$

**IV. ASSUMPTIONS**

There are one hundred nineteen (119) possible consumers for the Non-Medicaid Eligible Program. Approximately 20% or twenty-three (23) consumers will pay a monthly premium. The maximum monthly premium is \$66.38 (the average premium required by the Missouri Consolidated Health Care Plan).



**Title 19—DEPARTMENT OF HEALTH  
AND SENIOR SERVICES  
Division 15—Division of Senior Services  
Chapter 8—Consumer-Directed Services**

**PROPOSED RESCISSION**

**19 CSR 15-8.400 Providers.** This rule provided procedures for certifying eligible providers for the personal care assistance program.

*PURPOSE: This rule is being rescinded as SB 539, effective August 28, 2005, changes the criteria, procedures, and responsibilities for entities eligible to be vendors of consumer-directed services administered by the Department of Health and Senior Services.*

*AUTHORITY: sections 161.092, RSMo Supp. 2003 and 178.662, 178.664, 178.666, 178.669 and 178.673, RSMo 2000. This rule originally filed as 5 CSR 90-7.200. Original rule filed June 28, 2001, effective Jan. 30, 2002. Amended: Filed Sept. 12, 2003, effective April 30, 2004. Moved to 19 CSR 15-8.400, effective Aug. 29, 2005. Emergency rescission filed Dec. 15, 2005, effective Dec. 25, 2005, expires June 23, 2006. Rescinded: Filed Dec. 15, 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 the Department of Health and Senior Services, Division of Senior and Disability Services, Brenda F. Campbell, Deputy Director, PO Box 570, 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 19—DEPARTMENT OF HEALTH  
AND SENIOR SERVICES  
Division 15—Division of Senior and Disability Services  
Chapter 8—Consumer-Directed Services**

**PROPOSED RULE**

**19 CSR 15-8.400 Vendors**

*PURPOSE: This rule incorporates changes in the consumer-directed services program required by Senate Bills 539 and 74/49, 93rd General Assembly, First Regular Session (2005), to establish the criteria, procedures, and responsibilities for entities eligible to be vendors of consumer-directed services administered by the Department of Health and Senior Services.*

(1) All vendors of the Consumer-Directed Services (CDS) program shall:

(A) Have a philosophy that promotes the consumer's ability to live independently in the most integrated setting. This philosophy includes the following independent living services:

1. Advocacy;
2. Independent living skills training;
3. Peer counseling; and
4. Information and referral;

(B) Have a valid written agreement with the Department of Health and Senior Services (DHSS); and

(C) Have a valid Medicaid participation agreement pursuant to federal and state laws and regulations.

(2) Vendors shall perform, directly or by contract, payroll and fringe benefit accounting functions for consumers, including but not limited to:

- (A) Collecting timesheets and certifying their accuracy;
- (B) Transmitting individual payments to the personal care attendant (attendant) on behalf of the consumer; and
- (C) Ensuring all payroll, employment, and other taxes are paid timely.

(3) Vendors shall, directly or by contract, file claims for Medicaid reimbursement.

(4) In addition to the above requirements, vendors shall be responsible, directly or by contract, for the following:

- (A) Maintaining a list of eligible attendants:
  1. Ensuring that each attendant is registered, screened, and employable pursuant to the Family Care Safety Registry (FCSR) and the Employee Disqualification List (EDL) maintained by DHSS, and applicable state laws and regulations;
  2. Notifying the attendant of his or her responsibility to comply with applicable state laws and regulations regarding reports of abuse or neglect;
  3. Attendants must meet the following qualifications:
    - A. Be at least eighteen (18) years of age;
    - B. Be able to meet the physical and mental demands required to perform specific tasks required by a particular consumer;
    - C. Agree to maintain confidentiality;
    - D. Be emotionally mature and dependable;
    - E. Be able to handle emergency type situations; and
    - F. Not be the consumer's spouse;
  4. The attendant is an employee of the consumer only for the time period subsidized with CDS funds, but is never the employee of the vendor, DHSS, or the state of Missouri;

(B) Training and orientation of consumers in the skills needed to recruit, employ, instruct, supervise and maintain the services of attendants including, but not limited to:

1. Assisting consumers in the general orientation of attendants as requested by the consumer;
2. Preparation of time sheets;
3. Identification of issues that would be considered fraud of the program;
4. Allowable and non-allowable tasks;
5. Rights and responsibilities of the attendant; and
6. Identification of abuse, neglect, and/or exploitation;

(C) Processing of consumers' and/or attendants' inquiries and problems;

(D) Public information, outreach and education activities to ensure that persons with disabilities are informed of the services available and have maximum opportunity for participation;

(E) Maintaining confidentiality of consumer records, including eligibility information from DHSS, pursuant to applicable federal and state laws and regulations;

(F) Performing case management activities with the consumer at least monthly to provide ongoing monitoring of the provision of services in the plan of care and other services as needed to live independently;

(G) Ensuring the consumer has an emergency and/or backup plan;

(H) Monitoring utilization of units by the consumer at least monthly;

(I) Ensuring that the consumer's case file contains, at a minimum, the following:

1. Written plan of care and service authorization that document the type of services and quantity of units to be provided;
2. Consumer's original time sheets that contain the following:
  - A. Attendant's name;
  - B. Consumer's name;
  - C. Dates and times of services delivery;
  - D. Types of activities performed at each visit;

- E. Attendant's signature for each visit; and
  - F. Consumer's signature verifying service delivery for each visit;
  - 3. Copies of all correspondence with DHSS, the consumer's physician, other service providers, and other administrative agencies;
  - 4. Documentation of training provided to the consumer in the skills needed to understand and perform the essential functions of an employer;
  - 5. Documentation of the consumer's emergency and/or backup plans;
  - 6. Signed documentation that the consumer has been informed of their rights concerning hearings and consumer responsibilities;
    - A. Such forms must comply with Medicaid and/or DHSS' requirements; and
    - 7. Any pertinent documentation regarding the consumer;
  - (J) Demonstrating positive impact on consumer outcomes regarding the provision of CDS through the submission of quarterly service reports and an annual service report to DHSS;
  - (K) Operating programs, services, and/or activities in such a manner as to be readily accessible to and usable by persons with disabilities;
  - (L) Providing information necessary to conduct state and/or federal audits, as requested by DHSS;
  - (M) Complying with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, and the Age Discrimination Act of 1975;
  - (N) Complying with applicable statutes and regulations regarding reports of abuse or neglect; and
  - (O) Complying with applicable statutes and regulations regarding reports of misappropriation of a consumer's property or funds or the falsification of documents verifying CDS delivery.
- (5) Vendors should refer the following situations to DHSS for investigation:
- (A) Circumstances that may require closure or termination of services, including but not limited to:
    - 1. Death;
    - 2. Admission into a long-term care facility;
    - 3. The consumer no longer needing services;
    - 4. The inability of the consumer to self-direct; and/or
    - 5. An inability to continue to meet the maintenance needs of the consumer because the plan of care hours needed to ensure the health and safety of the consumer exceed availability;
  - (B) Upon a finding that such circumstances exist, DHSS may close or terminate services.
- (6) Vendors, after notice to DHSS:
- (A) May suspend services to consumers in the following circumstances:
    - 1. The inability of the consumer to self-direct;
    - 2. Falsification of records or fraud;
    - 3. Persistent actions by the consumer of noncompliance with the plan of care;
    - 4. The consumer or a member of the consumer's household threatens or abuses the attendant and/or vendor; and/or
    - 5. The attendant is not providing services as set forth in the plan of care and attempts to remedy the situation have been unsuccessful;
  - (B) Shall provide written notice to DHSS and the consumer listing specific reasons for requesting closure or termination. All supporting documentation shall be maintained in the consumer's case file. DHSS shall investigate the circumstances reported by the vendor and assist the consumer in accessing appropriate care. Upon a finding that such circumstances exist, DHSS may close or terminate services.
- (7) Vendors shall comply, either directly or by contract, with the following fiscal requirements:

- (A) No state or federal funds shall be authorized or expended to pay for CDS if the primary benefit of such services is to the household unit, or is a task that members of the consumer's household may reasonably be expected to share or do for one another, unless such service is above and beyond typical activities household members may reasonably provide for another household member without a disability;
  - (B) No state or federal funds shall be authorized or expended to pay for CDS provided by an attendant who is listed on any of the background check lists in the Family Care Safety Registry, pursuant to applicable state laws and regulations, unless a good cause waiver is first obtained from DHSS in accordance with applicable state laws and regulations;
  - (C) The general assembly shall set the statewide reimbursement rate to be paid for CDS;
  - (D) The total monthly payment for CDS made on behalf of a consumer shall not exceed one hundred percent (100%) of the average statewide monthly cost for care in a nursing facility as defined in applicable state laws and regulations;
  - (E) Assure that federal funds shall not be used to replace funds from nonfederal sources and that the vendor shall continue or initiate efforts to obtain support from private sources or other public organizations;
  - (F) Be responsible for repayment of any federal or state funds that are deferred and/or ultimately disallowed;
  - (G) Quarterly financial reports shall be submitted to DHSS one (1) day after the end of each calendar quarter, or as soon as practicable thereafter, but no later than fifteen (15) days after the end of the quarter;
  - (H) Quarterly service reports shall be submitted to DHSS thirty (30) days after the end of each calendar quarter;
  - (I) Maintain CDS financial records separately from any other financial records and make all consumer and CDS financial records, documents, reports and data available to DHSS upon request; and
  - (J) Submit an annual audit by a properly licensed independent practitioner (certified public accountant licensed in the state of Missouri) pursuant to applicable federal and state laws and regulations, including any audit parameters as established by DHSS.
    - 1. The audit report must be submitted to DHSS within ninety (90) days after the end of the vendor's fiscal year.
- (8) DHSS may withhold funding if the vendor does not submit required documentation pursuant to this rule.
- (9) The vendor shall maintain, at a minimum, all case files and records of its activities pursuant to applicable state laws and regulations in a central location for six (6) years. Records must be provided to DHSS or its designee upon request and must be maintained in a manner that will ensure they are readily available for monitoring or inspection. Such records shall include, but not be limited to, records verifying the delivery of services.
- (10) DHSS or its designee shall conduct on-site visits, which may be announced or unannounced, for the purpose of program and/or fiscal monitoring of the vendor. The vendor's principal place of business shall have staff on the premises with access to records as prescribed by the vendor's written agreement with DHSS.
- (11) DHSS may invoke sanctions, upon written notice to the vendor, when it has cause to do so, including but not limited to the following:
- (A) Elimination of one (1) or more counties from the vendor's authorized service commitment area and the subsequent transfer of consumers served in those counties to other vendors;
  - (B) Prospective cessation, temporarily or permanently, of new consumer service authorizations to the vendor, either for specific counties or for all counties served by the vendor;

(C) Demand that the vendor make certain assurances, including but not limited to, audits or financial assurances to satisfy DHSS; and/or

(D) Any remedies calculated to correct or prevent further impairment of the delivery of service by the vendor or the attendant that is substandard, delivered in a substandard manner, or delivered but not documented according to the requirements of this rule.

(12) DHSS may take immediate action to protect consumers from vendors who are found to be out of compliance with this rule and/or any other statute and/or rule applicable to the CDS program, when such noncompliance creates a risk of injury or harm to the consumer.

(13) DHSS may suspend or terminate the written agreement of any vendor found to be out of compliance with the written agreement and with the provisions of this rule and/or the requirements of applicable state laws and regulations.

*AUTHORITY: sections 208.900, 208.903, 208.906, 208.909, 208.912, 208.915, 208.918, 208.921, 208.927 and 208.930, RSMo Supp. 2005. This rule originally filed as 5 CSR 90-7.200. Original rule filed June 28, 2001, effective Jan. 30, 2002. Amended: Filed Sept. 12, 2003, effective April 30, 2004. Moved to 19 CSR 15-8.400, effective Aug. 29, 2005. Emergency rescission and rule filed Dec. 15, 2005, effective Dec. 25, 2005, expires June 23, 2006. Rescinded and readopted: Filed Dec. 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 is estimated to cost private entities fourteen thousand six hundred ninety seven dollars (\$14,697) per year over the life of the rule.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Health and Senior Services, Division of Senior and Disability Services, Brenda F. Campbell, Deputy Director, PO Box 570, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.*

**FISCAL NOTE  
PRIVATE ENTITY COST**

**I. RULE NUMBER**

Title: 19 – Department of Health and Senior Services

Division: 15 – Senior and Disability Services

Chapter: 8 – Consumer-Directed Services

Rule Number and Name: 19 CSR 15-8.400 – Vendors

Type of Rulemaking: Proposed Rule

**II. SUMMARY OF FISCAL IMPACT**

Estimate the number of entities, by class, which would likely be affected by the adoption of the proposed rule.	Classification of types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
22	Vendors of the Consumer Directed Services Program	Zero to \$14,697 per year for the life of a rule.

**III. WORKSHEET**

$\$55.67/\text{month} \times 12 \text{ months} = \$668.04 \text{ per year.}$

$\$668.04 \text{ payroll costs per year} \times 22 \text{ vendors} = \$14,696.88 \text{ per year for the life of the rule.}$

**IV. ASSUMPTIONS**

Currently there are twenty-two (22) vendors of the Consumer Directed Services Program. While not required by the rule, many vendors are choosing to contract with a payroll vendor. Vendors previously paid costs associated with the payroll contract held by the Department of Elementary and Secondary Education. However, the average cost increase of the new contract is \$55.67 per month, per vendor.

While there is an increased payroll cost for the vendors, this cost will be wholly offset by the savings to vendors under 19 CSR 15-8.200, which removes the requirement that vendors pay the medical professional's cost of consumer assessments.

**Title 19—DEPARTMENT OF HEALTH  
AND SENIOR SERVICES**

**Division 15—Division of Senior and Disability Services  
Chapter 8—Consumer-Directed Services**

**PROPOSED AMENDMENT**

**19 CSR 15-8.500 [Appeals] Hearing Rights.** The Department of Health and Senior Services is amending the division title, Purpose, sections (1), (2), (3) and the authority section.

*PURPOSE:* This amendment incorporates changes in the appeals procedure for consumer-directed services required by Senate Bill 539 and Senate Bill 74/49, 93rd General Assembly, First Regular Session (2005).

*PURPOSE:* This rule establishes procedures [for appeal] by which an applicant or [client/] consumer dissatisfied with a determination made regarding the provision of services by the [Division of Vocational Rehabilitation] Department of Health and Senior Services (DHSS) can request a hearing.

(1) When an applicant or [client/] consumer is determined ineligible for **consumer-directed services (CDS)** or when a dispute arises concerning the provision of [services] CDS, after preparation of the [personal care assistance program services] CDS plan (plan of care), or **termination of CDS**, the applicant or [client/] consumer may request [under the rules promulgated by the State Board of Education, informal review and/or], **in writing**, a hearing with the Department of Social Services (DSS).

(2) [When a non-Medicaid eligible (NME) applicant or client/consumer is denied financial assistance or financial assistance is set below what the client/consumer believes is necessary, the NME applicant or client/consumer may request under the rules promulgated by the State Board of Education, informal review and/or a hearing.] **An applicant or consumer may request a hearing by contacting Department of Health and Senior Services (DHSS) in writing within ninety (90) days of denial of eligibility, denial of financial assistance, the determination of financial assistance, discontinuation, suspension or reduction of CDS.**

(3) [Division of Vocational Rehabilitation] **If the consumer appeals in writing within ten (10) days of the mailing of the notice regarding denial, suspension, reduction or termination of CDS, DHSS will not suspend, reduce, or terminate services provided to a [client/] consumer under an existing plan of care pending a decision from [informal review or] a hearing, unless the [client/] consumer [or their representative] requests in writing that services be suspended, reduced or terminated.**

**(A) The consumer shall be responsible for repayment of any federal or state funds expended for services while the appeal is pending if DHSS's decision is upheld.**

*AUTHORITY:* sections [161.092, 178.671 and 178.673] 208.921, 208.927 and 208.930, RSMo [2000] Supp. 2005. This rule originally filed as 5 CSR 90-7.300. Original rule filed June 28, 2001, effective Jan. 30, 2002. Moved to 19 CSR 15-8.500, effective Aug. 29, 2005. Emergency amendment filed Dec. 15, 2005, effective Dec. 25, 2005, expires June 23, 2006. Amended: Filed Dec. 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 Department of Health and Senior Services, Division of Senior and Disability Services, Brenda F. Campbell, Deputy Director, PO Box 570, 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 19—DEPARTMENT OF HEALTH  
AND SENIOR SERVICES  
Division 15—Division of Senior Services  
Chapter 8—Consumer-Directed Services**

**PROPOSED RESCISSION**

**19 CSR 15-8.510 Informal Review.** This rule provided the procedures for informal review of decisions made by the Division of Vocational Rehabilitation.

*PURPOSE:* This rule is being rescinded as SB 539, effective August 28, 2005, changes the appeal procedure.

*AUTHORITY:* sections 161.092, 178.671 and 178.673, RSMo 2000. This rule originally filed as 5 CSR 90-7.310. Original rule filed June 28, 2001, effective Jan. 30, 2002. Moved to 19 CSR 15-8.510, effective Aug. 29, 2005. Emergency rescission filed Dec. 15, 2005, effective Dec. 25, 2005, expires June 23, 2006. Rescinded: Filed Dec. 15, 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 the Department of Health and Senior Services, Division of Senior and Disability Services, Brenda F. Campbell, Deputy Director, PO Box 570, 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 19—DEPARTMENT OF HEALTH  
AND SENIOR SERVICES  
Division 15—Division of Senior Services  
Chapter 8—Consumer-Directed Services**

**PROPOSED RESCISSION**

**19 CSR 15-8.520 Hearings.** This rule provided for the hearing procedures for decisions made by the Division of Vocational Rehabilitation.

*PURPOSE:* This rule is being rescinded as SB 539, effective August 28, 2005, changes the way hearings are conducted.

*AUTHORITY:* sections 161.092, RSMo Supp. 2003 and 178.671 and 178.673, RSMo 2000. This rule originally filed as 5 CSR 90-7.320. Original rule filed June 28, 2001, effective Jan. 30, 2002. Amended: Filed Sept. 12, 2003, effective April 30, 2004. Moved to 19 CSR 15-8.520, effective Aug. 29, 2005. Emergency rescission filed Dec. 15,

2005, effective Dec. 25, 2005, expires June 23, 2006. Rescinded: Filed Dec. 15, 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 the Department of Health and Senior Services, Division of Senior and Disability Services, Brenda F. Campbell, Deputy Director, PO Box 570, 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 19—DEPARTMENT OF HEALTH  
AND SENIOR SERVICES  
Division 30—[Division of Health Standards  
and Licensure] Division of Regulation and Licensure  
Chapter 88—Resident's Rights and Handling Resident  
Funds and Property in Long-Term Care Facilities**

**PROPOSED AMENDMENT**

**19 CSR 30-88.010 Resident Rights.** The department is amending this rule as follows: adding new sections (12), (36), (39) and (40), amending sections (1), (3)–(6), (8)–(11), (13)–(18), (20), (25)–(29), (31)–(34) and (37) and renumbering throughout.

**PURPOSE:** This proposed amendment changes the name of the agency throughout the rule due to the transfer of the Division of Aging from the Department of Social Services to the Department of Health and Senior Services; updates and clarifies information which the facility is required to make available to prospective residents prior to admission, provides a website address and toll free phone number for facilities to access copies of Missouri's Guide to Home and Community Based Services, clarifies residents' rights information regarding transfers from the facility and room changes within the facility, clarifies who must give written consent for a resident's mail to be opened, revises language pertaining to who may have access to residents' confidential information in order to conform with the authorizing statute and with the requirements of the Health Insurance Portability and Accountability Act as they relate to information maintained by long-term care facilities and clarifies information regarding resident choices for room sharing.

