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SALUS POPULI SUPREMA LEX ESTO

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



ROBIN CARNAHAN
SECRETARY OF STATE

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

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

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

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

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

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

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

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

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

Title 7—DEPARTMENT OF TRANSPORTATION Division 60—Highway Safety Division Chapter 2—Breath Alcohol Ignition Interlock Device Certification and Operational Requirements

EMERGENCY AMENDMENT

7 CSR 60-2.010 Definitions. The Missouri Highways and Transportation Commission is amending paragraph (1)(A)19.

PURPOSE: This emergency amendment will clarify terms used in the breath alcohol ignition interlock device certification and operational requirements. This rule is being amended in accordance with *Truly Agreed to and Finally Passed Senate Bills 930 and 947*, which become effective on July 1, 2009, and change Missouri's ignition interlock laws.

EMERGENCY STATEMENT: This emergency amendment is necessary to make the rule changes required by *Truly Agreed to and Finally Passed Senate Bills 930 and 947*, which become effective July 1, 2009.

History: Alcohol is a significant contributing factor in Missouri's serious traffic crash experience. In Missouri, one (1) person is killed or injured in an alcohol-related traffic crash every one-point-seven (1.7) hours.

The Missouri General Assembly passed legislation in 1995 mandating that a court shall require that any person who is found guilty of or pleads guilty to a second or subsequent intoxication-related

traffic offense shall not operate any motor vehicle unless the vehicle is equipped with a functioning, certified ignition interlock device for a period of not less than one (1) month from the date of reinstatement of the person's drivers license. In many cases, however, judges were reluctant to impose this requirement because the offender's driving privileges had been revoked or suspended for prolonged periods of time (one to ten (1-10) years). By requiring the use of ignition interlock devices in this circumstance, judges felt they would be sending a mixed message to impaired driving offenders who did not have driving privileges at the time of sentencing.

Recent Developments: *Truly Agreed to and Finally Passed Senate Bills 930 and 947* change the ignition interlock law by now requiring proof of installation of an interlock device, with or without a court order, for any person who is found guilty of or pleads guilty to a second or subsequent intoxication-related traffic offense or who is subject to a license suspension, revocation, or denial action as a result of a second or subsequent alcohol-related enforcement contact. As of July 1, 2009, such offenders will be required to show the Missouri Department of Revenue proof of installation of an ignition interlock device when reinstating their driving privileges and shall further maintain proof for a period of not less than six (6) months from the date of reinstatement, as well as during the term of any limited or restricted driving privileges.

Compelling Governmental Interest for this Emergency Amendment: This emergency amendment clarifies that in addition to court-ordered ignition interlock use, the Department of Revenue will require any person who is found guilty of or pleads guilty to a second or subsequent intoxication-related offense or who is subject to a license suspension, revocation, or denial action as a result of a second or subsequent alcohol-related enforcement contact to install an ignition interlock device in his or her vehicle(s) in order to have his or her driving privileges reinstated.

Impaired drivers pose a deadly risk to the motoring public, contributing to over twenty-five percent (25%) of all fatal traffic crashes. When ignition interlock devices are used, they prevent drunk drivers from driving an automobile and putting the motoring public at risk.

Keeping impaired drivers off our roadways is a public safety concern. In the last three (3) years, eight hundred thirty-four (834) people were killed and four thousand ninety (4,090) people received disabling injuries in traffic crashes involving impaired drivers. Ignition interlock devices have been proven in this and other jurisdictions to be an effective means to prevent offenders from driving their vehicle while under the influence of alcohol, thereby greatly reducing the potential for traffic crashes caused by repeat alcohol offenders. The use of ignition interlock devices ensure the safety of the motoring public by monitoring repeat driving while intoxicated (DWI) offenders when their driving privileges are reinstated or while they are driving on a limited or restricted driving privilege.

Proposed Permanent Amended Rule Filed: Also, the Missouri Highways and Transportation Commission (MHTC) is filing a proposed amended administrative rule regarding this same subject with the Secretary of State's Office and the Joint Committee on Administrative Rules, which will appear in the June 15, 2009, *Missouri Register* but is not intended to become effective until December 30, 2009. In addition to the changes contained in this emergency amendment, the proposed amended administrative rule will clarify terms used in the breath alcohol ignition interlock device certification and operational requirements.

Because of the lengthy delay in the effective date of the proposed amended administrative rule, an emergency amendment is being filed which is limited to the circumstances creating the emergency and complies with the protections extended in the *Missouri* and *United States Constitutions*. It is limited to establishing terms used in the breath alcohol ignition interlock device certification and operational requirements and in implementing changes in accordance with *Truly*

Agreed to and Finally Passed Senate Bills 930 and 947, which change Missouri's ignition interlock law effective on July 1, 2009. No other changes are proposed.

Fairness to All Interested Parties and Support from Industry: MHTC believes this emergency amendment is fair to all interested persons and parties under the circumstances. On September 19, 2008, Missouri Department of Transportation staff met with ignition interlock manufacturers and distributors, Missouri Department of Revenue, Department of Health and Senior Services, and other interested parties. The group discussed the current rule and the proposed amendments to revise the definitions. In addition, drafts of the proposed amendments were sent to the ignition interlock manufacturers and distributors, Missouri Department of Revenue, and other interested parties on October 2, 2008, and February 6, 2009, and these groups were encouraged to comment on the proposed amendments. All comments received were considered when preparing the proposed amendments.

Effective Date and Duration: MHTC filed this emergency amendment on May 7, 2009, which becomes effective on July 1, 2009, and will expire on December 30, 2009.

(1) Definitions.

(A) The following words and terms as used in these requirements shall have the following meaning:

1. Alcohol retest setpoint—The breath alcohol concentration at which the ignition interlock device is set to lock the ignition for the rolling retest;

2. Alcohol setpoint—The breath alcohol concentration at which the ignition interlock device is set to lock the ignition. The alcohol setpoint is the nominal lock point at which the ignition interlock device is set at the time of calibration;

3. Alveolar air—Deep lung air or alveolar breath which is the last portion of a prolonged, uninterrupted exhalation;

4. Authorized service provider—A person, company or authorized franchise who is certified by the state of Missouri to provide breath alcohol ignition interlock devices under sections 577.600–577.614, RSMo;

5. Breath alcohol concentration (BAC)—The number of grams of alcohol (% weight/volume) per two hundred ten (210) liters of breath;

6. Breath alcohol ignition interlock device (BAIID)—A mechanical unit that is installed in a vehicle which requires the taking of a BAC test prior to the starting of the vehicle and at periodic intervals after the engine has been started. If the unit detects a BAC test result below the alcohol setpoint, the unit will allow the vehicle's ignition switch to start the engine. If the unit detects a BAC test result above the alcohol setpoint, the vehicle will be prohibited from starting;

7. Breath sample—Expired human breath containing primarily alveolar air;

8. Bypass—An unauthorized, intentional overt act or attempt to start, drive, or operate a vehicle equipped with a device, without the driver of the vehicle providing all required breath samples;

9. Calibration—The process which insures an accurate alcohol concentration reading on a device;

10. De-installation—The removal of a breath alcohol ignition interlock device from a vehicle by installers;

11. Device—Breath alcohol ignition interlock device (BAIID);

12. Download—Copying information from the interlock device's memory onto disk or other transfer protocol;

13. Emergency service—Unforeseen circumstances in the use and/or operation of a breath alcohol ignition interlock device, not covered by training or otherwise documented, which requires immediate action;

14. Independent laboratory—A laboratory which is properly equipped and staffed to conduct laboratory tests on ignition interlock devices;

15. Installation—Mechanical placement of a breath alcohol ignition interlock device in a vehicle by installers;

16. Installer—A dealer, distributor, supplier, individual, or service center who provides device calibration, installation, and other related activities as required by the authorized service provider;

17. Lockout—The ability of the device to prevent a vehicle's engine from starting unless it is serviced or recalibrated;

18. NHTSA—Federal agency known as the National Highway Traffic Safety Administration;

19. Operator—Any person who operates a vehicle [which] that has a court-ordered or Department of Revenue required breath alcohol ignition interlock device installed;

20. Permanent lockout—A feature of a device in which a vehicle will not start until the device is reset by a device installer;

21. Pure breath sample—Expired human breath containing primarily alveolar air and having a breath alcohol concentration below the alcohol setpoint of two-hundredths (.02);

22. Reinstallation—Replacing a breath alcohol ignition interlock device in a vehicle by an installer after it has been removed for service;

23. Retest—Two (2) additional chances to provide a breath sample below the alcohol setpoint when the first sample failed; or three (3) chances to provide a breath alcohol sample below the alcohol setpoint on the rolling retest;

24. Rolling retest—A subsequent breath test that must be conducted five (5) minutes after starting the vehicle and randomly during each subsequent thirty (30)-minute time period thereafter while the vehicle is in operation;

25. Tampering—An unlawful act or attempt to disable or circumvent the legal operation of the device;

26. Temporary lockout—a feature of the device which will not allow the vehicle to start for fifteen (15) minutes after three (3) failed or aborted attempts to blow a pure breath sample; and

27. Violations reset—A feature of a device in which a service reminder is activated due to one (1) of the following reasons:

A. Three (3) breath samples above the alcohol retest setpoint;

or

B. Any refusal to provide a retest sample.

AUTHORITY: sections 577.600–577.614, RSMo 2000 and RSMo Supp. 2008 and section [650.005] 226.130, RSMo [Supp 1995] 2000. This rule originally filed as II CSR 60-2.010. Emergency rule filed Feb. 5, 1996, effective Feb. 15, 1996, expired Aug. 12, 1996. Original rule filed Feb. 16, 1996, effective Aug. 30, 1996. Moved to 7 CSR 60-2.010, effective Aug. 28, 2003. Emergency amendment filed May 7, 2009, effective July 1, 2009, expires Dec. 30, 2009. A proposed amendment covering this same material is published in this issue of the Missouri Register.

Title 7—DEPARTMENT OF TRANSPORTATION Division 60—Highway Safety Division Chapter 2—Breath Alcohol Ignition Interlock Device Certification and Operational Requirements

EMERGENCY AMENDMENT

7 CSR 60-2.030 Standards and Specifications. The Missouri Highways and Transportation Commission is amending subsection (1)(A).

PURPOSE: This emergency amendment will require all certified breath alcohol ignition interlock devices to be based upon only electro-chemical fuel cell sensor technology and will ensure the integrity of the interlock program prior to an anticipated increase in persons who are required to install ignition interlock devices pursuant to Truly Agreed to and Finally Passed Senate Bills 930 and 947, which become effective on July 1, 2009.

EMERGENCY STATEMENT: This emergency amendment is necessary to make the rule changes required by Truly Agreed to and

Finally Passed Senate Bills 930 and 947, which become effective on July 1, 2009.

History: Alcohol is a significant contributing factor in Missouri's serious traffic crash experience. In Missouri, one (1) person is killed or injured in an alcohol-related traffic crash every one-point-seven (1.7) hours.

The Missouri General Assembly passed legislation in 1995 mandating that a court shall require that any person who is found guilty of or pleads guilty to a second or subsequent intoxication-related traffic offense shall not operate any motor vehicle unless the vehicle is equipped with a functioning, certified ignition interlock device for a period of not less than one (1) month from the date of reinstatement of the person's drivers license. In many cases, however, judges were reluctant to impose this requirement because the offender's driving privileges had been revoked or suspended for prolonged periods of time (one to ten (1-10) years). By requiring the use of ignition interlock devices in this circumstance, judges felt they would be sending a mixed message to impaired driving offenders who did not have driving privileges at the time of sentencing.

Recent Developments: Truly Agreed to and Finally Passed Senate Bills 930 and 947 change the ignition interlock law by now requiring proof of installation of an interlock device, with or without a court order, for any person who is found guilty of or pleads guilty to a second or subsequent intoxication-related traffic offense or who is subject to a license suspension, revocation, or denial action as a result of a second or subsequent alcohol-related enforcement contact. As of July 1, 2009, such offenders will be required to show the Missouri Department of Revenue proof of installation of an ignition interlock device when reinstating their driving privileges and shall further maintain proof for a period of not less than six (6) months from the date of reinstatement, as well as during the term of any limited or restricted driving privileges. According to the Department of Revenue, there are currently approximately one thousand five hundred (1,500) ignition interlock devices installed in the state through court-ordered use. With changes to the ignition interlock law, there are seventy thousand (70,000) people that will need to meet the ignition interlock requirements before their driving privileges can be reinstated. Of those, approximately forty-one thousand (41,000) are eligible for reinstatement on or before July 1, 2009. With the dramatic increase in the number of offenders who will now be subject to an ignition interlock requirement for license reinstatement, it is more imperative than ever that those devices be reliable.

Compelling Governmental Interest for this Emergency Amendment: Truly Agreed to and Finally Passed Senate Bills 930 and 947, effective July 1, 2009, increase the minimum amount of time a driving while intoxicated (DWI) offender must have the devices installed on their vehicle(s) from not less than one (1) to not less than six (6) months. It is imperative that the ignition interlock devices certified for use in the state be reliable.

There are currently nine (9) breath alcohol ignition interlock devices that are certified for use in Missouri. All of the ignition interlock devices are similar in that they provide a physical barrier to prevent the operation of a motor vehicle by drivers who have a breath alcohol concentration above a specified percent. A breath sample must be provided each time the driver attempts to start their vehicle and at variable times during operation of the vehicle. The ignition interlock devices differ in terms of the method used to detect and measure breath alcohol. Ignition interlock devices use one (1) of two (2) types of alcohol detection methods: semiconductor sensing or electro-chemical (fuel cell) sensing. Out of the nine (9) breath alcohol ignition interlock devices currently certified for use in Missouri, seven (7) of those devices are electro-chemical fuel cell sensing devices, while two (2) are semiconductor devices.

Eliminating the use of semiconductor sensor devices in conjunction with the effective date of Truly Agreed to and Finally Passed Senate Bills 930 and 947 is critical to the integrity of the breath alcohol ignition interlock device program because there are several disadvantages to using the semiconductor devices. However, the most impor-

tant disadvantage is that the semiconductor sensor is not specific to alcohol. The device can respond to other combustible gases and vapors, most notably cigarette smoke and vehicle exhaust. As a result, the device can, on occasion, give a positive reading even when the driver (offender) has not consumed alcohol. The impact for a driver (offender) with this type of device installed can result in a false positive reading and can prevent legitimate use of the vehicle. For those monitoring the driver (offender), this renders it impossible to determine whether low readings are the result of alcohol consumption or other volatile substances in the atmosphere. In addition, semiconductor sensors have been shown to be much more sensitive to acetone and acetaldehyde, which are known to regularly appear on human breath in sufficient concentration to potentially affect a breath alcohol test. As a result, a semiconductor sensor device can, on occasion, show a false positive reading due to the presence of acetone or acetaldehyde on the driver's (offender's) breath and can prevent legitimate use of the vehicle.

The electro-chemical fuel cell technology is used in evidential breath test instruments and a variety of roadside screening devices such as portable breath testing devices and passive sensors. Fuel cell based devices are specific to alcohol. This eliminates the potential for unjustified breath test failures due to the presence of other volatile substances such as cigarette smoke and vehicle exhaust.

In order to phase out semiconductor sensors and phase in more reliable electro-chemical (fuel cell) conductor testing, this emergency amendment will discontinue new installations of semiconductor sensors beginning July 1, 2009. However, ignition interlock devices using semiconductor sensors that were installed prior to July 1, 2009, will continue use through July 1, 2011.

Keeping impaired drivers off our roadways is a public safety concern. In the last three (3) years, eight hundred thirty-four (834) people were killed and four thousand ninety (4,090) people received disabling injuries in traffic crashes involving impaired drivers. Ignition interlock devices have been proven in this and other jurisdictions to be an effective means to prevent offenders from driving their vehicle while under the influence of alcohol, thereby greatly reducing the potential for traffic crashes caused by repeat alcohol offenders. The use of ignition interlock devices ensures the safety of the motoring public by monitoring repeat DWI offenders when their driving privileges are reinstated or while they are driving on a limited or restricted driving privilege.

Proposed Permanent Amended Rule Filed: Also, the Missouri Highways and Transportation Commission (MHTC) is filing a proposed amended administrative rule regarding this same subject with the Secretary of State's Office and the Joint Committee on Administrative Rules, which will appear in the June 15, 2009, *Missouri Register* but is not intended to become effective until December 30, 2009. In addition to the changes contained in this emergency amendment, the proposed amended administrative rule will change some of the ignition interlock device specifications, will change some of the interlock device servicing requirements, and will provide updated publication information for incorporated by reference material.

