

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

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 If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission.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

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

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

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

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

any state or federal governmental agency which administers any unemployment compensation system or any program related to an unemployment compensation system, except in those cases where that agency has funds available for payment of those charges and a contract or agreement has been signed by both agencies;] The division may choose, within its discretion, to provide records without payment to any party who is otherwise authorized to receive them and who qualifies for free records under 20 CFR Part 603. In such cases, the division will make a finding that the information is necessary for the proper administration of the unemployment compensation program, that the disclosure involves no more than an incidental amount of staff time and no more than nominal processing costs, or that the division has a reciprocal agreement in place with the recipient, under which both parties receive approximately equal benefits; or

(B) In any proceeding pending before an appeals tribunal, claimants or their attorneys, upon request in writing to the appeals tribunal, shall be supplied with information from the division's records without charge to the extent necessary for the proper preparation and presentation of any claim for unemployment or any appeal; or]

[(C) Any entity required to be charged for documents who is without funds to pay for the same, upon application to and approval by the director, may be furnished with the necessary documents without charge].

AUTHORITY: sections 288.220.5], RSMo Supp. 1999] and 288.360.3, RSMo [1994] 2000. This rule was previously known as regulation no. 19. Original rule filed Sept. 30, 1946, effective Oct. 10, 1946. For intervening history, please consult the Code of State Regulations. Amended: Filed Sept. 12, 2008.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Employment Security, Attn: Spencer Clark, Acting Director, PO Box 59, Jefferson City, MO 65104-0059. 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.

Proposed Amendment Text Reminder:

Boldface text indicates new matter.

[Bracketed text indicates matter being deleted.]

**Title 8—DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
Division 10—Division of Employment Security
Chapter 2—Administration**

PROPOSED AMENDMENT

8 CSR 10-2.020 Charges for Copies of Records, Reports, Decisions, Transcripts or Other Papers or Documents. The division is amending section (2).

PURPOSE: This amendment implements federally mandated requirements regarding the disclosure of confidential unemployment compensation records.

(2) Exceptions to the provisions of section (1) of this rule[—] are as follows:

(A) *[No charge shall be made for any material furnished to*

**Title 8—DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
Division 10—Division of Employment Security
Chapter 5—Appeals**

PROPOSED AMENDMENT

8 CSR 10-5.010 Appeals to an Appeals Tribunal. The division is amending sections (2) and (3).

PURPOSE: This amendment adds a definition for "participant," clarifies the definition of "agent," clarifies the difference between "participants" and "parties" in hearings before an appeals tribunal and that only a party can satisfy the appearance requirement for a hearing, expands the definition of "party," and provides consistency and simplification in terms and subsection designations.

(2) For purposes of these regulations, the following definitions apply:

(A) Agent—The person authorized to act in a representative capacity for *[a claimant]* an individual pursuant to Missouri Supreme Court Rule 5.29(b) and these regulations;

(B) Appear means that the *[participants]* parties—

1. Arrive at the physical location of the hearing at the time and location set forth on the notice of hearing; or

2. Provide telephone numbers as instructed on the notice of hearing within the designated time frame and answer at the time of the hearing;

(E) Participant—Any party, representative, or witness taking part in a hearing;

[(E)](F) Party—*[The individual, agency or business entity which has taken action to become an interested party pursuant to 288.070, 288.130, and 288.160, RSMo;]*

1. The claimant, if any;

2. Any employer or employing unit that has filed a protest that complies with section 288.070, RSMo;

3. Any employer or employing unit from whose employment the claimant was separated during a week claimed, other than a week during which an initial claim or a renewed claim was effective;

4. Any employer or employing unit having a legal interest in any determination made under section 288.130, RSMo;

5. Any person, employer, or employing unit having a legal interest in any assessment made under section 288.160, RSMo; or

6. The Division of Employment Security;

[(F)](G) Representative—Any person acting in a representative capacity with regard to unemployment appeals as authorized by Chapter 288, RSMo, Missouri Supreme Court Rules, and these regulations. Depending on the context, the word is used to refer both to employer representatives and all persons authorized to act in a representative capacity in these matters;

[(G)](H) Split hearing/s—*[Those]* An appeals hearing/s in which some *[parties and their witnesses may]* participants are scheduled to appear in person and others by telephone, by pre-arrangement with the hearing officer;

[(H)](I) Telephone hearing—An appeals hearing in which all participants appear by telephone; and

[(I)](J) Witness—A person who *[is presented for testimony at a hearing by]* testifies at a hearing on behalf of a party to an appeal.

(3) Appeal to be Written.

(A) Any signed, legible written notice filed by a party in accordance with these regulations, which expresses disagreement with or otherwise indicates a desire to appeal a determination or redetermination, in the absence of a reconsideration by the deputy, shall constitute an appeal. An appeal must be signed by the *[claimant, the claimant's] party (including any officer or employee of an employing unit) or the party's* authorized agent, *[the employing unit (including any officer or employee of it),]* or by a licensed attorney representing *[either the claimant or employing unit]* a party. A person acting as a *[claimant's] party's* authorized agent shall submit an authorization signed by *[the claimant]* that party as soon as that authorization occurs. *[The authorization must include the name, social security number and signature of the claimant and a statement that the named agent is acting on behalf of the claimant.]*

(D) Any signed, legible written notice filed by a party in accordance with these regulations, which sets forth specifically and in detail the grounds upon which it is claimed the assessment is erroneous shall constitute a petition for reassessment. A petition for reassessment must be signed by the *[claimant, if any,]* party *(including any officer or employee of an employing unit)*, the *[claimant's] party's* authorized agent, *[the employing unit (including any officer or employee of it),]* or by a licensed attorney representing *[either the claimant or employing unit]* a party.

AUTHORITY: section[s] 288.190, RSMo Supp. 2007 and section 288.220.5, RSMo 2000. Original rule filed Sept. 30, 1946, effective Oct. 10, 1946. For intervening history, please consult the Code of State Regulations. Amended: Filed Sept. 12, 2008.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Employment Security, Attn: Ronald J. Miller, PO Box 59, Jefferson City, MO 65104-0059. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 8—DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

Division 10—Division of Employment Security

Chapter 5—Appeals

PROPOSED AMENDMENT

8 CSR 10-5.015 Appeal Hearings and Procedures. The division is amending sections (1), (4), (5), (7), and (9) through (11).

PURPOSE: This amendment provides new, simplified, clarified, consistent, or more specific division procedures for providing copies of file materials prior to hearings, for granting continuances for hearings, for representing parties, for the conduct of parties and participants in hearings, for appeals tribunal evidentiary rulings, and for addressing additional issues that arise in hearings and changes existing language to conform with such changes and the changes effected in 8 CSR 10-5.010, to be more affirmative, to eliminate redundant information, to conform with the sentence structure of surrounding or similar provisions, and to correct typographical and punctuation errors.

(1) Copy of Appeal. Upon the division's receipt of an appeal, the appeal shall be acknowledged and the parties shall be provided with a copy of the division's informational pamphlet concerning hearings *[and copies of the documents from the appeals file upon which the determination was based]*.

(4) Hearings may be conducted in~~[-]~~ person, by telephone, or by a combination of telephone and in-person attendance referred to as a split hearing in this regulation.

(C) *[The]* A hearing officer may, on the hearing officer's own motion or the motion of a party, schedule a matter for an in-person hearing or adjourn any split or telephone hearing in progress for an in-person hearing, if, in the hearing officer's opinion, conducting any part of the hearing by telephone is unsatisfactory.

(D) A hearing officer may, on the hearing officer's own motion or the motion of a party, schedule a split hearing~~], with the parties present at different locations at the same time, may be scheduled only]~~ if an in-person or telephone hearing is not possible or *[the parties agree to or request a split hearing]* a participant is located more than fifty (50) miles from the in-person hearing location.

(5) Notices of Hearing.

(A) Notice of Hearing shall be mailed, by regular United States

mail, to the address of record in the appeal file of each party, attorney who has entered an appearance, and others **properly** appearing in a representative capacity [*who have filed notice of intent to represent*]. Notices shall be mailed at least seven (7) days prior to the date of the hearing. These notices shall specify the date, time, and place or method of hearing and shall set forth the address of the office to which all requests or other correspondence concerning the hearing should be directed. **A copy of the contents of the appeal file will also be mailed with the hearing notice.**

(7) Continuances and Additional Evidence.

(B) All parties shall be prepared to introduce all of their evidence when the case is set for hearing as continuances for additional evidence will be granted only when the hearing officer is satisfied that the additional evidence is necessary to a full and complete hearing and was unavailable at the original setting because of surprise, [*or*] because the party was unable to obtain the evidence after diligent and good faith efforts to obtain such evidence, **or because the party was unable to timely supply the evidence to all the parties and the hearing officer after making a diligent and good faith effort to timely provide such evidence.**

(9) Participation and Representation at Hearings.

(A) **An [*claimant*] individual** may represent him/herself or be represented by a duly authorized agent[, *who may not charge a fee for the representation*]. **Except for services provided by licensed lawyers, an individual shall not be charged fees of any kind for representation. For purposes of this rule individual means a claimant or sole proprietor.**

(B) A party, which is a corporation, partnership, [*or*] other business entity authorized by law, **or a governmental entity including Indian tribes**, may be represented by an officer or a person employed full-time in a managerial capacity. For purposes of this regulation, managerial capacity includes any person who has managerial or supervisory duties as defined by the party.