**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 facility shall retain and make available for public inspection at the facility to facility personnel, residents, their [families or] next of kin, legal representatives or designees and the general public, a list of names, addresses and occupations of all individuals who have a property interest in the facility as well as a complete copy of each official notification from the [Division of Aging] Department of Health and Senior Services (the department) of violations, deficiencies, licensure approval, disapprovals, or a combination of these, and responses. This includes, as a minimum, statements of deficien-

cies, copies of plan(s) of correction, acceptance or rejection notice(s) regarding the plan(s) of corrections and revisit inspection report(s). II/III

(3) A copy of the most current [Division of Aging] department rules governing the facility shall be kept available and easily accessible in the facility for review by residents, their [families, legal guardians] next of kin, legally authorized representatives or designees, and the public. II/III

(4) Each resident admitted to the facility, or [his/her guardian or legally qualified] his or her next of kin, legally authorized representative or designee, shall be fully informed of [his/her] the individual's rights and responsibilities as a resident. These rights shall be reviewed annually with each resident, [guardian or legally qualified] and/or his or her next of kin, legally authorized representative or designee, either in a group session or individually. II/III

(5) All incoming and present residents, or their next of kin, legally authorized representatives or designees in a facility shall be provided statements of resident rights [along with rules governing] and a copy of any facility policies which relate to resident conduct and responsibilities. Such information shall be provided in a manner which effectively communicates, in terms the resident can reasonably be expected to understand, those rights and responsibilities. II/III

(6) The facility shall document the disclosure of resident's rights information [to the resident or his/her legal guardian] as required in sections (4) and (5). III

(8) Prior to or at the time of admission and during [his/her] his or her stay in the facility, each resident and/or his or her next of kin, legally authorized representative or designee shall be fully informed, in writing, of services available in the facility and of related charges, including any charges for services not covered by the facility's basic per diem rate or federal or state programs. Information shall include procedures to be followed by the facility in cases of medical emergency, including transfer agreements and costs. All residents who receive treatment in an Alzheimer's special care program or unit and their next of kin, [designee, legally qualified representative or guardian] legally authorized representatives or designees shall be given a copy of the Alzheimer's Special Care Services Disclosure Form at the time of admission. Residents also shall be informed of services outside the facility which may reasonably be made available to the resident and of any reasonable estimate of any foreseeable costs connected with those services. II/III

(9) Prior to or upon admission, each prospective resident or each resident, or his or her next of kin, legally authorized representative or designee shall be informed of the home and community based services available in this state by providing such resident a copy of [the most current] Missouri's Guide to Home and Community Based Services (Revised 4/4/05), incorporated by reference [ , or any successor pamphlet as may be incorporated by reference in a subsequent amendment to this section], provided by the Missouri Department of Health and Senior Services, PO Box 570, Jefferson City, MO 65102-0570 and which is available to long-term care facilities at [www.ged.aa.mo.gov/PICServicesPamphlet/index.shtml](http://www.ged.aa.mo.gov/PICServicesPamphlet/index.shtml) or by telephone at 1-800-235-5503. This rule does not incorporate any subsequent amendments or additions. III

(10) Prior to or upon admission and at least annually after that, each resident or [guardian] his or her next of kin, legally authorized representatives or designees shall be informed of facility policies regarding provision of emergency and life-sustaining care, of an individual's right to make treatment decisions for [him/herself] himself

or herself and of state laws related to advance directives for health-care decision making. The annual discussion may be handled either on a group or on an individual basis. *[Family members]* **Residents' next of kin, legally authorized representatives or [other concerned individuals also] designees** shall be informed, upon request, regarding state laws related to advance directives for health-care decision making as well as the facility's policies regarding the provision of emergency or life-sustaining medical care or treatment. If a resident has a written advance health-care directive, a copy shall be placed in the resident's medical record and reviewed annually with the resident unless, in the interval, *[he/she]* **he or she** has been determined incapacitated, in accordance with section 475.075 or 404.825, RSMo. Residents' *[guardians or health care attorneys-in-fact]* **next of kin, legally authorized representatives or designees** shall be contacted annually to assure their accessibility and understanding of the facility's policies regarding emergency and life-sustaining care. II/III

(11) A physician shall fully inform each resident of *[his/her]* **his or her** health and medical condition unless medically contraindicated. If the physician determines the resident's medical condition contraindicates *[his/her]* **the resident** being fully informed of *[his/her]* **his or her** diagnosis, treatment or any known prognosis, the medical record shall contain documentation and justification of this signed by the physician. If there is a legally authorized representative to make health-care decisions, **or the resident has designated any individual to have access**, that person shall be fully informed of the resident's medical condition and shall have free access to the resident's medical records for that purpose, subject to the limitations provided by *[the]* **a power of attorney, duly-executed authorization** or any federal law. I/II

(12) **If the facility has a policy which requires that residents' medications be bubble packed or otherwise individual dose packaged, the facility shall, prior to each resident's admission, make such information available to the resident and/or his or her next of kin, legally authorized representatives, designees or placement authority.** II/III

*[[12]]* (13) Each resident shall be afforded the opportunity to participate in the planning of *[his/her]* **his or her** total care and medical treatment, to refuse treatment and to participate in experimental research only upon *[his/her]* **his or her** informed written consent. If a resident refuses treatment, this refusal shall be documented in the resident's record and the resident, *[legal guardian]* **his or her legal-ly authorized representatives or designees**, or both, shall be informed of possible consequences of not receiving treatment. II

*[[13]]* (14) Each resident shall have the privilege of selecting *[his/her]* **his or her** own physician who will be responsible for the resident's total care. II

*[[14]]* (15) No resident shall be transferred or discharged except in the case of an emergency discharge unless the resident, **and** the next of kin, *[the]* **or a** legally authorized representative **or designee**, **and** the resident's attending physician and the responsible agency, if any, are notified at least thirty (30) days in advance of the transfer or discharge, and casework services or other means are utilized to assure that adequate arrangements exist for meeting the resident's needs. **In the event that there is no next of kin, legally authorized representative or designee known to the facility, the facility shall notify the appropriate regional coordinator of the Missouri State Ombudsman's office.** II

*[[15]]* (16) A resident may be transferred or discharged only for medical reasons or for *[his/her]* **his or her** welfare or that of other residents, or for nonpayment for *[his/her]* **his or her** stay. II

*[[16]]* (17) No resident may be discharged without full and adequate notice of *[his/her]* **his or her** right to a hearing before the *[Department of Social Services]* **department's Administrative Hearings Unit** and an opportunity to be heard on the issue of whether *[his/her]* **his or her** discharge is necessary. Such notice shall be given in writing no less than thirty (30) days in advance of the discharge except in the case of an emergency discharge and must comply with the requirements set forth in 19 CSR 30-82.050. II/III

*[[17]]* (18) In emergency discharge situations **the facility shall submit to the resident and his or her next of kin, legally authorized representative or designee** a written notice of discharge *[and right to a hearing shall be given as soon as practicable]*. **The written notice of discharge shall be given as soon as practicable and advise the resident of the right to request an expedited hearing. In the event that there is no next of kin, legally authorized representative or designee known to the facility, the facility shall send a copy of the notice to the appropriate regional coordinator of the Missouri State Ombudsman's office.** II/III

*[[18]]* (19) A room transfer of a resident within a facility, except in an emergency situation, requires consultation with the resident as far ahead of time as possible and shall not be permitted where this transfer would result in any avoidable detriment to the resident's physical, mental or emotional condition. II/III

*[[19]]* (20) Each resident shall be encouraged and assisted, throughout *[his/her]* **his or her** period of stay, to exercise *[his/her]* **his or her** rights as a resident and as a citizen and to this end a resident may voice grievances and recommend changes in policies and services to facility personnel or to outside representatives of *[his/her]* **his or her** choice. A staff person shall be designated to receive grievances and the residents shall be free to voice their complaints and recommendations to the staff designee, an ombudsman or to any person outside the *[institution]* **facility**. Residents shall be informed of and provided a viable format for recommending changes in policy and services. The facility shall assist residents in exercising their rights to vote. II/III

*[[20]]* (21) The exercise of resident rights shall be free from restraint, interference, coercion, discrimination or reprisal. II/III

*[[21]]* (22) Each resident shall be free from mental and physical abuse. I

*[[22]]* (23) The resident has the right to be free from any physical or chemical restraint except as follows:

(A) When used to treat a specified medical symptom as a part of a total program of care to assist the resident to attain or maintain the highest practicable level of physical, mental or psychosocial well-being. The use of restraints must be authorized in writing by a physician for a specified period of time; or

(B) When necessary in an emergency to protect the resident from injury to *[him/herself]* **himself or herself** or to others, in which case restraints may be authorized by professional personnel so designated by the facility. The action taken shall be reported immediately to the resident's physician and an order obtained which shall include the reason for the restraint, when the restraint may be removed, the type of restraint and any other actions required. When restraints are indicated, only devices that are the least restrictive for the resident and consistent with the resident's total treatment program shall be used. I/II

*[[23]]* (24) In a residential care facility I or II, if it is ever necessary to use a restraint in case of emergency, the resident shall be reevaluated immediately for appropriateness of placement and transferred if necessary. II/III

[(24)] (25) All information contained in a resident's medical, personal or financial record and information concerning source of payment shall be held confidential. Facility personnel shall not discuss aspects of the resident's record or care in front of persons not involved in the resident's care or in front of other residents. Written consent of the resident or *[legal guardian]* **his or her legally authorized representative** shall be required for the release of information to persons not otherwise authorized by law to receive it. II/III

[(25)] (26) Each resident shall be treated with consideration, respect and full recognition of *[his/her]* **his or her** dignity and individuality, including privacy in treatment and care of *[his/her]* **his or her** personal needs. All persons, other than the attending physician, the facility personnel necessary for any treatment or personal care, or the *[Division of Aging]* **department** or Department of Mental Health staff, as appropriate, shall be excluded from observing the resident during any time of examination, treatment or care unless consent has been given by the resident. II/III

[(26)] (27) No resident shall be required to perform services for the facility. If the resident desires and it is not contraindicated by *[his/her]* **his or her** physician, the resident may perform tasks or services for *[him/herself]* **himself or herself** or others. II/III

[(27)] (28) Each resident shall be permitted to communicate, associate and meet privately with persons of *[his/her]* **his or her** choice whether on the resident's initiative or the other person's initiative, unless to do so would infringe upon the rights of other residents. The person(s) may visit, talk with and make personal, social or legal services available, inform residents of their rights and entitlements by means of distributing educational materials or discussions, assisting residents in asserting their legal rights regarding claims for public assistance, medical assistance and Social Security benefits and engaging in any other methods of assisting, advising and representing residents so as to extend to them the full enjoyment of their rights. The facility, however, may place reasonable limitations on solicitations. II/III

[(28)] (29) The facility shall permit a resident to meet alone with a **person** or persons of *[his/her]* **his or her** choice and provide an area which assures privacy. II/III

[(29)] (30) Telephones appropriate to the residents' needs shall be accessible at all times. Telephones available for residents' use shall enable all residents to make and receive calls privately. II/III

[(30)] (31) If the resident cannot open mail, written consent by the resident or *[legal guardian]* **his or her legally authorized representative** shall be obtained to have all mail opened and read to the resident. II/III

[(31)] (32) Each resident shall be permitted to participate, as well as not participate, in activities of social, religious or community groups at *[his/her]* **his or her** discretion, both within the facility, as well as outside the facility, unless contraindicated for reasons documented by physician in the resident's medical record. II/III

[(32)] (33) Each resident shall be permitted to retain and use personal clothing and possessions as space permits. Personal possessions may include furniture and decorations in accordance with the facility's policies and shall not create a fire hazard. The facility shall maintain a record of any personal items accompanying the resident upon admission to the facility, or which are brought to the resident during *[his/her]* **his or her** stay in the facility, which are to be returned to the resident or responsible party upon discharge, transfer or death. II/III

[(33)] (34) Each married resident shall be assured privacy for visits by *[his/her]* **his or her** spouse. II/III

[(34)] (35) If both husband and wife are residents, they shall be allowed the choice of sharing or not sharing a room. III

(36) **If siblings and/or a parent and his or her child are both residents, the facility shall allow the family members the choice of sharing or not sharing a room upon availability of room(s) appropriate to accommodate the residents.** III

[(35)] (37) Each resident shall be allowed the option of purchasing or renting goods or services not included in the per diem or monthly rate from a supplier of *[his/her]* **his or her** own choice, provided the quality of goods or services meets the reasonable standards of the facility. *[Freedom of choice of pharmacy shall be permitted provided the facility's policy and procedures for packaging specifications are met.]* Each resident shall be allowed the option of purchasing his or her medications from a pharmacy of his or her choice, provided the quality of the medications and packaging meets reasonable standards of the facility, except that residents who are enrolled in Medicare Part D may choose a pharmacy included in the resident's Part D plan. II/III

[(36)] (38) Residents shall not have their personal lives regulated or controlled beyond reasonable adherence to meal schedules and other written policies which may be necessary for the orderly management of the facility and the personal safety of the residents. II

(39) **All written accounts of the resident's funds shall be brought current monthly and a written statement showing the current balance and all transactions shall be given to the resident, or his or her next of kin, legally authorized representative or designee on a quarterly basis and upon request. The facility shall keep written receipts of all personal possessions and all funds received by or deposited with the facility and all disbursements made to or on behalf of the resident and shall disclose such receipts to the resident, and/or his or her next of kin, legally authorized representative or designee upon request.** II/III

(40) **The resident, or his or her next of kin, legally authorized representative or designee shall receive an itemized bill for all goods and services actually rendered. No later than thirty (30) days after the discharge or death of a resident, the operator of the facility shall submit a final itemized bill for all goods and services rendered, showing any credit balances accruing on the date of discharge or death of the resident, and a complete account of the resident's remaining funds with the facility, in any account, with whatever title the account(s) may be known, to the resident's guardian, conservator, fiduciary of the resident's estate or the individual who was designated to receive the quarterly accounting of all financial transactions made.** II/III

*AUTHORITY: sections 198.009, 198.076, 198.079 and 198.088, RSMo 2000 and 660.050 and 660.060, RSMo Supp. [2003] 2004. This rule originally filed as 13 CSR 15-18.010. Original rule filed July 13, 1983, effective Oct. 13, 1983. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 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 David S. Durbin, Director, Division of Regulation and Licensure, 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.*

**Title 19—DEPARTMENT OF HEALTH  
AND SENIOR SERVICES  
Division 73—Missouri Board of Nursing Home  
Administrators  
Chapter 2—General Rules**

**PROPOSED AMENDMENT**

**19 CSR 73-2.015 Fees.** The Board proposes to amend section (1).

*PURPOSE: This proposed amendment revises the license renewal fee that is based upon the length of the renewal period.*

(1) The following fees are required by the Board of Nursing Home Administrators:

(D) License Renewal Fee	
1. One-year license	\$50
2. Two-year license	\$100

*AUTHORITY: section 344.070, RSMo 2000. This rule was previously filed as 13 CSR 73-2.015. Original rule filed Jan. 3, 1992, effective May 14, 1992. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 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 Board of Nursing Home Administrators, Diana Love, Executive Secretary, PO Box 570, 912 Wildwood, 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 19—DEPARTMENT OF HEALTH  
AND SENIOR SERVICES  
Division 73—Missouri Board of Nursing Home  
Administrators  
Chapter 2—General Rules**

**PROPOSED AMENDMENT**

**19 CSR 73-2.050 Renewal of Licenses.** The Board proposes to amend sections (1), (2), (3), and (5), delete section (4), add new sections (2), (3), and (6), and renumber sections (2), (3) and (5).

*PURPOSE: This proposed amendment revises the license renewal auditing process, removes the requirement for prior approval on programs held in another state, increases the number of clock hours awarded for serving as a preceptor, and changes the licensure period from one (1) year to two (2) years, pursuant to Senate Bill 177, 93rd General Assembly, First Regular Session.*

(1) By April 1 of each year, the board shall mail an application for renewal of license, to the last recorded address on file, to every person [to whom a] whose license [was issued or] is due to be renewed during the current year.

(2) Licenses that expire on June 30, 2006 will be renewed if the licensee:

(A) Files an application for renewal on a form furnished by the board during the month of May. Information provided in the application shall be given under oath and include an attestation verifying that the licensee has completed at least twenty (20) clock hours of board-approved continuing education, as outlined in 19 CSR 73-2.050(5)(A)–(B), obtained during the current licensure year or carried from the preceding year. A minimum of five (5) clock hours must be in patient-care related offerings, as defined in 19 CSR 73-2.031(2)(A)–(F).

1. Licensees must maintain proof of having completed the number of continuing education hours claimed at the time of renewal.

2. Upon request of the board, make that proof available for audit to verify completion of the number and validity of hours claimed;

(B) Submit the renewal fee made payable to the Department of Health and Senior Services. Licensees with a license number that ends in an odd number (1, 3, 5, 7, or 9) shall submit a renewal fee of fifty dollars (\$50). Licensees that hold a license number that ends in an even number (0, 2, 4, 6, or 8) shall submit a renewal fee of one hundred dollars (\$100);

(C) Licensees that hold a license number that ends in an odd number shall be issued a one (1)-year license expiring June 30, 2007. Licensees that hold a license number that ends in an even number shall be issued a two (2)-year license expiring June 30, 2008;

(D) Up to a maximum of fifteen (15) excess clock hours of continuing education may be carried forward to apply toward the renewal of a license in June 2007 or June 2008.

(3) Licenses that expire on June 30, 2007 will be renewed if the licensee:

(A) Files an application for renewal on a form furnished by the board during the month of May. Information provided in the application shall be given under oath and include an attestation verifying that the licensee has completed at least twenty (20) clock hours of board-approved continuing education, as outlined in 19 CSR 73-2.050(5)(A)–(B), obtained during the current licensure year or carried from the preceding year. A minimum of five (5) clock hours must be in patient-care related offerings, as defined in 19 CSR 73-2.031(2)(A)–(F).

1. Licensees must maintain proof of having completed the number of continuing education hours claimed at the time of renewal.

2. Upon request of the board, make that proof available for audit to verify completion of the number and validity of hours claimed;

(B) Submit a renewal fee of one hundred dollars (\$100) made payable to the Department of Health and Senior Services;

(C) A two (2)-year license expiring on June 30, 2009 will be issued.

[(2)] (4) Licensees seeking renewal on June 30, 2008 or later shall, during the month of May of [each] the year of renewal, file an application for renewal on a form furnished by the board, and shall submit a renewal fee of [fifty dollars (\$50)] one hundred dollars (\$100) made payable to the Department of Health and Senior Services. Information provided in the application shall be given under oath and include an attestation verifying that the licensee has completed at least forty (40) clock hours of board-approved continuing education obtained during the current licensure period. A minimum of ten (10) clock hours must be in patient-care related offerings, as defined in 19 CSR 73-2.031(2)(A)–(F).

*[(3)] (5) [As a requirement for renewal of license, a licensee shall provide the board, on the annual application form for license renewal, satisfactory evidence of twenty (20) clock hours of board-approved continuing education obtained during the current licensure year or carried from the preceding year. A minimum of five (5) clock hours must be in patient-care related offerings, as defined in 19 CSR 73-2.031(2)(A)–(F) and must be obtained during the current licensure year.] Licensees must maintain proof of having completed the number of continuing education hours claimed at the time of renewal and shall, upon request of the board, make that proof available for audit to verify completion of the number and validity of hours claimed. Documentation to prove completion of continuing education hours must be maintained by each licensee for four (4) years from the last day of the licensure year in which the hours were earned.*

(A) A minimum of *[fifteen (15)] thirty (30)* clock hours toward the *[twenty (20)] forty (40)* required shall be obtained through attendance at board-approved continuing education programs or academic courses, as defined in 19 CSR 73-2.031(2)(A)–(K), and must meet the following criteria:

1. Be *[prior]* approved by the board. In the case of academic courses, the licensee must submit a course description from the college for board review. A maximum of five (5) clock hours per semester hour may be approved by the board. Upon successful completion of the course (grade of “C” or above), an official *[copy of the] transcript or* grade report must be submitted to the board office, **upon request**, as verification of course completion;

2. Be offered by a registered training agency approved by the board or a single offering provider (as outlined in 19 CSR 73-2.060);

*[3. Programs held out-of-state, may be considered for prior approval by the board upon submission of the following information:]*

*[A.] 3. [Evidence that the program has been] Be approved by another state licensure board for nursing home administrators or by the National Continuing Education Review Service (NCERS) under the National Association of Boards (NAB), if the program is held out-of-state; and].*

*[B. A brochure or other detailed information from the program which must include: offering title, date and location; program objectives; speaker credentials; and a detailed agenda.]*

(B) A maximum of *[five (5)] ten (10)* clock hours toward the *[twenty (20)] forty (40)* required may be obtained as follows:

1. For the purposes of this subsection, the following definitions shall apply:

A. Referred publication—a publication that undergoes an anonymous review process that determines whether or not the article will be published; and

B. National health-care publication—a publication that is—

(I) Published by a health-care association whose mission statement/bylaws indicate its scope is national;

(II) Mailed nationwide; and

(III) Addressing content contained within the long-term care core of knowledge outlined in 19 CSR 73-2.031(2)(A)–(K);

2. Publishing health-care related articles of at least fifteen hundred (1,500) words shall be granted—

A. Five (5) clock hours if article appears in a national health-care referred publication;

B. Four (4) clock hours if article appears in a regional health-care referred publication;

C. Three (3) clock hours if article appears in a state health-care referred publication;

D. Two (2) clock hours if article appears in a national health-care publication; and

E. One (1) clock hour if article is published; **and**

*[3. Serving as a registered preceptor for an applicant who has been required by the board to complete an intern-*

*ship as described in 19 CSR 73-2.031. One (1) clock hour per full month as a preceptor shall be granted with a maximum of five (5) clock hours per internship; and]*

*[4.] 3.* An administrator lecturing at a board-approved seminar may receive credit equal to each hour or quarter hour of presentation time with a maximum of *[three (3)] six (6)* hours credit earned per licensure *[year] period*. This credit may be in addition to actual hours of attendance at the seminar but credit shall be granted for only one (1) presentation of the same seminar.