Because of the lengthy delay in the effective date of the proposed amended administrative rule, an emergency amendment is being filed which is limited to the circumstances creating the emergency and complies with the protections extended in the *Missouri and United States Constitutions*. It is limited to amending the rule to require all certified breath alcohol ignition interlock devices to be based upon only electro-chemical fuel cell sensor technology. This amendment will ensure the integrity of the program by strengthening the reliability of devices used in the state and in implementing changes in accordance with Truly Agreed to and Finally Passed Senate Bills 930 and 947 which change Missouri's ignition interlock law effective on July 1, 2009. No other changes are proposed.

Fairness to All Interested Parties and Support from Industry: MHTC believes this emergency amendment is fair to all interested persons and parties under the circumstances. On September 19, 2008

Missouri Department of Transportation staff met with ignition interlock manufacturers and distributors, Missouri Department of Revenue, and other interested parties. The group discussed the current rule and the proposed amendments. In addition, drafts of the proposed amendments were sent to the ignition interlock manufacturers and distributors, Missouri Department of Revenue, and other interested parties on October 2, 2008, and February 6, 2009, and these groups were encouraged to comment on the proposed amendments. All comments received were considered when preparing the proposed amendments.

Effective Date and Duration: MHTC filed this emergency amendment on May 7, 2009, which becomes effective on July 1, 2009, and will expire on December 30, 2009.

(1) Standards and Specifications.

(A) [All] **Beginning July 1, 2009, all devices newly installed into a vehicle must be based on electro-chemical fuel cell sensor technology and shall meet or exceed the standards established by the United States Department of Transportation, National Highway Traffic Safety Administration, identified as "Model Specifications for Breath Alcohol Ignition Interlock Devices" 57 FR 67, pp. 11772-11787, April 7, 1992 (no subsequent dates or editions). Beginning July 1, 2011, all devices currently installed in an operator's vehicle that are not electro-chemical fuel cell technology shall be removed by the authorized service provider of the non-electro-chemical fuel cell device and such authorized service provider shall install new devices based on electro-chemical fuel cell technology, which must be selected from the state of Missouri's list of such approved devices. The authorized service provider shall notify by May 1, 2011, operators with non-electro-chemical fuel cell devices in their vehicles that such devices are to be removed from the operators' vehicles at the cost of the authorized service provider and that new devices shall be installed at the authorized service provider's expense.**

AUTHORITY: sections 577.600-577.614, *RSMo 2000 and RSMo Supp. 2008* and section [650.005] 226.130, *RSMo [Supp. 1995] 2000*. This rule originally filed as 11 CSR 60-2.030. Emergency rule filed Feb. 5, 1996, effective Feb. 15, 1996, expired Aug. 12, 1996. Original rule filed Feb. 16, 1996, effective Aug. 30, 1996. Moved to 7 CSR 60-2.030, effective Aug. 28, 2003. Emergency amendment filed May 7, 2009, effective July 1, 2009, expires Dec. 30, 2009. A proposed amendment covering this same material is published in this issue of the *Missouri Register*.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 60—Highway Safety Division
Chapter 2—Breath Alcohol Ignition Interlock Device
Certification and Operational Requirements**

EMERGENCY AMENDMENT

7 CSR 60-2.040 Responsibilities of Authorized Service Providers. The Missouri Highways and Transportation Commission is amending paragraphs (1)(A)5. and 15. and adding paragraph (1)(A)16.

PURPOSE: This emergency amendment will make changes required by Truly Agreed to and Finally Passed Senate Bills 930 and 947, effective July 1, 2009. Reporting requirements will be changed to allow for electronic notification to the Department of Revenue of information necessary to ensure compliance with Truly Agreed to and Finally Passed Senate Bills 930 and 947.

EMERGENCY STATEMENT: This emergency amendment is necessary to have the electronic reporting requirements in place and make the necessary rule changes required by Truly Agreed to and Finally

Passed Senate Bills 930 and 947, which become effective July 1, 2009.

History: Alcohol is a significant contributing factor in Missouri's serious traffic crash experience. In Missouri, one (1) person is killed or injured in an alcohol-related traffic crash every one-point-seven (1.7) hours.

The Missouri General Assembly passed legislation in 1995 mandating that a court shall require that any person who is found guilty of or pleads guilty to a second or subsequent intoxication-related traffic offense shall not operate any motor vehicle unless the vehicle is equipped with a functioning, certified ignition interlock device for a period of not less than one (1) month from the date of reinstatement of the person's drivers license. In many cases, however, judges were reluctant to impose this requirement because the offender's driving privileges had been revoked or suspended for prolonged periods of time (one to ten (1-10) years). By requiring the use of ignition interlock devices in this circumstance, judges felt they would be sending a mixed message to impaired driving offenders who did not have driving privileges at the time of sentencing.

Recent Developments: Truly Agreed to and Finally Passed Senate Bills 930 and 947 change the ignition interlock law by now requiring proof of installation of an interlock device, with or without a court order, for any person who is found guilty of or pleads guilty to a second or subsequent intoxication-related traffic offense or who is subject to a license suspension, revocation, or denial action as a result of a second or subsequent alcohol-related enforcement contact. As of July 1, 2009, such offenders will be required to show the Missouri Department of Revenue proof of installation of an ignition interlock device when reinstating their driving privileges and shall further maintain proof for a period of not less than six (6) months from the date of reinstatement, as well as during the term of any limited or restricted driving privileges. According to the Department of Revenue, there are currently approximately one thousand five hundred (1,500) ignition interlock devices installed in the state through court-ordered use. With changes to the ignition interlock law, there are seventy thousand (70,000) people that will need to meet the ignition interlock requirements before their driving privileges can be reinstated. Of those, approximately forty-one thousand (41,000) are eligible for reinstatement on or before July 1, 2009. With the dramatic increase in the number of offenders who will now be subject to an ignition interlock requirement for license reinstatement, it is imperative that the rules contemplate reporting requirements so the Department of Revenue can track the use of interlock devices according to Truly Agreed to and Finally Passed Senate Bills 930 and 947's requirements.

The emergency amendment is limited to establishing reporting requirements for the ignition interlock companies to the Department of Revenue in implementing changes in accordance with Truly Agreed to and Finally Passed Senate Bills 930 and 947, which change Missouri's ignition interlock law effective on July 1, 2009.

Compelling Governmental Interest for this Emergency Amendment: Due to the passage of Truly Agreed to and Finally Passed Senate Bills 930 and 947, the use of ignition interlock devices by driving while intoxicated (DWI) offenders will need to be reported to the Missouri Department of Revenue. Ignition interlock providers will need to report when offenders install a device, fail to maintain a device, and/or remove an ignition interlock device from their vehicle. The most efficient, cost effective, and accurate way for reporting this information is electronically from the ignition interlock providers to the Department of Revenue. If reporting is not handled in an electronic fashion, additional manpower will be needed to manage this program. Electronic reporting will allow for a system that can be more automated and require less manpower to process.

Keeping impaired drivers off our roadways is a public safety concern. In the last three (3) years, eight hundred thirty-four (834) people were killed and four thousand ninety (4,090) people received disabling injuries in traffic crashes involving impaired drivers. Ignition interlock devices have been proven in this and other jurisdictions to

be an effective means to prevent offenders from driving their vehicle while under the influence of alcohol, thereby greatly reducing the potential for traffic crashes caused by repeat alcohol offenders. The use of ignition interlock devices ensures the safety of the motoring public by monitoring repeat DWI offenders when their driving privileges are reinstated or while they are driving on a limited or restricted driving privilege.

Proposed Permanent Amended Rule Filed: *Also, the Missouri Highways and Transportation Commission (MHTC) is filing a proposed amended administrative rule regarding this same subject with the Secretary of State's Office and the Joint Committee on Administrative Rules, which will appear in the June 15, 2009, Missouri Register but is not intended to become effective until December 30, 2009. In addition to the changes contained in this emergency amendment, the proposed amended administrative rule will correct references to the Department of Public Safety, will change the information required in quarterly reports to the Missouri Department of Transportation, and will require authorized service providers to ensure their installers carry liability insurance.*

Because of the lengthy delay in the effective date of the proposed amended administrative rule, an emergency amendment is being filed which is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions.

Fairness to All Interested Parties and Support from Industry: *MHTC believes this emergency amendment is fair to all interested persons and parties under the circumstances. On September 19, 2008, Missouri Department of Transportation staff met with ignition interlock manufacturers and distributors, the Missouri Department of Revenue, and other interested parties. The group discussed the current rule and the proposed amendments. In addition, drafts of the proposed amendments were sent to the ignition interlock manufacturers and distributors, Missouri Department of Revenue, and other interested parties on October 2, 2008, and February 6, 2009, and these groups were encouraged to comment on the proposed amendments. All comments received were considered when preparing the proposed amendments. Six (6) conference calls also were conducted between November 3, 2008, and January 26, 2009, to discuss electronic reporting processes between the ignition interlock companies, the Department of Revenue, and the Missouri Department of Transportation.*

Effective Date and Duration: *MHTC filed this emergency amendment on May 7, 2009, which becomes effective on July 1, 2009, and will expire on December 30, 2009.*

(1) Responsibilities of Authorized Service Providers.

(A) The responsibilities of a breath alcohol ignition interlock device authorized service provider to the state of Missouri shall include:

1. The authorized service provider shall carry product liability insurance with minimum liability limits of one (1) million dollars per occurrence and three (3) million dollars aggregate total. The liability insurance shall include coverage for defects in product design and materials as well as manufacturing, calibration, installation, and removal of devices. The proof of insurance shall include a statement from the insurance company that thirty (30) days' notice will be given to the director, Division of Highway Safety, before cancellation of the insurance. Proof of insurance must be submitted to the Missouri Division of Highway Safety within thirty (30) days after a Letter of Certification has been issued;

2. The authorized service provider shall indemnify and hold harmless the state of Missouri and its officers, employees and agents from all claims, demands, actions, and costs whatsoever which may arise, directly or indirectly, out of any act or omission by the authorized service provider relating to the installation, service, repair, use or removal of a device;

3. The authorized service provider shall provide expert or other required testimony in any civil or criminal proceedings or adminis-

trative hearings as to the method of manufacture of the device, how said device functions, and the testing protocol by which the device was evaluated for approval. Failure to provide testimony may result in suspension or revocation of approval for the device;

4. The authorized service provider shall notify the Missouri Division of Highway Safety in writing of any material modification or alteration in the components, design or installation and operating instructions of any device approved for use in the state of Missouri; and shall provide the Missouri Division of Highway Safety satisfactory proof that any modifications or alterations do not adversely affect the ability of the device to satisfy the United States Department of Transportation, National Highway Traffic Safety Administration, identified as "Model Specifications for Breath Alcohol Ignition Interlock Devices" 57 FR 67, pp. 11772-11787, April 7, 1992, as stated herein;

5. The authorized service provider must provide informational materials to the [State Board] Division of Probation and Parole, [and] the circuit courts (including circuit, associate, and municipal divisions), and the Department of Revenue for distribution to operators at no cost;

6. In cases of operator noncompliance, the authorized service provider or his/her installer must notify the appropriate court-ordered supervising authority before the end of the next working day. Noncompliance shall include tampering, violations resets, high breath alcohol concentration (BAC), missing a scheduled service date, or other noncompliance as determined by the referring court;

7. The authorized service provider shall notify the appropriate court-ordered supervising authority by the end of the next working day of removal of a device;

8. The authorized service provider shall conduct physical tamper inspections any time the device is serviced or given routine inspection, maintenance, or repair. Tamper inspections shall include the following:

A. Inspection of all external wiring, insulation, connections, tamper seals, and sheathing for the device and where the device connects to the vehicle; and

B. Checking the device for proper operation to insure tamper detection capabilities;

9. The authorized service provider must notify the chief law enforcement official of the county, or a city not within a county, where the installer is located and the court-ordered supervising authority of any evidence of tampering with or circumvention of the device. The evidence must be preserved by the authorized service provider or his/her installer until otherwise notified by local law enforcement officials;

10. The authorized service provider must provide summary reports every thirty (30) days to the court-ordered supervising authority. The summary reports must contain a summary of violations, the number of starts and all noncompliance on devices placed in service in the state of Missouri under sections 577.600-577.614, RSMo;

11. The authorized service provider must provide to the court-ordered supervising authority additional reports, to include, but not be limited to, records of installation, calibrations, maintenance checks and usage records on devices placed in service in the state of Missouri under sections 577.600-577.614, RSMo. These records shall be agreed upon and transmitted using electronic transfer protocols or in hard copy;

12. The authorized service provider must provide a quarterly status report to the Missouri Division of Highway Safety. The first quarter shall be January 1, 1996 through March 31, 1996. The quarterly reports should reach the Missouri Division of Highway Safety on or before the fifteenth of the month immediately following the end of the quarter. The reports shall contain the following information:

A. The name, birth date, case number, and driver's license number of every operator who has a device installed or removed from a vehicle;

B. The total number of devices installed, the total number of devices that malfunctioned or were defective and required a service

call, repair or replacement and a listing of the devices' respective serial numbers and problems found;

C. The total number of service calls that resulted in a charge to an operator, and their individual names, birth dates, case numbers and driver's license number, the amount of each charge, and the stated purpose of the charge; and

D. Any other nonstandard charges made to any operator, listing the operator contact information, the reason for the charge and the amount;

13. The authorized service provider shall grant the state of Missouri the right to inspect or request copies of any and all operator files and records on a random basis;

14. The authorized service provider shall supply for each ignition interlock device installed as a result of a Missouri probation order, a warning label which shall not be less than one-half inch (1/2") in height by three inches (3") in length and shall contain the following language: "WARNING! ANY PERSON TAMPERING, CIRCUMVENTING OR OTHERWISE MISUSING THIS DEVICE IS GUILTY OF A CLASS A MISDEMEANOR."; and

15. The authorized service provider must notify the Division of Highway Safety **electronically or** in writing of changes in the status of any installer and additions or deletions **or other changes to [the list of approved devices.] its complete listing of all installers that includes the name, location, phone number, contact name, and hours of operation. Such notification shall occur at least once per month and shall occur more frequently if additional changes are made; and**

16. The authorized service provider shall electronically notify the Department of Revenue in a format as determined by the director of revenue within one (1) working day of the following:

A. The date the ignition interlock device was installed;

B. The driver's failure to have the ignition interlock device calibrated every thirty (30) days; and

C. The date the ignition interlock device was removed.

AUTHORITY: sections 577.600-577.614, RSMo 2000 and RSMo Supp. 2008 and section [650.005] 226.130, RSMo [Supp. 1995] 2000. This rule originally filed as II CSR 60-2.040. Emergency rule filed Feb. 5, 1996, effective Feb. 15, 1996, expired Aug. 12, 1996. Original rule filed Feb. 16, 1996, effective Aug. 30, 1996. Moved to 7 CSR 60-2.040, effective Aug. 28, 2003. Emergency amendment filed May 7, 2009, effective July 1, 2009, expires Dec. 30, 2009. A proposed amendment covering this same material is published in this issue of the Missouri Register.

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 20—Clean Water Commission
Chapter 4—Grants**

EMERGENCY AMENDMENT

10 CSR 20-4.040 State Revolving Fund General Assistance Regulation. The Clean Water Commission is amending sections (1) through (4), (18), and (19).

PURPOSE: This amendment incorporates the requirements for the implementation of Title VII of the American Recovery and Reinvestment Act of 2009, which authorizes the administrator of the Environmental Protection Agency to make capitalization grants to states for financing State Revolving Fund Programs.

EMERGENCY STATEMENT: The Missouri Department of Natural Resources and the Missouri Clean Water Commission are authorized to administer state and federal grants and loans to municipalities and political subdivisions for the planning and construction of sewage treatment works, and to promulgate and implement regulations to govern the receipt and disbursement of funds for water pollution con-

trol projects pursuant to Chapter 644, RSMo. The Missouri Department of Natural Resources and the Missouri Clean Water Commission have a compelling governmental interest in promulgating this emergency amendment to ensure that federal funds can be made available for expenditure in Missouri on a timely basis. Federal funds provided through the American Recovery and Reinvestment Act (ARRA) of 2009, which was signed by the president on February 17, 2009, must be obligated to wastewater infrastructure projects within one (1) year. Otherwise, unobligated funds will be reallocated to other states. The American Recovery and Reinvestment Act requires that not less than fifty percent (50%) of the capitalization grants that each state receives must be used to provide additional subsidization in the form of principal forgiveness, negative interest loans, grants, or any combination of these. Currently, Missouri's State Revolving Fund (SRF) program regulations do not allow for such subsidies. This emergency amendment must be promulgated to allow timely implementation of this legislation. A permanent rule change, which may not become effective until February of 2010, is also being pursued in order to retain the ability to provide some of these subsidies through the SRF in the future. Further, some communities will be unable to proceed with their water pollution control projects without ARRA funding. As a result, the Missouri Department of Natural Resources and the Missouri Clean Water Commission find this emergency amendment necessary to preserve a compelling governmental interest. The promulgation of this emergency amendment is necessary to enable the state to continue to comply with the provisions of Title VI of the Federal Water Pollution Control Act and Title VII of the American Recovery and Reinvestment Act of 2009. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The Missouri Department of Natural Resources and the Missouri Clean Water Commission have limited the scope of the emergency amendment to the circumstances creating the emergency to provide for the expeditious use of the federal funds by providing low interest loans and grants for the construction of water pollution control projects and believe that it is fair to all interested persons and parties under the circumstances. This emergency amendment was filed May 12, 2009, becomes effective May 22, 2009, and expires February 25, 2010.