(C) An employee of a corporation, partnership, [*or*] other business entity authorized by law, **or a governmental entity including Indian tribes** who is not an officer or full-time managerial employee may appear[,] **and** testify [*and offer exhibits*] in hearings in which the [*business*] entity is a party. The employee's participation at the hearing is limited to testifying and offering exhibits] **may make documents or other evidence available to the referee for entry into the record during the hearing.**

(E) [*All persons who will be acting in a representative capacity on behalf of a party before the hearing officer shall file notice of their intent to represent the party as soon as possible after being retained or chosen.*] Attorneys shall file an entry of appearance, **and** agents shall file an authorization signed by the claimant **or sole proprietor**[, *and representatives shall file a statement of intent to act on behalf of the entity*].

(F) No subsequent entry of appearance or [*notice of intent*] **authorization** to represent shall be honored absent written withdrawal by the previous representative.

(G) In order to protect the integrity and fairness of the appeals process, the hearing officer requires all parties and [*persons acting in a representational capacity*] **participants** to comply with the following rules of conduct:

1. [*All p*]/Participants shall appear for the hearing and be ready to proceed no later than the starting time listed on the notice of hearing;
2. [*All p*]/Participants shall comply with all directions given by a hearing officer during a hearing;
3. Participants [*may*] **shall** not use dilatory tactics prior to or during a hearing;
4. Participants [*may*] **shall** not engage in abusive conduct, harass, intimidate, threaten, or cause physical harm to any hearing officer, party, witness, or member of the public in attendance;
5. Participants [*may*] **shall** not act in a manner disruptive or

disrespectful to the operations of the appeals' process;

6. [*All p*]/Participants shall act in good faith and with integrity during the representation of a party and shall adhere to reasonable standards of orderly and ethical conduct;

7. The representative shall, to the extent reasonably possible, restrain the **represented party [*represented by that individual*] and its witnesses** from improprieties in connection with the hearing; and

8. Any [*individual*] **participant** who fails to follow these rules [*will*] **may** be excluded from the hearing.

(10) Conduct of Hearings.

(B) In any hearing before a hearing officer, the following shall be the applicable rules of evidence and procedure:

1. Oral evidence shall only be taken by oath or affirmation;
2. Subject to this chapter's restrictions regarding representation, each party has the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not a subject of the direct examination, to impeach any witness, regardless of which party first called the witness to testify, and to rebut the evidence against him/her;
3. A party who does not testify in his/her own behalf may be called and examined as if under cross-examination;
4. The hearing need not be conducted according to the common law or statutory rules of evidence or the technical rules of procedure. Hearsay evidence is generally admissible. Evidence is admissible if it is not irrelevant, immaterial, privileged, or unduly repetitious. Hearsay which is timely objected to shall not constitute competent evidence which, by itself, will support a finding of fact. A party or [*his/her attorney*] **the party's representative** may advise the hearing officer of a defect in the character of any evidence introduced by voicing an objection. The hearing officer shall rule on the admissibility of all evidence **to which an objection has been made.** Any evidence received without objection which has probative value shall be considered by the hearing officer along with other evidence in the case;
5. Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of an act, transaction, occurrence, or event, shall be admissible as evidence of the act, transaction, occurrence, or event, if it was made in the regular course of any business and that it was the regular course of the business to make the memorandum or record at the time of the act, transaction, occurrence, or event or within a reasonable time thereafter. All other circumstances of the making of the writing or record[,] may be shown to affect the weight of the evidence, but the showing shall not affect its admissibility. The term business shall include business, profession, occupation, and calling of every kind; and
6. All documents introduced as evidence shall be marked as exhibits. A photocopy may be substituted for an original document. Whenever practicable, demonstrative and physical evidence also shall be marked and placed in the record; otherwise, it shall be described in detail on the record.

(C) If the hearing officer believes that the deputy's determination did not apply the correct provision(s) of law to the factual situation presented, the hearing officer, after informing the parties **and inquiring as to whether additional time is needed to prepare**, may expand or otherwise alter the hearing to include the correct issues involved. If one (1) or more parties object to the change in the hearing, the hearing officer shall continue the hearing to allow the parties time to prepare for the proper issues.

(11) Reassignment of Hearing Officer. A hearing officer may be reassigned under the following conditions:

(B) A hearing officer shall not conduct a hearing in which he/she may have a personal interest or conflict of interest or in which he/she

would have a personal bias towards or against any of the *[parties]* participants;

(C) Any party to a proceeding before a hearing officer may request the disqualification of the hearing officer assigned to the proceeding by filing with the chief referee a signed, written statement detailing the reasons why the disqualification is necessary. This request must be filed **as soon as possible in the appeals process but in any event no later than [five (5)] two (2) days** prior to the *[scheduled hearing]* date of hearing. The chief referee, or designee, shall issue a written ruling on the request. The written ruling shall be interlocutory but may be specified as a grounds for appeal following the issuance of the decision of the hearing officer; and

AUTHORITY: section[s] 288.190, RSMo Supp. 2007 and section 288.220.5, RSMo 2000. Original rule filed Dec. 14, 1982, effective March 13, 1983. For intervening history, please consult the Code of State Regulations. Amended: Filed Sept. 12, 2008.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Employment Security, Attn: Ronald J. Miller, PO Box 59, Jefferson City, MO 65104-0059. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 8—DEPARTMENT OF LABOR AND
INDUSTRIAL RELATIONS
Division 10—Division of Employment Security
Chapter 5—Appeals**

PROPOSED AMENDMENT

8 CSR 10-5.030 Telephone Hearings Before an *[Hearing Officer]* Appeals Tribunal. The division is amending the title and sections (1) through (3).

PURPOSE: This amendment changes the wording of the title from “hearing officer” to “appeals tribunal,” changes the word “judicial” to “quasi-judicial,” and makes changes to be consistent with the new pre-hearing mailing procedures instituted in 8 CSR 10-5.015; simplifies and clarifies the process required for the presentation of exhibits in telephone hearings; eliminates or modifies redundant, negative, and passive language; provides a procedure for an appeals tribunal to follow if a party becomes disconnected during the course of a telephone hearing; provides a new evidentiary procedure for notes and records used by participants during the course of telephone hearings; and provides consistency and simplification of provisions and subsection designations.

(1) Exhibits.

(A) Copies of the contents of the appeal file *[upon which the determination is based which may be used as exhibits]* shall be mailed **with the notice of hearing** to the parties *[to]* involved in telephone hearings and split hearings *[prior to the hearing date]* and may be used as exhibits by a party or the hearing officer during the hearing.

(B) Parties to split or telephone hearings shall mail, fax, or deliver copies of potential exhibits, **other than documents already a part of the appeal file that were mailed with the notice of hearing**, to the hearing officer, *[and any other]* named *[party]* parties,

or **known representatives** in sufficient time for the exhibits to reach those locations prior to the hearing.

(C) Mailing of exhibits shall be to the address of the *[party]* parties or representatives shown on the Notice of Hearing. The item(s) shall be designated as a potential exhibit and paginated.

(2) Participation.

(A) *[Election of an in-person hearing by a party must be conveyed to the hearing officer at least two (2) days prior to the hearing and acknowledged by the hearing officer.] A party may elect to appear in person as provided in section 8 CSR 10-5.015(4).* Absent acknowledgement, a party may not assume that its appearance is scheduled in *[-]* person.

(B) Election by a party *[not to participate by telephone]* to appear in person shall not be binding on other parties to the proceeding who may, at the discretion of the hearing officer in accordance with subsection 8 CSR 10-5.015(4)(D), present evidence by telephone.

(C) If **telephone technical difficulties prevent** a hearing officer *[is unable to]* from contacting a party who has provided a number to participate *[as scheduled]* by telephone *[due to land based telephone technical difficulties]*, the hearing shall not be dismissed but must be rescheduled. For purposes of this regulation, technical difficulties shall not include use of the telephone by the party for other calls, failure of battery-powered, digital, or cellular phones due to location or failure of power, or failure to provide access or security codes.

(D) If a party participating in a hearing by telephone is disconnected, the hearing officer will make at least one (1) attempt to reconnect the party to the hearing. If the hearing officer is unable to reconnect the party, the hearing will continue with the remaining party, and a decision will be issued based on the evidence presented during the hearing. If the party who is disconnected is the only party, or is the appellant, and there is insufficient evidence on which to base a decision, the hearing officer may dismiss the appeal. A dismissal is subject to being set aside under the provisions of 8 CSR 10-5.040.

[(D)](E) Whenever a *[party]* participant does not have access to a telephone, the *[party]* participant may appear by telephone from any Workforce Development office. In that event, the telephone number at that location shall be provided by the *[participant]* party in accordance with instructions included on the Notice of Hearing.

(3) Testimony.

(B) A witness may use notes or records to refresh his/her memory *[so long as copies of the records or items used for that purpose have been mailed, faxed, or otherwise delivered to the other participants by the time of the hearing in order to allow cross-examination of the witness on that basis]*. If a party objects to the witness's use of the notes or records to refresh his/her memory, the hearing officer may continue the hearing on another date and order the party sponsoring the witness to mail, fax, or otherwise deliver copies of the notes or records to the other parties by the time of the rescheduled hearing in order to allow examination of the witness based upon those notes or records.

(D) Telephone hearings are quasi-judicial evidentiary proceedings and shall not be subject to interruptions. If a *[party]* participant leaves the phone for any reason, such action shall be considered voluntary and the hearing shall proceed without such *[party]* participant (subject to the provisions of subsection 8 CSR 10-5.030(2)(D)).