*[(C) Applicants who are initially licensed between January 1 and April 30 in any year need only to complete ten (10) clock hours of board-approved continuing education, at least two and one-half (2 1/2) of which must be in patient-care related offerings, for their first renewal period.]*

(C) Serving as a registered preceptor for an applicant who has been required by the board to complete an internship as described in 19 CSR 73-2.031. One (1) clock hour per full month as a preceptor shall be granted with a maximum of ten (10) clock hours per internship. During the two (2)-year licensure period, a maximum of twenty (20) clock hours will be granted.

*[(D) Applicants who are initially licensed between May 1 and June 30 in any year need not complete any board-approved continuing education for their first renewal period.]*

(D) Each licensee whose initial licensure period is less than twenty-four (24) months shall be required to obtain at least one and one-half (1 1/2) hours of continuing education for each month in the initial licensure period which shall include programs covering patient-care related topics as defined in 19 CSR 73-2.031(2)(A)–(F). The minimum number of clock hours required in patient-care (PC) related programs is as follows. Initial licensure period of:

1. 23 months to 18 months—8 PC clock hours

2. 17 months to 12 months—6 PC clock hours

3. 11 months to 6 months—4 PC clock hours

4. 5 months or less—2 PC clock hours

*[(E) Licensees making application for renewal of license shall be responsible for filing evidence of continuing education clock hours with the executive secretary BEFORE the renewal application is approved by the board. The evidence submitted may be subject to audit and review by the board and additional documentation may be requested. To facilitate submission of any additional evidence to the board prior to expiration of licenses June 30, all renewal forms must be completed and received by the executive secretary prior to May 30. Information provided in the application shall be given under oath.]*

*(F) Up to a maximum of fifteen (15) excess clock hours from subsection (2)(A), of continuing education may be carried forward to apply toward the renewal of license in the following year. However, the five (5) clock hours required in patient care related offerings described in section (2) of this rule MUST be applied in the current year. Any excess hours will NOT be used to meet the next year’s requirement of five (5) clock hours in patient-care related offerings.]*

*[(4) If an incomplete application is received by the board prior to May 30, the board shall grant the licensee a thirty (30)-day extension if needed effective May 31. If an incomplete application is received by the board between May 31 and June 30, the board shall grant the licensee a thirty (30)-day extension, if needed, effective the date the incomplete application is received. An incomplete application shall not include an application that lacks completion of the continuing education requirements prior to June 30. The licensee shall submit a completed application within the thirty (30)-day period or the board may refuse to renew the license. The notarized renewal application, fee and supporting documentation must all be submitted to the board office prior to*

*June 30 to avoid the late penalty fee of twenty-five dollars (\$25).]*

(6) The board shall annually select on a random basis at least five percent (5%) of the licensees applying for renewal to have their claims of continuing education hours audited for compliance with board requirements. A licensee will be notified by mail when a renewal application has been selected for audit and will have up to thirty (30) days to provide copies of all certificates of attendance and other documentation supporting the continuing education clock hours claimed on the renewal application. Nothing in this section shall prevent the board from requiring any individual licensee to provide evidence satisfactory to the board of having completed the continuing education hours required for license renewal. Failure to provide proof of continuing education hours as reported on the renewal application or submission of falsified records can be cause for discipline pursuant to section 344.050.2, RSMo.

*[(5)]* (7) When the required information, documentation and fee are received and approved by the board within the specified time period, the board shall issue the *[annual]* license.

*AUTHORITY: sections 344.040, RSMo Supp. 2005 and 344.070, RSMo 2000. This rule was previously filed as 13 CSR 73-2.050. Original rule filed May 13, 1980, effective Aug. 11, 1980. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 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 Board of Nursing Home Administrators, Diana Love, Executive Secretary, PO Box 570, 912 Wildwood, 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 19—DEPARTMENT OF HEALTH AND  
SENIOR SERVICES  
Division 73—Missouri Board of Nursing Home  
Administrators  
Chapter 2—General Rules**

**PROPOSED AMENDMENT**

**19 CSR 73-2.055 Renewal of Expired License.** The Board proposes to amend sections (2), (4) and (5).

*PURPOSE: This proposed amendment incorporates the change in the licensure period from one (1) year to two (2) years, pursuant to Senate Bill 177, 93rd General Assembly, First Regular Session.*

(2) The licensee must complete and forward to the board office a license renewal application (see 19 CSR 73-2.050(2), (3), or (4), according to the date the license expired), along with *[the fifty dollar (\$50)]* a renewal fee of fifty dollars (\$50) for a one (1)-year license or one hundred dollars (\$100) for a two (2)-year license, plus a twenty-five dollar (\$25) penalty fee. Satisfactory evidence of *[twenty (20) clock hours of]* board-approved continuing education, *[at least five (5) of which must be in patient care-relat-*

*ed offerings, as defined in 19 CSR 73-2.031(2)(A)-(F)]* (as outlined in 19 CSR 73-2.050(2), (3), or (4), according to the date the license expired), must also be submitted with the license renewal application. Information provided in the application shall be given under oath and include an attestation verifying that the licensee has completed the required number of board-approved continuing education clock hours obtained during the current licensure period.

(4) The *[twenty (20) clock hours of]* board-approved continuing education must be obtained as described in 19 CSR 73-2.050(3)(5)(A) and may include clock hours as outlined in 19 CSR 73-2.050(3)(5)(B)1.-4.

(5) Upon receipt of the required application, documentation and fee, the board may issue the *[annual]* license effective the date the late renewal is approved by the board.

*AUTHORITY: sections 344.040, RSMo Supp. 2005 and 344.070, RSMo 2000. This rule was previously filed as 13 CSR 73-2.055. Original rule filed June 28, 1990, effective Dec. 31, 1990. Amended: Filed June 30, 1994, effective Feb. 1, 1995. Amended: Filed Jan. 31, 1996, effective July 30, 1996. Moved and amended: Filed Jan. 31, 2003, effective Aug. 30, 2003. Amended: Filed Dec. 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 Board of Nursing Home Administrators, Diana Love, Executive Secretary, PO Box 570, 912 Wildwood, 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 20—DEPARTMENT OF INSURANCE  
Division 200—Financial Examination  
Chapter 1—Financial Solvency and Accounting Standards**

**PROPOSED AMENDMENT**

**20 CSR 200-1.030 Financial Statement and *[Diskette]* Electronic Filing.** The department is amending sections (1) through (7), adding a new section (8) and renumbering the old section (8) to section (9).

*PURPOSE: The purposes of the amendment are 1) to make the required annual and quarterly statement filings consistent with current practices and procedures and 2) to promote administrative efficiencies for both the Department of Insurance and insurers regulated by the department.*

(1) Each health services corporation, health maintenance organization (HMO), stock or mutual life insurance company, assessment or stipulated premium plan life insurance company, fraternal benefit society, stock or mutual insurance company other than life, Chapter 383 assessment company, reciprocal and eligible surplus lines insurer and each accredited or qualified reinsurer shall file a sworn annual statement on or before March 1 of each year, for its business and affairs for the year ended the next previous December 31, in accordance with the National Association of Insurance Commissioners (NAIC) Annual Statement Blank and the instructions

for it, or in accordance with any other form as the director expressly permits to the entity. This statement also shall be prepared in accordance with the applicable accounting standards or principles approved by the NAIC, published in the *Accounting Practices and Procedures Manual, Valuation of Securities* or *Examiner's Handbook*, or a combination of these, except where the applicable provisions of Chapters 354 and 374-385, RSMo, or other specific rules expressly provide otherwise.

(A) For entities not domiciled in Missouri, one (1) **hard** copy of the annual statement shall be filed with the *[Missouri department's office in Jefferson City and one (1) copy shall be filed with the]* NAIC's office in Kansas City, Missouri, **and with the Missouri Department of Insurance's office in Jefferson City a sworn and signed jurat page only, in the form provided by the department.**

(B) For entities domiciled in Missouri, one (1) signed original and *[two (2) copies]* **one (1) hard copy** of the annual statement shall be filed with the Missouri department's office in Jefferson City and one (1) **hard** copy shall be filed with the NAIC's Kansas City office; provided, however, that for domiciled companies doing business in seventeen (17) or more states, for life and health insurers writing fifty (50) million dollars or more in gross premium, and for property and casualty insurers writing thirty (30) million dollars or more in gross premium, an additional **hard** copy also shall be filed with the NAIC's office in Kansas City, Missouri, but only upon the written request of the NAIC. The annual *[and quarterly]* statements should be signed by *[three (3)]* officers of the company as **required by applicable Missouri law.**

(2) Each entity shall file *[a diskette including]* **electronically** all annual statement information with the NAIC's office in Kansas City, Missouri. The *[diskette]* **electronic filing** shall be prepared under the NAIC's guidelines *[contained in the NAIC's Annual Statement Diskette Filing Specifications].*

(3) Each health services corporation, HMO, stock or mutual life insurance company, assessment or stipulated premium plan life insurance company, fraternal benefit society, stock or mutual insurance company other than life, Chapter 383 assessment company, reciprocal and eligible surplus lines insurer shall file, in addition to the sworn annual statement required in section (1), three (3) quarterly statements for its business and affairs for the quarters ending, respectively, the next previous March 31, June 30 and September 30, in accordance with the NAIC Quarterly Statement Blank and the instructions for it, or in accordance with any other forms as the director expressly permits to the entity.

(A) For entities not domiciled in Missouri, one (1) **hard** copy of each quarterly statement shall be filed with the *[Missouri department's office in Jefferson City and one (1) copy shall be filed with the]* NAIC's office in Kansas City, Missouri, **and with the Missouri Department of Insurance's office in Jefferson City a sworn and signed jurat page only, in the form provided by the department.**

(B) For entities domiciled in Missouri, one (1) signed original and *[two (2) copies]* **one (1) hard copy** of each quarterly statement shall be filed with the Missouri department's office in Jefferson City and one (1) **hard** copy shall be filed with the NAIC's Kansas City office; provided, however, that for domiciled companies doing business in seventeen (17) or more states, for life and health insurers writing fifty (50) million dollars or more in gross premium, and for property and casualty insurers writing thirty (30) million dollars or more in gross premium, an additional **hard** copy also shall be filed with the NAIC's office in Kansas City, Missouri, but only upon the written request of the NAIC. **The quarterly statements should be signed by three (3) officers of the company.**

(4) Each entity shall file *[a diskette including]* **electronically** all quarterly statement information with the NAIC's office in Kansas

City, Missouri, *and an additional diskette with the Missouri department's Jefferson City office].* The *[diskette]* **electronic filing** shall be prepared under the NAIC's guidelines *[contained in the NAIC's Quarterly Statement Diskette Filing Specifications].*

(5) *[Filings]* **To the extent a hard copy is required by this rule to be filed with the Missouri Department of Insurance, such filings for the respective quarters shall be mailed on or before May 15, August 15 and November 15 of each year.**

(6) This rule will apply to filing of the annual and quarterly statements and *[diskette]* **electronic filings** beginning with the year ending December 31, 1992, to be filed by March 1, 1993, as well as all future years.

(7) All entities *[regulated by the Department of Insurance]* **domiciled in Missouri** shall place bar code labels on the following documents that are required to be filed with the Missouri Department of Insurance:

(M) *[Confirmation of deposit]* **Supplemental compensation exhibit;**

(N) *[Certificate of Authority (foreign companies)]* **Affidavit of stock ownership;**

(O) *[Certificate of Valuation (foreign companies)]* **Form B and C holding company registration statement;**

(P) *[Certificate of Deposit (foreign companies)]* **Form B inter-company agreements supplement;**

(R) *[Market Value of Securities form (form MO 375-0421)]* **Title Insurance Premium Reserve;**

(S) *[Page fourteen supplement to the annual statement (property and casualty insurance)]* **Actuarial opinion summary;**

(T) *[Annual statement supplement to the state page for Missouri (life and health insurance)]* **Reinsurance attestation supplement;**

(U) *[Missouri state page of the annual statement]* **Reinsurance summary supplement; and**

*[(V) Self-Insurance Table 1 Payroll and Premium Tax Report form;*

*(W) Self-Insurance Certification Report for excess Workers' Compensation premium; and]*

*[(X)] (V) Any other documents determined by the director.*

**(8) All entities not domiciled in Missouri shall place bar code labels on the following documents that are required to be filed with the Missouri Department of Insurance:**

**(A) All annual and quarterly sworn and signed jurat pages;**

**(B) Any other documents determined by the director.**

*[(8)] (9) A master sheet of bar code labels will be provided once a year. If the master sheet or any part thereof has to be reproduced for any reason, a fee of ten dollars (\$10) will be charged. This fee, along with a written request for a replacement set of labels, must be received by the department before the replacement set of labels will be provided. A document will not be considered filed unless the proper bar code label is affixed thereto. Loss of any bar code label(s) and a request for a replacement set of labels will not excuse the late filing of any documents and appropriate penalties will be imposed for any late filings.*

*AUTHORITY: sections 354.120, 354.485, 354.723, 374.045 and 380.561, RSMo 2000. This rule was previously filed as 4 CSR 190-II.180. Original rule filed Sept. 2, 1988, effective Jan. 1, 1989. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 15, 2005.*

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

*The proposed amendment contains no sunset clause. Any cost savings or costs imposed by the proposed amendment may, therefore, be shown only on an annual basis.*

*The department assumes that it will be receiving neither a hard copy of annual and quarterly financial statements from about one thousand four hundred four (1,404) foreign authorized insurers nor the hard copy of the annual management discussion and analysis and the independent auditor's opinion from such insurers. The department will, however, receive a hard copy jurat page for each financial statement.*

*Accordingly, the department anticipates cost savings from no longer using clerical staff to process the annual management discussion and analysis and the independent auditor's opinion. In addition, the department anticipates cost savings from no longer having to store the hard copies of the annual and quarterly financial statements of foreign authorized insurers. These cost savings are, however, not quantifiable at this time.*

*The proposed amendment does not require any activity or expense by the department that it does not already incur. Accordingly, the proposed amendment imposes no cost on the department.*

*PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate. See attached Private Entity Fiscal Note for statement regarding possible cost savings.*

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed amendment at 10 a.m. on February 28, 2006. The public hearing will be held at the Harry S Truman State Office Building, 301 West High Street, Room 530, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to the proposed amendment, until 5:00 p.m. on February 28, 2006. Written statements shall be sent to Stephen Gleason, Department of Insurance, PO Box 690, Jefferson City, MO 65102.*

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

**FISCAL NOTE  
PRIVATE COST**

**I. RULE NUMBER**

Rule Number and Name:	20 CSR 200-1.030, Financial Statement and Electronic Filing
Type of Rulemaking:	Proposed Amendment

**II. SUMMARY OF FISCAL IMPACT**

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
1,404	Authorized foreign insurance companies	\$163,789.08 annual cost savings

**III. WORKSHEET**

56 X \$1,200 =	\$67,200.00
56 X \$510 X 3 =	\$85,680.00
1404 X \$3.95 =	\$5,545.80
1404 X \$1.52 X 3 =	\$6,402.24
1404 X \$0.37 X 2 =	\$1,038.96
Subtotal	\$165,867.00
1404 X \$0.03 X 4 =	(\$2,077.92)
	\$163,789.08

**IV. ASSUMPTIONS**

“Authorized foreign insurance companies” means all persons authorized to transact any type of insurance business in this state, other than those persons organized under the laws of this state. Included are health maintenance organizations, fraternal benefit association, and insurance companies.

The proposed amendment does not have a sunset clause. Accordingly, the fiscal impact of the proposed amendment cannot be estimated on an aggregate basis. An estimate of the annual fiscal impact is provided instead.

The proposed amendment will affect only foreign authorized insurers. The present rule requires all insurers to make an both electronic filing with the National Association of Insurance Commissioners (NAIC) and a hard copy filing with the Missouri Department of Insurance (MDI) of annual financial statements and certain related information and quarterly financial statements. The proposed amendment will eliminate the hard copy filing requirement for foreign authorized insurers. Accordingly, the proposed amendment imposes no costs, but should result in cost savings, consisting primarily of the avoidance of printing and mailing costs.

The cost of printing one copy of the typical annual financial statement is assumed to be about \$1200, based on a conservative estimate of about 140 pages per annual statement and pricing information provided by a printer used by many, if not most, insurance companies. The assumed printing cost was based on the lowest printing cost for one to twenty-five copies of the 8½ by 11 inch annual statement form. The price list grouped its unit pricing based on increments of twenty-five copies; accordingly, it is assumed that only one in twenty five foreign authorized insurers (or 56 of the 1,404 authorized foreign insurers) will be affected by changes in printing requirements. The same assumptions were applied to the three quarterly statements, except that only about 60 pages are estimated for each quarterly statement; accordingly, the printing cost for a quarterly statement is assumed to be about \$510.

Cost savings from avoiding certain mailings are based on the assumption that every authorized foreign insurer will avoid annually filing by mail the annual financial statement, three quarterly financial statements, the annual management discussion and analysis, and the annual opinion of the independent auditor. Nearly all, if not all, financial statements and other filings made by foreign admitted insurers are made by mail. Based on the estimate of the size of the annual statement and quarterly statement, the costs of first class mailing is assumed to be \$3.95 for an annual statement and \$1.52 for a quarterly statement. The costs of first class mailing for the management discussion and analysis and the auditor's opinion are assumed to be \$0.37 each. These cost savings are assumed to be partially offset by the continuing requirement that a hard copy of a one page jurat be filed for the annual and three quarterly statements. The mailing costs for mailing a jurat page is assumed to be \$0.37.

**Title 20—DEPARTMENT OF INSURANCE**  
**Division 200—Financial Examination**  
**Chapter 1—Financial Solvency and Accounting Standards**

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

**PROPOSED RULE**

**20 CSR 200-1.170 Derivatives for Replication Transactions**

*PURPOSE: This rule sets forth methods of disclosure, reserving for risk-based capital and determining the asset valuation reserve for derivative instruments used for replication transactions.*

(1) An insurer may use derivatives for replication transactions as permitted pursuant to section 375.345, RSMo. An insurer engaging in replication transactions shall:

(A) Comply with the following requirements:

1. The disclosure and annual and quarterly statement reporting of such replication transactions;

2. The inclusion of such transaction in the insurer's Risk Based Capital (RBC) Report (as required by sections 375.1250–375.1275, RSMo); and

3. If applicable, the calculation and reporting of the asset valuation reserve for such transaction;

(B) Comply with the filing requirements for Replication Synthetic Asset Transactions (RSATs) contained in the *Purposes and Procedures Manual* of the Securities Valuation Office of the National Association of Insurance Commissioners;

(C) File with the director of the Department of Insurance a duplicate copy of all RSAT filings made with the Securities Valuation Office of the National Association of Insurance Commissioners; after June 1, 2004, the director may waive this duplicate filing requirement;

(D) Have a system for determining whether a replication transaction has been effective in replicating the intended investment position; and

(E) Include all replicated investment positions in calculating compliance with the limitations on investments contained in sections 376.300–376.305 and 379.080–379.082, RSMo; provided, that no replicated investment position shall be held pursuant to the additional investment authority contained in sections 376.307 and 379.080.1(2)(m) and (o), RSMo.

(2) Notwithstanding any provision of this regulation to the contrary, an insurer which is not required to file an RBC Report shall not use derivatives for replication transactions.

*AUTHORITY: sections 374.045, RSMo 2000 and 375.345, RSMo Supp. 2004. Original rule filed Dec. 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 OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed rule at 10 a.m. on February 28, 2006. The public hearing will be held at the Harry S Truman State Office Building, 301 West High Street, Room 530, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to the proposed rule, until 5:00 p.m. on February 28, 2006. Written statements shall be sent to Stephen R. Gleason, Department of Insurance, PO Box 690, Jefferson City, Missouri 65102.*



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

**T**he agency is also required to make a brief summary of the general nature and extent of comments submitted in support of or opposition to the proposed rule and a concise summary of the testimony presented at the hearing, if any, held in connection with the rulemaking, together with a concise summary of the agency's findings with respect to the merits of any such testimony or comments which are opposed in whole or in part to the proposed rule. The ninety (90)-day period during which an agency shall file its order of rulemaking for publication in the *Missouri Register* begins either: 1) after the hearing on the proposed rulemaking is held; or 2) at the end of the time for submission of comments to the agency. During this period, the agency shall file with the secretary of state the order of rulemaking, either putting the proposed rule into effect, with or without further changes, or withdrawing the proposed rule.