(1) Applicability. This rule defines the minimum requirements which apply to all recipients of assistance under the State Revolving Fund (SRF) Program. The recipient must satisfy more stringent requirements, if required to do so by **applicable federal laws, regulations, or guidance** and state or local statutes, policies, rules, ordinances, or orders. **Recipients of assistance under the American Recovery and Reinvestment Act of 2009 are subject to the requirements of this regulation, unless otherwise specified.**

(2) Definitions. The definitions of terms for 10 CSR 20-4.040-10 CSR 20-4.050 are contained in 10 CSR 20-2.010 and subsections (2)(A)-(R)/(T) of this rule.

(B) ARRA—American Recovery and Reinvestment Act of 2009 (P.L. 111-5).

/(B)/(C) BPWTT—Best practicable waste treatment technology.

/(C)/(D) Collection sewers—Sewers having the primary purpose of collecting wastewater from individual properties.

/(D)/(E) Combined sewers—Sewers constructed to carry both storm water and sanitary sewage.

/(E)/(F) Debt service—The costs associated with amortizing loans. These costs include interest charges, penalty charges, and repayment of principal.

/(F)/(G) Director of staff—The director of staff of the Missouri Clean Water Commission.

/(G)/(H) EIERA—State Environmental Improvement and Energy Resources Authority.

/(H)/(I) Excessive I/I—I/I may be considered excessive if the average dry weather flow for the system during high groundwater is

greater than one hundred twenty (120) gallons per capita per day (gpcd) or the wet weather flows exceed two hundred seventy-five (275) gpcd or wet weather flows result in chronic operational problems which may include surcharging, backups, bypasses, and overflows. Only the portion of the I/I which is cost effective to eliminate instead of transport and treat is excessive.

[(I)](J) Infiltration/inflow (I/I)—Groundwater or storm water which enters a sanitary sewer system.

[(J)](K) Initiation of operation—The date when the facilities are first capable of being used for their intended purpose.

[(K)](L) I/A—Innovative/alternative technologies (see Innovative and Alternative).

[(L)](M) Innovative technology—Developed wastewater treatment processes and techniques which have not been fully proven under the circumstances of their contemplated use and which represent a significant advancement over the state of the art in terms of significant reduction in life cycle cost or significant environmental benefits through the reclaiming and reuse of water, otherwise eliminating the discharge of pollutants, utilizing recycling techniques, such as land treatment, more efficient use of energy and resources, improved or new methods of waste treatment management for combined municipal and industrial systems, or the confined disposal of pollutants so that they will not migrate to cause water or other environmental pollution.

[(M)](N) Interceptor sewers—Sewers having the primary purpose of transporting wastewater from collection sewers to a wastewater treatment facility.

[(N)](O) Recipient—The recipient of assistance from programs supported by the Water and Wastewater Loan Fund (WWLF) or the Water and Wastewater Revolving Loan Fund (WWRLF).

[(O)](P) Staff—Staff of the Missouri Water Pollution Control Program.

[(P)](Q) State Revolving Fund (SRF)—The financial assistance program authorized by Title VI of the Federal Clean Water Act. In Missouri the State Revolving Fund consists of the WWLF, the WWRLF, and those accounts secured by funds from the WWLF and the WWRLF. The State Revolving Fund is subject to the requirements, restrictions, and eligibilities placed on the State Revolving Fund by the Federal Water Pollution Control Act as amended in 1987.

[(Q)](R) Subagreements—Agreements and contracts entered into by recipients.

[(R)](S) WWLF—Water and Wastewater Loan Fund. State fund established by the state treasurer pursuant to section 644.122, RSMo.

[(S)](T) WWRLF—Water and Wastewater Revolving Loan Fund. State fund under the WWLF into which repayments are held by the state treasurer and from which new loans may be made.

(3) Project Selection Process. This section delineates the process by which the commission selects projects for receipt of SRF assistance.

(A) The commission shall hold an annual competition for receipt of SRF assistance. This competition will be structured as follows:

1. Applicants—

A. SRF applicants must submit an application as described in section (8) of this rule that must be postmarked or received by the department on or before November 15 prior to the fiscal year for which SRF assistance is being sought. Electronically transmitted applications shall not be accepted. Unsuccessful applicants requesting funds during a given fiscal year shall be considered for funding the next fiscal year and need not reapply. The department may extend this deadline if sufficient applications are not received to use all of the funds expected to be available. Applications received after the deadline may be placed on a contingency list following October 1 of the fiscal year for which SRF assistance is sought. The projects may subsequently be considered for funding by the Clean Water Commission (CWC) if the project is ready to proceed during the fiscal year the project appears on the *[Indended]* **Intended** Use Plan (IUP); **or**

B. ARRA applicants must submit an application as described in section (8) of this rule. Applications will be accepted upon announcement by Department of Natural Resources (DNR) and must meet program guidance and federal law or regulations as appropriate and applicable;

2. All qualified applications will be rated and placed on the planning list in accordance with 10 CSR 20-4.010(1)(A) **and in addition, applicants seeking ARRA funding shall also be rated in accordance with the American Recovery and Reinvestment Act of 2009 and corresponding federal guidance;**

3. The commission will select the highest rated projects for SRF assistance from SRF funds anticipated to be available during the upcoming fiscal year;

4. The commission may hold a separate competition for projects eligible under the provisions of subsection (23)(C) of this rule or for projects requesting loans with a term of less than three (3) years; *[and]*

5. The commission may hold a separate competition for unsewered communities to fund eligible project costs using the point system established under 10 CSR 20-4.010(1)(C).; **and**

6. The commission may hold a separate competition for projects seeking ARRA funding.

(4) Target Interest Rate (TIR). The TIR for assistance provided under 10 CSR 20-4.041 shall not be less than thirty percent (30%) of the Twenty-Five Revenue Bond Index published by the Bond Buyers Index of Twenty Bonds rounded to the nearest one-tenth (0.1) of one percent (1%). The department will use the Twenty-Five Revenue Bond Index most recently published prior to the date on which the project assistance is provided. **The TIR for ARRA funded projects will initially be calculated as directed above, however, additional subsidization may be applied in the form of principal forgiveness, negative interest loans, grants, or any combination thereof.** The TIR for all assistance provided under 10 CSR 20-4.042 shall not be less than thirty percent (30%) of the net interest cost of the EIERA bonds or notes issued for this purpose. The TIR shall be established by the Missouri Clean Water Commission in consultation with the department and the EIERA based upon current economic factors, projected fund utilization, deposits in the Wastewater Revolving Loan Fund, and actual or anticipated federal capitalization grants. The Clean Water Commission (CWC) shall not undertake project-by-project revisions.

(18) Specifications. The construction specifications must contain the features listed in the following:

(I) Contractors for equivalency **and ARRA funded** projects must comply with the Davis-Bacon Act (40 U.S.C. 276a-276a-7). The current Davis-Bacon wage rate from the United States Department of Labor must be incorporated in the bid documents;

(L) Right of entry to the project site must be provided for representatives of the Missouri Department of Natural Resources, Clean Water Commission, and the EIERA so they may have access to the work wherever it is in preparation or progress. Proper facilities must be provided for access and inspections; *[and]*

(M) The specifications must include the following statement: "The owner shall make payment to the contractor in accordance with section 34.057, RSMo./."; **and**

(N) Buy American Provision. For ARRA funded projects, the specifications must include the following statement or a similar statement in accordance with federal guidance: "All iron, steel, and manufactured goods used in this project must be produced in the United States unless a) a waiver is provided to the owner by the Environmental Protection Agency or b) compliance would be inconsistent with United States obligations under international agreements."

(19) Construction Equipment and Supplies Procurement. This section describes the minimum procurement requirements which the

recipient must use under the SRF program unless the applicant elects to use the design/build option described in section (20).

(B) Bidding Requirements. This subsection applies to procurement of construction equipment, supplies, and construction services in excess of twenty-five thousand dollars (\$25,000) awarded by the recipient for any project. No contract shall be awarded until the department has approved the formal advertising and bidding.

1. Formal advertising.

A. Adequate public notice. The recipient will cause adequate notice to be given of the solicitation by publication in newspapers of general circulation beyond the recipient's locality (preferably statewide), construction trade journals, or plan rooms, inviting bids on the project work and stating the method by which bidding documents may be obtained or examined.

B. Adequate time for preparing bids. A minimum of [thirty (30)] **twenty-one (21)** days shall be allowed between the date when public notice, publication, insertion, or document available in a plan room is first published or provided and the date by which bids must be submitted. Bidding documents shall be available to prospective bidders from the date when the notice is first published or provided.

2. Bid document requirements and procedure.

A. The recipient shall prepare a reasonable number of bidding documents (invitations for bids) and shall furnish them upon request on a first-come, first-served basis. The recipient shall maintain a complete set of bidding documents and shall make them available for inspection and copying by any party. The bidding documents shall include, at a minimum:

(I) A completed statement of the work to be performed or equipment to be supplied and the required completion schedule;

(II) The terms and conditions of the contract to be awarded;

(III) A clear explanation of the method of bidding and the method of evaluation of bid prices and the basis and method for award of the contract or rejection of all bids;

(IV) Responsibility requirements and criteria which will be employed in evaluating bidders;

(V) The recipient shall provide for bidding by sealed bid and for the safeguarding of bids received until public opening;

(VI) If a recipient desires to amend any part of the bidding documents during the period when bids are being prepared, addenda shall be communicated in writing to all firms which have obtained bidding documents in time to be considered before the bid opening time. All addenda must be approved by the department prior to award of the contract;

(VII) A firm which has submitted a bid shall be allowed to modify or withdraw its bid before the time of bid opening;

(VIII) The recipient shall provide for a public opening of bids at the place, date and time announced in the bidding documents. Bids received after the announced opening time shall be returned unopened;

(IX) Award shall be to the lowest, responsive, responsible bidder.

(a) After bids are opened, the recipient shall evaluate them in accordance with the methods and criteria set forth in the bidding documents.

(b) The recipient shall award contracts only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed contract. A responsible contractor is one that has financial resources, technical qualifications, experience, organization and facilities adequate to carry out the contract or a demonstrated ability to obtain these. The recipient may reserve the right to reject all bids. Unless all bids are rejected for good cause, award shall be made to the low, responsive, responsible bidder, the recipient shall have established protest provisions in the specifications. These provisions shall not include the department as a participant in the protest procedures.

(c) If the recipient intends to make the award to a firm which did not submit the lowest bid, the recipient shall prepare a

written statement before any award, explaining why each lower bidder was deemed nonresponsive or nonresponsive and shall retain the statements in its files.

(d) The recipient shall not reject a bid as nonresponsive for failure to list or otherwise indicate the selection of subcontractor(s) or equipment unless the recipient has clearly stated in the solicitation documents that the failure to list shall render a bid nonresponsive and shall cause rejection of a bid;

(X) The recipient is encouraged though not required to use the model specification clauses developed by the department; and

(XI) Departmental concurrence with contract award must be obtained prior to actual contract award. Recipients shall notify the department in writing of each proposed construction contract which has an aggregate value over twenty-five thousand dollars (\$25,000). The recipient shall notify the department within ten (10) calendar days after the bid opening for each construction subagreement. The notice shall include:

(a) Proof of advertising;

(b) Tabulation of bids;

(c) The bid proposal from the bidder that the recipient wishes to accept, including justification if the recommended successful bidder is not also the lowest bidder;

(d) Recommendation of award;

(e) Any addenda not submitted previously and bidder acknowledgment of all addenda;

(f) Copy of the bid bond;

(g) One (1) set of as-bid specifications;

(h) Suspension/Debarment Certification;

(i) Revised financial capability worksheet and certification if bids exceed prebid estimates by more than fifteen percent (15%);

(j) MBE/WBE Worksheet;

(k) Recipient's statement that proposed contractor(s) positive efforts, MBE/WBE utilization, or both, have been reviewed and meet regulatory requirements;

(l) Site certification, if not previously submitted; and

(m) For equivalency projects, Certification of Nonsegregated Facilities.

AUTHORITY: section 644.026, RSMo [Supp. 1995] 2000. Original rule filed Sept. 13, 1988, effective Feb. 14, 1989. For intervening history, please consult the Code of State Regulations. Emergency amendment filed May 12, 2009, effective May 22, 2009, expires Feb. 25, 2010.

The Secretary of State shall publish all executive orders beginning January 1, 2003, pursuant to section 536.035.2, RSMo Supp. 2008.

EXECUTIVE ORDER 09-19

WHEREAS, I have been advised by the State Emergency Management Agency that on-going and forecast severe storm systems have caused, or have the potential to cause, damages associated with flooding, flash flooding, high winds, hail, and tornadoes impacting communities throughout the southern part of the State of Missouri; and

WHEREAS, there have been at least three reported deaths associated with this storm system; and

WHEREAS, the severe weather that began on May 8, 2009, and is continuing, has created a condition of distress and hazard to the safety, welfare, and property of the citizens of the State of Missouri beyond the capabilities of some local jurisdictions, and other established agencies; and

WHEREAS, interruptions of public services are occurring, or anticipated to occur, as a result of the severe weather event that started on May 8, 2009, and is continuing; and

WHEREAS, the state will continue to be proactive where the health and safety of the citizens of Missouri are concerned; and

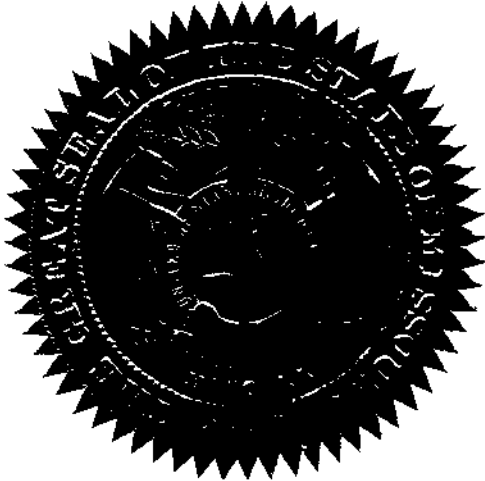
WHEREAS, the resources of the State of Missouri may be needed to assist affected jurisdictions and to help relieve the condition of distress and hazard to the safety and welfare of our fellow Missourians; and

WHEREAS, an invocation of the provisions of Sections 44.100 and 44.110, RSMo, will be required to ensure the protection of the safety and welfare of the citizens of Missouri.


NOW THEREFORE, I, JEREMIAH W. (JAY) NIXON, GOVERNOR OF THE STATE OF MISSOURI, by virtue of the authority vested in me by the Constitution and laws of the State of Missouri, including Sections 44.100 and 44.110, RSMo, do hereby declare that a State of Emergency exists in the State of Missouri. I do hereby direct that the Missouri State Emergency Operations Plan be activated.

I further authorize the use of state agencies to provide assistance, as needed.

This order shall terminate on June 8, 2009, unless extended in whole or in part.

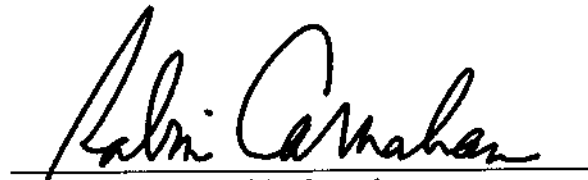


IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 8th day of May, 2009.