AUTHORITY: section[s] 288.190, RSMo Supp. 2007 and section 288.220.5, RSMo 2000. Original rule filed Dec. 14, 1982, effective March 13, 1983. For intervening history, please consult the Code of State Regulations. Amended: Filed Sept. 12, 2008.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Division of Employment Security, Attn: Ronald J. Miller, PO Box 59, Jefferson City, MO 65104-0059. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 8—DEPARTMENT OF LABOR AND
INDUSTRIAL RELATIONS
Division 10—Division of Employment Security
Chapter 5—Appeals**

PROPOSED AMENDMENT

8 CSR 10-5.040 Orders of an [Hearing Officer] Appeals Tribunal. The division is amending the title and section (2) and deleting section (5). The division is removing the reference to an appellate case which follows this rule in the *Code of State Regulations*.

PURPOSE: This amendment changes the wording of the title from "hearing officer" to "appeals tribunal" and the procedure connected with a failure-to-participate hearing and deletes redundant procedures. This amendment removes reference to an appellate case as it refers to a previous version of the rule.

(2) Failure to Appear for Hearings.

(B) If such dismissal is set aside, the matter shall be scheduled for hearing. The threshold issue shall be whether the appellant had good cause for failing to appear for the prior setting. The merits of the appeal [may] shall also be heard. If good cause is not found, the hearing officer shall reinstate the order of dismissal. If good cause is found, the hearing officer shall rule on the merits of the appeal.

[(15) Application for Review.

(A) When a written request to reconsider or set aside an order of dismissal is not granted, the request shall be considered an application for review to the Labor and Industrial Relations Commission.

(B) Any written request by the appellant to set aside an order of withdrawal shall be considered an application for review to the Labor and Industrial Relations Commission.]

AUTHORITY: section[s] 288.190, *RSMo Supp. 2007* and section 288.220.5, *RSMo 2000*. Original rule filed Dec. 14, 1982, effective March 13, 1983. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Sept. 12, 2008.

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

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**Title 8—DEPARTMENT OF LABOR AND
INDUSTRIAL RELATIONS
Division 10—Division of Employment Security
Chapter 5—Appeals**

PROPOSED AMENDMENT

8 CSR 10-5.050 Decisions of an Appeals Tribunal. The division is amending sections (1), (2), and (3), adding a new section (5), and renumbering and revising the remaining section.

PURPOSE: This amendment clarifies procedures for decision writing, changes language to make sentence structures less passive and more readable, provides a new procedure in the case where a non-appealing party failed to participate in a previous hearing, and provides consistency and simplification of provisions and subsection designations.

(1) Upon conclusion of the hearing, [the] a hearing officer shall prepare a written decision. The decision shall be based solely upon competent and substantial evidence contained in the official record.

(2) The decision [may] shall include, but shall not be limited to, the following:

(A) Findings of fact necessary for resolution of the issues[,]. The findings shall be based upon evidence presented at the hearing, stipulation of the parties, or matters officially noticed by the hearing officer [shall be so designated];

(3) Notification of the decision shall include the following procedure:

(A) A copy of the decision shall be mailed to the address of record of the parties and attorneys of record, if any, by regular United States mail. Information accompanying the decision shall advise the parties of their right to[, and the means by which,] file an application for review of the decision [may be filed] with the Labor and Industrial Relations Commission and the manner whereby they may accomplish such filing; and

(5) If an interested party, who is not the appellant, fails to appear for a hearing and the resulting decision is adverse to that party's interest, the party may request reconsideration of the decision. If the decision is set aside, the matter shall be scheduled for hearing. The threshold issue shall be whether the party requesting reconsideration had good cause for failing to appear for the prior setting. The merits of the appeal shall also be heard. If good cause is not found, the hearing officer shall reinstate the original decision. If good cause is found, the hearing officer shall rule on the merits of the appeal. A hearing officer may set aside a decision and have the appeal reset for hearing if the request and set aside occur within thirty (30) days of the decision.

[(5)] (6) If the hearing officer receives a signed written communication from a party which expresses disagreement with a decision or order, or which otherwise indicates a desire to file an application for review, the hearing officer shall forward it to the Labor and Industrial Relations Commission. This section does not supersede the provisions of this chapter regarding orders of dismissal or provisions governing reconsideration of adverse decisions.

AUTHORITY: section[s] 288.190, *RSMo Supp. 2007* and section 288.220.5, *RSMo 2000*. Original rule filed Oct. 17, 1988, effective March 26, 1989. Emergency amendment filed July 25, 1996, effective Aug. 28, 1996, expired Feb. 23, 1997. Amended: Filed July 25, 1996, effective Jan. 30, 1997. Amended: Filed April 5, 2002, effective Oct. 30, 2002. Amended: Filed Sept. 12, 2008.

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

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

PROPOSED AMENDMENT

10 CSR 10-6.400 Restriction of Emission of Particulate Matter From Industrial Processes. The commission proposes to amend subsection (1)(B). If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency to replace the current rule that is in the Missouri State Implementation Plan. The evidence supporting the need for this proposed rulemaking is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address and phone number listed in the Notice of Public Hearing at the end of this rule. More information concerning this rulemaking can be found at the Missouri Department of Natural Resources' Environmental Regulatory Agenda website, www.dnr.mo.gov/regs/index.html.

PURPOSE: This regulation restricts the emission of particulate matter in the source gas of an operation or activity. This proposed amendment will eliminate outdated information and clarify the intent of the regulation by correcting a reference and adding exemptions. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is a July 21, 2004 letter from the City of St. Louis Department of Health, a rule comment form dated November 5, 2004 from Missouri Department of Natural Resources staff, and a February 9, 2007 email from the St. Louis County Department of Health.

(1) Applicability.

(B) The provisions of this rule shall not apply to the following:

1. Cotton gins;
2. The grinding, crushing, and classifying operations at a rock quarry;
3. The receiving and shipping of whole grain from or into a railroad or truck transportation source at a grain elevator;
4. Smoke generating devices, as defined in subsection (2)(D) of this rule, when a required permit or a written determination that a permit is not required has been issued or written;
5. Batch-type charcoal kilns required to comply with 10 CSR 10-6.330;
6. The burning of fuel for indirect heating;
7. Fugitive emissions;
8. Emission sources that are exempt from construction permitting under [10 CSR 10-6.060 paragraphs (1)(D)1. and (1)(D)2.] **10 CSR 10-6.061;**
9. Emission sources that are permitted by rule under **10 CSR 10-6.062;**

[9.]10. The burning of refuse;

[10.]11. The processing of salvageable material by burning;

[11.]12. Emission units that at maximum design capacity have a potential to emit less than one-half (0.5) pounds per hour of particulate matter; [and]

[12.]13. The grinding, crushing, and conveying operations at a power plant./;]

14. Coating operations equipped with a control system designed to control at least ninety-five percent (95%) of the particulate overspray provided the system is operated and maintained in accordance with manufacturers' specifications or comparable maintenance procedures that meet or exceed manufacturers' specifications;

15. Any particulate matter emission unit that is subject to a federally enforceable requirement to install, operate, and maintain a particulate matter control device system that controls at least ninety percent (90%) of particulate matter emissions; and

16. Emission units that at maximum hourly design rate (MHDR) have an uncontrolled potential to emit less than the allowable emissions as calculated in paragraphs (3)(A)1. and (3)(A)2. of this rule.

AUTHORITY: section 643.050, RSMo [Supp.] 2000. Original rule filed Jan. 14, 2000, effective Aug. 30, 2000. Amended: Filed Dec. 22, 2000, effective Sept. 30, 2001. Amended: Filed Sept. 9, 2008.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed amendment will begin at 9:00 a.m., December 4, 2008. The public hearing will be held at the Governor Office Building, Room 450, 200 Madison Street, Jefferson City, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Written request to be heard should be submitted at least seven (7) days prior to the hearing to Director, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176, (573) 751-4817. Interested persons, whether or not heard, may submit a written or email statement of their views until 5:00 p.m., December 11, 2008. Written comments shall be sent to Chief, Operations Section, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to apcprulespn@dnr.mo.gov.

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 7—Water Quality**

PROPOSED AMENDMENT

10 CSR 20-7.050 Methodology for Development of Impaired Waters List. The department's Water Protection Program is amending subsection (4)(A) and removing the reference in subsection (4)(B) to the "Methodology for the Development of the 2006 Section 303(d) List for Missouri" and the reference in subsection (4)(C) to the methodology as set forth in subsection (4)(B).

PURPOSE: This rule describes the process used to develop the list of impaired waters as required by the Federal Water Pollution Control Act, Section 303(d), for the purpose of identifying those waters that do not fulfill their designated uses and require the development of total maximum daily loads. Removal of subsection (4)(B) and reference to subsection (4)(B) in subsection (4)(C) removes the requirement to amend the rule whenever an impaired waters list is produced.

The approval of the methodology by the Missouri Clean Water Commission is needed before beginning water quality assessments for the purpose of completing the 303(d) list.

(4) Creation of the Proposed 303(d) List.

(A) The department shall develop a detailed methodology for identifying waters that are impaired and shall submit the methodology to public review prior to the development of an impaired waters list. The methodology shall include an explanation of how data are used, how the data are evaluated to determine impairment, and how a list of impaired waters is developed. The development of the methodology shall involve at least one (1) stakeholder meeting inviting all persons expressing an interest in the methodology and a sixty (60)-day comment period on the final draft. **Following the review of public comments on the draft methodology, the department will provide written responses to the comments and obtain approval of the methodology from the Missouri Clean Water Commission before beginning water quality assessments for the purpose of completing the 303(d) list.**

[(B) The methodology established in accordance with subsection (4)(A) of this rule is hereby incorporated by reference and is known as the "Methodology for the Development of the 2006 Section 303(d) List for Missouri," Missouri Department of Natural Resources, Division of Environmental Quality, Water Protection Program—Approved by the Clean Water Commission on June 7, 2006. No later amendments or additions are included. This document shall be made available to anyone upon written request to the Department of Natural Resources, Water Protection Program, Water Pollution Control Branch, PO Box 176, Jefferson City, MO 65102-0176. The department will maintain a copy of this document on the web at <http://www.dnr.mo.gov>.]