**Title 3—DEPARTMENT OF CONSERVATION  
Division 10—Conservation Commission  
Chapter 5—Wildlife Code: Permits**

**ORDER OF RULEMAKING**

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

**3 CSR 10-5.205** Permits Required; Exceptions is **amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on November 1, 2005 (30 MoReg 2241). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

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

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Highways and Transportation Commission under section 227.107, RSMo Supp. 2004, the commission adopts a rule as follows:

7 CSR 10-24.010 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 15, 2005 (30 MoReg 1904–1906). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Highways and Transportation Commission (MHTC) received one (1) comment and made one (1) comment on the proposed rule.

COMMENT: The Associated General Contractors of Missouri, Inc. (AGC) expressed concern that 7 CSR 10-24.010 and 7 CSR 10-24.020 are inconsistent as to their authorization for local governments to enter into design-build contracts under the proposed rules and that section 227.107.1, RSMo only authorizes the MHTC to enter into design-build contracts for three (3) pilot projects. The AGC suggested that the proposed rule definition of “Contracting agency” be modified.

RESPONSE: A Transportation Development District (TDD), a Transportation Corporation (TC) or any other local public agency that proposes to let a design-build contract and requires the approval or concurrence of MHTC, must proceed in accordance with these rules or the approval or concurrence will be withheld. MHTC does not feel a change to the definition is necessary.

COMMENT: MHTC reviewed all definitions in 7 CSR 10-24.010. An incorrect term was used in definition (31). That term, as originally published in the September 15, 2005 *Missouri Register*, was Public-private agreement.

RESPONSE AND EXPLANATION OF CHANGE: MHTC has changed the term from Public-private agreement to Project agreement, however, the definition remains unchanged.

**7 CSR 10-24.010 Definitions**

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

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

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Highways and Transportation Commission under section 227.107, RSMo Supp. 2004, the commission adopts a rule as follows:

7 CSR 10-24.020 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 15, 2005 (30 MoReg 1906). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Highways and Transportation Commission (MHTC) received one (1) comment on the proposed rule.

COMMENT: The Associated General Contractors (AGC) requested that 7 CSR 10-24.020 be modified to include the following language after the last sentence in paragraph (1): All acquisitions under these rules shall be competitive acquisitions.

RESPONSE AND EXPLANATION OF CHANGE: All design-build contracts will be competitive in the sense that the rule requires that there be at least two (2) proposers eligible for award of the design-build contract. However, price will not be the only criteria forming the basis of the competition. Design issues, alternative technical concepts, and other issues on which MHTC requires flexibility may be the criteria for competition. One of the advantages of design-build projects is the creation of competition that will give the department the best value, but not necessarily the lowest bid. MHTC does not object to adding the language suggested by the AGC and will incorporate it into the order of rulemaking.

#### 7 CSR 10-24.020 General

(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. All acquisitions under these rules shall be competitive acquisitions.

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

#### ORDER OF RULEMAKING

By the authority vested in the Missouri Highways and Transportation Commission under section 227.107, RSMo Supp. 2004, the commission adopts a rule as follows:

**7 CSR 10-24.030** Procedures for Solicitations and Receipt of Proposals **is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 15, 2005 (30 MoReg 1907). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

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

#### ORDER OF RULEMAKING

By the authority vested in the Missouri Highways and Transportation Commission under section 227.107, RSMo Supp. 2004, the commission withdraws a rule as follows:

**7 CSR 10-24.040** Applicability to Public-Private Agreements **is withdrawn.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 15, 2005 (30 MoReg 1907-1908). This proposed rule is withdrawn.

SUMMARY OF COMMENTS: The Missouri Highways and Transportation Commission (MHTC) received one (1) comment on the proposed rule.

COMMENT: The Associated General Contractors (AGC) raised the possibility of deferring publication of this rule to a future date because the AGC does not believe MHTC has statutory authority to enter into Public-Private Partnerships. The AGC believed that applicability of the rule is beyond that of design-build projects authorized under 227.107, RSMo Supp. 2004.

RESPONSE: This proposed rule is withdrawn due to the change in the definition term Public-private agreement to Project agreement in 7 CSR 10-24.010(31) mentioned above. This rule is no longer necessary due to that term change.

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

#### ORDER OF RULEMAKING

By the authority vested in the Missouri Highways and Transportation Commission under section 227.107, RSMo Supp. 2004, the commission adopts a rule as follows:

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

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 15, 2005 (30 MoReg 1908). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

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

#### ORDER OF RULEMAKING

By the authority vested in the Missouri Highways and Transportation Commission under section 227.107, RSMo Supp. 2004, the commission adopts a rule as follows:

7 CSR 10-24.060 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 15, 2005 (30 MoReg 1908-1909). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Highways and Transportation Commission (MHTC) received two (2) comment on the proposed rule.

COMMENT: The Associated General Contractors (AGC) believed the specific amount of the stipend to be paid to unsuccessful proposers for a project should be stated in the Request for Qualifications (RFQ), so as to attract only qualified proposers to submit their qualifications.

RESPONSE: MHTC concurs with what is perceived to be the intent of AGC's concern, i.e., that the amount of the stipend be stated early enough in the process that a prospective proposer can be fully advised when preparing a proposal. However, in the overall process, the RFQ is issued too early in the process to have accurately estimated a proper amount for the stipend. The stipend is not intended to fully reimburse an unsuccessful proposer for his costs in preparing a proposal. It is merely acknowledgement that responding to an Request for Proposal (RFP) in a large-scale design-build project may be much more expensive than merely preparing a bid in the standard design-bid-build contract. The stipend, as indicated in the rule, is intended to cover between one-third and one-half of the preparation costs, is included in the RFP and will not be incorporated in the order of rulemaking.

COMMENT: The AGC noted that there are two (2) fiscal notes published in the Register with two (2) different cost amounts. They do not understand the difference.

RESPONSE: MHTC has attached a revised cost statement and revised fiscal notes. There is a fiscal note to reflect cost to private entities, which is the full amount of assumed costs to be incurred by unsuccessful proposers. The public entity cost reflects the mitigated amount that would be paid under the stipend formula. The stipend was not intended to fully reimburse private entity costs.

#### **7 CSR 10-24.060 Stipends**

*PUBLIC COST: This proposed rule might cost state agencies or political subdivisions nine (9) million dollars to thirteen and one-half (13.5) 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 eighteen (18) million dollars to twenty-seven (27) 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.*

**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	<b>Costs for FY 2005 to FY 2012</b> \$9,000,000.00 to \$13,500,000.00

**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 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 \$13,500,000.00 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	<b>Costs for FY 2005 to FY 2012</b>
	\$18,000,000.00 to \$27,000,000.00

**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 unsuccessful responsive offerors could total \$18,000,000.00 to \$27,000,000.00 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**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Highways and Transportation Commission under section 227.107, RSMo Supp. 2004, the commission adopts a rule as follows:

7 CSR 10-24.070 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 15, 2005 (30 MoReg 1912). The section with changes is reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** The Missouri Highways and Transportation Commission (MHTC) made one (1) comment on the proposed rule.

**COMMENT AND EXPLANATION OF CHANGE:** No comments were received from the public, however, the commission has noted a grammatical error in the text of the rule and corrects it in this order.

**7 CSR 10-24.070 Risk Allocation**

(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:

(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 (7) of this rule);

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**ORDER OF RULEMAKING**

By the authority vested in the Missouri Highways and Transportation Commission under section 227.107, RSMo Supp. 2004, the commission adopts a rule as follows:

7 CSR 10-24.080 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 15, 2005 (30 MoReg 1912–1913). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** The Missouri Highways and Transportation Commission made one (1) comment on the proposed rule.

**COMMENT AND EXPLANATION OF CHANGE:** No comments were received from the public, however, the commission has noted a grammatical error in the text of the rule and corrects it in this order.

**7 CSR 10-24.080 Organizational Conflicts of Interest**

(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 a 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.

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**ORDER OF RULEMAKING**

By the authority vested in the Missouri Highways and Transportation Commission under section 227.107, RSMo Supp. 2004, the commission adopts a rule as follows:

**7 CSR 10-24.100 Selection Procedures and Award Criteria  
is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 15, 2005 (30 MoReg 1913–1914). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** No comments were received.

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Commission  
Chapter 24—Design-Build Project Contracts**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Highways and Transportation Commission under section 227.107, RSMo Supp. 2004, the commission adopts a rule as follows:

7 CSR 10-24.110 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 15, 2005 (30 MoReg 1914). The section with changes is reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** The Missouri Highways and Transportation Commission (MHTC) received three (3) comments on the proposed rule.

**COMMENT:** The Associated General Contractors (AGC) requested that 7 CSR 10-24.110 be modified to state the specific stipend amounts in the Request for Qualifications (RFQ).

**RESPONSE:** MHTC believes, since no proposals would have been received at this phase of the design-build project, the RFQ is not an appropriate place to indicate a specific amount of stipend. A more appropriate place for an amount to be stated would be in the draft Request for Proposal (RFP), however, reference to a draft RFP is not included in the order of rulemaking. Certain projects might not involve a draft RFP, therefore, reference to a draft RFP within the rules is not necessary. Therefore, no change is made to the order of rulemaking.

**COMMENT:** The phase one proposal is to include technical approach information, however, the AGC commented that it would be difficult to provide any information on technical approach without the detail as designated as being excluded. Proposers will not want to provide detailed design strategies to potential competitors in phase two. This phase one criteria should be clarified as to what information the commission is seeking.

**RESPONSE AND EXPLANATION OF CHANGE:** AGC's comment presupposes that the requirement of disclosing technical approach is mandatory. It is not intended to be a mandatory requirement, but a discretionary one, that would vary depending on the requirements of the particular project under consideration. To clarify this intent in the final order of rulemaking, MHTC amended the language of the first sentence of 7 CSR 10-24.110(3).

**COMMENT:** The specific award criteria to be utilized for a specific design/build project should be specified in the phase two solicitation. The AGC suggested the following additional language in the second sentence of 7 CSR 10-24.110(4): "All factors and significant sub-factors that will affect contract award, including the award criteria to be used for the project, and their relative importance will be clearly stated in the solicitation. The award criteria to be used for the project shall not be changed after proposals are received in response to the Request for Proposal."

**RESPONSE:** AGC's concern for specificity is understood, however, to make the design-build procurement process successful, MHTC needs flexibility. We believe this rule, and 7 CSR 10-24.210, provide the appropriate balance between specificity and flexibility. Therefore, no change is made to the order of rulemaking.

#### **7 CSR 10-24.110 Solicitation Procedures for Competitive Proposals**

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

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Division 10—Missouri Highways and Transportation  
Commission  
Chapter 24—Design-Build Project Contracts**

### **ORDER OF RULEMAKING**

By the authority vested in the Missouri Highways and Transportation Commission under section 227.107, RSMo Supp. 2004, the commission adopts a rule as follows:

7 CSR 10-24.120 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 15, 2005 (30 MoReg 1914–1915). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** The Missouri Highways and Transportation Commission (MHTC) received one (1) comment and made one (1) comment on the proposed rule.

**COMMENT AND EXPLANATION OF CHANGE:** MHTC has noted a grammatical error in the text of the rule and corrected it in this order of rulemaking.

**COMMENT:** The Associated General Contractors (AGC) felt it is unclear whether this rule pertains to past performance with design-build projects, experience with the type of work to be performed (i.e.: bridge, asphalt or concrete paving), or both.

The AGC wanted the language clarified so potential proposers will understand the role of past experience in the proposal evaluation.

**RESPONSE:** The rule clearly contemplates that there may be proposers without direct design-build experience. The rule provides that the commission will allow proposers to submit any experience they may have for similar work. If a proposer believes it has experience that qualifies it to propose on a project, it may submit that experience and the commission will consider it. In addition, MHTC is required to conform to the federal statutes and regulations on the subject of design-build procurement. This rule is patterned directly after the corresponding *Code of Federal Regulations*. Other than the grammatical changes made to the rule, no other changes were made with regard to the AGC's comments.

#### **7 CSR 10-24.120 Past Performance**

(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 and contractors performance may be considered.

(6) In the case of a 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.

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### **ORDER OF RULEMAKING**

By the authority vested in the Missouri Highways and Transportation Commission under section 227.107, RSMo Supp. 2004, the commission adopts a rule as follows:

**7 CSR 10-24.130 Modified Design-Build Procedures is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 15, 2005 (30 MoReg 1915). No changes have been made to the text of the

proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

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**ORDER OF RULEMAKING**

By the authority vested in the Missouri Highways and Transportation Commission under section 227.107, RSMo Supp. 2004, the commission adopts a rule as follows:

**7 CSR 10-24.140 Tradeoffs in Design-Build Contracting  
is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 15, 2005 (30 MoReg 1915-1916). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

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**ORDER OF RULEMAKING**

By the authority vested in the Missouri Highways and Transportation Commission under section 227.107, RSMo Supp. 2004, the commission adopts a rule as follows:

**7 CSR 10-24.150 Use of a Competitive Range to Limit  
Competition is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 15, 2005 (30 MoReg 1916). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Highways and Transportation Commission (MHTC) received one (1) comment on the proposed rule.

COMMENT: This proposed rule should specify when competitive range will be applied. It is the position of Associated General Contractors (AGC) that proposers qualified to compete after phase one should also be allowed to compete throughout the phase two process. Many contractors may assume that they cannot be disqualified from competing after being qualified.

RESPONSE: MHTC believes the rule specifies when a competitive range may be used. Competitive range would be initiated after proposals have been made, which would be during the phase two evaluation. This rule also describes the circumstances under which competitive range may be used. A competitive range may be established if it will result in more efficient competition, without regard to the number of proposers, involved in the competitive range. The estab-

lishment of a competitive range allows for, but does not require, the elimination of any proposer from the competition. The proposed rule directly follows the *Code of Federal Regulation* (CFR), Chapter 23, Part 636.404. Any pre- or post-discussions would be conducted with all proposers, and will not exclude any proposer, in order to maintain fair and equal competition and expedite the award process. Therefore, no change is made to the order of rulemaking.

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Chapter 24—Design-Build Project Contracts**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Highways and Transportation Commission under section 227.107, RSMo Supp. 2004, the commission adopts a rule as follows:

**7 CSR 10-24.200 Proposal Evaluation Factors is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 15, 2005 (30 MoReg 1916). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

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**ORDER OF RULEMAKING**

By the authority vested in the Missouri Highways and Transportation Commission under section 227.107, RSMo Supp. 2004, the commission adopts a rule as follows:

**7 CSR 10-24.210 Process to Review, Rate and Score Proposals  
is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 15, 2005 (30 MoReg 1917). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

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**ORDER OF RULEMAKING**

By the authority vested in the Missouri Highways and Transportation Commission under section 227.107, RSMo Supp. 2004, the commission adopts a rule as follows:

**7 CSR 10-24.300 is adopted.**



A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 15, 2005 (30 MoReg 1917-1919). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** The Missouri Highways and Transportation Commission (MHTC) made two (2) comments on the proposed rule.

**COMMENT AND EXPLANATION OF CHANGE:** MHTC has noted a grammatical error in the text of the rule and corrected it in this order of rulemaking.

**COMMENT AND EXPLANATION OF CHANGE:** MHTC has eliminated the reference in the table below to 7 CSR-24.400 through 7 CSR 10-24.413 under the topic of Discussions.

#### **7 CSR 10-24.300 Information Exchange, General**

(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.

<b>Type of Information Exchange</b>	<b>When</b>	<b>Purpose</b>	<b>Parties Involved</b>
(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 proposers whose exclusion from, or inclusion in, the competitive range is uncertain. All proposers whose past performance information is the determining factor preventing them from being placed in the competitive range.
(3) Discussions	After receipt of proposals and after determination of the competitive range	Enhance commission understanding of proposals and proposers understanding of scope of work. Facilitate the evaluation process.	Must be held with all proposers in the competitive range.

- (3) Commission will not engage in information exchanges that:
- (A) Favor one proposer over another;
  - (B) Reveal a proposer's technical solution, including unique technology, innovative and unique uses of commercial items, or any information that would compromise a proposer's intellectual property to another proposer;
  - (C) Reveal a proposer's price without that proposer's permission;
  - (D) Reveal the names of individuals providing reference information about a 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.

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**ORDER OF RULEMAKING**

By the authority vested in the Missouri Highways and Transportation Commission under section 227.107, RSMo Supp. 2004, the commission adopts a rule as follows:

7 CSR 10-24.310 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 15, 2005 (30 MoReg 1919). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** The Missouri Highways and Transportation Commission (MHTC) made one (1) comment on the proposed rule.

**COMMENT AND EXPLANATION OF CHANGE:** MHTC has noted a grammatical error in the text of the rule and corrected it in this order of rulemaking.

**7 CSR 10-24.310 Clarifications**

(1) The commission may clarify any aspect of proposals that would enhance the commission's understanding of a 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 a proposer's past performance to which the proposer has not previously had an opportunity to respond.

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**ORDER OF RULEMAKING**

By the authority vested in the Missouri Highways and Transportation Commission under section 227.107, RSMo Supp. 2004, the commission adopts a rule as follows:

7 CSR 10-24.320 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 15, 2005 (30 MoReg 1919). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** The Missouri Highways and Transportation Commission (MHTC) made one (1) comment on the proposed rule.

**COMMENT:** MHTC has noted a grammatical error in the text of the rule.

**RESPONSE AND EXPLANATION OF CHANGE:** This error is corrected in this order of rulemaking.

**7 CSR 10-24.320 Communications**

(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 a proposer has not had a prior opportunity to respond; and

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**ORDER OF RULEMAKING**

By the authority vested in the Missouri Highways and Transportation Commission under section 227.107, RSMo Supp. 2004, the commission adopts a rule as follows:

7 CSR 10-24.330 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 15, 2005 (30 MoReg 1920). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** The Missouri Highways and Transportation Commission (MHTC) received one (1) comment and made one (1) comment on the proposed rule.

**COMMENT:** MHTC has noted a grammatical error in the text of the rule.

**RESPONSE AND EXPLANATION OF CHANGE:** This error is corrected in this order of rulemaking.

**COMMENT:** The language in 7 CSR 10-24.330 implies some acquisitions may be competitive and some may be non-competitive. The Associated General Contractors' (AGC's) position is that all acquisitions by the commission for design-build projects should be competitive. We recommend that the words "In a competitive acquisition, . . ." be removed throughout rule 7 CSR 10-24.330. **RESPONSE:** See MHTC's response to the AGC comment to 7 CSR 10-24.020, wherein MHTC has agreed to add language that states all acquisitions under these rules shall be competitive acquisitions.

**7 CSR 10-24.330 Discussions**

(8) The commission may inform a 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 estimate published as part of the public notice of Request for Qualifications provided by section 227.107.18, RSMo.

(10) The commission may further narrow the competitive range if a 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 a proposer excluded from the competitive range with a written determination and notice that proposal revisions will not be considered.

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**ORDER OF RULEMAKING**

By the authority vested in the Missouri Highways and Transportation Commission under section 227.107, RSMo Supp. 2004, the commission adopts a rule as follows:

**7 CSR 10-24.413** Negotiations Allowed After Source Selection Prior to Contract Execution **is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on September 15, 2005 (30 MoReg 1920–1921). No changes have been made to the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 7—DEPARTMENT OF TRANSPORTATION  
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Commission  
Chapter 25—Motor Carrier Operations**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Highways and Transportation Commission under section 304.200, RSMo 2000, the commission adopts a rule as follows:

**7 CSR 10-25.020** is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 15, 2005 (30 MoReg 1709–1726). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Highways and Transportation Commission received six (6) comments on the proposed rule.

COMMENT: Charles Kruse with the Missouri Farm Bureau Federation expressed concern that the proposed change in subsection (1)(B) from “farm products” to “farm products (hay) and equipment with dual tires” would be less inclusive. Missouri Farm Bureau Federation expressed similar concerns regarding the change in subsection (7)(A) from “road-building equipment, soil-conservation equipment” to “construction equipment.”

RESPONSE: Under the current rules, equipment with dual tires are not eligible for permits, so this rule will actually expand rather than restrict permit eligibility. The change from “farm products” to “farm products (hay)” is intended to clarify what is currently permissible under 7 CSR 10-2.010(1)(B), which restricts permits from being granted for reducible loads or for farm products not specifically referenced in sections (7) and (10). Under the current rules, hay is the only farm product that can permissibly receive an overdimension/overweight (OD/OW) permit. The change in section (7) from “road-building equipment, soil-conservation equipment” to “construction equipment” actually benefits permit customers by removing the necessity to declare the purpose for a move. In the current rule, only equipment used for road building or soil-conservation work is eligible for annual blanket OD/OW permits. This rule is

more inclusive than the current version since it allows equipment to be used without relying on the purpose for use. No changes have been made as a result of this comment.