Jeremiah W. (Jay) Nixon
Governor

ATTEST:



Robin Carnahan
Secretary of State

EXECUTIVE ORDER
09-20

WHEREAS, the State Emergency Management Agency has advised me that severe weather has caused damages associated with flooding, flash flooding, high winds, hail and tornadoes impacting communities throughout the southern part of Missouri; and

WHEREAS, the severe weather that began on May 8, 2009, created a condition of distress and hazards to the safety and welfare of the citizens of the State of Missouri beyond the capabilities of some local jurisdictions and other established agencies; and

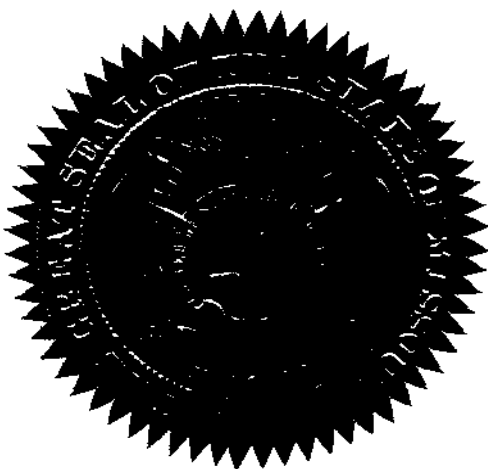
WHEREAS, the Missouri Department of Natural Resources is charged by law with protecting and enhancing the quality of Missouri's environment and with enforcing a variety of environmental rules and regulations; and

WHEREAS, in order to respond to the emergency and expedite the cleanup and recovery process, it is necessary to adjust certain environmental rules and regulations on a temporary and short-term basis.

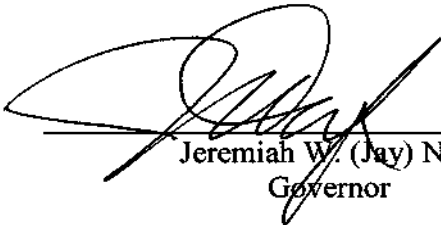
NOW THEREFORE, I, JEREMIAH W. (JAY) NIXON, GOVERNOR OF THE STATE OF MISSOURI, by virtue of the authority vested in me by Chapter 44, RSMo, do hereby issue the following order:

The Director of the Missouri Department of Natural Resources is vested with full discretionary authority to temporarily waive or suspend the operation of any statutory or administrative rule or regulation currently in place under his purview in order to best serve the interests of the public health and safety during the period of the emergency and the subsequent recovery period.

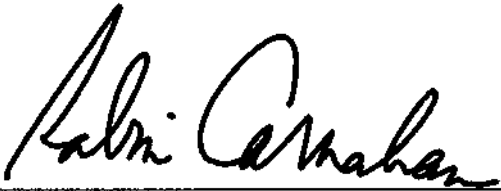
This order shall terminate on June 8, 2009, unless extended in whole or in part.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 12th day of May, 2009.


Jeremiah W. (Jay) Nixon
Governor

ATTEST:


Robin Carnahan
Secretary of State

EXECUTIVE ORDER
09-21

WHEREAS, I have been advised by the State Emergency Management Agency that on-going and forecast severe storm systems have caused, or have the potential to cause, damages associated with flooding, flash flooding, high winds, hail, and tornadoes impacting communities throughout the State of Missouri; and

WHEREAS, the on-going system of severe weather addressed in Executive Order 09-19 continues to adversely impact the entire state and;

WHEREAS, there have been four deaths associated with this storm system in addition to the three deaths referenced in Executive Order 09-19; and

WHEREAS, the severe weather that began on May 8, 2009, and is continuing, has created a condition of distress and hazard to the safety, welfare, and property of the citizens of the State of Missouri beyond the capabilities of some local jurisdictions, and other established agencies; and

WHEREAS, interruptions of public services are occurring, or anticipated to occur, as a result of the severe weather event that started on May 8, 2009, and is continuing; and

WHEREAS, the state will continue to be proactive where the health and safety of the citizens of Missouri are concerned; and

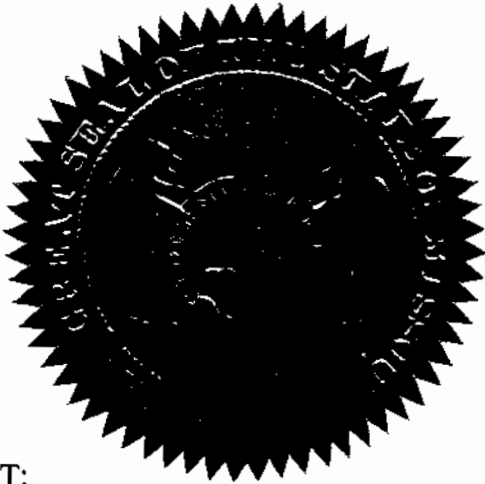
WHEREAS, the resources of the State of Missouri may be needed to assist affected jurisdictions and to help relieve the condition of distress and hazard to the safety and welfare of our fellow Missourians; and

WHEREAS, an invocation of the provisions of Sections 44.100 and 44.110, RSMo, will be required to ensure the protection of the safety and welfare of the citizens of Missouri.

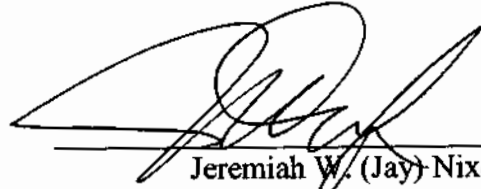
NOW THEREFORE, I, JEREMIAH W. (JAY) NIXON, GOVERNOR OF THE STATE OF MISSOURI, by virtue of the authority vested in me by the Constitution and laws of the State of Missouri, including Sections 44.100 and 44.110, RSMo, do hereby declare that a State of Emergency exists in the State of Missouri. I do hereby direct that the Missouri State Emergency Operations Plan remain activated.

I further authorize the use of state agencies to provide assistance, as needed.

This order shall terminate on June 14, 2009, unless extended in whole or in part.




IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 14th day of May, 2009.



Jeremiah W. (Jay) Nixon
Governor

ATTEST:



Robin Carnahan
Secretary of State

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.

Proposed Amendment Text Reminder:

Boldface text indicates new matter.

[Bracketed text indicates matter being deleted.]

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

PROPOSED AMENDMENT

2 CSR 30-2.040 Animal Health Requirements for Exhibition.
The director is amending section (2) and removing subsection (2)(K).

PURPOSE: This proposed amendment reflects changes made in Missouri's regulations on intrastate and interstate requirements.

(2) The following listed minimal health and testing requirements on livestock are for exhibition only and do not qualify livestock to be sold or moved to a new owner or destination.

(A) Exhibition Requirements for Cattle, *[and]* Bison, and Exotic Bovids.

1. Intrastate (Missouri origin cattle and bison moving for exhibition only).

A. No Certificate of Veterinary Inspection is required.

B. Brucellosis—no test is required.

C. Tuberculosis—no test is required.

2. Interstate (cattle, *[and]* bison, and exotic bovids entering Missouri for exhibition only).

A. *[A Certificate of Veterinary Inspection is required with official individual identification for each animal listed.] All animals must be individually identified by an official eartag as defined in Title 9 Code of Federal Regulations, Part 71, published annually in January, herein incorporated by reference and made a part of this rule, as published by the United States Superintendent of Documents, 732 N Capital Street NW, Washington, DC 20402-0001, phone: toll free (866) 512-1800, DC area (202) 512-1800, website <http://bookstore.gpo.gov>, registration tattoo, or any other means approved by the state veterinarian and listed on the Certificate of Veterinary Inspection. This rule does not incorporate any subsequent amendments or additions.*

B. Brucellosis.

(I) Cattle from brucellosis-free states.

(a) All **sexually intact** cattle may enter without a brucellosis test.

(b) Steers. No **brucellosis** test required but *[the steer(s)]* must be *[listed and]* **individually identified and listed** on a Certificate of Veterinary Inspection.

(II) Sexually intact cattle from brucellosis Class A states. All test-eligible animals must be tested and negative within thirty (30) days prior to entry except—

(a) Cattle from a certified brucellosis-free herd. The certified herd number and the date of the last test must be listed on the Certificate of Veterinary Inspection;

(b) Steers. No **brucellosis** test/s required but *[the steer(s)]* must be *[listed and]* **individually identified and listed** on a Certificate of Veterinary Inspection; and

(c) Rodeo bulls from a Class A state must have a **negative brucellosis** test within twelve (12) months **prior to exhibition**.

C. Tuberculosis.

(I) Dairy—all *[sexually intact]* **classes of dairy cattle [six (6)] two (2)** months of age and older entering Missouri for exhibition *[must be negative to an official tuberculosis test within sixty (60) days prior to exhibition, except dairy cattle that move from an accredited tuberculosis-free herd. The herd number and date of last test must be listed on the Certificate of Veterinary Inspection.]* must meet the following requirements:

(a) **Must obtain an entry permit;**

(b) **Must have a negative tuberculosis test within sixty (60) days of shipment, test date must be listed on the Certificate of Veterinary Inspection;** or

(c) **Move from an accredited tuberculosis-free herd (herd test date must be listed on the Certificate of Veterinary Inspection);** or

(d) **Move directly from a herd of origin that has had one (1) complete negative herd test within one (1) year (date of test must be listed on the Certificate of Veterinary Inspection).**

(II) Beef—all **classes of beef [breeding] cattle (including exotic bovids and bison) [six (6)] two (2)** months of age and older entering Missouri for exhibition must meet *[one (1) of]* the following requirements:

(a) *[Originate from a tuberculosis-free state;]* **All classes of beef cattle two (2) months of age and older entering Missouri for exhibition from a state having a tuberculosis-free status may enter without additional testing requirements or entry permit;**

(b) *[Originate from a tuberculosis-accredited free herd. The herd number and date of last test must be listed on the Certificate of Veterinary Inspection; or]* All classes of beef cattle two (2) months of age and older entering Missouri for exhibition from a state having a tuberculosis status less than free must meet the following requirements:

I. Must obtain an entry permit;

II. Must have a negative tuberculosis test within sixty (60) days of shipment, test date must be listed on the Certificate of Veterinary Inspection; or

III. Move from an accredited tuberculosis-free herd (herd test date must be listed on the Certificate of Veterinary Inspection); or

IV. Move directly from a herd of origin that has had one (1) complete negative herd test within one (1) year (date of test must be listed on the Certificate of Veterinary Inspection).

[(c) Test negative within sixty (60) days prior to exhibition.]

(III) *[All cattle eighteen (18) months of age and over must have a negative tuberculosis test within twelve (12) months of exhibition]* Rodeo Livestock.

(a) Rodeo stock must be tested negative for tuberculosis every twelve (12) months and obtain an entry permit prior to entering Missouri.

(b) No sexually intact rodeo stock from Mexico will be permitted to enter Missouri.

(B) Exhibition Requirements for Swine (exhibition of feral swine is prohibited).

1. Intrastate (Missouri origin swine moving for exhibition only).

A. All swine to be exhibited must be free of clinical signs of infectious or contagious disease.

B. No Certificate of Veterinary Inspection is required.

C. Brucellosis. No test is required.

D. Pseudorabies. No test is required.

2. Interstate (swine entering Missouri for exhibition only).

A. All swine must be **individually** identified by **official** eartag as defined in Title 9 Code of Federal Regulations, Part 71, published annually in January, herein incorporated by reference and made a part of this rule, as published by the United States Superintendent of Documents, 732 N Capital Street NW, Washington, DC 20402-0001, phone: toll free (866) 512-1800, DC area (202) 512-1800, website <http://bookstore.gpo.gov>, ear notch, *[or]* tattoo, or any other means of permanent identification approved by the state veterinarian and be individually listed on a Certificate of Veterinary Inspection and free of clinical signs of infectious or contagious disease. This rule does not incorporate any subsequent amendments or additions. An entry permit is required.

B. Brucellosis.

(I) *[Breeding s]*Swine originating from brucellosis-free states may exhibit without a brucellosis test.

(II) *[Breeding s]*Swine originating from *[brucellosis Stage II states]* from a state having a brucellosis status less than free must be tested negative within sixty (60) days prior to exhibition except breeding swine from a validated brucellosis-free herd. The validated herd number and date of last validating test must be listed on the Certificate of Veterinary Inspection.

C. Pseudorabies.

(I) Swine originating from a state classified as Stage V in the National Pseudorabies (PRV) Eradication Plan may exhibit without a pseudorabies test.

(II) All other swine must be tested negative within sixty (60) days prior to exhibition except swine from a qualified pseudorabies-free herd. The qualified herd number and date of the last qualifying test must be listed on the Certificate of Veterinary Inspection.

(C) Exhibition Requirements for *[Sheep in Missouri] Equidae* (including exotic equine, donkeys, asses, burros, and zebras).

1. Intrastate (Missouri origin *[sheep moving for exhibition] horses and other equidae moving for exhibition*).

A. *[Sheep must be free of clinical signs of an infectious or contagious disease. All sheep, including wethers, must be accompanied by a Certificate of Veterinary Inspection showing official identification (eartag, electronic implant, or registration tattoo) as defined in Title 9, Code of Federal Regulations, Part 79, January 1, 2008, herein incorporated by reference and made a part of this rule, as published by the United States Superintendent of Documents, 732 N Capital Street, NW, Washington, DC 20402-0001, phone: toll free (866) 512-1800, DC area (202) 512-1800, website <http://bookstore.gpo.gov>. This rule does not incorporate any subsequent amendments or additions. If electronic implants are used for identification, owner/manager must provide electronic implant reader.] Equidae must be free of clinical signs of an infectious or contagious disease. Any equidae showing signs of infectious or contagious disease at an exhibition shall be excused by the official inspecting veterinarian. When an official inspecting veterinarian is present, all equidae will be subject to daily inspection.*

B. *[No tests are required.]* A Certificate of Veterinary Inspection is not required.

C. *[Scabies.]* All equidae (except nursing foals accompanied by their dams) must be accompanied by a current VS Form 10-11 or any officially recognized federal/state Equine Infectious Anemia (EIA) test chart showing test date within twelve (12) months prior to exhibition for each animal, the name of the EIA accredited testing laboratory and the test accession number assigned by the laboratory, the graphic description of all markings needed for identification, or microchip, or legible tattoo, or unique registered brand or imprinted photograph on any officially recognized federal/state EIA test chart. A certified photocopy or certified facsimile of the VS Form 10-11 or any officially recognized federal/state EIA test chart may be accepted for the purpose of exhibition.

(I) *[Sheep from a scabies-quarantined area must be dipped or treated by an officially approved method within ten (10) days prior to exhibition.]* A certified photocopy is one obtained from the testing veterinarian or accredited testing laboratory bearing seal or signature in the lower right-hand corner along with the date of certification of photocopy in some ink other than black.

(II) A certified facsimile may be obtained only from the testing veterinarian or accredited testing laboratory and must bear the facsimile imprint of the originating facility clearly across the top of the page. It must also bear the date of facsimile either along the top or in the lower right-hand corner.

(III) Alteration or substitution of any information on any VS Form 10-11 or any officially recognized federal/state EIA test chart, including certified photocopies, certified facsimiles, or Certificate of Veterinary Inspections, shall cause the document to be invalid and in violation of sections 267.010 to 267.730, RSMo, and may result in civil penalties not to exceed ten thousand dollars (\$10,000) per violation and subject to expulsion.

2. Interstate *[(sheep entering Missouri for exhibition only)]* (including exotic equine, donkeys, asses, burros, and zebras).

A. *[Sheep must be free of clinical signs of an infectious or contagious disease. All sheep, including wethers, must be accompanied by a Certificate of Veterinary Inspection showing official identification (eartag, electronic implant, or registration tattoo) as defined in Title 9, Code of Federal Regulations, Part 79, January 1, 2008, herein incorporated by reference and made a part of this rule, as published by the United States Superintendent of Documents, 732 N Capital Street, NW, Washington, DC 20402-0001, phone: toll free (866) 512-1800, DC area (202) 512-1800, website <http://bookstore.gpo.gov>. This rule does not incorporate any subsequent amendments or additions. If electronic*

implants are used for identification, owner/manager must provide electronic implant reader.] *Equidae* must be free of clinical signs of an infectious or contagious disease. Any *equidae* showing signs of infectious or contagious diseases at an exhibition shall be excused by the official inspecting veterinarian. When an official inspecting veterinarian is present, all *equidae* will be subject to daily inspection.

B. [No tests or entry permits are required.] A Certificate of Veterinary Inspection is required on all *equidae* (except nursing foals accompanied by their dams) showing identification and description of *equidae* listed and negative test results of an official EIA test, showing test date within twelve (12) months prior to exhibition for each animal, and the name of the EIA-accredited testing laboratory and the test accession number assigned by the laboratory. All *equidae* entering without an official Certificate of Veterinary Inspection and/or EIA test shall be excused from the show until proper documentation and test are available.

C. [Scabies.] All *equidae* (except nursing foals accompanied by their dams) must be accompanied by a current VS Form 10-11 or any officially recognized federal/state Equine Infectious Anemia (EIA) test chart showing test date within twelve (12) months prior to exhibition for each animal, the name of the EIA accredited testing laboratory and the test accession number assigned by the laboratory, the graphic description of all markings needed for identification or microchip, or legible tattoo, or unique registered brand or imprinted photograph on any officially recognized federal/state EIA test chart. A certified photocopy or certified facsimile of the VS Form 10-11 or any officially recognized federal/state EIA test chart may be accepted for the purpose of exhibition.