[(C)](B) The 303(d) list shall be developed in accordance with section 644.036.5, RSMo. [and in accordance with the methodology set forth in subsection (4)(B) of this rule.]

[(D)](C) The department shall establish priority ratings or schedules for the creation of total maximum daily loads (TMDLs) for waters on the proposed 303(d) list in accordance with the Federal Water Pollution Control Act, Section 303(d).

AUTHORITY: section 644.026, RSMo 2000. Original rule filed Nov. 5, 2003, effective July 30, 2004. Emergency amendment filed Oct. 16, 2006, effective Oct. 26, 2006, expired April 23, 2007. Amended: Filed Nov. 14, 2006, effective Aug. 30, 2007. Emergency amendment filed Sept. 15, 2008, effective Jan. 2, 2009, expires June 30, 2009. Amended: Filed Sept. 15, 2008.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: *Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Natural Resources, Division of Environmental Quality, Water Protection Program, Philip A. Schroeder, PO Box 176, Jefferson City, MO 65102. Comments may be sent with name and address through email to phil.schroeder@dnr.mo.gov. Public comments must be received by January 14, 2009. A public hearing is scheduled at a meeting of the Clean Water Commission to be held at 9:00 a.m., January 7, 2009, at the Department of Natural Resources' Lewis and Clark State Office Building, LaCharrette/Nightingale Creek Conference Rooms, 1101 Riverside Drive, Jefferson City, Missouri 65102.*

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—[Division of Medical Services]
MO HealthNet Division
Chapter 20—Pharmacy Program**

PROPOSED AMENDMENT

13 CSR 70-20.320 Pharmacy Reimbursement Allowance. The division is amending sections (1) and (2).

PURPOSE: This amendment changes the name of Missouri's medical assistance program to MO HealthNet, revises the name of the administering agency to MO HealthNet Division, changes program recipients to participants, corrects statutory references, and updates the tax rate methodology and maximum percentage.

(1) Pharmacy Reimbursement Allowance (PRA). PRA shall be assessed as described in this section.

(A) Definitions.

1. Department—Department of Social Services.
2. Director—Director of Department of Social Services.
3. Division—[Division of Medical Services] **MO HealthNet Division.**

4. [Monthly g]Gross retail prescription receipts—For ease of administration for the department as well as the industry, this shall be an annual amount. The basis of tax in any fiscal year will be the gross prescription sales of the last calendar year prior to the previous fiscal year.

(B) Each pharmacy engaging in the business of providing outpatient prescription drugs in Missouri to the general public shall pay a PRA.

1. The PRA owed for existing pharmacies shall be calculated by multiplying the pharmacy's total gross retail prescription receipts by the tax rate determined by the department. Subject to the limitations established in section [538.520] **338.520**, RSMo, [the range of] such said tax rate shall be [uniformly distributed in bands determined by a ratio of total Medicaid prescriptions divided by total sales] **uniform** and shall not exceed [six percent (6%)] **five percent (5%)**.

2. The PRA shall be divided by and collected over the number of months for which the PRA is effective.

3. The initial PRA owed by a newly licensed pharmacy shall be calculated by estimating the total prescription sales and multiplying the estimate by the rate determined by the department, **as described in paragraph (1)(B)1.**

4. If a pharmacy ceases to provide outpatient prescription drugs to the general public, the pharmacy is not required to pay the PRA during the time it did not provide outpatient prescription drugs.

5. If the pharmacy reopens, it shall resume paying the PRA. It shall owe the same PRA as it did prior to closing, if the PRA has not changed per paragraph (1)(B)1.

(C) Each pharmacy shall submit an affidavit to the department with the following information:

1. Pharmacy name;
2. Contact;
3. Telephone number;
4. Address;
5. Federal tax ID number;
6. [Medicaid] **MO HealthNet** pharmacy number (if applicable);
7. Pharmacy sales (total);
8. [Medicaid] **MO HealthNet** pharmacy sales;
9. Number of paid [Medicaid] **MO HealthNet** prescriptions; and
10. Gross receipts attributable to prescription drugs that are delivered directly to the patient via common carrier, by mail, or a courier service.

(2) Payment of the PRA.

(A) Offset.

1. Each pharmacy may request that its PRA offset against any *[Missouri Medicaid] MO HealthNet* payment due to that pharmacy.

A. A statement authorizing the offset must be on file with the division before any offset may be made relative to the PRA by the pharmacy.

B. Assessments shall be allocated and deducted over the applicable service period.

C. Any balance due after the offset shall be remitted to the *[D]director* of the Department of Revenue and be deposited in the state treasury to the credit of the Pharmacy Reimbursement Allowance Fund.

D. If the remittance is not received before the next *[Medicaid] MO HealthNet* payment cycle, the division shall offset the balance due from that check.

(C) Failure to comply with this request for information or failure to pay the PRA.

1. If a pharmacy fails to comply with a request for information from the *[Division of Medical Services] MO HealthNet Division* or fails to pay its PRA within thirty (30) days of notice, the PRA shall be delinquent.

2. For any delinquent PRA, the department may:

A. Proceed to enforce the state's lien of the property of the pharmacy;

B. Cancel or refuse to issue, extend, or reinstate the *[Medicaid] MO HealthNet* provider agreement; or

C. Seek denial, suspension, or revocation of license granted under Chapter 338, RSMo.

3. The new owner, as a result of a change in ownership, shall have his/her PRA paid by the same method the previous owner elected.

(D) Each pharmacy, upon receiving written notice of the final determination of its PRA, may file a protest with the director of the department setting forth the grounds on which the protest is based, within thirty (30) days from the date of receipt of written notice from the department. The director of the department shall reconsider the determination and, if the pharmacy so requested, grant the pharmacy a hearing to be held within forty-five (45) days after the protest was filed, unless extended by agreement between the pharmacy and the director. The director shall issue a final decision within forty-five (45) days of the completion of the hearing. After a final decision by the director, a pharmacy's appeal of the director's final decision shall be to the Administrative Hearing Commission in accordance with section/s/ 208.156, RSMo 2000 and section 621.055, RSMo Supp. **[2001] 2007.**

(E) PRA Rates.

1. The PRA tax *[rates] rate* will be *[done in bands and will be determined by the ratio of paid Medicaid claims to total prescription sales]* a uniform effective rate of eighty-nine hundredths percent (.89%) with an aggregate annual adjustment, by the MO HealthNet Division, not to exceed five hundredths percent (.05%) based on the pharmacy's total prescription volume.

2. The maximum rate shall be *[six percent (6%)]* five percent (5%).

[3. Adjustments will be made to the tax rate if the average Medicaid prescription charge for an individual entity is statistically different than that of the other entities in the assigned tax band.]

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

PRIVATE COST: This proposed amendment will cost private entities \$42 million annually.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be delivered by regular mail, express or overnight mail, in person, or by courier within thirty (30) days after publication of this notice in the Missouri Register. If to be hand-delivered, comments must be brought to the MO HealthNet Division at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.

AUTHORITY: sections 208.201, RSMo 2000] and 338.505, RSMo Supp. [2003] 2007. Emergency rule filed June 20, 2002, effective July 1, 2002, expired Feb. 27, 2003. Original rule filed July 15, 2002, effective Feb. 28, 2003. Amended: Filed Feb. 3, 2003, effective Aug. 30, 2003. Amended: Filed Nov. 3, 2003, effective April 30, 2004. Emergency amendment filed Sept. 12, 2008, effective Sept. 22, 2008, expires March 20, 2009. Amended: Filed Sept. 12, 2008.

**FISCAL NOTE
 PRIVATE COST**

- I. Department Title:** Department of Social Services
- Division Title:** MO HealthNet Division
- Chapter Title:** Pharmacy Program

Rule Number and Title:	13 CSR 70-20.320 Pharmacy Reimbursement Allowance
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 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:
1,200	Retail Pharmacies	\$42 million annually

III. WORKSHEET

IV. ASSUMPTIONS

The tax is based on gross retail prescription receipts reported via an affidavit by the pharmacies. Total gross retail prescription receipts for calendar year 2007 were approximately \$4.7 billion. The tax rate for the year is estimated at .8926%, therefore, the fiscal impact is estimated at \$42 million annually over the life of the rule.

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 10—Voting Machines (Electronic)

PROPOSED AMENDMENT

15 CSR 30-10.110 Manual Recount. The secretary is amending sections (2) and (3), adding new sections (4) and (7), and renumbering remaining sections accordingly.

PURPOSE: This amendment enhances the method for the election authority, the secretary of state, and the general public to compare electronically tabulated vote results with manual recounts of selected races and ballot issues in certain election precincts by increasing the number of election precincts that are selected for these manual recounts and changing the races and ballot issues that are selected.