COMMENT: Charles Kruse with the Missouri Farm Bureau Federation expressed concern that subsection (1)(H) modifies current language regarding multi-stop permits by adding “(not intended for delivery of legal loads).”

RESPONSE AND EXPLANATION OF CHANGE: Although this language was added to clarify legal loads are not considered when multi-stop permits are issued; this may inadvertently lead some to interpret it as restricting the use of multi-stop permits. Therefore, language in this subsection was revised to clarify that since legal loads do not require OD/OW permits, they are not considered when issuing multi-stop permits.

COMMENT: Charles Kruse with the Missouri Farm Bureau Federation commented on the hours of movement restrictions during the Thanksgiving weekend and decreased holiday working hours for permit offices.

RESPONSE: Missouri Farm Bureau Federation expressed concerns that wording in (1)(I) increases the restrictions for moves during Thanksgiving weekend and adds three (3) holidays where the Jefferson City permit office will be closed. No hours have been added to the Thanksgiving weekend restriction. Whereas the current rule specifies the Thanksgiving restriction applies “through Sunday,” the language in this proposed rule clarifies the restriction lasts until “one-half hour before sunrise on the following Monday.” Under the current rule, “through Sunday” is interpreted as lasting until Monday travel is permissible. Since OD moves currently must stop one-half (1/2) hour after sunset and are not allowed to resume moves until one-half (1/2) hour before sunrise, the language in this proposed rule specifies the earliest that travel is possible on the following Monday. Farm Bureau inaccurately states all permitting offices except for the Jefferson City location will be closed on three (3) additional holidays. Under the current rule, all OD/OW permitting offices are closed on: New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, Christmas, Martin Luther King Day, Veteran’s Day, President’s Day, and those days the governor designates as a holiday (Truman’s Birthday, Columbus Day, and Lincoln’s Day). Under this proposed rule, the Jefferson City office will be open on Martin Luther King Day, Lincoln’s Day, President’s Day, Truman Day, Columbus Day, and Veterans’ Day. This proposed rule would actually increase the number of days applicants could seek OD/OW permits. Therefore, no changes were made to this rule as a result of this comment.

COMMENT: Charles Kruse with the Missouri Farm Bureau Federation found the proposed permit fee increases to be excessive.

RESPONSE: Although Missouri Farm Bureau Federation considers the fee increases excessive; the commission considers them to be reasonable. Other than superloads, the cost of overdimension/overweight permits has not been revised in more than fifteen (15) years. An increase in permit cost is necessary to cover operating expenses for the MoDOT Motor Carrier Services Division handling OD/OW permit processing. This includes the cost to maintain an open office on holidays. The increase from twelve dollars (\$12) to fifteen dollars (\$15) for a standard single trip overdimension permit is far from excessive. The increase in movement feasibility costs from two hundred dollars (\$200) to two hundred fifty dollars (\$250) covers the cost for MoDOT employees to perform an extensive study of an entire route to ensure a carrier can travel safely without damaging state roadways or bridges. The increased costs for overweight vehicle permits will help MoDOT cover some of the damage caused to state roadways by OD/OW vehicles. The amounts charged for OD/OW permits under this proposed rule would only place Missouri among the average for permit fees when compared to other states. Therefore, no changes were made to this rule as a result of this comment.

COMMENT: Charles Kruse with the Missouri Farm Bureau Federation expressed opposition to the modified hours of movement restriction for the Lake of the Ozarks, Branson and Springfield areas. RESPONSE: Section (9) does expand the travel restrictions for the Lake of the Ozarks for one (1) additional weekend during the summer. The commission considers these two (2) additional restrictions of movement days necessary due to the high volume of traffic in this area. The additional restrictions for Branson only apply to Saturdays and Sundays and are necessary due to the high volume of traffic. The proposed curfew on I-44 only adds an additional two (2) hours in the evenings and is necessary due to high traffic. The additional restrictions on US 65 are necessary due to the high traffic volume. The proposed curfew for US 60 is less restrictive than current regulations since two (2) hours of daily restrictions are removed. Although Missouri Farm Bureau Federation's desire to limit restricted travel time is understandable, the safety of the traveling public as well as those operating under OD/OW permits requires the restrictions be maintained. No changes have been made to the rule as a result of this comment.

COMMENT: Charles Kruse with the Missouri Farm Bureau Federation requested the proposed rule be revised to: exempt implement dealers traveling any state highway other than the interstate from permit requirements, regardless of their width, height or length if they are delivering farm machinery for repairs, and allow implement dealers on all other moves to have an overwidth permit with an allowable width of fourteen feet six inches (14'6").

RESPONSE AND EXPLANATION OF CHANGE: Although section 304.170, RSMo, does exempt agricultural implement dealers from the dimension requirements otherwise specified in that section, there are certain limitations. Entitlement to the statutory exemption requires implement dealers to: 1) not travel on the interstate system, 2) operate for short distances; and 3) operate between the hours of sunrise and sunset. Missouri Farm Bureau Federation incorrectly asserts "implement dealers are currently required to have permits for any movement of overwidth farm equipment up to a maximum allowable width of 12 feet, 4 inches." Only those vehicles that cannot fulfill the statutory requirements are required to travel with permits. 7 CSR 10-2.010(7)(A)3. currently allows vehicles with a maximum width of twelve feet four inches (12'4"), to travel with annual blanket permits if all other dimensions are legal. Single trip permits are available for loads that exceed twelve feet four inches (12'4")

Missouri Farm Bureau Federation, ". . . questions whether permit conditions that are not deemed necessary at 12'4" are necessary at 14'6". A new paragraph will be added under subsection (7)(B) creating a one hundred (100)-mile radius blanket permit for farmers and farm implement dealers. This new annual blanket permit will allow them to travel within one hundred (100)-miles of the permittee's principal place of business with a maximum width up to fourteen feet six inches (14'6").

## 7 CSR 10-25.020 Overdimension and Overweight Permits

### (1) General Regulations for Overdimension/Overweight Permits.

(H) Permits for round trips will not be issued. Each single trip permit covers the movement of one (1) load only, between one origin and one destination, except for the multi-stop permit designed for transportation of farm implement delivery only (legal loads are not considered for multi-stop permits since permits are not required for legal loads). Moves must be completed in seven (7) moving days, except for multi-state permits which must be completed in ten (10) days, and blanket permits which are for a specified period.

(7) Annual Blanket Permits. Blanket permits may be issued for moves up to and including twelve feet four inches (12'4") in width and one hundred fifty feet zero inches (150'0") in overall length. Height and weight shall be in accordance with Chapter 304 of the *Missouri Revised Statutes*. The fee schedule for blanket permits is outlined in subsection (4)(E). Separate permits are required for each power unit. To qualify for an annual blanket permit, insurance must be in force

for the entire period (see section (2)) and vehicles must be properly licensed. Annual blanket permits are issued only by the Missouri Department of Transportation, Motor Carrier Services Division, 1320 Creek Trail Drive, PO Box 893, Jefferson City, MO 65102. All annual permits will expire at 12:00 a.m. on January 1 of the following year. Violation of a blanket permit shall be cause for revocation of the current blanket permit and may result in loss of the privilege of obtaining future blanket permits. Blanket permit moves shall be made in accordance with all other regulations and requirements. The permittee is required to obtain current travel restrictions prior to movement with blanket permits.

### (B) Single Commodity.

1. Manufactured and sectional home units. Annual blanket permits are available for the movement of manufactured and sectional home units up to and including twelve feet four inches (12'4") in width and one hundred fifty feet (150') in overall length. Height and weight shall be legal.

2. Farm implements, farm products (hay), construction equipment. Annual blanket permits are available for these moves up to and including twelve feet four inches (12'4") in width. All other dimensions and weight shall be legal. Farm implements or equipment not designed for towing at highway speeds must be hauled. If the equipment is designed to be towed, it shall meet all regulatory safety requirements. Farm products (hay) and equipment with dual tires will not be required to comply with the reducible load requirement for width.

3. One hundred (100)-mile radius blanket for farmers and farm implement dealers. Annual blanket permits are available to farm implement dealers and farmers for movement of farm implements up to and including fourteen feet six inches (14'6") in width. All other dimensions and weight shall be legal. This blanket is only valid for moves within a one hundred (100) mile radius of permittee's principal place of business. All other permit regulations, (including but not limited to times of travel, signing and escorts) will apply. Farm implements not designed for towing at highway speeds must be hauled. If the equipment is designed to be towed, it shall meet all regulatory safety requirements.

4. Implements of husbandry and transporting vehicle. Annual blanket permits are available for movement up to and including twelve feet four inches (12'4") in width. All other dimensions and weight shall be legal. Implements of husbandry are machines designed specifically for the application of commercial plant-food materials or agricultural chemicals and off-road usage. Such units shall not operate under their own power on the interstate system.

5. Repeated moves of like objects. Annual blanket permits for the movement of specific nonreducible commodities may be issued to a maximum width of twelve feet four inches (12'4") and/or overall length up to a maximum of one hundred fifty feet (150'). Height and weight shall be legal. The following items may be considered: boats, portable buildings, wood trusses, steel trusses, plates, beams, angles, pipe or piling, reinforcing steel mesh, rods or bars, tanks, mobile office trailers, grain carts, cotton trailers, park trailers, precast concrete panels, aluminum plates, wood beams and concrete girders. The permit will describe and specify the object to be hauled. A blanket permit may be issued for the repeated movement of objects for permanent use in their transported form. Such objects may vary in size as long as the largest is within the width and/or length limit specified on the permit. Multipiece loads must be nonreducible and non-divisible in dimension.

## Title 7—DEPARTMENT OF TRANSPORTATION Division 265—Motor Carrier and Railroad Safety Chapter 10—Motor Carrier Operations

### ORDER OF RULEMAKING

By the authority vested in the Missouri Highways and Transportation Commission under sections 390.041(1), 390.138 and 622.027,

RSMo 2000 and 226.008 and 390.136, RSMo Supp. 2004, the commission amends a rule as follows:

**7 CSR 265-10.020 Licensing of Vehicles is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2005 (30 MoReg 1900–1903). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 9—DEPARTMENT OF MENTAL HEALTH  
Division 10—Director, Department of Mental Health  
Chapter 5—General Program Procedures**

**ORDER OF RULEMAKING**

By the authority vested in the Department of Mental Health under section 630.050, RSMo 2000, the department amends a rule as follows:

**9 CSR 10-5.200 is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 15, 2005 (30 MoReg 1924–1925). Those sections with changes are reprinted here. This proposed amendment becomes effective on **March 1, 2006**.

SUMMARY OF COMMENTS: Six (6) persons submitted comments on the proposed amendment.

COMMENT: One (1) person wrote in support of the centralization of investigation procedures as a means to achieve a more consistent application of the standards throughout the state.

COMMENT: Two (2) persons expressed support for the revision to the definition of verbal abuse in 9 CSR 10-5.200(1)(H).

COMMENT: One (1) person expressed concern about having medication errors fall under the definitions of abuse/neglect in subsection (1)(D).

RESPONSE: Under the amendment, only a “serious” medication error will be investigated. It’s the department’s position that it has a responsibility to determine whether abuse or neglect occurred if a medication error has serious adverse consequences, as described in the definition. The department has not revised the amendment in response to this comment.

COMMENT: One (1) person requested that the definitions of medication errors in subsection (1)(D) be rewritten to make them consistent with other definitions.

RESPONSE: The department assumes the commenter is suggesting that the definitions be consistent with definitions developed by one of several other regulatory or accrediting bodies. The definitions as they appear in the amendment are designed to have meaning in the many different types of facilities that are licensed, certified or funded by the department. The department has not revised the amendment in response to this comment.

COMMENT AND EXPLANATION OF CHANGE: Even though no specific comment was received, the department noted that the phrase “is required” is redundant at the end of the definition of “minimal”

medication error in subparagraph (1)(D)1.A. The department has removed the redundant phrase.

COMMENT: Also commenting on the definitions of medication error in subsection (1)(D), one (1) person suggested that evidence of intent be included in the definitions, so that the level of error would be elevated to a higher level if it were determined that the error was intentional.

RESPONSE: The department did not revise the definition as suggested because, in the interest of consistent application, the department defined serious medication error in terms of an objective outcome, i.e., life-threatening experiences, permanent adverse consequences, or hospitalization, rather than intent.

COMMENT: One (1) person commenting on the definition of medication errors in subsection (1)(D) pointed out that there are often mitigating circumstances resulting from the employment environment.

RESPONSE: The department agrees with the comment. The mitigating factors will become apparent as a result of the investigation and affect the decision as to whether abuse or neglect occurred. The department has not revised the amendment in response to this comment.

COMMENT: One physician commented on the definition of serious medication error in subsection (1)(D), objecting to the provision that a medication error shall be considered “serious” if it results in an emergency room episode of care. The commenter stated that, as a precaution following a medication error, a consumer is sometimes sent to an emergency room for an assessment. Often the assessment is favorable, hospitalization is not necessary and the consumer returns to the facility without need of treatment.

RESPONSE AND EXPLANATION OF CHANGE: The department agrees with the comment and revised the amendment accordingly.

COMMENT: Two (2) persons objected to the revision of the definition of misuse of funds/property in subsection (1)(E). They stated that the prohibition of the “conversion” of consumer funds “for any purpose” will end a current practice in which consumers provide staff with funds to purchase items such as tobacco, clothes and food.

RESPONSE: The department disagrees and has not revised the amendment in response to this comment. By prohibiting the “conversion of funds,” the rule prohibits the taking of a consumer’s resources for the benefit of someone other than the consumer; it does not prohibit staff from buying things for the consumer with the consumer’s funds.

COMMENT: Also commenting on the definition of misuse of funds/property in subsection (1)(E), one (1) person objected that the revised definition will not allow staff to accept small gifts, such as a soda, which are offered willingly by the consumer as a gesture of friendship. The commenter stated that this policy is disrespectful to consumers because it denies them the choice of spending their money as they wish.

RESPONSE: The department agrees that the definition prohibits staff from accepting gifts from consumers, noting that the concept of allowing staff to receive the funds or property from consumers can and has led to great abuse and exploitation of the consumers. Therefore, the department has not revised the amendment in response to this comment.

COMMENT: One (1) person suggested that the definition of sexual abuse in subsection (1)(G) is unclear.

RESPONSE AND EXPLANATION OF CHANGE: The department agrees and has revised the punctuation and categorization to create greater clarity.

COMMENT: Two (2) persons commenting on the report of suspected abuse under subsection (2)(A) stated that all reports should be in writing.

RESPONSE AND EXPLANATION OF CHANGE: The department agrees and has revised the subsection accordingly.

COMMENT: One (1) person commented on paragraph (2)(A)8, which requires an investigation of abuse and neglect to take place if there is a diversion of medication from intended use by the consumer for whom it was intended. The commenter stated that diversion should be allowed in emergency situations.

RESPONSE AND EXPLANATION OF CHANGE: The department does not agree that diversion of medications should be allowed but is evaluating to what extent it should be subject to investigation. Pending the outcome of that evaluation, the department is removing the "diversion of medication" from the list of items subject to investigation under this amendment.

COMMENT: One (1) person stated that the rule ought to require the provider to have a policy regarding the disposition of staff alleged to have committed abuse or neglect, e.g. suspension with or without pay.

RESPONSE AND EXPLANATION OF CHANGE: The department does not agree that the agency should be required to develop a policy, anticipating many contingencies that might arise. The department does agree that the agency should take immediate action to protect consumers during the investigation process and therefore has amended subsection (2)(B) to add an appropriate provision.

#### **9 CSR 10-5.200 Report of Complaints 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;

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.

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

(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;
5. Failing to intervene or attempting to stop inappropriate sexual activity or performance between consumers; and/or
6. Encouraging inappropriate sexual activity or performance between consumers; and

(2) This section applies to any director, supervisor or employee of any residential facility, day program or specialized service, 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 person shall immediately file a written complaint if that person has reasonable cause to believe that a consumer has been subjected to any of the following misconducts while under the care of a residential facility, day program or specialized service:

1. Physical abuse;
2. Sexual abuse;
3. Misuse of funds/property;
4. Class I neglect;
5. Class II neglect;
6. Verbal abuse; or
7. Serious medication error.

(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 district administrator office. If the allegation results in an investigation, the head of the facility shall make reasonable arrangements with respect to the alleged perpetrator to assure the safety of all of the facility's consumers. Such arrangements may include but are not limited to leave with or without pay, or transfer to a position where there is no client contact.

#### **Title 9—DEPARTMENT OF MENTAL HEALTH Division 10—Director, Department of Mental Health Chapter 5—General Program Procedures**

##### **ORDER OF RULEMAKING**

By the authority vested in the director of the Department of Mental Health under sections 630.050 and 630.655, RSMo 2000, the director amends a rule as follows:

#### **9 CSR 10-5.206 Report of Events is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 3, 2005 (30 MoReg 2049). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

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

##### **ORDER OF RULEMAKING**

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo 2000, the commission amends a rule as follows:

#### **10 CSR 10-6.010 is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 15, 2005 (30 MoReg 1727-1729). Those sections with changes are

reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** The Missouri Department of Natural Resources' Air Pollution Control Program received a comment from the U.S. Environmental Protection Agency (EPA) concerning the eight (8)-hour ozone standard.

**COMMENT:** EPA commented that for clarification, the *Code of Federal Regulations* specifies the eight (8)-hour ozone concentration in terms of ppm, i.e., 0.08 ppm, the federal eight (8)-hour ozone standard does not set forth a microgram per cubic meter standard as the one (1)-hour ozone did, therefore the 156.64  $\mu\text{g}/\text{m}^3$  standard should be deleted for consistency with the eight (8)-hour ozone standard found in the *Code of Federal Regulations*.

**RESPONSE AND EXPLANATION OF CHANGE:** As a result of this comment, the reference to the eight (8)-hour ozone micrograms per cubic meter language was removed to be consistent with the *Code of Federal Regulations*.



## 10 CSR 10-6.010 Ambient Air Quality Standards

Pollutant	Concentration	Method	Remarks	Pollutant	Concentration	Method	Remarks
1. Particulate matter 10 micron (PM <sub>10</sub> )	50 micrograms per cubic meter	As specified in 10 CSR 10-6.040(4)(J)	3-year average of annual arithmetic mean	6. Hydrogen sulfide	0.05 ppm (70 micrograms per cubic meter)	As specified in 10 CSR 10-6.040(5)	1/2-hour average not to be exceeded over 2 times per year
	150 micrograms per cubic meter		24-hour average concentration. Not more than one expected exceedance, 3-year average (see 10 CSR 10-6.040(4)(K))		0.03 ppm (42 micrograms per cubic meter)		1/2-hour average not to be exceeded over 2 times in any 5 consecutive days
Particulate matter 2.5 micron (PM <sub>2.5</sub> )	15 micrograms per cubic meter	As specified in 10 CSR 10-6.040(4)(L)	3-year average of annual arithmetic mean	7. Sulfuric acid	10 micrograms per cubic meter	As specified in 10 CSR 10-6.040(6)	24-hour average not to be exceeded more than once in any 90 consecutive days
	65 micrograms per cubic meter		24-hour average concentration 98th percentile of monitored daily concentration (see 10 CSR 10-6.040(4)(M))		30 micrograms per cubic meter		1-hour average not to be exceeded more than once in any 2 consecutive days
2. Sulfur dioxide	0.03 ppm (80 micrograms per cubic meter)	As specified in 10 CSR 10-6.040(4)(A)	Annual arithmetic mean	8. Lead	1.5 micrograms per cubic meter	As specified in 10 CSR 10-6.040(4)(G)	Calendar quarter arithmetic mean not to be exceeded
	0.14 ppm (365 micrograms per cubic meter)		24-hour average not to be exceeded more than once per year				
	0.5 ppm (1,300 micrograms per cubic meter)		3-hour average not to be exceeded more than once per year				
3. Carbon monoxide	9 ppm (10,000 micrograms per cubic meter)	As specified in 10 CSR 10-6.040(4)(C)	8-hour average not to be exceeded more than once per year				
	35 ppm (40,000 micrograms per cubic meter)		1-hour average not to be exceeded more than once per year				
4. Photo-chemical oxidants (1-hour ozone)	0.12 ppm (235 micrograms per cubic meter)	As specified in 10 CSR 10-6.040(4)(D)	1-hour average. Not more than one expected exceedance, 3-year average (see 10 CSR 10-6.040(4)(H))				
	Photo-chemical oxidants (8-hour ozone)	0.08 ppm	As specified in 10 CSR 10-6.040(4)(D)				8-hour standard not to exceed 3-year average of the 4th highest daily maximum (see 10 CSR 10-6.040(4)(I))
5. Nitrogen dioxide	0.05 ppm (100 micrograms per cubic meter)	As specified in 10 CSR 10-6.040(4)(F)	Annual arithmetic mean not to be exceeded				

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

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo 2000, the commission amends a rule as follows:

10 CSR 10-6.020 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 15, 2005 (30 MoReg 1730-1739). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** The Missouri Department of Natural Resources' Air Pollution Control Program received comments from the Boeing Company, Mississippi Lime Company, the Regulatory Environmental Group for Missouri (REGFORM), St. Louis Regional Chamber and Growth Association (RCGA) and the U.S. Environmental Protection Agency (EPA) with concerns on proposed definitions language.