(I) [Sheep from a scabies-quarantined area must be dipped or treated by an officially approved method within ten (10) days prior to exhibition.] A certified photocopy is one obtained from the testing veterinarian or accredited testing laboratory bearing seal or signature in the lower right-hand corner along with the date of certification of photocopy in some ink color other than black.

(II) [A permit number must be obtained and recorded on a Certificate of Veterinary Inspection if the sheep are from a scabies-quarantined area.] A certified facsimile may be obtained only from the testing veterinarian or accredited testing laboratory and must bear the facsimile imprint of the originating facility clearly across the top of the page. It must also bear the date of the facsimile either along the top or in the lower right-hand corner.

(III) Alteration or substitution of any information on any VS Form 10-11 or any officially recognized federal/state EIA test chart, including certified photocopies, certified facsimiles, or Certificate of Veterinary Inspection, shall cause the document to be invalid and in violation of sections 267.010 to 267.730, RSMo, and may result in civil penalties not to exceed ten thousand dollars (\$10,000) per violation and subject to expulsion.

D. A six (6)-month passport from states with which there is a reciprocal agreement will be accepted in lieu of a Certificate of Veterinary Inspection. These passports must have proof of a negative EIA test within thirty (30) days of the date of application of the passport and permanent identification for each horse recorded on the passport and the VS Form 10-11 or any officially recognized federal/state EIA test chart, along with other identifying characteristics. In the event of confirmed vesicular stomatitis in any of the states with which reciprocal agreements exist, use of the six (6)-month passport will be suspended by the state veterinarian of Missouri.

E. Venezuelan *Equidae* Encephalomyelitis (VEE) vaccination and entry permit is required prior to entry on *equidae* originating from states in which VEE has been diagnosed within the preceding twelve (12) months.

F. Any *equidae* from a premise under quarantine for vesicular stomatitis shall obtain an entry permit and must include the statement on the Certificate of Veterinary Inspection that "the *equidae* listed have not been exposed to vesicular stomatitis within the past thirty (30) days."

G. The board, organization, or manager of each assembly or event is responsible for certifying that all *equidae* admitted or participating meet the regulations in this section and shall not admit or allow participation of *equidae* not so certified. Untested *equidae* shall not be allowed to congregate with other *equidae*. The owner of each animal shall comply with requirements under sections 267.010 to 267.730, RSMo, and may be assessed civil penalties not to exceed ten thousand dollars (\$10,000) for each violation.

(D) Exhibition Requirements for [Goats] Sheep (including exotic sheep and antelope).

1. Intrastate (Missouri origin [goats] sheep (including exotic sheep and antelope) moving for exhibition).

A. [Goats] All sheep (including exotic sheep and antelope), regardless of age or gender, must be free of clinical signs of an infectious or contagious disease. [All goats, including wethers, must be accompanied by a Certificate of Veterinary Inspection showing official identification (eartag, electronic implant, or registration tattoo) as defined in Title 9, Code of Federal Regulations, Part 79, January 1, 2008, herein incorporated by reference and made a part of this rule, as published by the United States Superintendent of Documents, 732 N Capital Street, NW, Washington, DC 20402-0001, phone: toll free (866) 512-1800, DC area (202) 512-1800, website <http://bookstore.gpo.gov>. This rule does not incorporate any subsequent amendments or additions. If electronic implants are used for identification, owner/manager must provide electronic implant reader.]

B. [No tests are required.] All sheep (including exotic sheep and antelope), regardless of age or gender, must be individually identified by an official scrapie eartag as defined in Title 9, Code of Federal Regulations, Part 79, published annually in January, herein incorporated by reference and made a part of this rule, as published by the United States Superintendent of Documents, 732 N Capital Street NW, Washington, DC 20402-0001, phone: toll free (866) 512-1800, DC area (202) 512-1800, website <http://bookstore.gpo.gov>, or any other means of permanent identification approved by the state veterinarian identifying them to the flock-of-origin and be listed on a Certificate of Veterinary Inspection. This rule does not incorporate any subsequent amendments or additions.

C. No tests are required.

D. Scabies.

(I) Sheep from a scabies-quarantined area must be dipped or treated by an officially approved method within ten (10) days prior to exhibition.

2. Interstate ([goats] sheep (including exotic sheep and antelope) entering Missouri for exhibition only).

A. [Goats] All sheep (including exotic sheep and antelope), regardless of age or gender, must be free of clinical signs of an infectious or contagious disease. [All goats, including wethers, must be accompanied by a Certificate of Veterinary Inspection showing official identification (eartag, electronic implant, or registration tattoo) as defined in Title 9, Code of Federal Regulations, Part 79, January 1, 2008, herein incorporated by reference and made a part of this rule, as published by the United States Superintendent of Documents, 732 N Capital Street, NW, Washington, DC 20402-0001, phone: toll free (866) 512-1800, DC area (202) 512-1800, website <http://bookstore.gpo.gov>. This rule does not incorporate any subsequent amendments or additions. If electronic implants are used for identification, owner/manager must provide electronic implant reader.]

B. *[No tests or entry permits are required.]* All sheep (including exotic sheep and antelope), regardless of age or gender, must be individually identified by an official scrapie eartag as defined in Title 9, *Code of Federal Regulations*, Part 79, published annually in January, herein incorporated by reference and made a part of this rule, as published by the United States Superintendent of Documents, 732 N Capital Street NW, Washington, DC 20402-0001, phone: toll free (866) 512-1800, DC area (202) 512-1800, website <http://bookstore.gpo.gov>, or any other means of permanent identification approved by the state veterinarian identifying them to the flock-of-origin and be listed on a Certificate of Veterinary Inspection. This rule does not incorporate any subsequent amendments or additions.

C. No tests or entry permit is required.

D. Scabies.

(I) Sheep (including exotic sheep and antelope) from a scabies-quarantined area must be dipped or treated by an officially approved method within ten (10) days prior to exhibition.

(II) A permit number must be obtained and recorded on a Certificate of Veterinary Inspection if the sheep (including exotic sheep and antelope) are from a scabies-quarantined area.

(E) Exhibition Requirements *[for Horses and Other Equidae]* Goats (including exotic goats).

1. Intrastate (Missouri origin *[horses and other equidae]* goats (including exotic goats) moving for exhibition only).

A. *[Equidae must be free of clinical signs of an infectious or contagious disease. Any equidae showing signs of infectious or contagious disease at an exhibition shall be excused by the official inspecting veterinarian. When an official inspecting veterinarian is present, all equidae will be subject to daily inspection.]* All goats (including exotic goats), regardless of age or gender, must be free of clinical signs of an infectious or contagious disease.

B. *[A Certificate of Veterinary Inspection is not required.]* All goats (including exotic goats), regardless of age or gender, must be individually identified by an official scrapie eartag as defined in Title 9, *Code of Federal Regulations*, Part 79, published annually in January, herein incorporated by reference and made a part of this rule, as published by the United States Superintendent of Documents, 732 N Capital Street NW, Washington, DC 20402-0001, phone: toll free (866) 512-1800, DC area (202) 512-1800, website <http://bookstore.gpo.gov>, or any other means of permanent identification approved by the state veterinarian identifying them to the herd-of-origin and be listed on a Certificate of Veterinary Inspection. This rule does not incorporate any subsequent amendments or additions.

C. *[All equidae (except nursing foals accompanied by their dams) must be accompanied by a current VS Form 10-11 or any officially recognized state Equine Infectious Anemia (EIA) test chart showing test date within twelve (12) months prior to exhibition for each animal, the name of the EIA accredited testing laboratory and the test accession number assigned by the laboratory, the graphic description of all markings needed for identification or microchip, or legible tattoo, or unique registered brand. A certified photocopy or certified facsimile of the VS Form 10-11 or any officially recognized state EIA test chart may be accepted for the purpose of exhibition.]* No tests are required.

(I) A certified photocopy is one obtained from the testing veterinarian or accredited testing laboratory bearing seal or signature in the lower right hand corner along with the date of certification of photocopy in some ink color other than black.

(II) A certified facsimile may be obtained only from the testing veterinarian or accredited testing laboratory and must bear the facsimile imprint of the originating facility clearly across the top of the page. It must also bear the date of the facsimile either along the top or in the lower right-hand corner.

(III) Alteration or substitution of any information on any VS Form 10-11 including certified photocopies, certified facsimiles or Certificate of Veterinary Inspections shall cause the document to be invalid and in violation of sections 267.010 to 267.730, RSMo, and may result in civil penalties not to exceed ten thousand dollars (\$10,000) per violation and subject to expulsion.

2. Interstate (horses and other equidae entering Missouri for exhibition only).

A. Equidae must be free of clinical signs of an infectious or contagious disease. Any equidae showing signs of infectious or contagious diseases at an exhibition shall be excused by the official inspecting veterinarian. When an official inspecting veterinarian is present, all equidae will be subject to daily inspection.

B. A Certificate of Veterinary Inspection is required on all equidae (except nursing foals accompanied by their dams) showing identification and description of all equidae listed and negative test results of an official EIA test, showing test date within twelve (12) months prior to exhibitor for each animal, the name of the EIA accredited testing laboratory and the test accession number assigned by the laboratory. All equidae entering without an official Certificate of Veterinary Inspection when required and/or EIA test shall be excused from the show until proper documentation and test are obtained.

C. All equidae (except nursing foals accompanied by their dams) must be accompanied by a current VS Form 10-11 or any officially recognized state (EIA) test chart showing the graphic description of all markings needed for identification or microchip, or legible tattoo, or unique registered brand. A certified photocopy or certified facsimile of the VS Form 10-11 or any officially recognized state EIA test chart may be accepted for the purpose of exhibition.

(I) A certified photocopy is one obtained from the testing veterinarian or accredited testing laboratory bearing seal or signature in the lower right-hand corner along with the date of certification of photocopy in some ink color other than black.

(II) A certified facsimile may be obtained only from the testing veterinarian or accredited testing laboratory and must bear the facsimile imprint of the originating facility clearly across the top of the page. It must also bear the date of the facsimile either along the top or in the lower right-hand corner.

(III) Alteration or substitution of any information on any VS Form 10-11 including certified photocopies, certified facsimiles or Certificate of Veterinary Inspections shall cause the document to be invalid and in violation of sections 267.010 to 267.730, RSMo, and may result in civil penalties not to exceed ten thousand dollars (\$10,000) per violation and subject to expulsion.

D. A six (6)-month passport from states with which there is a reciprocal agreement will be accepted in lieu of a Certificate of Veterinary Inspection. These passports must have proof of a negative EIA test within thirty (30) days of the date of application of the passport and permanent identification for each horse by means of registered brand, legible tattoo, or microchip to be recorded on the passport and the VS Form 10-11 or any officially recognized state EIA test chart, along with other identifying characteristics. In the event of confirmed vesicular stomatitis in any of the states with which reciprocal agreements exist, use of the six (6)-month passport will be suspended by the state veterinarian of Missouri.

E. Venezuelan Equidae Encephalomyelitis (VEE) vaccination and entry permit is required prior to entry on equidae originating from states in which VEE has been diagnosed within the preceding twelve (12) months.

F. Any equidae originating from a premise under quarantine for vesicular stomatitis shall obtain an entry permit and must include the statement on the Certificate of Veterinary Inspection that "the equidae listed have not been exposed to vesicular stomatitis within the past thirty (30) days."

G. The board, organization or manager of each assembly or event is responsible for certifying that all equidae admitted or participating meet the regulations in this section and shall not admit or allow participation of equidae not so certified. Untested equidae shall not be allowed to congregate with other equidae. The owner of each animal shall comply with requirements under sections 267.010 to 267.730, RSMo, and may be assessed civil penalties not to exceed ten thousand dollars (\$10,000) for each violation.]

2. Interstate (goats including exotic goats entering Missouri for exhibition only).

A. Goats (including exotic goats) must be free of clinical signs of an infectious or contagious disease.

B. All goats (including exotic goats), regardless of age or gender, must be individually identified by an official scrapie eartag as defined in Title 9, *Code of Federal Regulations*, Part 79, published annually in January, herein incorporated by reference and made a part of this rule, as published by the United States Superintendent of Documents, 732 N Capital Street NW, Washington, DC 20402-0001, phone: toll free (866) 512-1800, DC area (202) 512-1800, website <http://bookstore.gpo.gov>, or any other means of permanent identification approved by the state veterinarian identifying them to the herd-of-origin and be listed on a Certificate of Veterinary Inspection. This rule does not incorporate any subsequent amendments or additions.

C. No tests or entry permits are required.

(G) Exhibition Requirements for [Ratites] Captive Cervids.

1. Intrastate (Missouri origin [ratites, including but not limited to ostrich, rheas, and emus,] captive cervids moving for exhibition).

A. All [ratites must be free of clinical signs of any infectious or contagious disease] captive cervids must be accompanied by a Certificate of Veterinary Inspection and individually identified by official eartag as defined in Title 9, *Code of Federal Regulations*, Part 71, published annually in January, herein incorporated by reference and made a part of this rule as published by the United States Superintendent of Documents, 732 N Capital Street NW, Washington, DC 20402-0001, phone: toll free (866) 512-1800, DC area (202) 512-1800, website <http://bookstore.gpo.gov>, or any other means of permanent identification approved by the state veterinarian and must not commingle with other animals. This rule does not incorporate any subsequent amendments or additions.

B. A Certificate of Veterinary Inspection is not required.

C. Ratites must be officially identified by leg band, microchip, wing band, or legible tattoo.

D. No test is required.]

2. Interstate ([ratites, including but not limited to ostrich, rheas, and emus,] captive cervids entering Missouri for exhibition only).

A. [All ratites must be free of clinical signs of any infectious or contagious disease.] All captive cervids must be accompanied by a Certificate of Veterinary Inspection and individually identified by official eartag as defined in Title 9, *Code of Federal Regulations*, Part 71, published annually in January, herein incorporated by reference and made a part of this rule as published by the United States Superintendent of Documents, 732 N Capital Street NW, Washington, DC 20402-0001, phone: toll free (866) 512-1800, DC area (202) 512-1800, website <http://bookstore.gpo.gov>, or any other means of permanent identification approved by the state veterinarian and must not commingle with other animals. This rule does not incorporate any subsequent

amendments or additions.

B. [All ratites must be accompanied by a Certificate of Veterinary Inspection showing official identification (leg band, microchip, wing band, or legible tattoo).] Brucellosis Requirements.

(I) All sexually intact animals six (6) months of age and older must test negative for brucellosis within ninety (90) days prior to exhibition except—

(a) Captive cervids that originate from a brucellosis-free herd. The herd number and the date of the last herd test must be listed on the Certificate of Veterinary Inspection; and

(b) Captive cervids that originate from a brucellosis-monitored herd. The herd number and the date of the last herd test must be listed on the Certificate of Veterinary Inspection.

C. [No test is required.] Tuberculosis.

(I) Captive cervids, less than six (6) months of age, not known to be affected or exposed to tuberculosis and not in a status herd must have one (1) negative tuberculosis test, using the single cervical method, within ninety (90) days prior to entering Missouri. The negative test date must be listed on the Certificate of Veterinary Inspection. Captive cervids must have been isolated from other captive cervids during the testing period.

(II) Captive cervids, six (6) months of age and older, not known to be affected with or exposed to tuberculosis and not in a status herd must have two (2) negative tuberculosis tests, not less than ninety (90) days apart, using the single cervical method prior to exhibition. The second test must be within ninety (90) days prior to exhibition. Both negative test dates must be listed on the Certificate of Veterinary Inspection. Captive cervids must have been isolated from other captive cervids during the testing period.

(III) Movement from tuberculosis status herds.

(a) Accredited herd—captive cervids originating from an accredited tuberculosis-free cervid herd may enter on herd status without additional testing provided the accredited herd number and current test date is listed on the Certificate of Veterinary Inspection.

(b) Qualified herd—captive cervids originating from a qualified herd must have one (1) negative tuberculosis test, using the single cervical method, within ninety (90) days prior to the date of exhibition.

(c) Monitored herd—captive cervids originating from a monitored herd must have one (1) negative tuberculosis test, using the single cervical method, within ninety (90) days prior to the date of movement.

(d) Captive cervids less than twelve (12) months of age that originate from and were born in a status herd may be moved without further testing provided that they have not been exposed to captive cervids from a lower status herd.

D. [An entry permit is required.] Chronic wasting disease. All captive cervids must be enrolled in an approved surveillance program by the state of origin for five (5) years.