(2) [After the electronic recount provided for in 15 CSR 30-10.060(2)(G) and p]Prior to the certification of the election results, the accuracy certification team shall randomly select not less than [one (1) precinct for every one hundred (100) election precincts or fraction thereof] **five percent (5%) of all election precincts through the use of a random drawing**, but not less than one (1) precinct, in order to conduct a manual recount of selected contested races and ballot issues in the selected precinct(s). **Random selection of the precincts shall be open to any member of the public, and the election authority shall notify the public of the time and place of the selection process no later than forty-eight (48) hours prior to the beginning of the selection process by posting a notice in a prominent place, which is easily accessible to the public and clearly designated for that purpose, at the principal office of the election authority.**

(3) Recount of the randomly selected precinct(s) shall be conducted in the following manner:

(C) One (1) contested race or ballot issue to be manually recounted shall be randomly selected from each of the following categories, where applicable:

1. Presidential and Vice-Presidential electors, United States senate candidates and state-wide candidates;
2. State-wide ballot issues;
3. United States representative candidates and state general assembly candidates;
4. Partisan circuit and associate circuit judge candidates and all nonpartisan judicial retention candidates; [and]

5. In addition to the candidates and issues previously listed, the manual recount team shall select not less than [three (3)] **one (1) contested race/s/ or ballot issue/s/** from all political subdivisions and special districts, including the county, in the selected precinct(s)/. *When there are three (3) or fewer contested races or ballot issues within this category at a selected precinct, all shall be counted.]; and*

6. In addition to the candidates and issues previously listed, the manual recount team shall select all races in which the margin of victory between the two (2) top candidates is equal to or less than one-half of one percent (0.5%) of the number of votes cast for the office or issue.

(4) **If the results of the manual recount of the selected races and ballot issues differ by more than one-half of one percent (0.5%) from the results of the electronically tabulated vote results, the manual recount team shall immediately notify the election authority, who shall investigate the causes of any discrepancy and resolve any discrepancies prior to the date of certification set forth in section 115.507, RSMo.**

[(4)](5) The secretary of state, at his/her sole discretion, and upon the showing of good cause by an election authority not less than three

(3) weeks prior to the date of an election, may waive the manual recount requirement for any political subdivision or special district holding an election on the election date.

[(5)](6) Upon completion of the manual recount, the manual recount team shall reseal the ballots and other support materials in the appropriate containers. The results of the manual recount shall be reported on certificates provided by the secretary of state. One (1) copy shall be filed with the secretary of state within four (4) weeks of the election date and one (1) copy shall be filed with the public records of the election.

(7) The secretary of state may make grant funds available to reimburse election authorities for the cost of conducting manual recounts under section (2) and paragraph (3)(C)6. of this rule.

AUTHORITY: section 115.225.1., RSMo [1986] Supp. 2007. Original rule filed Jan. 3, 1990, effective March 26, 1990. Emergency amendment filed Sept. 15, 2008, effective Sept. 25, 2008, expires March 23, 2009. Amended: Filed Sept. 15, 2008.

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions eighteen thousand eighty dollars (\$18,080) statewide per municipal, primary, or general election.

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 Office of the Secretary of State, Elections Division, Michael Bushmann, Deputy Secretary for Elections, PO Box 1767, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**FISCAL NOTE
PUBLIC COST**

- I. Department Title: Title 15-Elected Officials**
Division Title: Division 30-Secretary of State
Chapter Title: Chapter 10-Voting Machines (Electronic)

Rule Number and Name:	15 CSR 30-10.110 Manual Recount
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
41 Local Election Authorities	\$18,080 statewide per municipal, primary or general election

III. WORKSHEET

Jurisdictions affected by amendment	Total no. precincts	Current Rule: # precincts audited	Proposed Amendment: # precincts audited	Estimated cost per precinct	Estimated additional cost per election
Boone	90	1	5	\$160	\$640
Buchanan	35	1	2	160	160
Butler	25	1	2	160	160
Callaway	27	1	2	160	160
Camden	24	1	2	160	160
Cape Gir.	35	1	2	160	160
Cass	48	1	3	160	320
Christian	25	1	2	160	160
Clay	75	1	4	160	480
Cole	38	1	2	160	160
Douglas	25	1	2	160	160
Dunklin	22	1	2	160	160
Franklin	53	1	3	160	320
Greene	83	1	5	160	640
Howell	21	1	2	160	160
Jackson	294	3	15	160	1920
Jasper	50	1	3	160	320
Jefferson	108	2	6	160	640
Johnson	21	1	2	160	160
Kansas City	186	2	10	160	1280

Laclede	21	1	2	160	160
Lawrence	21	1	2	160	160
Lincoln	24	1	2	160	160
Miller	21	1	2	160	160
New Madrid	24	1	2	160	160
Newton	25	1	2	160	160
Pettis	26	1	2	160	160
Phelps	25	1	2	160	160
Platte	33	1	2	160	160
Polk	22	1	2	160	160
Scott	23	1	2	160	160
St. Charles	170	2	9	160	1120
St. Francois	28	1	2	160	160
St. Louis City	203	3	11	160	1280
St. Louis County	681	7	35	160	4480
Stoddard	21	1	2	160	160
Stone	22	1	2	160	160
Taney	24	1	2	160	160
Texas	22	1	2	160	160
Warren	24	1	2	160	160
Wayne	21	1	2	160	160
TOTAL COST PER ELECTION					\$18,080

IV. ASSUMPTIONS

The numbers of precincts that are currently audited and the number that would be audited if the rule is amended as proposed were calculated using the formulas in the current rule and the proposed amendment.

The estimated fiscal cost of the proposed amendment for each precinct audited was determined by surveying a sample of local elections authorities (LEAs) from both large and small jurisdictions. Those sample LEAs provided information on the costs to comply with the current manual recount rule, including the number of people necessary, hourly wage, and time required to perform the audit. The results of the survey indicate that the total cost of complying with the current rule range from \$80-\$160 per precinct. To insure that the impact of the proposed amendment is not underestimated, the fiscal cost of the amendment has been based on the higher number.

In order to determine the total cost of the proposed amendment per jurisdiction, the estimated cost of a manual recount for one precinct was multiplied by the number of additional precincts that would be required to be recounted under the proposed amendment.

Title 16—RETIREMENT SYSTEMS
Division 50—The County Employees' Retirement Fund
Chapter 2—Membership and Benefits

PROPOSED AMENDMENT

16 CSR 50-2.120 Benefits Upon Participant's Death. The board is adding a new section (6).

PURPOSE: This amendment adds a new section to amend the death benefit to reflect compliance with federal law.

(6) In the case of a participant who dies while performing qualified military service (as defined in section 414(u) of the Code), the survivors of the participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the plan had the participant resumed and then terminated employment on account of death. The foregoing shall be effective with respect to deaths occurring on or after January 1, 2007. Notwithstanding anything herein to the contrary, the plan shall be administered to comply with the Heroes Earnings Assistance and Tax Relief Act of 2008, to the extent required therein.

AUTHORITY: section 50.1032, RSMo 2000. Original rule filed Sept. 29, 2000, effective March 30, 2001. Amended: Filed Nov. 10, 2005, effective May 30, 2006. Amended: Filed Sept. 5, 2007, effective March 30, 2008. Amended: Filed Sept. 8, 2008.

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 County Employees' Retirement Fund, 2121 Schotthill Woods Drive, Jefferson City, MO 65101. 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 16—RETIREMENT SYSTEMS
Division 50—The County Employees' Retirement Fund
Chapter 10—County Employees' Defined Contribution Plan

PROPOSED AMENDMENT

16 CSR 50-10.050 Distribution of Accounts. The board is amending subsection (2)(A).

PURPOSE: This amendment provides that the amount available for a hardship distribution will be limited to the lesser of the amount sufficient to meet the need and the vested amounts in a participant's account.

(2) Distribution Due to Hardship. A Participant may request a distribution due to Hardship by submitting a request to the Board (or its designee) in such form as may be permitted by the Board (or its designee). The Board (or its designee) shall have the authority to require such evidence as it deems necessary to determine if a distribution is warranted. If an application for a distribution due to a Hardship is approved, the distribution is limited to the lesser of—

(A) An amount sufficient to meet the need[, less the value of the Participant's account in the 457 Plan]; or

AUTHORITY: section[s] 50.1250, RSMo Supp. [2006] 2007 and section 50.1260, RSMo 2000. Original rule filed May 9, 2000, effective Jan. 30, 2001. For intervening history, please consult the Code of State Regulations. Amended: Filed Sept. 8, 2008.

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 County Employees' Retirement Fund, 2121 Schotthill Woods Drive, Jefferson City, MO 65101. 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,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 100—Insurer Conduct
Chapter 1—Improper or Unfair Claims Settlement
Practices

PROPOSED RULE

20 CSR 100-1.060 Standards for Prompt, Fair, and Equitable Settlements under Health Benefit Plans

PURPOSE: This rule effectuates or aids in the interpretation of section 375.1007, RSMo 2000, and sections 376.383 and 376.384, RSMo Supp. 2007.

(1) Scope. This rule applies to all claims submitted by a claimant to a health carrier or its third-party contractor after September 1, 2009, and that health benefit plan is either a fully-insured group health benefit plan where the provider submits claims as a participating provider or is an individual health benefit plan.