**COMMENT:** The Boeing Company and EPA commented that the proposed definition for insignificant activity lacks a phrase currently in the existing definition language which is needed to clarify that sources and activities may only be insignificant if there is no applicable requirement associated with them.

**RESPONSE AND EXPLANATION OF CHANGE:** As a result of these comments, the rule text in paragraph (2)(I)5. has been revised to clarify that sources and activities may only be insignificant if there is no applicable requirement associated with them.

**COMMENT:** The Boeing Company and EPA commented that the proposed definition for net emissions increase references 40 CFR 51.166(b)(3) promulgated as of June 19, 1978 which is not consistent with the Construction Permit Required Rule in 10 CSR 10-6.060. It was recommended that the definition be changed to reference 40 CFR 52.21(b) for consistency with the construction permit rule.

**RESPONSE AND EXPLANATION OF CHANGE:** As a result of these comments, paragraph (2)(N)2. has been revised for consistency with the construction permit rule.

Due to similar concerns addressed in the following two (2) comments, one (1) response that addresses those concerns can be found at the end of these two (2) comments.

**COMMENT:** The EPA commented that, in order for paragraph (2)(P)4. to be federally approvable, the definition of PM and PM<sub>2.5</sub> should be revised to remove the test method language and simply refer to the appropriate test methods. EPA commented that condensable particulate matter has to be accounted for when sampling for PM and that test methods need to be specified that address their capture. If left unchanged, this rulemaking will not be federally approvable because a significant portion of the condensable fraction of PM<sub>10</sub> and PM<sub>2.5</sub> will be unaccounted for and could have serious implications for modeling compliance with the National Ambient Air Quality Standards (NAAQS) and with New Source Review and Title V Permit applicability.

**COMMENT:** REGFORM and RCGA commented that the definitions under particulate matter should be revised to remove reference to stack testing methods since the NAAQS and source testing methods are already specified in 10 CSR 10-6.030.

**RESPONSE AND EXPLANATION OF CHANGE:** As a result of these comments, the definitions in paragraph (2)(P)4. have been revised to remove test method language and simply refer to ambient air methods.

**COMMENT:** EPA commented that the volatile organic compounds (VOC) definition list in subparagraph (2)(V)9.A. and the Table 3 list in subsection (3)(C) need to match the lists in the *Code of Federal Regulations* and the Clean Air Act for uniformity.

**RESPONSE AND EXPLANATION OF CHANGE:** As a result of this comment, the VOC list in subparagraph (2)(V)9.A. has been updated for consistency with 40 CFR 51.100 and Table 3 in subsection (3)(C) has been updated for consistency with Section 112(b) of the Clean Air Act.

Due to similar concerns addressed in the following two (2) comments, one (1) response that addresses those concerns can be found at the end of these two (2) comments.

**COMMENT:** The EPA commented that the purpose for adding the new term hourly *de minimis* level is not clear. If the definition is being added to clarify which minor sources may be exempt from the requirement to perform ambient analysis as provided in 10 CSR 10-6.060(5)(D)1., then the definition is adequate for that limited purpose. However, there would be a need to analyze the definition further if it is intended for any other purpose.

**COMMENT:** The Mississippi Lime Company commented that the department proposed that the definition for hourly *de minimis* level be added in 1999 but elected to withdraw the definition because it did not address a multitude of different circumstances that can arise as a result. They urge the department to come to the same conclusion and withdraw this definition.

**RESPONSE AND EXPLANATION OF CHANGE:** A definition for hourly *de minimis* level was proposed to clarify this term as used in rule 10 CSR 10-6.060 Construction Permits Required. However, due to these comments showing concern for adding this definition and, since defining this term is not necessary, this term has been removed from the order of rulemaking. This action will avoid confusion over the intent of adding this term.

**10 CSR 10-6.020 Definitions and Common Reference Tables**

(2) Definitions.

(H) All terms beginning with "H."

1. Hazardous air pollutant—Any of the air pollutants listed in subsection (3)(C) of this rule.

2. HHV—A higher heating value as determined by 10 CSR 10-6.040(2) (ASTM Standard: D 2015-66, Part 19, 1972, Standard Method for Determining Gross Heating Values of Solid Fuels).

3. High efficiency particulate air filter—A HEPA filter found in respirators and vacuum systems capable of filtering three-tenths (0.3) micron particles with at least ninety-nine and ninety-seven hundredths percent (99.97%) efficiency.

4. High terrain—Any area having an elevation nine hundred feet (900') or more above the base of the stack of the installation.

5. Homogeneous area—An area of surfacing material, thermal system insulation material or miscellaneous material that is uniform in color and texture.

6. Hot car—A vehicle which transfers hot coke from the oven to the area of quenching.

7. Hot well—The reservoir of a condensing unit receiving the warm condensate from the condenser.

(I) All terms beginning with "I."

1. Incinerator—Any article, machine, equipment, contrivance, structure or part of a structure used to burn refuse or to process refuse material by burning other than by open burning as defined in this rule.

2. Indirect heating source—A source operation in which fuel is burned for the primary purpose of producing steam, hot water or hot

air, or other indirect heating of liquids, gases or solids where, in the course of doing so, the products of combustion do not come into direct contact with process materials.

3. Individual source monitoring—A system as specified in EPA document EPA-450/2-78-036 entitled *Control of Volatile Organic Compound Leaks from Petroleum Refinery Equipment*, which utilizes a portable hydrocarbon monitor to measure levels of volatile hydrocarbons emitted from individual process equipment.

4. Innovative control technology—Any system of air pollution control that has not been adequately demonstrated in practice but would have a substantial likelihood of achieving greater continuous emission reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics or non-air quality environmental impacts.

5. Insignificant activity—An activity or emission unit in which the only applicable requirement would be to list the requirement in an operating permit application under 10 CSR 10-6.065 and is either of the following:

A. Emission units whose aggregate emission levels for the installation do not exceed that of the *de minimis* levels; and

B. Emission units or activities listed in 10 CSR 10-6.061 as exempt or excluded from construction permit review under 10 CSR 10-6.060.

6. Inspector—An individual, under AHERA, who collects and assimilates information used to determine whether asbestos-containing material is present in a building or other air contaminant sources.

7. Installation—All source operations including activities that result in fugitive emissions, that belong to the same industrial grouping (that have the same two (2)-digit code as described in the *Standard Industrial Classification Manual*, 1987), and any marine vessels while docked at the installation, located on one (1) or more contiguous or adjacent properties and under the control of the same person (or persons under common control).

8. Interior body spray (two (2)- and three (3)-piece)—The surface coating for the interior and ends of a two (2)-piece formed can or the surface coating of the side of the rectangular material to be used as the interior and ends of a three (3)-piece can.

9. Internal floating roof—A product cover in a fixed roof tank which rests upon or is floated upon the VOC liquid being contained and which is equipped with a sliding seal(s) to close the space between the edge of the covers and tank shell.

10. Inventory—A quantification of emissions by installation and by source operation.

(N) All terms beginning with “N.”

1. Nearby—Nearby as used in the definition GEP stack height in subparagraph (2)(G)2.B. is defined for a specific structure or terrain feature—

A. For purposes of applying the formula provided in subparagraph (2)(G)3.B., nearby means that distance up to five (5) times the lesser of the height or the width dimension of a structure, but not greater than one-half (1/2) mile; and

B. For conducting fluid modeling or field study demonstrations under subparagraph (2)(G)3.C., nearby means not greater than one-half (1/2) mile, except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to ten (10) times the maximum height of the feature, not to exceed two (2) miles if feature achieves a height one-half (1/2) mile from the stack that is at least forty percent (40%) of the GEP stack height determined by the formula provided in subparagraph (2)(G)3.B. or twenty-six meters (26 m), whichever is greater, as measured from the ground level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground level elevation at the base of the stack.

2. Net emissions increase—This term is defined in 40 CFR 52.21(b)(3), promulgated as of July 1, 2003 and 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.

3. New tepee burner—One not in existence as of September 18, 1970.

4. NIOSH—National Institute of Occupational Safety and Health.

5. Nonattainment area—Those geographic areas in Missouri that have officially been designated by the U.S. Environmental Protection Agency in 40 CFR part 81 as nonattainment areas.

(P) All terms beginning with “P.”

1. Pail—Any nominal cylindrical container of one to twelve (1-12) gallon capacity.

2. Paint—A pigmented surface coating using VOCs as the major solvent and thinner which converts to a relatively opaque solid film after application as a thin layer.

3. Part 70—U.S. Environmental Protection Agency regulations, codified at 40 CFR part 70, setting forth requirements for state operating permit programs pursuant to Title V of the Act.

4. Particulate matter—Any material, except uncombined water, that exists in a finely divided form as a liquid or solid and as specifically defined as follows:

A. PM—any airborne, finely divided solid or liquid material with an aerodynamic diameter smaller than one hundred (100) micrometers as measured in the ambient air as specified in 10 CSR 10-6.040(4)(B);

B. PM<sub>10</sub>—particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured in the ambient air as specified in 10 CSR 10-6.040(4)(J); and

C. PM<sub>2.5</sub>—particulate matter with an aerodynamic diameter less than or equal to a nominal two and one-half (2.5) micrometers including the filterable component as measured in the ambient air as specified in 10 CSR 10-6.040(4)(L).

5. Permanent shutdown—The permanent cessation of operation of any air pollution control equipment or process equipment, not to be placed back into service or have a start-up.

6. Permitting authority—Either the administrator or the state air pollution control agency, local agency or other agency authorized by the administrator to carry out a permit program as intended by the Act.

7. Person—Any individual, partnership, association, corporation including the parent company of a wholly-owned subsidiary, municipality, subdivision or agency of the state, trust, estate or other legal entity either public or private. This shall include any legal successor, employee or agent of the previous entities.

8. Petroleum liquid—Petroleum, condensate and any finished or intermediate products manufactured in a petroleum refinery with the exception of Numbers 2-6 fuel oils as specified in ASTM D(396-69), gas turbine fuel oils Number 2-GT-4-GT, as specified in ASTM D(2880-71), and diesel fuel oils Number 2-D and 4-D, as specified in ASTM D(975-68).

9. Petroleum refinery—Any facility which produces gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants or other products through distillation, cracking, extraction or reforming of unfinished petroleum derivatives.

10. Pharmaceutical—Any compound or preparation included under the Standard Industrial Classification Codes 2833 (Medicinal Chemicals and Botanical Products) and 2834 (Pharmaceutical Preparations), excluding products formulated by fermentation, extraction from vegetable material or animal tissue or formulation and packaging of the final product.

11. Pilot plants—The installations which are of new type or design which will serve as a trial unit for experimentation or testing.

12. Plant-mix—A mixture produced in an asphalt mixing plant that consists of mineral aggregate uniformly coated with asphalt cement, cutback asphalt or emulsified asphalt.

13. Pollutant—An air contaminant listed in 10 CSR 10-6.020(3)(A), Table 1 without regard to levels of emission or air quality impact.

14. Polyethylene bag sealing operation—Any operation or facility engaged in the sealing of polyethylene bags, usually by the use of heat.

15. Polystyrene resin—The product of any styrene polymerization process, usually involving heat.

16. Portable equipment—Any equipment that is designed and maintained to be movable, primarily for use in noncontinuous operations. Portable equipment includes rock crushers, asphaltic concrete plants and concrete batching plants.

17. Portable equipment installation—An installation made up solely of portable equipment, meeting the requirements of or having been permitted according to 10 CSR 10-6.060(4).

18. Positive crankcase ventilation system—Any system or device which prevents the escape of crankcase emissions to the ambient air.

19. Potential to emit—The emission rates of any pollutant at maximum design capacity. Annual potential shall be based on the maximum annual-rated capacity of the installation assuming continuous year-round operation. Federally enforceable permit conditions on the type of materials combusted or processed, operating rates, hours of operation or the application of air pollution control equipment shall be used in determining the annual potential. Secondary emissions do not count in determining annual potential.

20. Potroom—A building unit which houses a group of electrolytic cells in which aluminum is produced.

21. Potroom group—An uncontrolled potroom, a potroom which is controlled individually or a group of potrooms or potroom segments ducted to a common or similar control system.

22. Primary aluminum reduction installation—Any facility manufacturing aluminum by electrolytic reduction of alumina.

23. Primer—The first surface coating applied to the surface.

24. Primer-surfacer—The surface coatings applied over the primer and beneath the topcoat.

25. Process weight—The total weight of all materials introduced into a source operation including solid fuels, but excluding liquids and gases used solely as fuels and excluding air introduced for purposes of combustion.

26. Production equipment exhaust system—A device for collecting and directing out of the work area fugitive emissions from reactor openings, centrifuge openings and other vessel openings and equipment for the purpose of protecting workers from excessive exposure.

27. Publication rotogravure printing—Rotogravure printing upon paper which is subsequently formed into books, magazines, catalogues, brochures, directories, newspaper supplements and other types of printed materials.

28. Pushing operation—The process of removing coke from the coke oven. The coke pushing operation begins when the coke-side oven door is removed and is completed when the hot car enters the quench tower and the coke-side oven door is replaced.

(V) All terms beginning with "V."

1. Vacuum producing system—Any reciprocating, rotary or centrifugal blower or compressor or any jet ejector device that takes suction from a pressure below atmospheric on a system containing volatile hydrocarbons.

2. Vapor recovery system—A vapor gathering system capable of collecting the hydrocarbon vapors and gases discharged and a vapor disposal system capable of processing the hydrocarbon vapors and gases so as to limit their emission to the atmosphere.

3. Vapor-mounted seal—A primary seal mounted so there is an annular vapor space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank wall, the liquid surface and the floating roof.

4. Vapor tight—When applied to a delivery vessel or vapor recovery system as one that sustains a pressure change of no more than seven hundred fifty (750) pascals (three inches (3") of H<sub>2</sub>O) in five (5) minutes when pressurized to a gauge pressure of four thousand five hundred (4,500) pascals (eighteen inches (18") of H<sub>2</sub>O) or

evacuated to a gauge pressure of one thousand five hundred (1,500) pascals (six inches (6") of H<sub>2</sub>O).

5. Varnish—An unpigmented surface coating containing VOC and composed of resins, oils, thinners and driers used to give a glossy surface to wood, metal, etc.

6. Vehicle—Any mechanical device on wheels, designed primarily for use on streets, roads or highways, except those propelled or drawn by human or animal power or those used exclusively on fixed rails or tracks.

7. Vinyl coating—The application of a decorative or protective topcoat, or printing or vinyl coated fabric or vinyl sheet.

8. Visible emission—Any discharge of an air contaminant, including condensibles, which reduces the transmission of light or obscures the view of an object in the background.

9. Volatile organic compounds (VOC)—For all areas in Missouri VOC means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, that participates in atmospheric photochemical reactions to produce ozone.

A. The following compounds are not considered VOCs because of their known lack of participation in the atmospheric reactions to produce ozone:

CAS #	Compound
138495428	1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee)
431890	1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea)
375031	1,1,1,2,2,3,3-heptafluoro-3-methoxypropane (n-C <sub>3</sub> F <sub>7</sub> OCH <sub>3</sub> , HFE-7000)
690391	1,1,1,3,3,3-hexafluoropropane (HFC-236fa)
679867	1,1,2,2,3-pentafluoropropane (HFC-245ca)
24270664	1,1,2,3,3-pentafluoropropane (HFC-245ea)
431312	1,1,1,2,3-pentafluoropropane (HFC-245eb)
460731	1,1,1,3,3-pentafluoropropane (HFC-245fa)
431630	1,1,1,2,3,3-hexafluoropropane (HFC-236ea)
406586	1,1,1,3,3-pentafluorobutane (HFC-365mfc)
422560	3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca)
507551	1,3-dichloro-1,1,2,2,3-pentafluoropropane HCFC-5cb)
354234	1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a)
1615754	1-chloro-1-fluoroethane (HCFC151a)
163702076	1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxybutane (C <sub>4</sub> F <sub>9</sub> OCH <sub>3</sub> or HFE-7100);
163702087	2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane (CF <sub>3</sub> ) <sub>2</sub> CF <sub>2</sub> OCH <sub>3</sub> )
163702054	1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C <sub>4</sub> F <sub>9</sub> OC <sub>2</sub> H <sub>5</sub> or HFE-7200)
163702065	2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF <sub>3</sub> ) <sub>2</sub> CF <sub>2</sub> OC <sub>2</sub> H <sub>5</sub> )
297730939	3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl)-hexane (HFE-7500)
71556	1,1,1-trichloroethane (methylchloroform)

67641	acetone	107131	Acrylonitrile
25497294	chlorodifluoroethane (HCFC-142b)	107051	Allyl chloride
75456	chlorodifluoromethane (HCFC-22)	92671	4-Aminobiphenyl
593704	chlorofluoromethane (HCFC-31)	62533	Aniline
76153	chloropentafluoroethane (CFC-115)	90040	o-Anisidine
63938103	chlorotetrafluoroethane (HCFC-124)	1332214	Asbestos
75718	dichlorodifluoromethane (CFC-12);	71432	Benzene (including from gasoline)
1717006	dichlorofluoroethane (HCFC-141b);	92875	Benzidine
1320372	dichlorotetrafluoroethane (CFC-114)	98077	Benzotrichloride
34077877	dichlorotrifluoroethane (HCFC-123)	100447	Benzyl chloride
75376	difluoroethane (HFC-152a)	192524	Biphenyl
75105	difluoromethane (HFC-32)	117817	Bis(2-ethylhexyl)phthalate (DEHP)
74840	ethane	542881	Bis(chloromethyl)ether
353366	ethylfluoride (HFC-161)	75252	Bromoform
74828	methane	106990	1,3-Butadiene
79209	methyl acetate	156627	Calcium cyanamide
107313	methyl formate (HCOOCH <sub>3</sub> )	133062	Captan
75092	methylene chloride dichloromethane	63252	Carbaryl
98566	parachlorobenzotrifluoride (PCBTF)	75150	Carbon disulfide
354336	pentafluoroethane (HFC-125);	56235	Carbon tetrachloride
127184	perchloroethylene	463581	Carbonyl sulfide
359353	tetrafluoroethane (HFC-134)	120809	Catechol
811972	tetrafluoroethane (HFC-134a)	133904	Chloramben
75694	trichlorofluoromethane (CFC-11)	57749	Chlordane
26523648	trichlorotrifluoroethane (CFC-113)	7782505	Chlorine
306832	trifluorodichloroethane (HCFC-123)	79118	Chloroacetic acid
27987060	trifluoroethane (HFC-143a)	532274	2-Chloroacetophenone
75467	trifluoromethane (HFC-23)	108907	Chlorobenzene
0	cyclic, branched or linear, completely fluorinated alkanes	510156	Chlorobenzilate
0	cyclic, branched or linear, completely fluorinated ethers with no unsaturations	67663	Chloroform
0	cyclic, branched or linear, completely methylated siloxanes	107302	Chloromethyl methyl ether
0	cyclic, branched or linear, completely fluorinated tertiary amines with no unsaturations	126998	Chloroprene
0	sulfur-containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorines	1319773	Cresols/Cresylic acid (isomers and mixture)
		108394	m-Cresol
		95487	o-Cresol
		106445	p-Cresol
		98828	Cumene
		94757	2,4-D, salts and esters
		3547044	DDE
		334883	Diazomethane
		132649	Dibenzofurans
		96128	1,2-Dibromo-3-chloropropane
		84742	Dibutylphthalate
		106467	1,4-Dichlorobenzene(p)
		91941	3,3-Dichlorobenzidine
		111444	Dichloroethyl ether (Bis(2-chloroethyl)ether)
		542756	1,3-Dichloropropene
		62737	Dichlorvos
		111422	Diethanolamine
		121697	N,N-Dimethylaniline
		64675	Diethyl sulfite
		119904	3,3-Dimethoxybenzidine
		60117	Dimethyl aminoazobenzene
		119937	3,3-Dimethyl benzidine
		79447	Dimethyl carbamoyl chloride
		68122	Dimethyl formamide
		57147	1,1-Dimethyl hydrazine
		131113	Dimethyl phthalate
		77781	Dimethyl sulfate
		534521	4,6-Dinitro-o-cresol and salts
		51285	2,4-Dinitrophenol
		121142	2,4-Dinitrotoluene
		123911	1,4-Dioxane (1,4-Diethyleneoxide)
		122667	1,2-Diphenylhydrazine
		106898	Epichlorohydrin (1-Chloro-2,3-epoxypropane)
		106887	1,2-Epoxybutane
		140885	Ethyl acrylate
		100414	Ethyl benzene
		51796	Ethyl carbamate (Urethane)

VOC may be measured by a reference method, an equivalent method, an alternative method or by procedures specified in either 10 CSR 10-6.030 or 40 CFR 60. These methods and procedures may measure nonreactive compounds so an owner or operator must exclude these nonreactive compounds when determining compliance.