E. An entry permit is required.

(H) Exhibition Requirements for [Captive Cervids] Alpacas, Camels, and Llamas.

1. Intrastate (Missouri origin [captive cervids] alpacas, camels, llamas, and others of that group moving for exhibition).

A. All [captive cervids must be accompanied by a Certificate of Veterinary Inspection showing official identification (legible tattoo, microchip, or eartag) and must not commingle with other animals] alpacas, camels, llamas, and others of that group must be free of clinical signs of infectious or contagious disease.

2. Interstate ([captive cervids] alpacas, camels, llamas, and others of that group entering Missouri for exhibition only).

A. All [captive cervids must be accompanied by a Certificate of Veterinary Inspection showing official identification (legible tattoo, microchip, or eartag).] alpacas, camels, llamas, and others of that group must be free of clinical signs of

infectious or contagious diseases.

B. [*Brucellosis—all sexually intact animals six (6) months of age and older must test negative for brucellosis within thirty (30) days prior to exhibition except:*] All alpacas, camels, and llamas and others of that group must be accompanied by an official Certificate of Veterinary Inspection showing an individual listing of the common name(s) of the animal(s) such as sex, age, weight, coloration, and the official eartag as defined in Title 9, *Code of Federal Regulations*, Part 71, published annually in January, herein incorporated by reference and made a part of this rule, as published by the United States Superintendent of Documents, 732 N Capital Street NW, Washington, DC 20402-0001, phone: toll free (866) 512-1800, DC area (202) 512-1800, website <http://bookstore.gpo.gov>, microchip, tattoo, or any other means of permanent identification approved by the state veterinarian. This rule does not incorporate any subsequent amendments or additions.

[(I) *Captive cervids that originate from a brucellosis-free herd. The herd number and the date of the last herd test must be listed on the Certificate of Veterinary Inspection; and*

(II) *Captive cervids from a brucellosis-monitored herd. The herd number and the date of the last herd test must be listed on the Certificate of Veterinary Inspection.*]

C. [*Tuberculosis—captive cervids must have two (2) negative tuberculosis tests, not less than ninety (90) days apart, using the single cervical method prior to exhibition. The second test must be within ninety (90) days prior to exhibition. Both negative test dates must be listed on the Certificate of Veterinary Inspection, except:*] No test is required.

[(I) *Captive cervids that originate from an accredited tuberculosis-free herd. The herd number and the date of the last herd test must be listed on the Certificate of Veterinary Inspection.*]

D. [*Chronic wasting disease. All captive cervids must be enrolled in an approved surveillance program by the state of origin.*] No permit is required.

[*E An entry permit is required.*]

(I) Exhibition Requirements for [*Camelids*] **Dogs and Cats.**

1. Intrastate (Missouri origin [*alpacas, camels, llamas, and others of that group*] dogs and cats moving for exhibition).

A. [*All alpacas, camels, llamas, and others of that group*] **Dogs and cats** must be free of clinical signs of infectious or contagious disease.

B. No Certificate of Veterinary Inspection is required.

C. **Dogs and cats** four (4) months of age and older must be vaccinated for rabies by one (1) of the methods and within the time period published in the current *Compendium of Animal Rabies Vaccines* by the National Association of State Public Health Veterinarians, Inc., incorporated by reference and made a part of this rule, as published by the United States Superintendent of Documents, 732 N Capital Street NW, Washington, DC 20402-0001, phone: toll free (866) 512-1800, DC area (202) 512-1800, website <http://bookstore.gpo.gov>. This rule does not incorporate any subsequent amendments or additions.

2. Interstate [*alpacas, camels, llamas, and others of that group*] **dogs and cats** entering Missouri for exhibition only).

A. [*All alpacas, camels, llamas, and others of that group*] **Dogs and cats** must be free of clinical signs of infectious or contagious disease.

B. A Certificate of Veterinary Inspection is [*not*] required.

C. All [*alpacas, camels, llamas, and others of that group*] must be officially identified by legible tattoo, microchip, or eartag.] All **dogs and cats** four (4) months of age and older must be vaccinated for rabies by one (1) of the methods and within the time period published in the current *Compendium of Animal Rabies Vaccines* by the National Association of State Public Health Veterinarians, Inc., incorpo-

rated by reference and made a part of this rule, as published by the United States Superintendent of Documents, 732 N Capital Street NW, Washington, DC 20402-0001, phone: toll free (866) 512-1800, DC area (202) 512-1800, website <http://bookstore.gpo.gov>. This rule does not incorporate any subsequent amendments or additions.

D. No [*test is required*] entry permit is required.

(J) Exhibition Requirements for [*Dogs and Cats*] **Miscellaneous and Exotic Animals.**

1. Intrastate (Missouri origin [*dogs and cats*] miscellaneous and exotic animals moving for exhibition).

A. [*All dogs and cats*] **Miscellaneous and exotic animals** must be free of clinical signs of any infectious or contagious disease.

B. [*No*] A Certificate of Veterinary Inspection is required showing an individual listing of the common name(s) of the animal(s), appropriate descriptions of animal(s) such as sex, age, weight, coloration, and individually identified as defined in Title 9 *Code of Federal Regulations*, Part 71, published annually in January, herein incorporated by reference and made a part of this rule, as published by the United States Superintendent of Documents, 732 N Capital Street NW, Washington, DC 20402-0001, phone: toll free (866) 512-1800, DC area (202) 512-1800, website <http://bookstore.gpo.gov>, or any other means approved by the state veterinarian and listed on the Certificate of Veterinary Inspection. This rule does not incorporate any subsequent amendments or additions.

C. [*All dogs and cats four (4) months of age or older must be vaccinated for rabies by one (1) of the methods and within the time period published in the 2008 Compendium of Animal Rabies Vaccines by the National Association of State Public Health Veterinarians, Inc., incorporated by reference and made a part of this rule, as published by the United States Superintendent of Documents, 732 N Capital Street, NW, Washington, DC 20402-0001, phone: toll free (866) 512-1800, DC area (202) 512-1800, website http://bookstore.gpo.gov. This rule does not incorporate any subsequent amendments or additions.*] **Elephants** (Asiatic, African) must be tested negative for tuberculosis within one (1) year prior to exhibition.

D. **Ratites** (including but not limited to ostrich, rheas, and emus) must be veterinarian inspected and individually identified as defined in Title 9 *Code of Federal Regulations*, Part 71, published annually in January, herein incorporated by reference and made a part of this rule, as published by the United States Superintendent of Documents, 732 N Capital Street NW, Washington, DC 20402-0001, phone: toll free (866) 512-1800, DC area (202) 512-1800, website <http://bookstore.gpo.gov>, by leg band, microchip, wing band, legible tattoo, or any other means approved by the state veterinarian and listed on the Certificate of Veterinary Inspection. This rule does not incorporate any subsequent amendments or additions. No test is required.

E. No tests are required for animals moving between publicly-owned American Zoological and Aquariums (AZA)-accredited zoos, except cervids moving between publicly-owned American Zoological and Aquariums (AZA)-accredited zoos must meet the chronic wasting disease monitoring requirements as outlined in subparagraph (2)(G)2.D.

2. Interstate [*dogs and cats*] **miscellaneous and exotic animals** entering Missouri for exhibition only).

A. All [*dogs and cats*] **miscellaneous and exotic animals** must be free of clinical signs of any infectious or contagious disease.

B. [*All dogs and cats*] must be accompanied by a] A Certificate of Veterinary Inspection is required showing an individual listing of the common name(s) of the animal(s) and appropriate descriptions of animal(s) such as sex, age, weight, coloration, and must be individually identified as defined in Title 9 *Code of Federal Regulations*, Part 71, published annually in January, herein incorporated by reference and made a part of this rule, as published by the United States Superintendent of

Documents, 732 N Capital Street NW, Washington, DC 20402-0001, phone: toll free (866) 512-1800, DC area (202) 512-1800, website <http://bookstore.gpo.gov>, or any other means approved by the state veterinarian and listed on the Certificate of Veterinary Inspection. This rule does not incorporate any subsequent amendments or additions.

C. [All dogs and cats four (4) months of age or older must be vaccinated for rabies by one (1) of the methods and within the time period published in the 2008 Compendium of Animal Rabies Vaccines by the National Association of State Public Health Veterinarians, Inc., incorporated by reference and made a part of this rule, as published by the United States Superintendent of Documents, 732 N Capital Street, NW, Washington, DC 20402-0001, phone: toll free (866) 512-1800, DC area (202) 512-1800, website <http://bookstore.gpo.gov>. This rule does not incorporate any subsequent amendments or additions.] Elephants (Asiatic, African) must be tested negative for tuberculosis within one (1) year prior to exhibition.

D. [No entry permit is required.] Ratites (including but not limited to ostrich, rheas, and emus) must be veterinarian inspected and individually identified as defined in Title 9 Code of Federal Regulations, Part 71, published annually in January, herein incorporated by reference and made a part of this rule, as published by the United States Superintendent of Documents, 732 N Capital Street NW, Washington, DC 20402-0001, phone: toll free (866) 512-1800, DC area (202) 512-1800, website <http://bookstore.gpo.gov>, by leg band, microchip, wing band, legible tattoo, or any other means approved by the state veterinarian and listed on the Certificate of Veterinary Inspection. This rule does not incorporate any subsequent amendments or additions. No test is required.

E. Importation of skunks and raccoons into Missouri is prohibited by the Missouri Wildlife Code (3 CSR 10-9).

F. No tests are required for animals moving between publicly-owned American Zoological and Aquariums (AZA)-accredited zoos but must be accompanied by a Certificate of Veterinary Inspection. Cervids moving between publicly-owned American Zoological and Aquariums (AZA)-accredited zoos must meet the chronic wasting disease monitoring requirements as outlined in subparagraph (2)(G)2.D. An entry permit is required on all animals moving between publicly-owned American Zoos and Aquariums (AZA)-accredited zoos.

[(K) *Exhibition Requirements for Miscellaneous and Exotic Animals.*

1. *Intrastate (miscellaneous and exotic animals moving for exhibition).*

A. *All miscellaneous and exotic animals must be free of clinical signs of any infectious or contagious disease.*

B. *A Certificate of Veterinary Inspection is required showing an individual listing of the common name(s) of the animal(s) and appropriate descriptions of animal(s) such as sex, age, weight, coloration, and the permanent tag number, brand or tattoo identification.*

C. *No test is required.*

2. *Interstate (miscellaneous and exotic animals entering Missouri for exhibition only).*

A. *All miscellaneous and exotic animals must be free of clinical signs of any infectious or contagious disease.*

B. *A Certificate of Veterinary Inspection is required showing an individual listing of the common name(s) of the animal(s) and appropriate descriptions of animal(s) such as sex, age, weight, coloration, and the permanent tag number, brand or tattoo identification.*

C. *Exotic bovids eight (8) months of age and over must have a negative brucellosis test within ninety (90) days prior to exhibition and a negative tuberculosis test within ninety (90) days prior to exhibition.*

D. *Exotic goats, sheep, and antelope. No tests are*

required on these animals.

E Exotic equine, donkeys, asses, burros, and zebras must meet domestic equine requirements.

F. Feral swine, javalena, and peccaries must be in compliance with domestic swine requirements.

G. Elephants (Asiatic, African) must be tested negative for tuberculosis within one (1) year prior to exhibition.

H. Importation of skunks and raccoons into Missouri is prohibited by the Missouri Wildlife Code (3 CSR 10-9).

I. Animals moving between publicly-owned American Zoological and Aquariums (AZA)-accredited zoos are exempt from subsection (2)(K) except cervids moving between publicly-owned American Zoological and Aquariums (AZA)-accredited zoos must meet the chronic wasting disease monitoring requirements as outlined in subparagraph (2)(H)2.D.]

AUTHORITY: section 267.645, RSMo 2000. Emergency rule filed June 28, 1977, effective July 8, 1977, expired Nov. 5, 1977. Original rule filed June 28, 1977, effective Oct. 13, 1977. For intervening history, please consult the Code of State Regulations. Amended: Filed May 11, 2009.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Agriculture, Taylor H. Woods, D.V.M., State Veterinarian, PO Box 630, Jefferson City, MO 65102, by facsimile at (573) 751-6919, or via email at Taylor.Woods@mda.mo.gov. Comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 7—DEPARTMENT OF TRANSPORTATION Division 60—Highway Safety Division Chapter 2—Breath Alcohol Ignition Interlock Device Certification and Operational Requirements

PROPOSED AMENDMENT

7 CSR 60-2.010 Definitions. The Missouri Highways and Transportation Commission is amending subsection (1)(A) to add new paragraphs 5., 10., 14., 16., and 27.; delete paragraphs 8. and 10.; and amend and/or renumber paragraphs 5.-7., 12., and 14.-30.

PURPOSE: This proposed amendment will clarify terms used in the breath alcohol ignition interlock device certification and operational requirements. This rule is being amended in accordance with Truly Agreed to and Finally Passed Senate Bills 930 and 947, which become effective on July 1, 2009, and change Missouri's ignition interlock laws.

(1) Definitions.

(A) The following words and terms as used in these requirements shall have the following meaning:

1. Alcohol retest setpoint—The breath alcohol concentration at which the ignition interlock device is set to lock the ignition for the rolling retest;

2. Alcohol setpoint—The breath alcohol concentration at which the ignition interlock device is set to lock the ignition. The alcohol setpoint is the nominal lock point at which the ignition interlock device is set at the time of calibration;

3. Alveolar air—Deep lung air or alveolar breath, which is the last portion of a prolonged, uninterrupted exhalation;

4. Authorized service provider—A person, company, or authorized franchise who is certified by the state of Missouri to provide breath alcohol ignition interlock devices under sections 577.600–577.614, RSMo;

5. Bogus breath sample—Any gas sample other than an unaltered, undiluted, and unfiltered alveolar air sample from a driver;

[5.]6. Breath alcohol concentration (BAC)—The number of grams of alcohol (% weight/volume) per two hundred ten (210) liters of breath;

[6.]7. Breath alcohol ignition interlock device (BAIID)—A mechanical unit that is installed in a vehicle which requires the taking of a BAC test prior to the starting of the vehicle and at periodic intervals after the engine has been started. If the unit detects a BAC test result below the alcohol setpoint, the unit will allow the vehicle's ignition switch to start the engine. If the unit detects a BAC test result at or above the alcohol setpoint, the vehicle will be prohibited from starting;

[7.]8. Breath sample—Expired human breath containing primarily alveolar air;

[8. Bypass—An unauthorized, intentional overt act or attempt to start, drive, or operate a vehicle equipped with a device, without the driver of the vehicle providing all required breath samples;]

9. Calibration—The process which [insures] ensures an accurate alcohol concentration reading on a device;

10. [De-installation—The removal of a breath alcohol ignition interlock device from a vehicle by installers] **Circumvention—An unauthorized, intentional, or overt act or attempt to start, drive, or operate a vehicle equipped with a breath alcohol ignition interlock device without the driver of the vehicle providing a pure breath sample;**

11. Device—Breath alcohol ignition interlock device (BAIID);

12. Download—[Copying] **The transfer of information from the interlock device's memory onto disk or other electronic or digital transfer protocol;**

13. Emergency service—Unforeseen circumstances in the use and/or operation of a breath alcohol ignition interlock device, not covered by training or otherwise documented, which requires immediate action;

14. Filtered breath sample—A breath sample which has been filtered through a substance in an attempt to remove alcohol from the sample;

[14.]15. Independent laboratory—A laboratory which is properly equipped and staffed to conduct laboratory tests on ignition interlock devices;

16. Initial breath test—A breath test required to start a vehicle to ensure that the driver's BAC is below the alcohol setpoint;

[15.]17. Installation—Mechanical placement and electrical connection of a breath alcohol ignition interlock device in a vehicle by installers;

[16.]18. Installer—A dealer, distributor, supplier, individual, or service center who provides device calibration, installation, and other related activities as required by the authorized service provider;

[17.]19. Lockout—The ability of the device to prevent a vehicle's engine from starting unless it is serviced or recalibrated;

[18.]20. NHTSA—Federal agency known as the National Highway Traffic Safety Administration;

[19.]21. Operator—Any person who operates a vehicle [which] that has a court-ordered or Department of Revenue required breath alcohol ignition interlock device installed;

[20.]22. Permanent lockout—A feature of a device in which a vehicle will not start until the device is reset by a device installer;

[21.]23. Pure breath sample—Expired human breath containing primarily alveolar air and having a breath alcohol concentration below the alcohol setpoint of [two-hundredths] **twenty-five thousandths (.025);**

[22.]24. Reinstallation—Replacing a breath alcohol ignition interlock device in a vehicle by an installer after it has been removed for service;

[23.]25. Retest—Two (2) additional chances to provide a breath sample below the alcohol setpoint when the first sample failed; or three (3) chances to provide a breath alcohol sample below the alcohol setpoint on the rolling retest;

[24.]26. Rolling retest—A subsequent breath test that must be conducted [five (5)] **fifteen (15)** minutes after starting the vehicle and randomly during each subsequent thirty (30)-minute time period thereafter while the vehicle is in operation;

27. Service lockout—A feature of the breath alcohol ignition interlock device which will not allow a breath test and will not allow the vehicle to start until the device is serviced and recalibrated as required;

[25.]28. Tampering—[An unlawful act or attempt to disable or circumvent the legal operation of the device] **An overt, purposeful attempt to physically alter or disable an ignition interlock device, or disconnect it from its power source, or remove, alter, or deface physical anti-tampering measures, so a driver can start the vehicle without taking and passing an initial breath test;**

[26.]29. Temporary lockout—a feature of the device which will not allow the vehicle to start for fifteen (15) minutes after three (3) failed [or aborted] attempts to blow a pure breath sample; and

[27.]30. Violations reset—A feature of a device in which a service reminder is activated due to one (1) of the following reasons:

A. [Three (3) breath samples above the alcohol retest setpoint] **Two (2) fifteen (15)-minute temporary lockouts within a thirty (30)-day period; or**

B. Any **two (2)** refusals to provide a retest sample **within a thirty (30)-day period.**

AUTHORITY: sections 577.600–577.614, RSMo 2000 and RSMo Supp. 2008 and section [650.005] 226.130, RSMo [Supp 1995] 2000. This rule originally filed as II CSR 60-2.010. Emergency rule filed Feb. 5, 1996, effective Feb. 15, 1996, expired Aug. 12, 1996. Original rule filed Feb. 16, 1996, effective Aug. 30, 1996. Moved to 7 CSR 60-2.010, effective Aug. 28, 2003. Emergency amendment filed May 7, 2009, effective July 1, 2009, expires Dec. 30, 2009. Amended: Filed May 7, 2009.