(2) Definitions. As used in sections 376.383 and 376.384, RSMo, and in the regulations promulgated pursuant thereto—

(A) "Acknowledgment of the date of receipt" shall mean a written notice, whether made in electronic or nonelectronic format, to the claimant by the health carrier or its third-party contractor that it received a claim and setting forth the date on which the claim was received;

(B) "Claim" shall mean a written request or demand by a claimant for the payment of health care services provided, whether made in an electronic or nonelectronic format;

(C) "Confirmation of receipt" shall mean a written notice, made in electronic or nonelectronic format, to the health care provider by the health carrier or its third-party contractor that it received an electronically-filed claim. A confirmation of receipt may also constitute an acknowledgement of the date of receipt if it meets the requirements of subsection (A) of this section;

(D) "Date of claim payment" shall mean the date the health carrier or its third-party contractor mails or sends the payment as indicated by the date of—

1. The postmark, if a claim payment is delivered by the U.S. Postal Service;

2. The electronic transmission, if the payment is made electronically;

3. The delivery of the claim payment by a courier; or

4. The receipt by the claimant, if the claim payment is made other than as provided in paragraphs (2)(D)1. through (2)(D)3.,

above;

(E) "Date of denial" shall mean the date when the health carrier or its third-party contractor mails or electronically sends a denial;

(F) "Date of receipt" shall mean the date upon which the health carrier or its third-party contractor first receives a claim or other information relevant and pertinent to the claim, indicated by the date of—

1. The postmark, if a claim payment is delivered by the U.S. Postal Service;

2. The electronic transmission, if the payment is made electronically; or

3. The date stamped by the health carrier or its third-party contractor, if the claim is delivered in a manner other than those described above;

(G) "Deny" or "denial" shall mean the health carrier or its third-party contractor mails or sends an electronic or written notice to the claimant refusing to reimburse all or part of the claim, which includes each reason for the denial;

(H) "Health benefit plan" shall mean health benefit plan as defined in section 376.1350, RSMo;

(I) "Notification of claim" shall mean any notification to a carrier or its third-party contractor, by a claimant, which reasonably apprises the health carrier of the facts pertinent to a claim;

(J) "Pay" or "payment" shall mean the health carrier or its third-party contractor mails or sends electronic or written notice including remuneration to the claimant that reimburses all or part of the claim;

(K) "Processing days" shall mean the number of days the health carrier or its third-party contractor has the claim in its possession. Processing days shall not include days in which the health carrier is waiting for a response to a reasonable request for additional necessary information;

(L) "Reason for denial" shall mean a contract provision or provisions upon which a health carrier is basing its denial of a claim or any portion of a claim;

(M) "Request for additional information" shall mean when the health carrier or its third-party contractor requests, in writing, whether made in electronic or nonelectronic format, additional necessary information from the claimant to determine if all or part of the claim will be reimbursed. Such a request must meet the following requirements:

1. It shall be specific to the claim or the claim's related episode of care;

2. It shall describe with specificity the clinical and other information to be included in the response;

3. It shall be relevant and necessary for the resolution of the claim; and

4. It shall be for information that is contained in or in the process of being incorporated into the patient's medical or billing record maintained by the health care provider;

(N) "Suspends the claim" shall mean when a health carrier or its third-party contractor mails or electronically sends a written notice to the claimant specifying the reason the claim is not yet paid or denied, including, but not limited to, grounds as listed in the contract between the claimant and the health carrier;

(O) "Suspension date" shall mean the date the health carrier or its third-party contractor mails or sends electronic written notice that the claim is suspended;

(P) "Third-party contractor" shall mean an entity or person directly or indirectly contracted with the health carrier to receive or process claims for reimbursement of health care services; and

(Q) "Working days" shall mean the number of consecutive days not counting weekends or federal holidays.

(3) Communications Between Entities Subject to This Rule.

(A) An entity subject to this rule may deliver written communication as follows:

1. By U.S. mail, first-class delivery; by U.S. mail, return receipt requested; or by overnight mail, and maintain a copy of the

receipt or signature card acknowledging receipt of delivery;

2. Electronically and maintain proof of the electronically submitted communication;

3. If the entity accepts facsimile transmissions for the type of communication being sent, then fax the communication and maintain proof of the facsimile transmission; or

4. Hand delivery of the communication and maintain a copy of the signed receipt acknowledging the hand delivery.

(B) Communication is presumed to be received as follows:

1. On the date shown by a date stamp showing the actual date received, if the sender used U.S. mail, first-class delivery;

2. On the date the delivery receipt is signed, if the sender used an overnight delivery service or the U.S. mail, return receipt requested, or if the sender hand delivered the communication; or

3. If the communication was received electronically, an electronic verification or confirmation of receipt must be issued to the sender within twenty-four (24) hours of the receipt of the communication.

(4) Standards for Prompt, Fair, and Equitable Settlements under Health Benefit Plans.

(A) Every health carrier or third-party contractor, upon receiving notification of a claim from a claimant, shall, within ten (10) working days—

1. Pay the total amount of the claim in accordance with the contract between the health carrier and the health care provider or the health carrier and the insured or enrollee; or

2. Send an acknowledgement of the date of receipt and do one (1) or more of the following:

A. Send written notice of status of the claim, whether made in electronic or nonelectronic format, with request for specific additional pertinent claim information and from whom it is requested, such as the claimant, the patient, or another health care provider;

B. Pay the portion of the claim for which the health carrier acknowledges liability in accordance with the contract between the health carrier and the health care provider or the health carrier and the insured or enrollee, suspend the remainder of the claim, and request specific additional pertinent claim information;

C. Pay the portion of the claim for which the health carrier acknowledges liability in accordance with the contract between the health carrier and the health care provider or the health carrier and the insured or enrollee, and deny a portion of the claim and specify each reason for the denial; or

D. Deny the claim in its entirety and specify each reason for such denial.

(B) If notice of the claim was received as an electronically filed claim, the health carrier shall issue confirmation of receipt of the claim within one (1) working day of its receipt to the claimant that submitted the claim electronically.

(C) If additional information is requested, an appropriate reply shall be made within fifteen (15) processing days of receiving any additional claim information from whom the information was requested. An appropriate reply shall mean payment of all or the undisputed portion of claim, denial of the claim, suspension of the claim, or final request for additional pertinent and relevant information.

(D) All denials, suspensions, or requests for additional information shall be communicated in writing to the claimant and shall include specific reasons why the action was taken or why the information is needed.

(5) Health carriers must conduct a reasonable investigation before denying or suspending a claim in whole or in part. Health carriers shall not suspend or deny claims for the lack of information until it has requested the pertinent additional information on two (2) separate occasions.

(A) Claims.

1. If a claim or portion of a claim remains unpaid after forty-five

(45) days after notification of the claim, interest shall accrue beginning on the forty-sixth day after the date of receipt of the claim at a rate equal to one percent (1%) per month of the unpaid balance of the claim until the claim is paid. The interest shall be payable by the health carrier to the health care provider, individual insured, or other entity submitting the claim. If the health carrier denies or suspends a claim that is subsequently determined to be the liability of the health carrier, the health carrier will be responsible for the interest from the forty-sixth day of the original date of notification of the claim until the claim is actually paid.

2. Any improperly denied claims that are subsequently determined to be payable shall have interest calculated from the forty-sixth day after the date of receipt of the claim.

3. The health carrier may wait until the claimant's aggregate interest payments reach five dollars (\$5) before making interest payment to the claimant.

(B) Duties of the Health Carrier.

1. When a health carrier pays or denies a claim, it shall explain in sufficient detail how each item or service was reimbursed. Specifically, if the health carrier has a contract rate with the health care provider, the health carrier shall indicate which items or services are included in the reimbursement and which items are not included in the reimbursement.

2. Pursuant to the requirements of 20 CSR 100-8.040, health carriers shall maintain and legibly date stamp all documentary material related to the pertinent events of a claim. Pertinent events shall include, but not be limited to, the date of the notification of claim, date of payment, date of denial, date of suspension, reason for denial or suspension, amount paid, amount denied, amount suspended, date additional information is requested, the nature of the specific additional information requested, and the date such additional information was received.

3. After notification of a claim, if any information on the claim that affects the amount of benefits payable is changed or omitted in the processing of the claim, including any electronic edits, the health carrier or its third-party contractor shall notify the claimant of the modification in writing with specificity.

4. Any contractual agreement between the health carrier and any of its third-party contractors that receives or processes claims, obtains the service of a health care provider to provide health care services, or issues verifications or pre-authorizations may not be construed to limit the health carrier's authority or responsibility to comply with all applicable statutory and regulatory requirements of this rule or of sections 376.383 and 376.384, RSMo.

5. Contracts between health care providers, health carriers, and their respective third-party contractors shall not extend the statutory or regulatory time frames set forth in this rule or in sections 376.383 and 376.384, RSMo.

(C) Complaints Against Health Carriers. Every complaint made by a health care provider to the director shall include: the health care provider's name, address, and daytime phone number; the health carrier's name; the date of service and date the claim was filed with the health carrier; all relevant correspondence between the health care provider and the health carrier, including requests from the health carrier for additional information; a copy of the confirmation of receipt or acknowledgment of the date of receipt of the claim from the health carrier or its third-party contractor, if available; and additional information which the health care provider believes would be of assistance in the department's review.

AUTHORITY: sections 375.045 and 376.1007, RSMo 2000 and sections 376.383 and 376.384, RSMo Supp. 2007. Original rule filed Sept. 5, 2008.

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 10:00 a.m. on November 18, 2008. The public hearing will be held at the Harry S Truman State Office Building, Room 530, 301 West High Street, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to the proposed rule, until 5:00 p.m. on November 25, 2008. Written statements shall be sent to Tamara Kopp, Department of Insurance, Financial Institutions and Professional Registration, 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) 751-2619 at least five (5) working days prior to the hearing.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 100—Insurer Conduct
Chapter 1—Improper or Unfair Claims Settlement
Practices**

PROPOSED RULE

20 CSR 100-1.070 Identification Cards Issued by Health Carriers

PURPOSE: This rule sets forth the requirements for an identification card issued to insureds or enrollees by health carriers offering health benefit plans.

(1) **Applicability.** This rule applies to all health carriers offering or providing a plan of health insurance, health benefits, or health services to individuals and groups, or administering health benefit plans on behalf of self-insured employer groups.

(2) **Definitions.** As used in this section—

(A) "Health benefit plan" shall mean health benefit plan as defined in section 376.1350(18), RSMo; and

(B) "Health carrier" shall mean health carrier as defined in section 376.1350(22), RSMo.