B. The following compound(s) are considered VOC for purposes of all record keeping, emissions reporting, photochemical dispersion modeling and inventory requirements which apply to VOC and shall be uniquely identified in emission reports, but are not VOC for purposes of VOC emissions limitations or VOC content requirements.

CAS #	Compound
540885	t-butyl acetate

(3) General Provisions. Common reference tables are provided in this section of the rule.

(C) Table 3—Hazardous Air Pollutants.

CAS #	Hazardous Air Pollutant
75070	Acetaldehyde
60355	Acetamide
75058	Acetonitrile
98862	Acetophenone
53963	2-Acetylaminofluorene
107028	Acrolein
79061	Acrylamide
79107	Acrylic acid

75003	Ethyl chloride (Chloroethane)	96093	Styrene oxide
106934	Ethylene dibromide (1,2-Dibromoethane)	1746016	2,3,7,8-Tetrachloro-dibenzo-p-dioxin
107062	Ethylene dichloride (1,2-Dichloroethane)	79345	1,1,2,2-Tetrachloroethane
107211	Ethylene glycol	127184	Tetrachloroethylene (Perchloroethylene)
151564	Ethylene imine (Aziridine)	7550450	Titanium tetrachloride
75218	Ethylene oxide	108883	Toluene
96457	Ethylene thiourea	95807	2,4-Toluene diamine
75343	Ethylidene dichloride (1,1-Dichloroethane)	584849	2,4-Toluene diisocyanate
50000	Formaldehyde	95534	o-Toluidine
76448	Heptachlor	8001352	Toxaphene (Chlorinated camphene)
118741	Hexachlorobenzene	120821	1,2,4-Trichlorobenzene
87683	Hexachlorobutadiene	79005	1,1,2-Trichloromethane
77474	Hexachlorocyclopentadiene	79016	Trichloroethylene
67721	Hexachloroethane	95954	2,4,5-Trichlorophenol
822060	Hexamethylene-1,6-diisocyanate	88062	2,4,6-Trichlorophenol
680319	Hexamethylphosphoramide	121448	Triethylamine
110543	Hexane	1582098	Trifluralin
302012	Hydrazine	540841	2,2,4-Trimethylpentane
7647010	Hydrochloric acid	108054	Vinyl acetate
7664393	Hydrogen fluoride (hydrofluoric acid)	593602	Vinyl bromide (bromoethene)
123319	Hydroquinone	75014	Vinyl chloride
78591	Isophorone	75354	Vinylidene chloride (1,1-Dichloroethylene)
58899	Lindane (all isomers)	1330207	Xylenes (isomers and mixture)
108316	Maleic anhydride	108383	m-Xylenes
67561	Methanol	95476	o-Xylenes
72435	Methoxychlor	106423	p-Xylenes
74839	Methyl bromide (Bromomethane)	0	Antimony compounds
74873	Methyl chloride (Chloromethane)	0	Arsenic compounds (inorganic)
71556	Methyl chloroform (1,1,1-Trichloromethane)	0	Beryllium compounds
78933	Methyl ethyl ketone (2-Butanone)	0	Beryllium salts
60344	Methyl hydrazine	0	Cadmium compounds
74884	Methyl iodide (Iodomethane)	0	Chromium compounds
108101	Methyl isobutyl ketone (Hexone)	0	Cobalt compounds
624839	Methyl isocyanate	0	Coke oven emissions
80626	Methyl methacrylate	0	Cyanide compounds <sup>1</sup>
1634044	Methyl tert butyl ether	0	Glycol ethers <sup>2</sup>
101144	4,4-Methylene bis(2-chloroaniline)	0	Lead compounds
75092	Methylene chloride (Dichloromethane)	0	Manganese compounds
101688	Methylene diphenyldiisocyanate (MDI)	0	Mercury compounds
101779	4,4-Methylenedianiline	0	Mineral fibers <sup>3</sup>
91203	Naphthalene	0	Nickel compounds
12035722	Nickel subsulfide	0	Nickel refinery dust
98953	Nitrobenzene	0	Polycyclic organic matter <sup>4</sup>
92933	4-Nitrobiphenyl	0	Radionuclides (including radon) <sup>5</sup>
100027	4-Nitrophenol	0	Selenium compounds
79469	2-Nitropropane		
684935	N-Nitroso-N-methylurea		
62759	N-Nitrosodimethylamine		
59892	N-Nitrosomorpholine		
56382	Parathion		
82688	Pentachloronitrobenzene (Quintobenzene)		
87865	Pentachlorophenol		
108952	Phenol		
106503	p-Phenylenediamine		
75445	Phosgene		
7803512	Phosphine		
7723140	Phosphorus		
85449	Phthalic anhydride		
1336363	Polychlorinated biphenyls (Arochlors)		
1120714	1,3-Propane sultone		
57578	beta-Propiolactone		
123386	Propionaldehyde		
114261	Propoxur (Baygon)		
78875	Propylene dichloride (1,2-Dichloropropane)		
75569	Propylene oxide		
75558	1,2-Propylenimine (2-Methyl aziridine)		
91225	Quinoline		
106514	Quinone		
100425	Styrene		

**Note:** For all listings in this table that contain the word compounds and for glycol ethers, the following applies: Unless otherwise specified, these listings are defined as including any unique chemical substance that contains the named chemical (that is, antimony, arsenic and the like) as part of that chemical's infrastructure.

<sup>1</sup> X'CN where X-H' or any other group where a formal dissociation may occur, for example, KCN or Ca(CN)<sub>2</sub>.

<sup>2</sup> Includes mono- and diethers of ethylene glycol, diethylene glycol and triethylene glycol R-(OCH<sub>2</sub>CH<sub>2</sub>)<sub>n</sub>-OR' where n = 1, 2 or 3; R = Alkyl or aryl groups; R' = R, H or groups which, when removed, yield glycol ethers with the structure R-(OCH<sub>2</sub>CH<sub>2</sub>)<sub>n</sub>-OH. Polymers and ethylene glycol monobutyl ether are excluded from the glycol category.

<sup>3</sup> Includes glass microfibers, glass wool fibers, rock wool fibers and slag wool fibers, each characterized as respirable (fiber diameter less than three and one-half (3.5) micrometers) and possessing an aspect ratio (fiber length divided by fiber diameter) greater than or equal to three (3), as emitted from production of fiber and fiber products.

<sup>4</sup> Includes organic compounds with more than one (1) benzene ring, and which have a boiling point greater than or equal to one hundred degrees Celsius (100°C).

<sup>5</sup> A type of atom which spontaneously undergoes radioactive decay.

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

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo 2000, the commission amends a rule as follows:

10 CSR 10-6.030 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 15, 2005 (30 MoReg 1739-1740). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** The Missouri Department of Natural Resources' Air Pollution Control Program received comments from the Regulatory Environmental Group for Missouri (REGFORM), St. Louis Regional Chamber and Growth Association (RCGA) and the U.S. Environmental Protection Agency (EPA) concerning particulate matter sampling methods.

**COMMENT:** REGFORM and RCGA commented that subsections (5)(A) and (B) concerning particulate matter can be combined for rule simplification and suggested allowing other methods as approved by the department.

**RESPONSE:** Subsections (5)(A) and (B) were not opened for comment with this rulemaking proposal. However, these comments will be retained and considered the next time this rule is opened for revision. No changes have been made as a result of this comment.

**COMMENT:** REGFORM and RCGA commented that subsections (5)(C) and (D) concerning  $PM_{10}$  can be combined now for rule simplification and suggested adding Conditional Test Method 040 and allowing other methods as approved by the department.

**RESPONSE:** Subsections (5)(C) and (D) were not opened for comment with this rulemaking proposal. However, these comments will be retained and considered the next time this rule is opened for revision. No changes have been made as a result of this comment.

Due to similar concerns addressed in the following five (5) comments, one (1) response that addresses those concerns can be found at the end of these five (5) comments.

**COMMENT:** REGFORM and RCGA commented that subsection (5)(E) concerning condensible particulate matter emissions should be changed to allow use of Conditional Test Method 039, allow other methods as approved by the department, not allow use of methods defined in this subsection to be used to determine compliance with emission limitations for particulate control devices since control devices are not explicitly designed to remove condensible particulate matter, and allow procedures to correct results from condensible tests based on known biases or other technical analyses. REGFORM and RCGA also suggested that an electronic path be included with the Conditional Test Method reference.

**COMMENT:** EPA commented that Conditional Test Method 040 specified in subsection (5)(E) is not acceptable and should be removed because it measures only filterable  $PM_{10}$  and  $PM_{2.5}$  and does not account for any of the condensibles in sample fraction. The Method 202 portion of this subsection is acceptable. It could be clarified in this subsection that Conditional Method 039 may be used to determine the total  $PM_{10}$  and  $PM_{2.5}$  fraction of filterable and condensibles.

**COMMENT:** REGFORM and RCGA commented that subsections (5)(F) and (G) concerning  $PM_{2.5}$  can also be combined into one sub-

section for rule simplification and expressed concern that some of the methods specified are inappropriate or impractical for use in many applications. For example, Method 202 has been clearly shown to exhibit significant biases that can cause results to be unreliable. REGFORM and RCGA suggested that language be added for alternative test methods for measurement of condensible particulate matter emissions.

**COMMENT:** EPA commented that subsections (5)(F) and (G) could be merged into one paragraph to measure the total  $PM_{10}$  and  $PM_{2.5}$  filterable and condensible using Conditional Method 040 and Method 202. It was noted that the total  $PM_{10}$  and  $PM_{2.5}$  may also be determined using Conditional Method 039.

**COMMENT:** EPA commented that federal rules 40 CFR 51.100(pp)-(rr) and 40 CFR 51, Appendix M, require that reference methods for particulate matter measurement be either those promulgated by EPA or specifically identified by the state and approved by EPA into the SIP. Therefore, any alternate test methods not specified in the approved SIP would need EPA approval to be effective under federal law.

**RESPONSE AND EXPLANATION OF CHANGE:** After consideration of these comments, subsection (5)(E) has been revised to Method 202 and to allow use of Conditional Method 039. Although it was suggested that an electronic path for Conditional Method 039 reference be used to make it easier to find the conditional method, the electronic path was not incorporated because the path changes over time and each update would require a rule action to be promulgated. Subsections (5)(F) and (G) have been combined and changed to Method 202 for measurement of condensible particulate matter emissions along with Conditional Test Method 040 for measurement of  $PM_{2.5}$  and also allows the use of Conditional Method 039. While a reliable field test method for condensible emissions has not yet been developed, condensible emissions are a component of  $PM_{2.5}$  and must be included in test methods measuring  $PM_{2.5}$  emissions.

**10 CSR 10-6.030 Sampling Methods for Air Pollution Sources**

(5) Particulate Matter Emissions.

(E) The concentration of condensible particulate matter (CPM) emissions in stack gases shall be determined as specified by 40 CFR part 51, Appendix M—Test Methods, *Method 202—Determination of Condensible Particulate Emissions from Stationary Sources*. EPA *Conditional Test Method 039—Measurement of  $PM_{2.5}$  and  $PM_{10}$  Emissions By Dilution Sampling (Constant Sampling Rate Procedures—July 2004)* may be used to determine the total  $PM_{10}$  and  $PM_{2.5}$  fraction of filterable particulate matter including condensibles.

(F) The concentration of  $PM_{2.5}$  emissions in stack gases shall be determined as specified by 40 CFR part 51, Appendix M—Test Methods, *Method 202—Determination of Condensible Particulate Emissions from Stationary Sources* and EPA *Conditional Test Method 040—Method For The Determination of  $PM_{10}$  and  $PM_{2.5}$  Emissions (Constant Sampling Rate Procedures—December 3, 2002)*. EPA *Conditional Test Method 039—Measurement of  $PM_{2.5}$  and  $PM_{10}$  Emissions By Dilution Sampling (Constant Sampling Rate Procedures—July 2004)* may be used to determine the total  $PM_{10}$  and  $PM_{2.5}$  fraction of filterable particulate matter including condensibles.

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

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo 2000, the commission amends a rule as follows:

**10 CSR 10-6.040 Reference Methods is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 15, 2005 (30 MoReg 1740-1741). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

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

**Title 12—DEPARTMENT OF REVENUE  
Division 10—Director of Revenue  
Chapter 5—City Sales Tax, Transportation Sales  
Tax and Public Mass Transportation Tax**

**ORDER OF RULEMAKING**

By the authority vested in the director of revenue under section 32.087.6, RSMo Supp. 2004, the director rescinds a rule as follows:

**12 CSR 10-5.030 State Sales Tax Rule Apply is rescinded.**

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on October 3, 2005 (30 MoReg 2050). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 12—DEPARTMENT OF REVENUE  
Division 10—Director of Revenue  
Chapter 5—City Sales Tax, Transportation Sales  
Tax and Public Mass Transportation Tax**

**ORDER OF RULEMAKING**

By the authority vested in the director of revenue under section 32.087.6, RSMo Supp. 2004, the director rescinds a rule as follows:

**12 CSR 10-5.045 Seller Entitled is rescinded.**

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on October 3, 2005 (30 MoReg 2050). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 12—DEPARTMENT OF REVENUE  
Division 10—Director of Revenue  
Chapter 5—City Sales Tax, Transportation Sales  
Tax and Public Mass Transportation Tax**

**ORDER OF RULEMAKING**

By the authority vested in the director of revenue under section 32.087.6, RSMo Supp. 2004, the director rescinds a rule as follows:

**12 CSR 10-5.055 Determining Which Tax Applies is rescinded.**

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on October 3, 2005 (30 MoReg 2050-2051). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 12—DEPARTMENT OF REVENUE  
Division 10—Director of Revenue  
Chapter 5—City Sales Tax, Transportation Sales  
Tax and Public Mass Transportation Tax**

**ORDER OF RULEMAKING**

By the authority vested in the director of revenue under section 32.087.6, RSMo Supp. 2004, the director rescinds a rule as follows:

**12 CSR 10-5.065 Items Taken from Inventory is rescinded.**

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on October 3, 2005 (30 MoReg 2051). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 12—DEPARTMENT OF REVENUE  
Division 10—Director of Revenue  
Chapter 5—City Sales Tax, Transportation Sales  
Tax and Public Mass Transportation Tax**

**ORDER OF RULEMAKING**

By the authority vested in the director of revenue under section 32.087.6, RSMo Supp. 2004, the director rescinds a rule as follows:

**12 CSR 10-5.072 Metered and Nonmetered Natural Gas Sales  
is rescinded.**

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on October 3, 2005 (30 MoReg 2051). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 12—DEPARTMENT OF REVENUE  
Division 10—Director of Revenue  
Chapter 5—City Sales Tax, Transportation Sales  
Tax and Public Mass Transportation Tax**

**ORDER OF RULEMAKING**

By the authority vested in the director of revenue under section 32.087.6, RSMo Supp. 2004, the director rescinds a rule as follows:

**12 CSR 10-5.085 Motor Vehicles is rescinded.**



A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on October 3, 2005 (30 MoReg 2051). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 12—DEPARTMENT OF REVENUE  
Division 10—Director of Revenue  
Chapter 5—City Sales Tax, Transportation Sales  
Tax and Public Mass Transportation Tax**

**ORDER OF RULEMAKING**

By the authority vested in the director of revenue under section 32.087.6, RSMo Supp. 2004, the director rescinds a rule as follows:

**12 CSR 10-5.090 Mobile Homes is rescinded.**

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on October 3, 2005 (30 MoReg 2051-2052). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 12—DEPARTMENT OF REVENUE  
Division 10—Director of Revenue  
Chapter 5—City Sales Tax, Transportation Sales  
Tax and Public Mass Transportation Tax**

**ORDER OF RULEMAKING**

By the authority vested in the director of revenue under section 32.087.6, RSMo Supp. 2004, the director rescinds a rule as follows:

**12 CSR 10-5.095 Over-the-Road Trailers is rescinded.**

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on October 3, 2005 (30 MoReg 2052). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 12—DEPARTMENT OF REVENUE  
Division 10—Director of Revenue  
Chapter 5—City Sales Tax, Transportation Sales  
Tax and Public Mass Transportation Tax**

**ORDER OF RULEMAKING**

By the authority vested in the director of revenue under section 32.087.6, RSMo Supp. 2004, the director rescinds a rule as follows:

**12 CSR 10-5.100 Delinquent Tax is rescinded.**

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on October 3, 2005 (30 MoReg 2052). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 12—DEPARTMENT OF REVENUE  
Division 10—Director of Revenue  
Chapter 5—City Sales Tax, Transportation Sales  
Tax and Public Mass Transportation Tax**

**ORDER OF RULEMAKING**

By the authority vested in the director of revenue under section 32.087.6, RSMo Supp. 2004, the director rescinds a rule as follows:

**12 CSR 10-5.500 Other Entity Defined is rescinded.**

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on October 3, 2005 (30 MoReg 2052). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 12—DEPARTMENT OF REVENUE  
Division 10—Director of Revenue  
Chapter 5—City Sales Tax, Transportation Sales  
Tax and Public Mass Transportation Tax**

**ORDER OF RULEMAKING**

By the authority vested in the director of revenue under section 32.087.6, RSMo Supp. 2004, the director rescinds a rule as follows:

**12 CSR 10-5.510 Sales Tax Rules Apply is rescinded.**

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on October 3, 2005 (30 MoReg 2052-2053). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 12—DEPARTMENT OF REVENUE  
Division 10—Director of Revenue  
Chapter 5—City Sales Tax, Transportation Sales  
Tax and Public Mass Transportation Tax**

**ORDER OF RULEMAKING**

By the authority vested in the director of revenue under section 32.087.6, RSMo Supp. 2004, the director rescinds a rule as follows:

**12 CSR 10-5.525 Tax Imposed is rescinded.**

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on October 3, 2005 (30 MoReg 2053). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 12—DEPARTMENT OF REVENUE  
Division 10—Director of Revenue  
Chapter 5—City Sales Tax, Transportation Sales  
Tax and Public Mass Transportation Tax**

**ORDER OF RULEMAKING**

By the authority vested in the director of revenue under section 32.087.6, RSMo Supp. 2004, the director rescinds a rule as follows:

**12 CSR 10-5.530 Seller Not Entitled is rescinded.**

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on October 3, 2005 (30 MoReg 2053). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 12—DEPARTMENT OF REVENUE  
Division 10—Director of Revenue  
Chapter 24—Drivers License Bureau Rules**

**ORDER OF RULEMAKING**

By the authority vested in the director of revenue under sections 302.010, 302.233, 302.272, 302.273, 302.700 and 302.735, RSMo Supp. 2004 and 302.765, RSMo 2000, the director amends a rule as follows:

**12 CSR 10-24.300 Commercial Drivers License Written Examinations is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 3, 2005 (30 MoReg 2053–2054). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 12—DEPARTMENT OF REVENUE  
Division 10—Director of Revenue  
Chapter 24—Drivers License Bureau Rules**

**ORDER OF RULEMAKING**

By the authority vested in the director of revenue under sections 302.060, 302.600 and 302.740, RSMo 2000 and 302.171 RSMo Supp. 2004, the director amends a rule as follows:

**12 CSR 10-24.325 License Denial for Suspension, Revocation, Disqualification or Cancellation is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 3, 2005 (30 MoReg 2054). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 12—DEPARTMENT OF REVENUE  
Division 10—Director of Revenue  
Chapter 101—Sales/Use Tax—Nature of Tax**

**ORDER OF RULEMAKING**

By the authority vested in the director of revenue under section 144.270, RSMo 2000, the director amends a rule as follows:

**12 CSR 10-101.600 Successor Liability is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 3, 2005 (30 MoReg 2054–2055). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 12—DEPARTMENT OF REVENUE  
Division 10—Director of Revenue  
Chapter 103—Sales/Use Tax—Imposition of Tax**