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

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

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

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 60—Highway Safety Division
Chapter 2—Breath Alcohol Ignition Interlock Device
Certification and Operational Requirements**

PROPOSED AMENDMENT

7 CSR 60-2.020 Approval Procedure. The Missouri Highways and Transportation Commission is amending paragraphs (1)(A)1., (1)(B)1., and (1)(C)1. and subparagraphs (1)(B)1.B., (1)(B)2.E., and (1)(B)2.F.; deleting subparagraph (1)(B)2.G. and paragraph

(1)(C)3.; renumbering subparagraph (1)(B)2.H.; and renumbering and amending paragraph (1)(C)4.

PURPOSE: This proposed amendment will correct references to the Department of Public Safety, since the Highway Safety Division is now under the Missouri Department of Transportation pursuant to Executive Order 03-05, issued on February 5, 2003, and provide publication information for the incorporated by reference material. This proposed amendment will remove the requirement that some providers supply pricing lists during the application process and also will require the Highway Safety Division to update the list of approved devices when changes occur, instead of monthly.

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) Approval Procedure.

(A) Approval Requirement.

1. No ignition interlock device may be leased, sold, serviced, repaired, installed, or used in the state of Missouri under sections 577.600–577.614, RSMo, unless it has been approved by the Missouri Department of **[Public Safety] Transportation** in accordance with the requirements stated herein.

(B) Application.

1. Application to become an authorized service provider must be made by submitting a letter requesting approval of a breath alcohol ignition interlock device to the State of Missouri, Department of **[Public Safety] Transportation, [Division of] Highway Safety Division, P./O./ Box [104808] 270, Jefferson City, MO [65110] 65102**, in the manner described herein. All applicants must certify that their device—

A. Does not impede the safe operation of a vehicle;

B. Minimizes opportunities to *[bypass/ circumvent]* the device; and

C. Prevents an operator from starting a vehicle when the operator has a breath alcohol concentration which exceeds the alcohol setpoint.

2. An application for certification must include all of the following:

A. A written request for certification of a device on the company's letterhead, signed by an authorized representative of the company;

B. The name and business address of the applicant;

C. The name and model number of the device. A separate application is required for each model of device;

D. Complete technical specifications describing the device's accuracy, reliability, security, data collection and recording, tamper detection, and environmental features;

E. A complete and certified copy of data from an independent laboratory demonstrating that the device meets or exceeds the standards established by the United States Department of Transportation, National Highway Traffic Safety Administration identified as "Model Specifications for Breath Alcohol Ignition Interlock Devices" 57 FR [67, pp.] 11772–11787 (April 7, 1992), which is incorporated by reference and made a part of this rule as published in the *Federal Register* by the National Highway Traffic Safety Administration, 1200 New Jersey SE, Washington, DC 20590 and effective April 7, 1992 *[(no subsequent dates or editions)]*. This rule does not incorporate any subsequent amendments or additions to this publication;

F. A complete listing of all installers that includes the name, location, phone number, contact name, and hours of operation; and

[G. A complete listing of each installer's standard prices for installation, calibration, device removal, device rental, reinstallation, device purchase, emergency service calls, towing and any other charges; and]

[H./J.G. The applicant's toll-free customer service/question/complaint hot-line number.

3. All costs associated with the certification and recertification process shall be borne by the applicant or authorized service provider.

(C) Approval.

1. The state of Missouri will issue a letter of certification or a letter of refusal to certify within sixty (60) days after receipt of a completed application. No device should be deemed approved, regardless of the time frame, unless the applicant has received written notification from the state of Missouri, **Department of Transportation, [Division of] Highway Safety Division**.

2. The state of Missouri will notify applicants for certification if their application is incomplete and, if the application is incomplete, will specify what information or documents are needed to complete the application.

[3. Certification will be good through December 31, 1996.]

[4./3. The state of Missouri, Department of **[Public Safety] Transportation, [Division of] Highway Safety Division**, will publish and maintain a list of approved devices. The list will be updated *[monthly]* as changes occur.

AUTHORITY: sections 577.600–577.614, RSMo 2000 and RSMo Supp. 2008 and section [650.005] 226.130, RSMo [Supp. 1995] 2000. This rule originally filed as 11 CSR 60-2.020. Emergency rule filed Feb. 5, 1996, effective Feb. 15, 1996, expired Aug. 12, 1996. Original rule filed Feb. 16, 1996, effective Aug. 30, 1996. Moved to 7 CSR 60-2.020, effective Aug. 28, 2003. Amended: Filed May 7, 2009.

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

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

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

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 60—Highway Safety Division
Chapter 2—Breath Alcohol Ignition Interlock Device
Certification and Operational Requirements**

PROPOSED AMENDMENT

7 CSR 60-2.030 Standards and Specifications. The Missouri Highways and Transportation Commission is amending subsections (1)(A), (1)(B), (1)(C), (1)(D), (1)(E), and (1)(F) and deleting paragraphs (1)(C)3., 4., and 5.

PURPOSE: This proposed amendment will require all certified breath alcohol ignition interlock devices to be based upon only electro-chemical fuel cell sensor technology, change the alcohol set-point to twenty-five thousandths (.025), change the number of temporary lockouts that result in a violation reset message, change some of the

breath alcohol ignition interlock device servicing requirements, and provide publication information for the incorporated by reference material. The proposed changes will ensure the integrity of the program and the safety of the public.

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) Standards and Specifications.

(A) **[All] Beginning July 1, 2009, all devices newly installed into a vehicle must be based on electro-chemical fuel cell sensor technology and shall meet or exceed the standards established by the United States Department of Transportation, National Highway Traffic Safety Administration, identified as "Model Specifications for Breath Alcohol Ignition Interlock Devices" 57 FR [67, pp.] 11772-11787 (April 7, 1992), which is incorporated by reference and made a part of this rule as published in the Federal Register by the National Highway Traffic Safety Administration, 1200 New Jersey SE, Washington, DC 20590 and effective April 7, 1992 [no subsequent dates or editions]. This rule does not incorporate any subsequent amendments or additions to this publication. Beginning July 1, 2011, all devices currently installed in an operator's vehicle that are not electro-chemical fuel cell technology shall be removed by the authorized service provider of the non-electro-chemical fuel cell device and such authorized service provider shall install new devices based on electro-chemical fuel cell technology, which must be selected from the state of Missouri's list of such approved devices. The authorized service provider shall notify by May 1, 2011, operators with non-electro-chemical fuel cell devices in their vehicles that such devices are to be removed from the operators' vehicles at the cost of the authorized service provider and that new devices shall be installed at the authorized service provider's expense.**

1. All devices approved by the Missouri Department of Transportation, Highway Safety Division, must contain an anti-circumvention feature to help deter bogus breath samples and that feature should not be disengaged by any other person, including, but not limited to, the installer.

2. All devices approved by the Missouri Department of Transportation, Highway Safety Division, shall be programmed to allow the vehicle to be restarted without requiring an additional breath test for three (3) minutes after the ignition has been turned off or the vehicle has stalled, except when the driver has failed to take a random test.

(B) All approved devices must have an alcohol setpoint of *[two-hundredths] twenty-five thousandths (.025)* for initial startup.

1. A device shall be programmed to allow a maximum of three (3) attempts to blow a breath sample below the alcohol setpoint within a ten (10)-minute period.

2. Three (3) failed startup attempts within a ten (10)-minute period shall result in a fifteen (15)-minute temporary lockout.

3. *[Five (5)] Two (2)* fifteen (15)-minute temporary lockouts within a thirty (30)-day period will result in a violations reset message.

4. The violations reset message shall instruct the operator to return the device to the installer for servicing within *[seven (7)] five (5) working* days.

A. As the result of a reset message, the installer must download the device.

B. The installer must report all violations to the court-ordered supervising authority within *[seven (7)] three (3) working* days.

5. If the vehicle is not returned to the installer within *[seven (7)] five (5) working* days, the device shall cause the vehicle to enter a permanent lockout condition.

(C) A retest feature is required for all devices.

1. A device shall be programmed to *[allow] require* a rolling retest *[five (5)] within fifteen (15)* minutes after the start of the vehicle and randomly during each subsequent thirty (30)-minute time period thereafter as long as the vehicle is in operation.

2. Any breath sample above the alcohol retest setpoint of *[two-hundredths] twenty-five thousandths (.025)* or any failure to provide a retest sample *within fifteen (15) minutes* shall activate the vehicle's horn or other installed alarm and/or cause the vehicle's emergency lights to flash until the engine is shut off by the operator. **Three (3) breath samples above the alcohol setpoint or three (3) consecutive refusals by the driver to provide a retest sample will result in a violations reset message.**

[3. Once the engine has been shut off by the operator, the device shall be programmed to allow a maximum of three (3) attempts to blow a sample below the alcohol setpoint within a ten (10)-minute period.

4. Three (3) failed startup attempts within a ten (10)-minute period shall result in a fifteen (15)-minute temporary lockout.

5. Two (2) consecutive fifteen (15)-minute temporary lockouts will result in a violations reset message.

6. [3.] The violations reset message shall instruct the operator to return the device to the installer for servicing within *[seven (7)] five (5) working* days.

A. As the result of a reset message, the installer must download and calibrate the device.

B. The installer must report all violations to the court-ordered supervising authority within *[seven (7)] three (3) working* days.

[7.]4. If the vehicle is not returned to the installer within *[seven (7)] five (5) working* days, the device shall cause the vehicle to enter a permanent lockout condition.

(D) The device shall *[provide for calibration] be calibrated* at least once every thirty (30) days. **If the vehicle is not returned to the installer within five (5) working days of a scheduled service date, the device shall cause the vehicle to enter a service lockout condition.**

(E) A device shall record data in its memory in such a manner that a hard copy report can be printed which includes all of the following information:

1. The date and time of any use or attempted use of a vehicle;

2. The date and time of any act or attempt to tamper~~/,~~ or circumvent *[or bypass]* the device;

3. The date, time, and breath alcohol concentration, in grams per two hundred ten (210) liters of air, of each breath sample provided to the device;

4. The date and time of any malfunctions of the device;

5. The date and time of any failures to provide retest samples;

6. The date that a "service required" (that is, violations reset message is issued to the operator; and

7. The date that any service is performed.

(F) A device must provide all of the following information to an operator:

1. The device's readiness for acceptance of a breath sample;

2. A numeric display of the breath alcohol concentration in grams per two hundred ten (210) liters of air, or a visual pass/fail indicator, or a combination audio response and visual pass/fail indicator, or a combination audio response and a numeric display;

3. A reminder seven (7) **working** days prior to a scheduled service date; and

4. A warning to obtain service within *[seven (7)] five (5) working* days if any of the following conditions occur:

A. Any act or attempt to tamper or circumvent the device; and

B. A scheduled service date is missed.

AUTHORITY: sections 577.600–577.614, RSMo 2000 and RSMo Supp. 2008 and section [650.005] 226.130, RSMo [Supp. 1995] 2000. This rule originally filed as 11 CSR 60-2.030. Emergency rule filed Feb. 5, 1996, effective Feb. 15, 1996, expired Aug. 12, 1996. Original rule filed Feb. 16, 1996, effective Aug. 30, 1996. Moved to 7 CSR 60-2.030, effective Aug. 28, 2003. Emergency amendment filed May 7, 2009, effective July 1, 2009, expires Dec. 30, 2009. Amended: Filed May 7, 2009.

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 affect the costs to private entities, including small businesses. The fiscal impact to ignition interlock manufacturers, distributors, and installers cannot be determined because it is impossible to predict the number of new installations that this proposed amendment will impact. It also is difficult to determine the number of devices that will need to be switched to another device after July 1, 2011. Therefore, the dollar amount of the full impact of costs cannot be determined at this time, but is assumed that it will be more than five hundred dollars (\$500) in the aggregate.

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

**FISCAL NOTE
PRIVATE ENTITY COST**

I. RULE NUMBER

Title: 7 - Department of Transportation

Division: 60 - Highway Safety Division

Chapter: 2 - Breath Alcohol Ignition Interlock Device Certification and Operational Requirements

Rule Number and Name:	7 CSR 60-2.030 – Standards and Specifications
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 business entities which would be affected:	Estimated Cost in the Aggregate.
2	Ignition Interlock Manufacturers	Unknown fiscal impact
3	Ignition Interlock Distributors	
29	Ignition Interlock Installers	

III. WORKSHEET

There are currently nine breath alcohol ignition interlock devices that are certified for use in Missouri. All of the ignition interlock devices are similar in that they provide a physical barrier to prevent the operation of a motor vehicle by drivers who have a breath alcohol concentration above a specified percent. A breath sample must be provided each time the driver attempts to start their vehicle and at variable times during operation of the vehicle. The ignition interlock devices differ in terms of the method used to detect and measure breath alcohol. Ignition interlock devices use one of two types of alcohol detection methods: semiconductor sensing or electro-chemical (fuel cell) sensing.

Truly Agreed to and Finally Passed Senate Bills 930 and 947, effective July 1, 2009, increase the minimum amount of time a Driving While Intoxicated (DWI) offender must have the devices

installed on their vehicle(s) from not less than one (1) to not less than six (6) months. It is imperative that the ignition interlock devices certified for use in the state be reliable.

The proposed amendment will discontinue new installations of semiconductor sensors beginning July 1, 2009. However, ignition interlock devices using semiconductor sensors that were installed prior to July 1, 2009 will continue use through July 1, 2011.

The fiscal impact to ignition interlock manufacturers, distributors, and installers is unknown. It is impossible to predict the number of new installations that this amendment will impact. It also is difficult to determine the number of semiconductor sensor breath alcohol detection devices that will need to be switched to an electro-chemical (fuel cell) sensor device after July 1, 2011.

It is important to note that the ignition interlock companies involved have already arranged to switch to another device that is approved in the state and uses electro-chemical fuel cell technology. They can therefore easily switch their clients to that device and discontinue use of the devices using semiconductor sensors.

Fiscal impact also varies based on whether the distributors have purchased, rented, or leased the semiconductor device from the manufacturers. This could impact them in several ways. If the devices are purchased, the distributor will own the inventory of devices but can no longer use them in the state. However, if the distributor rents or leases the devices from the manufacturer, they can simply quit renting or leasing the devices from the manufacturer. The manufacturer may still be able to use those devices in another state that still allows the use of semiconductor sensors. However, several states have banned their use (Illinois, Wisconsin and Texas). Use in other states is unknown.

The monthly rental cost varies for semiconductor sensors from \$40.00 to \$95.00 per month. The cost for installation and removal at the end of use averages \$75.00 for each service provided.