(3) **Identification Cards.**

(A) An identification card or similar document issued to insureds or enrollees shall include the following information:

1. The name of the enrollee or insured;

2. The first date on which the enrollee or insured became eligible for benefits under the plan or a toll-free number that a health care provider may use to obtain such information; and

3. Indicate that the health benefit plan offered by the health carrier is regulated by the Department of Insurance, Financial Institutions and Professional Regulation by placing "DOI" on the front.

(B) Nothing shall prohibit the issuer of a health benefit plan from using an identification card containing a magnetic strip or other technological component enabling the electronic transmission of information, provided that the information required in this section is printed on the card.

(C) The requirements of this section shall apply to all health benefit plans issued or renewed twelve (12) months after this rule becomes effective.

AUTHORITY: sections 375.045 and 376.1007, RSMo 2000 and sections 376.383 and 376.384, RSMo Supp. 2007. Original rule filed Sept. 5, 2008.

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

PRIVATE COST: This proposed rule will cost private entities approximately \$76,800,000 in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed rule at 10:00 a.m. on November 18, 2008. The public hearing will be held at the Harry S Truman State Office Building, Room 530, 301 West High Street, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to the proposed rule, until 5:00 p.m. on November 25, 2008. Written statements shall be sent to Tamara Kopp, Department of Insurance, Financial Institutions and Professional Registration, 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) 751-2619 at least five (5) working days prior to the hearing.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 600—Statistical Reporting
Chapter 1—Reports Other Than Annual Statement and
Credit Insurance**

PROPOSED RULE

20 CSR 600-1.030 Medical Malpractice Statistical Data Reporting

PURPOSE: This rule establishes reporting requirements for medical professional liability insurers pursuant to sections 383.105–383.124, RSMo Supp. 2007.

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) Definitions. When used in this regulation—

(A) “Annual premium, loss, and exposure data” means annual aggregate data that insurers are required to report under section 383.106.1, RSMo;

(B) “Base rate” means the cost of insurance per exposure unit prior to any application of individual risk variations based on loss or expense considerations;

(C) “Base rate data” means the premium and rate information that insurers are required to report pursuant to section 383.106.2, RSMo;

(D) “Claim” means a formal written demand for payment of damages, a lien letter from legal counsel, or a filed lawsuit. In addition, any incident for which a payment has been made shall be considered a claim. Knowledge of a medical misadventure by an insured for which no demand for payment has been made does not constitute a claim;

(E) “Health care provider” means health care provider as defined in section 383.100.2, RSMo;

(F) “Insurer” means insurer as defined in section 383.105.3, RSMo, and includes all providers of medical malpractice coverage to any health care provider for claims arising from the practice of medicine in the state of Missouri;

(G) “Market rate” means the rates for medical malpractice risks calculated and published by the department pursuant to section 383.107, RSMo;

(H) “Medical malpractice insurance” means medical malpractice insurance as defined in section 383.100.3, RSMo; and

(I) “Quarterly claims data” means open and closed claims data required to be filed with the director pursuant to section 383.105, RSMo.

(2) Quarterly Claims Data.

(A) All insurers shall electronically file quarterly claims data in a manner and form prescribed by the director.

(B) Each claim shall be filed with the director once when opened, and once when closed.

(C) Claims must be filed with the director not later than the last day of the month following the end of the quarter the claim was opened or closed, as follows:

Claims Opened or Closed	Filing Date
First quarter	April 30
Second quarter	August 31
Third quarter	November 30
Fourth quarter	January 31

(D) Any insurer subject to this regulation that has not opened or closed claims during a reporting period shall file with the director, in lieu of quarterly claims data, an affidavit, signed by a company officer, attesting that no claims were opened or closed by the company.

(E) The Quarterly Data Reporting Codebook, (Form MM5), is published by the department, and the codes shall be used when filing claims with the department as required by this section.

(F) Data collected pursuant to sections 383.105.2(1), 383.105.2(3), and 383.105.2(6), RSMo, consisting of individually identifying information about the claimant and insured, shall be considered by the department to be confidential communications as provided in section 383.115.1, RSMo. The department shall interpret this section as conferring confidential status on all information collected pursuant to section 383.105, RSMo, which may be used with a reasonable probability of success, either directly or indirectly in conjunction with other publicly available information, to infer identities of such individuals or entities.

(G) Data collected pursuant to section 383.105, RSMo, that has been anonymized in a way consistent with the procedures set forth in this rule may be made available to any interested party upon request.

(3) Risk Reporting Categories to be Used by Insurers.

(A) The director shall establish appropriate categories and risk classifications for the reporting of data under this section. These categories and risk classifications shall consist of units of exposures; type of coverage or policy, subline, consisting of major segments customarily used for rate making; policy limits; Missouri territory codes, not to exceed seven (7) territories; medical specialty class, not to exceed fifty (50) such classes for individuals; medical facility class; surgical class; claims-made year; deductible amounts; and claim history.

(B) Risk Reporting Categories (Form MM6) is published by the department and the categories shall be used when completing Forms MM1, MM2, MM3, and MM4.

(4) Annual Premium, Exposure, and Loss Data.

(A) Data collected pursuant to section 383.106.1, RSMo, shall be reported in the aggregate for each of the specified risk reporting categories and shall consist of written and earned premium; written and earned exposures; paid and incurred losses; paid and incurred loss adjustment expenses; basic limits paid and incurred losses; assessments levied in excess of premium collected; loss and expense reserves, including cases basis reserves, total reserves, and basic limits of reserves; the number of open claims, closed claims, open occurrences, and closed occurrences; the number of cancellations and nonrenewals; and the number of policies renewed and new policies issued.

(B) Beginning March 31, 2010, and annually thereafter, each insurer shall file with the director an Annual Premium and Exposure summary report (Form MM1).

(C) Beginning March 31, 2010, and annually thereafter, each insurer shall file with the director an Annual Loss and Allocated Loss Adjustment Expense (ALAE) summary report (Form MM2).

(D) Beginning March 31, 2010, and annually thereafter, each insurer shall file with the director an Annual Written Policies summary report (Form MM3) relating to the prior calendar year.

(E) Data collected pursuant to section 383.106, RSMo, shall be deemed by the department to be a trade secret as defined by section 417.453(4), RSMo, inasmuch as such data possess economic value by virtue of its confidential status; the same or like information is unavailable through other sources; and insurers have made reasonable efforts to maintain the confidentiality of the data. As such, all data submitted pursuant to section 383.106, RSMo, shall be considered confidential communications and immune from requests made under Chapter 610, RSMo, nor shall such data otherwise be made available to the public or unauthorized individuals except in the manner and form prescribed by this rule.

(5) Market Rate Data. By December 31, 2009, and annually thereafter by September 30 of each year, the director shall publish a median market rate in accordance with section 383.107, RSMo, which will be derived from information collected pursuant to section 383.106, RSMo. To the extent that the median market rate cannot be determined from the data available, the average market rate shall be used.

(6) Base Rate Data.

(A) Upon any change of base rates or rating factors impacting Form MM4 after the effective date of this rule, and before use of the changed base rates, insurers shall file a Base Rate Data report (Form MM4) with the director.

(B) Base rate data shall be considered public information pursuant to section 383.108, RSMo.

(C) Surplus lines insurers transacting insurance pursuant to Chapter 384, RSMo, are not required to submit Form MM4.

(7) Notwithstanding anything else in this rule, the director or a department representative may waive or extend any requirement of this rule including, but not limited to, filing dates applicable to specific reports or filings, requirements to complete a data field or fields on any report or filings, or other information required to be reported pursuant to this rule.

(8) Forms, Codes, and Risk Reporting Categories. The following forms, codebook, and risk reporting categories have been adopted and approved for filing with the director in accordance with this rule and are incorporated by reference. The forms, codebook and risk reporting categories are published by the Missouri Department of Insurance, Financial Institutions and Professional Registration, PO Box 690, Jefferson City, MO 65102. The forms, codebook, and risk reporting categories do not include any amendments or additions. The forms, codebook, and risk reporting categories are available at the department's office in Jefferson City, Missouri, on the department website, www.insurance.mo.gov/industry/forms/index.htm, or by mailing a written request to the Missouri Department of Insurance, Financial Institutions and Professional Registration, PO Box 690, Jefferson City, MO 65102.

(A) Annual Premium and Exposure (Form MM1), or any form which substantially comports with the specified form (revised 8/28/08).

(B) Annual Loss and ALAE (Form MM2), or any form which substantially comports with the specified form (revised 8/28/08).

(C) Annual Written Exposure (Form MM3), or any form which substantially comports with the specified form (revised 8/28/08).

(D) Base Rate Data (Form MM4), or any form which substantially comports with the specified form (revised 9/3/08).

(E) Quarterly Data Reporting Codebook (Form MM5) (revised 7/9/08).

(F) Risk Reporting Categories (Form MM6) (revised 8/28/08).

(9) The department will maintain data confidentiality to the extent required by state and federal laws and regulations. Data collected pursuant to sections 383.105 and 383.106, RSMo, will be made available to the public only to the extent that such data comports with sections (10) and (11) of this rule.

(10) Confidentiality of Quarterly Claims Data Collected Pursuant to Section 383.105, RSMo.

(A) Medical malpractice data may be released on a unit level basis consisting of individual claims records in a form consistent with statute as prescribed below. In general, all data elements that reveal any parties involved, either directly or indirectly, in a malpractice action shall be removed prior to making any such data public. Any references to a county or smaller geographic unit shall be suppressed, though county-level data may be released in aggregate form. Dates shall be no more precise than the year associated with a date.

(B) No records that include any indemnity payments or expense amounts that identify a particular medical specialty may be released on an individual record basis unless there are a minimum of four (4) additional claims during an annual period against practitioners of the same medical specialty for each identifiable unit of geography. However, medical specialties may be combined and identified by a new specialty code to attain the minimum five (5) records.