**ORDER OF RULEMAKING**

By the authority vested in the director of revenue under sections 144.010(9) and 144.615(6), RSMo Supp. 2004 and 144.150, 144.270 and 144.705, RSMo 2000, the director amends a rule as follows:

**12 CSR 10-103.220 Resale is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 3, 2005 (30 MoReg 2055). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 15—ELECTED OFFICIALS  
Division 30—Secretary of State  
Chapter 51—Broker-Dealers, Agents, Investment  
Advisers, and Investment Adviser Representatives**

**ORDER OF RULEMAKING**

By the authority vested in the commissioner of securities under sections 409.4-411(f) and 409.6-605, RSMo Supp. 2004, the commissioner amends a rule as follows:

**15 CSR 30-51.100 Custody of Securities or Funds by Investment Advisers is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 3, 2005 (30 MoReg 2057). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 16—RETIREMENT SYSTEMS**  
**Division 10—The Public School Retirement System**  
**of Missouri**  
**Chapter 1—Organization and Operation of Board**  
**of Trustees**

**ORDER OF RULEMAKING**

By the authority vested in the board of trustees under section 169.020, RSMo 2000, the board of trustees hereby amends a rule as follows:

**16 CSR 10-1.040 Election to Fill Vacancy on Board of Trustees**  
**is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 3, 2005 (30 MoReg 2057–2058). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 16—RETIREMENT SYSTEMS**  
**Division 10—The Public School Retirement System**  
**of Missouri**  
**Chapter 1—Organization and Operation of Board**  
**of Trustees**

**ORDER OF RULEMAKING**

By the authority vested in the board of trustees under section 169.020, RSMo 2000, the board of trustees hereby amends a rule as follows:

**16 CSR 10-1.050 Appeal Process is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 3, 2005 (30 MoReg 2058). No changes have been made in the text of the proposed amendment, so it not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 16—RETIREMENT SYSTEMS**  
**Division 10—The Public School Retirement System**  
**of Missouri**  
**Chapter 3—Funds of Retirement System**

**ORDER OF RULEMAKING**

By the authority vested in the board of trustees under section 169.020, RSMo 2000, the board of trustees hereby amends a rule as follows:

**16 CSR 10-3.010 Payment of Funds to the Retirement System**  
**is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 3, 2005 (30 MoReg 2058–2059). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 16—RETIREMENT SYSTEMS**  
**Division 10—The Public School Retirement System**  
**of Missouri**  
**Chapter 4—Membership and Creditable Service**

**ORDER OF RULEMAKING**

By the authority vested in the board of trustees under section 169.020, RSMo 2000, the board of trustees hereby amends a rule as follows:

**16 CSR 10-4.005 Requirements for Membership is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 3, 2005 (30 MoReg 2059). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 16—RETIREMENT SYSTEMS**  
**Division 10—The Public School Retirement System**  
**of Missouri**  
**Chapter 4—Membership and Creditable Service**

**ORDER OF RULEMAKING**

By the authority vested in the board of trustees under section 169.020, RSMo 2000, the board of trustees hereby amends a rule as follows:

**16 CSR 10-4.010 Membership Service Credit is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 3, 2005 (30 MoReg 2059). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 16—RETIREMENT SYSTEMS**  
**Division 10—The Public School Retirement System**  
**of Missouri**  
**Chapter 4—Membership and Creditable Service**

**ORDER OF RULEMAKING**

By the authority vested in the board of trustees under section 169.020, RSMo 2000, the board of trustees hereby amends a rule as follows:

**16 CSR 10-4.012** Payment for Reinstatement and Credit Purchases is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 3, 2005 (30 MoReg 2059–2060). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 16—RETIREMENT SYSTEMS**  
**Division 10—The Public School Retirement System**  
**of Missouri**  
**Chapter 4—Membership and Creditable Service**

**ORDER OF RULEMAKING**

By the authority vested in the board of trustees under section 169.020, RSMo 2000, the board of trustees hereby amends a rule as follows:

**16 CSR 10-4.014** Reinstatement and Credit Purchases is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 3, 2005 (30 MoReg 2060–2061). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 16—RETIREMENT SYSTEMS**  
**Division 10—The Public School Retirement System**  
**of Missouri**  
**Chapter 5—Retirement, Options and Benefits**

**ORDER OF RULEMAKING**

By the authority vested in the board of trustees under section 169.020, RSMo 2000, the board of trustees hereby amends a rule as follows:

**16 CSR 10-5.020** Disability Retirement is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 3, 2005 (30 MoReg 2061). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 16—RETIREMENT SYSTEMS**  
**Division 10—The Public School Retirement System**  
**of Missouri**  
**Chapter 5—Retirement, Options and Benefits**

**ORDER OF RULEMAKING**

By the authority vested in the board of trustees under section 169.020, RSMo 2000, the board of trustees hereby amends a rule as follows:

**16 CSR 10-5.030** Beneficiary is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 3, 2005 (30 MoReg 2061–2062). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 16—RETIREMENT SYSTEMS**  
**Division 10—The Public School Retirement System**  
**of Missouri**  
**Chapter 6—The Public Education Employee Retirement**  
**System of Missouri**

**ORDER OF RULEMAKING**

By the authority vested in the board of trustees under section 169.610, RSMo 2000, the board of trustees hereby amends a rule as follows:

**16 CSR 10-6.010** Employment is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 3, 2005 (30 MoReg 2062). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 16—RETIREMENT SYSTEMS**  
**Division 10—The Public School Retirement System**  
**of Missouri**  
**Chapter 6—The Public Education Employee Retirement**  
**System of Missouri**

**ORDER OF RULEMAKING**

By the authority vested in the board of trustees under section 169.610, RSMo 2000, the board of trustees hereby amends a rule as follows:

**16 CSR 10-6.020** Source of Funds is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 3, 2005 (30 MoReg 2062–2063). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 16—RETIREMENT SYSTEMS**  
**Division 10—The Public School Retirement System**  
**of Missouri**  
**Chapter 6—The Public Education Employee Retirement**  
**System of Missouri**

**ORDER OF RULEMAKING**

By the authority vested in the board of trustees under section 169.610, RSMo 2000, the board of trustees hereby amends a rule as follows:

**16 CSR 10-6.040 Membership Service Credit is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 3, 2005 (30 MoReg 2063–2064). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 16—RETIREMENT SYSTEMS**  
**Division 10—The Public School Retirement System**  
**of Missouri**  
**Chapter 6—The Public Education Employee Retirement**  
**System of Missouri**

**ORDER OF RULEMAKING**

By the authority vested in the board of trustees under section 169.610, RSMo 2000, the board of trustees hereby amends a rule as follows:

**16 CSR 10-6.045 Reinstatement and Credit Purchases is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 3, 2005 (30 MoReg 2064–2065). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 16—RETIREMENT SYSTEMS**  
**Division 10—The Public School Retirement System**  
**of Missouri**  
**Chapter 6—The Public Education Employee Retirement**  
**System of Missouri**

**ORDER OF RULEMAKING**

By the authority vested in the board of trustees under section 169.610, RSMo 2000, the board of trustees hereby amends a rule as follows:

**16 CSR 10-6.060 Service Retirement is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 3, 2005 (30 MoReg 2065). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 16—RETIREMENT SYSTEMS**  
**Division 10—The Public School Retirement System**  
**of Missouri**  
**Chapter 6—The Public Education Employee Retirement**  
**System of Missouri**

**ORDER OF RULEMAKING**

By the authority vested in the board of trustees under section 169.610, RSMo 2000, the board of trustees hereby amends a rule as follows:

**16 CSR 10-6.090 Beneficiary is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 3, 2005 (30 MoReg 2065–2066). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 19—DEPARTMENT OF HEALTH AND**  
**SENIOR SERVICES**  
**Division 30—Division of Regulation and Licensure**  
**Chapter 1—Controlled Substances**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Department of Health and Senior Services under sections 195.017, as amended by House Bill 441 and Senate Bill 10 and 27, 93rd Leg. Session (Mo. 2005) and 195.195, RSMo 2000, the department amends a rule as follows:

**19 CSR 30-1.032 Security for Nonpractitioners is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 3, 2005 (30 MoReg 2066). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 19—DEPARTMENT OF HEALTH AND**  
**SENIOR SERVICES**  
**Division 30—Division of Regulation and Licensure**  
**Chapter 1—Controlled Substances**

**ORDER OF RULEMAKING**

By the authority vested in the Missouri Department of Health and Senior Services under sections 195.017, as amended by House Bill 441 and Senate Bill 10 and 27, 93rd Leg. Session (Mo. 2005) and 195.195, RSMo 2000, the department amends a rule as follows:

**19 CSR 30-1.074 Dispensing Without a Prescription is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 3, 2005 (30 MoReg 2066–2069). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

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

**ORDER OF RULEMAKING**

By the authority vested in the Department of Health and Senior Services under sections 207.020, 208.153, 208.159 and 198.079, RSMo 2000, the department rescinds a rule as follows:

**19 CSR 30-81.020 Prolong-Term Care Screening is rescinded.**

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on September 15, 2005 (30 MoReg 1925-1926). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** One set of comments was submitted to the Department of Health and Senior Services addressing the proposed rescission. These comments were submitted by Mary Schantz, Executive Director on behalf of the Missouri Alliance for Home Care.

**COMMENT:** The Missouri Alliance for Home Care urges you to withdraw this proposed rescission of the PreLong-Term Care Screening regulation. The state should be strengthening the prelong-term care process and system, not dismantling it.

An effective prelong-term care screening process will save the state money and help assure that seniors and others needing long-term care do not end up in a nursing home or remain in a nursing home unnecessarily. The current prelong-term care screening process is flawed and weak, but rescinding the regulation is not the solution to a dysfunctional system.

Rather than rescission of this regulation we urge you to modify the current regulation to include requirements that are necessary in order for Missouri to have an effective and efficient prelong-term care screening process. Some of the changes needed include:

- Require a prelong-term care screen for anyone considering long-term care;
- Assure that the screening is done on a timely basis and gives the individual information about all long-term care options available;
- Identify nursing home placements that may be short-term and inform the individual and family that returning to the community is likely. Have a process to revisit these individuals and to develop a discharge plan;
- Collect data that can be used to improve and enhance the long-term care system; and
- Utilize the enhanced federal funding available through PASARR.

There are many other components of a successful prelong-term care screening process that Missouri might want to utilize.

Again, the current regulation, while flawed, is better than nothing. Until such time as an improved process can be put in place that affords all Missourians a true pre-admission long-term care screening process, leave the current regulation in place.

**RESPONSE:** The goal of assisting individuals requesting access to state-funded home and community based care and providing prospective long-term care facility residents with home and community based care information in order to remain in the community will continue to be pursued through current program processes and Division of Senior and Disability Services (division) initiatives.

For over a decade, the division (formerly the Department of Social Services, Division of Aging) has administered the Missouri Care Options program. Through gubernatorial directives, legislative initiatives, various partnerships and networking, Missouri has been held as a model for ensuring that its citizens have access to information

necessary to make decisions about long-term care, including home and community based care options. The division, in conjunction with its partners, will continue to provide individuals with information regarding state-funded home and community based care services.

In that continued effort, the division has recently implemented a plan for workload redesign within current staffing levels. This redesign will centralize the intake function, using the toll-free Central Registry Unit (CRU) as the primary Customer Service Center for Missourians needing information about state-funded home and community based care. Within this design, the division will be able to collect data related to referral requests for home and community based care services and track referrals to state designated entities regarding individuals seeking information about private pay services. This effort will provide a coordinated centralized location for dissemination of service information and a repository of data associated with requests for home and community based care services.

The Preadmission Screening and Resident Review (PASARR) process mandated by federal law is one method by which prospective long-term care facility residents are assessed to determine their need for long-term care in a facility. Necessary documentation needed for PASARR is currently completed by facilities—and certified by treating physicians. This process will not be affected by the rescission of this rule.

Further, long-term care facilities are required by 19 CSR 30-88.010(9) to provide a copy of the Missouri Guide to Home and Community Based Services to individuals accessing nursing facility care prior to or at the time of their admission. This booklet, located at the following website, <http://www.gcd.oa.mo.gov/PIC/ServicesPamphlet/index.shtml>, describes home care services available in Missouri. The division distributes this booklet to many entities, including long-term care facilities, as requested.

Although additional suggestions from the commenter have merit, reinstatement of proposed changes would require additional department resources that are not currently available. The information shall be retained for possible future discussion.

**Title 20—DEPARTMENT OF INSURANCE  
Division 10—General Administration  
Chapter 2—Sunshine Rules (Meetings and Records)**

**ORDER OF RULEMAKING**

By the authority vested in the director of the Missouri Department of Insurance under section 374.045, RSMo 2000, the director amends a rule as follows:

**20 CSR 10-2.400 Records is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on October 3, 2005 (30 MoReg 2084-2085). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

**SUMMARY OF COMMENTS:** The department received one (1) comment on the proposed amendment.

**COMMENT:** The department received a comment suggesting that the optional pre-authorization language for release of information appears to be outside of the scope of section 374.071, RSMo.

**RESPONSE:** The department believes that such pre-authorization is not outside the scope of section 374.071, RSMo. Also, Executive Order 05-18 directs the department to give such pre-authorization option to all complaining consumers. Therefore, the department will keep such pre-authorization language in the rule.

**Title 20—DEPARTMENT OF INSURANCE  
Division 400—Life, Annuities and Health  
Chapter 7—Health Maintenance Organizations**

**ORDER OF RULEMAKING**

By the authority vested in the director of the Missouri Department of Insurance under section 374.045, RSMo 2000, the director amends a rule as follows:

**20 CSR 400-7.095 HMO Access Plans is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 2005 (30 MoReg 1808-1813). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The department received three (3) comments on the proposed amendment.

COMMENT ONE: The department received a suggestion that the proposed distance standard for “inpatient mental health treatment facilities” in rural counties be increased to one hundred (100) miles from seventy-five (75) miles.

RESPONSE: Data on the availability of inpatient mental health services indicates that there are only five (5) out of one hundred fifteen (115) counties in Missouri where the proposed inpatient standard cannot be met. For three (3) of those counties, the standard suggested in the comment would help. However, because the nature of inpatient care is such that frequent travel is likely for family members of the patient, and because the vast majority of Missouri counties can meet the standard in the proposal, the department considers the proposed standard to meet the needs of an overwhelming majority of people in Missouri.

COMMENT TWO: The department received a suggestion that the distance standards for “inpatient mental health treatment facilities” be expanded to twenty-five (25) miles in urban counties, fifty (50) in basic counties and eighty (80) in rural counties.

RESPONSE: Data on the availability of inpatient mental health services indicates that there are only five (5) out of one hundred fifteen (115) counties in Missouri where the proposed inpatient standard cannot be met. For three (3) of those counties, the standard suggested in the comment would help. However, because the nature of inpatient care is such that frequent travel is likely for family members of the patient, and because the vast majority of Missouri counties can meet the standard in the proposal, the department considers the proposed standard to meet the needs of an overwhelming majority of people in Missouri.

COMMENT THREE: The department received a general comment that the distance standards set for residential providers are too short.

RESPONSE: Data on the availability of residential mental health services indicates that there is no county in Missouri where the proposed residential standard cannot be met. Increasing the standard is not evidently necessary.

## STATUTORY LIST OF CONTRACTORS BARRED FROM PUBLIC WORKS PROJECTS

The following is a list of contractor(s) who have been prosecuted and convicted of violating the Missouri Prevailing Wage Law, and whose Notice of Conviction has been filed with the Secretary of State pursuant to Section 290.330, RSMo.

<u>Name of Contractor</u>	<u>Name of Officers</u>	<u>Address</u>	<u>Date of Conviction</u>	<u>Debarment Period</u>
Stan Buffington DBA Buffington Brothers Heating & Cooling		110 N. Riverview  Poplar Bluff, MO 63901	10/26/05	10/26/2005-10/26/06



**T**he Secretary of State is required by sections 347.141 and 359.481, RSMo 2000 to publish dissolutions of limited liability companies and limited partnerships. The content requirements for the one-time publishing of these notices are prescribed by statute. This listing is published pursuant to these statutes. We request that documents submitted for publication in this section be submitted in camera ready 8 1/2" x 11" manuscript.

**Notice of Corporate Dissolution  
To All Creditors of and  
Claimants Against  
Rhodes Manufacturing Company f/k/a Swing-A-Way Manufacturing Company**

On March 24, 2005, Rhodes Manufacturing Company f/k/a Swing-A-Way Manufacturing Company, a Missouri corporation, filed its Articles of Dissolution with the Missouri Secretary of State. Said corporation requests that all persons and organizations who have claims against it present them immediately by letter to the corporation c/o Richard B. Rothman, Blitz, Bardgett & Deutsch, L.C., 120 S. Central, Suite 1650, St. Louis, Missouri 63105. All claims must include the name, address and telephone number of the claimant; the amount claimed; the basis of the claim; the date(s) on which the events occurred which provided the basis of the claim; and documentation of the claim.

NOTICE: BECAUSE OF THE DISSOLUTION OF RHODES MANUFACTURING COMPANY, ANY CLAIMS AGAINST IT WILL BE BARRED UNLESS A PROCEEDING TO ENFORCE THE CLAIM IS COMMENCED WITHIN TWO (2) YEARS AFTER THE PUBLICATION DATE OF WHICHEVER OF THE NOTICES REQUIRED BY STATUTE IS PUBLISHED LAST.

MISSOURI REGISTER NOTICE TO THE UNKNOWN CREDITORS OF MARKER ARMSTRONG, LLP. You are hereby notified that effective immediately, Marker Armstrong, LLP, a Missouri limited liability partnership (the Company), whose principal office was located in St. Louis City, Missouri, has dissolved and is in the process of winding up its affairs. Pursuant to Section 358.371 of the Uniform Partnership Law of the State of Missouri, all claims against the Company must be mailed to: Schlichter, Bogard & Denton, 100 S. Fourth Street, Suite 900, St. Louis, MO 63102, Attention: Matthew Armstrong. Claims submitted must include the following information: (1) claimant name, address, and phone number; (2) name of debtor; (3) account or other number by which the debtor may identify the creditor; (4) a brief description of the nature of the debt or the basis of the claim; (5) the amount of the claim; (6) the date the claim was incurred; and (7) supporting documentation for the claim, if any. NOTICE: CLAIMS OF CREDITORS OF THE COMPANY WILL BE BARRED UNLESS A PROCEEDING TO ENFORCE THE CLAIM IS COMMENCED WITHIN 3 (THREE) YEARS OF THE DATE OF THIS NOTICE.

NOTICE OF WINDING UP TO ALL CREDITORS OF AND CLAIMANTS AGAINST  
SCHEER & BIRMINGHAM, L.C.

The Notice of Winding Up for Scheer & Birmingham, L.C. (the "Company") was filed with the Missouri Secretary of State on September 2, 2005.

You are hereby notified that if you believe you have a claim against the Company, you must submit your claim in writing to Donald E. Dibbern, P.O. Box 6098, Chesterfield, MO 63006-6098. Your claim must include the following information:

1. The name, address, and telephone number of the claimant.
2. The amount of the claim.
3. The date the claim accrued or will accrue.
4. A brief description of the nature of the debt or the basis of the claim and documentation.

All claims against the Company will be barred unless proceeding to enforce the claim is commenced within 3 years after the publication of this notice.

**Notice to All Creditors of Sulgrave Development, LLC**

Sulgrave Development, LLC filed a Notice of Winding Up on 11/28/05. If you have a claim against Sulgrave Development, LLC, you must submit written notice to the company c/o BWN, 121 W. 48th St., Unit 1400, Kansas City, MO 64112, furnishing the name and address of claimant, the amount and nature of the claim and documentation of the claim. Any claims against Sulgrave Development, LLC will be barred unless a proceeding to enforce the claim is commenced within three years after publication of this notice.

NOTICE OF CORPORATE DISSOLUTION  
TO ALL CREDITORS OF AND CLAIMANTS AGAINST  
MIDWEST ADOLESCENT HEALTHCARE, INC.

On December 5, 2005, Midwest Adolescent Healthcare, Inc. filed its Articles of Dissolution with the Missouri Secretary of State. Dissolution was effective on December 5, 2005.

All claims against the Corporation should be directed to the Corporation c/o Michael T. Schwend, 17027 State Highway B, Kirksville, Missouri 63501.

All claims must include the name, address and telephone number of the claimant; the amount of the claim; a statement setting forth the basis of the claim; and the date(s) of the event(s) upon which the claim(s) is/are based. Claims against the Corporation will be barred unless a proceeding to enforce the claim(s) is/are commenced within two (2) years after the date of this notice.