(C) The following data elements correspond to data fields of the same name in Form MM5, and shall be considered confidential communications, and immune from requests made pursuant to Chapter 610, RSMo:

1. Claim number;

2. Original claim number;

3. Claim numbers of any companion claims;

4. License number, name, city, zip code, Social Security number, telephone number, or any other information that personally identifies the insured, defendant, or any other party in the malpractice action, either directly or indirectly;

5. Name of the institution where the incident occurred, or any other information that may be used to identify such entity; and

6. Name of the presiding court, docket number, or district court code, or any other information that may be used to identify the court in which a malpractice suit has been filed.

(D) All dates shall be anonymized prior to public release. Specific dates shall not be released in any form more precise than the year corresponding to the date. Such dates include, but are not limited to, the date of injury, the date a claim was reported to an insurer, the date a claim is reopened, and the date of closure or payment. However, information derived from such dates may be released to the public, such as the time elapsed between the date a claim was reported and the date it was closed.

(E) Data that identify an insurer shall be anonymized prior to the public release of individual claim records. The name and any identifying codes of an insurer shall not be made public. However, public data may include insurer category, such as whether the insurer was a licensed insurer, a self-insured entity, risk retention group, or surplus lines company.

(F) Data that identify an insurer may be released to the public in aggregate form. Such data may include the total number of closed and paid claims, the number of reported and pending claims, the amounts paid on those claims, the year a claim was opened or closed, and broad practitioner classes consisting of those defined on Form MM5, such as physicians and surgeons, hospitals, clinics, nurses, and dentists.

(G) Information limited to the following data elements shall deemed to be in compliance with this rule and suitable for public release:

Data Fields that May be Released to the Public as Part of Claims Records Submitted Pursuant to 383.105, RSMo.	
Data Field	Description
Profession code	Broad practitioner class: physician or surgeon, hospital, nurse, nursing home, dentist, pharmacy, optometrist, chiropractor, podiatrist/chiroprapist, clinic/corporation/other
Specialty code	Five-digit ISO medical risk class code
Type of practice code	Self-employed, employed physician, etc.
Place of injury	Inpatient, ER, nursing home, etc.
Gender of injured person	
Number of total defendants	Total number of defendants involved in the malpractice action
Injury severity code	Nine point injury severity scale
Claim disposition code	Settled prior to or during court proceeding, or disposed by court
Settlement code	Detailed court disposition code, including before trial, after trial prior to judgment, after judgment, during appeal, after appeal, etc.
Verdict code	Code describing the verdict (direct for plaintiff, etc.)
Allegation category	National practitioner allegation category code (surgery, obstetric, diagnostic, etc.)
Allegation code	National Practitioner Databank code describing the allegation of malpractice
Age category of injured party	Less than 1 year, 1-5, 6-10, 11-15, 16-20, 21-35, 36-50, 51-65, 66-75, over 75
Age category of insured (if individual)	As above
Year claim was reported	
Year claim was reopened, if applicable	
Year claim was closed	
Year suit was filed, if applicable	
Year injury occurred	
Insurer type	Licensed insurer, risk retention group, surplus lines company, or self-insured entity
Indemnity paid	Amount paid on claim
Economic indemnity	The portion of total indemnity consisting of compensation for economic damages
Non-economic indemnity	The portion of total indemnity consisting of compensation for non-economic damages
Punitive damages	Amount, if any, associated with punitive damages
Other indemnity paid	Total amount paid on behalf of all defendants named in the malpractice action
Indemnity paid by all parties	Amounts that include amounts paid by all parties, if available
Defense expense	Loss adjustment expense paid to defense counsel

Data Fields that May be Released to the Public as Part of Claims Records Submitted Pursuant to 383.105, RSMo.	
Data Field	Description
Other expense	Other loss adjustment expense
Incurred medical expense	Amount of medical expense attributable to the malpractice incident
Future medical expense	Estimate of future medical expenses
Incurred wage loss	Amount of lost wages incurred by the injured party to date
Future wage loss	Estimate of future lost wages
Other expense	Any other expenses incurred by the injured party as a result of the medical incident
Periodic pay amount	Amount of any reserve, trust, or other instrument to provide for future periodic payments to the plaintiff
Anonymous codes	
Territory code	Code assigned for groupings of counties, not to exceed five (5)
Occurrence code	Random code assigned to each claim associated with a single incident

(11) Confidentiality of Aggregate Premium, Loss, Exposure, and Claims Data Collected Pursuant to 383.106, RSMo, and Aggregate Release of Data (Quarterly Claims Data) Collected Pursuant to 383.105, RSMo. To ensure that sensitive information such as individual identities cannot be inferred from information collected pursuant to section 383.106, RSMo, either directly or indirectly in combination with other public information, all data is considered proprietary, confidential, and a trade secret except to the extent that such data satisfies each of the following confidentiality standards. In addition, any data collected pursuant to 383.105, RSMo, that meets each of the following criteria, will be considered public information. Data aggregated in conformity to such criteria shall be deemed to satisfy 383.115.2, RSMo.

(A) The threshold rule: non-zero data cells or totals must include a minimum of five (5) observations.

(B) The p-percent rule: for cells consisting of meaningful mathematical values, such as premium, exposure, or loss amounts, the sum of all but the largest three (3) observations in a data cell or total must be greater than a specified percent (p) of the largest value, such that

$$\sum_{i=c+2}^N x_i \geq p \times x_1$$

Where:

- c is the second and third largest observations
- c + 2 represents all observations but the largest three
- N is the total number of observations in a data cell
- p represents a percent less than 100

(C) The (n, k) rule: for cells consisting of meaningful mathematical values, such as premium, exposure, or loss amounts, no single observation can exceed a specified percent (k) of a data cell total.

(D) The value for each of the three (3) preceding criteria shall be calculated in accordance with the methods prescribed in the *Statistical Policy Working Paper 22 (Second version, 2005, Report on Statistical Disclosure Limitation Methodology)*, Federal Committee on Statistical Methodology, Office of Management and Budget.

(E) The value of the parameter p in the p-percent rule, and of k in the (n, k) rule shall be determined by the director. As prescribed in the *Statistical Policy Working Paper 22*, to lessen the likelihood that public medical malpractice data can be used to infer individual identities and other sensitive information, the value of these parameters shall be considered proprietary, confidential, and a trade secret.

(12) Internal Policies and Procedures.

(A) The director shall adopt reasonable policies and procedures to limit access to and ensure the confidentiality of data collected pursuant to sections 383.105 and 383.106, RSMo, and to ensure that any data made public conforms to all applicable statutes and regulations.

(B) Only department employees who have a reasonable business or job-related purpose for accessing such data may do so. Each employee having such access will be required to sign the following confidentiality statement, or one that is substantially similar.

Confidentiality Protocols

Each individual granted access to the raw or unit level medical malpractice data collected pursuant to sections 383.105 to 383.106, RSMo, must sign this confidentiality form, and initial each of its provisions.

Only employees who have a job-related purpose to access the data may access raw or unit level medical malpractice data collected pursuant to sections 383.105 and 383.106, RSMo. ____ (initial)

Access to all other employees is prohibited. ____ (initial)

Description of duties related to data (to be completed by employee's supervisor):

An individual who has signed this confidentiality agreement has no authority to grant unit level access to any other individual who has not been granted such access. ____ (initial)

All electronic copies of data must be password protected and otherwise secured against unauthorized access. This password must not be disclosed to others who have not been granted access to the data. ____ (initial)

Paper copies of data must be stored in a secure location (locked filing cabinets, etc.). ____ (initial)

Data collected pursuant to section 383.106, RSMo, may be released to the public only in the aggregate form prescribed by rule 20 CSR 600-1.030 Medical Malpractice Statistical Data Reporting, and only pursuant to the director's written permission. ____ (initial)

Data collected pursuant to section 383.105, RSMo, may be released to the public in raw form only after it has been anonymized in a way prescribed by rule 20 CSR 600-1.030 Medical Malpractice Statistical Data Reporting, and only pursuant to the director's written permission. ____ (initial)

The process by which data are prepared for public release should be documented. A copy of the Statistical Analysis Software (SAS) programs used to process the data and the resulting SAS logs shall constitute appropriate documentation. Documents shall be retained for a minimum period of five (5) years, as should a copy of the released data. ____ (initial)

Any breach of security or other disclosure must be reported immediately to your section supervisor or division director. ____ (initial)

If unit level or raw data is stored on your hard drive, the computer must be locked and password protected when it is left unattended. ____ (initial)

Any data removed from the premises in a laptop or other electronic media should be logged, and shall remain secure from unauthorized access. ____ (initial)

Authorization to access the data is automatically revoked when an individual in a position granted access leaves that position. ____ (initial)

Signature _____ Date _____

A signed copy of this form shall be placed in the employee's personnel file.

*AUTHORITY: sections 383.105 and 383.106, RSMo Supp. 2007.
Original rule filed Sept. 15, 2008.*

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions forty-five thousand six hundred seventy-seven dollars and fifty cents (\$45,677.50) annually.

PRIVATE COST: This proposed rule will cost private entities in excess of five hundred dollars (\$500) annually. Initial compliance will cost insurers \$1,673,364 in the aggregate and four hundred fifty-three thousand seven hundred forty-one dollars (\$453,741) in the aggregate annually.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed rule at 10:00 a.m. on November 18, 2008. The public hearing will be held at the Harry S Truman State Office Building, Room 530, 301 West High Street, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to the proposed rule, until 5:00 p.m. on November 25, 2008. Written statements shall be sent to Tamara W. Kopp, Department of Insurance, Financial Institutions and Professional Registration, 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.