Total Estimated Costs for FY'09 and Subsequent Years

Unknown Fiscal Impact

IV. ASSUMPTIONS

1. Research used to support information about the ignition interlock detection methods: *Best Practices for Alcohol Interlock Programs*, Traffic Injury Research Foundation, April 2001.
2. Quarterly reports submitted by ignition interlock manufacturers and distributors.
3. Any other costs not identified in this fiscal note are unforeseeable.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 60—Highway Safety Division
Chapter 2—Breath Alcohol Ignition Interlock Device
Certification and Operational Requirements**

PROPOSED AMENDMENT

7 CSR 60-2.040 Responsibilities of Authorized Service Providers. The Missouri Highways and Transportation Commission is amending paragraphs (1)(A)1., 2., 4. through 6., 9., 12., 14., and 15., subsection (1)(B) and paragraphs (1)(B)4. and 5., and subsection (1)(C) and paragraphs (1)(C)1. and 2.; deleting subparagraphs A., C., and D. in paragraph (1)(A)12.; and adding paragraph 16. in subsection (1)(A) and paragraph 3. in subsection (1)(C).

PURPOSE: This proposed amendment will correct references to the Department of Public Safety, since the Highway Safety Division is now under the Missouri Department of Transportation pursuant to Executive Order 03-05, issued on February 5, 2003, and will make changes required by Truly Agreed to and Finally Passed Senate Bills 930 and 947, effective July 1, 2009. Reporting requirements will be changed to allow for electronic notification to the Department of Revenue and the Missouri Department of Transportation. The reporting requirements also reflect the different types of information needed by each agency based on the nature of their business. In addition, authorized service providers will be required to ensure that their installers carry liability insurance. The proposed amendment also will provide publication information for the incorporated by reference material.

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) Responsibilities of Authorized Service Providers.

(A) The responsibilities of a breath alcohol ignition interlock device authorized service provider to the state of Missouri shall include:

1. The authorized service provider shall carry product liability insurance with minimum liability limits of one (1) million dollars per occurrence and three (3) million dollars aggregate total. The liability insurance shall include coverage for defects in product design and materials as well as manufacturing, calibration, installation, and removal of devices. **The authorized service provider shall ensure that its installers are named additional insureds or that its installers carry like insurance in the amounts stated herein.** The proof of insurance shall include a statement from the insurance company that thirty (30) days' notice will be given to the director, [Division of] Highway Safety Division, before cancellation of the insurance. Proof of insurance must be submitted to the Missouri Department of Transportation, [Division of] Highway Safety Division within thirty (30) days after a Letter of Certification has been issued. **Failure to provide certificate of insurance may result in suspension or revocation of approval for the device;**

2. The authorized service provider shall indemnify and hold harmless the state of Missouri and its officers, employees, and agents from all claims, demands, actions, and costs whatsoever which may arise, directly or indirectly, out of any act or omission by the authorized service provider or its installers relating to the installation, service, repair, use, or removal of a device;

3. The authorized service provider shall provide expert or other required testimony in any civil or criminal proceedings or administrative hearings as to the method of manufacture of the device, how

said device functions, and the testing protocol by which the device was evaluated for approval. Failure to provide testimony may result in suspension or revocation of approval for the device;

4. The authorized service provider shall notify the Missouri Department of Transportation, [Division of] Highway Safety Division in writing of any material modification or alteration in the components, design, or installation and operating instructions of any device approved for use in the state of Missouri[;] and shall provide the [Missouri Division of] Highway Safety Division satisfactory proof that any modifications or alterations do not adversely affect the ability of the device to satisfy the standards established by the United States Department of Transportation, National Highway Traffic Safety Administration, identified as "Model Specifications for Breath Alcohol Ignition Interlock Devices" 57 FR [67, pp.] 11772-11787 (April 7, 1992), which is incorporated by reference and made a part of this rule as published in the Federal Register by the National Highway Traffic Safety Administration, 1200 New Jersey SE, Washington, DC 20590 and effective April 7, 1992[, as stated herein]. **This rule does not incorporate any subsequent amendments or additions to this publication;**

5. The authorized service provider must provide informational materials to the [State Board] Division of Probation and Parole, [and] the circuit courts (including circuit, associate, and municipal divisions), and the Department of Revenue for distribution to operators at no cost;

6. In cases of operator noncompliance, the authorized service provider or his/her installer must notify the appropriate court-ordered supervising authority before the end of the next working day. Noncompliance shall include tampering, circumvention, violations resets, high breath alcohol concentration (BAC), missing a scheduled service date, or other noncompliance as determined by the referring court;

7. The authorized service provider shall notify the appropriate court-ordered supervising authority by the end of the next working day of removal of a device;

8. The authorized service provider shall conduct physical tamper inspections any time the device is serviced or given routine inspection, maintenance, or repair. Tamper inspections shall include the following:

A. Inspection of all external wiring, insulation, connections, tamper seals, and sheathing for the device and where the device connects to the vehicle; and

B. Checking the device for proper operation to [insure] ensure tamper detection capabilities;

9. The authorized service provider must immediately notify the chief law enforcement official of the county, or a city not within a county, where the installer is located and the court-ordered supervising authority of any evidence of tampering with or circumvention of the device. The evidence must be preserved by the authorized service provider or his/her installer until otherwise notified by local law enforcement officials;

10. The authorized service provider must provide summary reports every thirty (30) days to the court-ordered supervising authority. The summary reports must contain a summary of violations, the number of starts, and all noncompliance on devices placed in service in the state of Missouri under sections 577.600-577.614, RSMo;

11. The authorized service provider must provide to the court-ordered supervising authority additional reports, to include, but not be limited to, records of installation, calibrations, maintenance checks, and usage records on devices placed in service in the state of Missouri under sections 577.600-577.614, RSMo. These records shall be agreed upon and transmitted using electronic transfer protocols or in hard copy;

12. The authorized service provider must provide a quarterly status report to the Missouri Department of Transportation, [Division of] Highway Safety Division. The first quarter of each year shall be January 1[, 1996] through March 31[, 1996]. The quarterly reports should reach the [Missouri Division of] Highway

Safety **Division** on or before the fifteenth of the month immediately following the end of the quarter. The reports shall be **filed electronically** and contain the following information:

[A. The name, birth date, case number, and driver's license number of every operator who has a device installed or removed from a vehicle;

B. T/the name of the ignition interlock device, total number of devices in operation in Missouri each quarter at the time of reporting, total number of devices installed during the quarter, total number of voluntary installations during the quarter, total number of devices removed during the quarter, total number of breath alcohol tests resulting in a BAC above the alcohol setpoint, total number of attempts to circumvent the device, and the total number of devices that malfunctioned or were defective [and required a service call, repair or replacement and a listing of the devices' respective serial numbers and problems found];

[C. The total number of service calls that resulted in a charge to an operator, and their individual names, birth dates, case numbers and driver's license number, the amount of each charge, and the stated purpose of the charge; and

D. Any other nonstandard charges made to any operator, listing the operator contact information, the reason for the charge and the amount;]

13. The authorized service provider shall grant the state of Missouri the right to inspect or request copies of any and all operator files and records on a random basis;

14. The authorized service provider shall supply for each ignition interlock device installed as a result of a Missouri probation order[,/] a warning label, which shall not be less than one-half inch (1/2") in height by three inches (3") in length and shall contain the following language: "WARNING! ANY PERSON TAMPERING, CIRCUMVENTING OR OTHERWISE MISUSING THIS DEVICE IS GUILTY OF A CLASS A MISDEMEANOR."; [and]

15. The authorized service provider must notify the [Division of] Highway Safety **Division electronically** or in writing of changes in the status of any installer and additions or deletions **or other changes to [the list of approved devices.] its complete listing of all installers that includes the name, location, phone number, contact name, and hours of operation. Such notification shall occur at least once per month and shall occur more frequently if additional changes are made; and**

16. The authorized service provider shall electronically notify the Department of Revenue in a format as determined by the director of revenue within one (1) working day of the following:

A. The date the ignition interlock device was installed;

B. The driver's failure to have the ignition interlock device calibrated every thirty (30) days; and

C. The date the ignition interlock device was removed.

(B) The responsibilities of an [breath alcohol ignition interlock device] authorized service provider to the operator shall include:

1. Written instructions on how to clean and care for the device;

2. Written instructions on what type of vehicle malfunctions or repairs may affect the device, and what to do when such repairs are necessary;

3. Written and hands-on training for the operator, and all persons who will use the vehicle, on how to use the device after it is installed in the operator's vehicle. Training shall include operation, maintenance, and safeguards against improper operation;

4. An emergency twenty-four (24)-hour toll-free telephone number that [s/he] the operator may contact to receive assistance in the event of device failure or vehicle problems related to the interlock device.

A. Assistance shall include technical information, tow service, and/or road service.

B. Emergency assistance related to the failure of a device should be provided within two (2) hours for vehicles located in or near an area with an installation or repair center.

C. The device must be made functional within twenty-four (24) hours from when the call for assistance is made or the device must be replaced;

5. Restoration of the operator's vehicle to its original condition after [deinstallation] **removal of the breath alcohol ignition interlock device;** and

6. Access to an enclosed building with a separate waiting area for operators. If installation is by a mobile unit, the operator must have a separate, enclosed waiting area available.

(C) The responsibilities of an [breath alcohol ignition interlock device] authorized service provider to the installer shall include:

1. Authorized service providers shall [insure] **ensure** that installers follow certified standards and specifications for service; [and]

2. Authorized service providers shall [insure] **ensure** that installers have the appropriate skills, equipment, and facilities necessary to comply with all of the certification and operational requirements outlined herein[.]; **and**

3. **Authorized service providers shall ensure that installers comply with all of the reporting requirements outlined herein.**

AUTHORITY: sections 577.600–577.614, RSMo 2000 and RSMo Supp. 2008 and section [650.005] 226.130, RSMo [Supp. 1995] 2000. This rule originally filed as II CSR 60-2.040. Emergency rule filed Feb. 5, 1996, effective Feb. 15, 1996, expired Aug. 12, 1996. Original rule filed Feb. 16, 1996, effective Aug. 30, 1996. Moved to 7 CSR 60-2.040, effective Aug. 28, 2003. Emergency amendment filed May 7, 2009, effective July 1, 2009, expires Dec. 30, 2009. Amended: Filed May 7, 2009.

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

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

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

Title 7—DEPARTMENT OF TRANSPORTATION Division 60—Highway Safety Division Chapter 2—Breath Alcohol Ignition Interlock Device Certification and Operational Requirements

PROPOSED AMENDMENT

7 CSR 60-2.050 Breath Alcohol Ignition Interlock Device Security. The Missouri Highways and Transportation Commission is amending paragraphs (1)(A)2. and 3.

PURPOSE: This proposed amendment will remove the reference to bypass because the term bypass has been removed from the breath alcohol ignition interlock device definitions.

(1) Security.

(A) The authorized service providers shall be responsible for [insuring] **ensuring** that the installers comply with all of the following security requirements:

1. Only authorized employees of an installer may observe the installation of a device. Reasonable security measures must be taken to prevent the operator from observing the installation of a device, or

obtaining access to installation materials;

2. An installer is prohibited from assisting or facilitating any tampering[,] or circumvention [or bypass] of a device; and
3. An installer may not install or service a device on a vehicle owned or operated by any of its employees.

AUTHORITY: sections 577.600–577.614, RSMo 2000 and RSMo Supp. 2008 and section [650.005] 226.130, RSMo [Supp. 1995] 2000. This rule originally filed as II CSR 60-2.050. Emergency rule filed Feb. 5, 1996, effective Feb. 15, 1996, expired Aug. 12, 1996. Original rule filed Feb. 16, 1996, effective Aug. 30, 1996. Moved to 7 CSR 60-2.050, effective Aug. 28, 2003. Amended: Filed May 7, 2009.

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

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

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

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 60—Highway Safety Division
Chapter 2—Breath Alcohol Ignition Interlock Device
Certification and Operational Requirements**

PROPOSED AMENDMENT

7 CSR 60-2.060 Suspension, or Revocation of Approval of a Device. The Missouri Highways and Transportation Commission is amending subsections (1)(A), (1)(B), and (1)(D); amending paragraphs (1)(A)5. and 6.; adding paragraphs (1)(D)1. and 2.; and removing the forms following this rule from the *Code of State Regulations*.

PURPOSE: This proposed amendment will correct references to the Department of Public Safety, since the Highway Safety Division is now under the Missouri Department of Transportation pursuant to Executive Order 03-05, issued on February 5, 2003, will clarify when the Highway Safety Division can suspend or revoke approval of a device, and provide publication information for the incorporated by referenced material. This proposed amendment also will outline an informal review process of a suspension or revocation of a certified device.

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) Suspension, or Revocation of Approval of a Device.

(A) The state of Missouri, Department of [Public Safety] Transportation, [Division of] Highway Safety Division may suspend or revoke approval of a device, and remove it from the list of

approved devices, for any of the following reasons:

1. Defects in design, materials, or workmanship causing repeated failures of a device;
2. Termination or cancellation of an authorized service provider's liability insurance;
3. Discontinuance in the business of manufacturing devices;
4. Voluntary request by an authorized service provider to cancel approval of a device;
5. Violation by an authorized service provider, or installer, of any of the provisions set forth [herein] in **7 CSR 60-2.010 through 7 CSR 60-2.060**; or
6. Modification or alteration of the components, design, or installation and operation instructions in such a way that the requirements of the United States Department of Transportation, National Highway Traffic Safety Administration, identified as "Model Specifications for Breath Alcohol Ignition Interlock Devices" 57 FR [67, pp.] 11772–11787, which is incorporated by reference and made a part of this rule as published in the *Federal Register* by the National Highway Traffic Safety Administration, 1200 New Jersey SE, Washington, DC 20590 and effective April 7, 1992, are no longer satisfied. **This rule does not incorporate any subsequent amendments or additions to this publication.**

(B) Notice of suspension or revocation shall be mailed to [the person] a representative of the authorized service provider at the last known address on file with the Missouri [Division of] Department of Transportation, Highway Safety Division. The notice is deemed received three (3) days after mailing unless returned by postal authorities.

(D) An authorized service provider may [appeal] request an informal review of a suspension or revocation. This [appeal] request must be submitted to the Missouri Department of [Public Safety] Transportation, [Missouri Division of] Highway Safety Division, in writing, within ten (10) days of receipt of a notice of [denial,] suspension or revocation.

1. The informal review may be conducted in person, in writing, or by telephone with Missouri Department of Transportation, Highway Safety Division personnel delegated to conduct such informal review by the Missouri Highways and Transportation Commission.

2. In the event that the informal review is unable to resolve the dispute between the Highway Safety Division and the authorized service provider, the initial determination shall become the final decision of the commission.

AUTHORITY: sections 577.600–577.614, RSMo 2000 and RSMo Supp. 2008 and section [650.005] 226.130, RSMo [Supp. 1995] 2000. This rule originally filed as II CSR 60-2.060. Emergency rule filed Feb. 5, 1996, effective Feb. 15, 1996, expired Aug. 12, 1996. Original rule filed Feb. 16, 1996, effective Aug. 30, 1996. Moved to 7 CSR 60-2.060, effective Aug. 28, 2003. Amended: Filed May 7, 2009.

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

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

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

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 3—Conditions of Provider Participation,
Reimbursement and Procedure of General Applicability**

PROPOSED AMENDMENT

13 CSR 70-3.120 Limitations on Payment of Out-of-State Nonemergency Medical Services. The division is amending the purpose statement, section (1), and sections (3)–(7).

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, and adds incorporated by reference material.

PURPOSE: This rule establishes a regulatory basis for implementation of prior authorization on all out-of-state nonemergency [Medicaid] MO HealthNet-covered services.

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) All nonemergency, [Medicaid] MO HealthNet-covered services, except for those services exempted in section (6) of this rule, which are to be performed or furnished out-of-state for eligible [Missouri Medicaid recipients] MO HealthNet participants and for which [Missouri Medicaid] MO HealthNet is to be billed, must be prior authorized in accordance with policies and procedures established by the [Division of Medical Services] MO HealthNet Division before the services are provided.

(3) Out-of-state is defined as not within the physical boundaries of Missouri nor within the boundaries of any state which physically borders on the Missouri boundaries. Border-state providers of services (those providers located in Arkansas, Illinois, Iowa, Kansas, Kentucky, Nebraska, Oklahoma, Tennessee) will be considered as being on the same [Medicaid] MO HealthNet participation basis as providers of services located within Missouri for purposes of administration of this rule.

(4) The out-of-state provider of services must meet the requirements for participation in the [Missouri Medicaid] MO HealthNet program and have a state-approved participation agreement in effect in order to receive reimbursement for any covered service, emergency or nonemergency.

(5) The patient’s attending physician is responsible for obtaining prior authorization of the services s/he believes to be medically necessary.

(A) Failure to obtain prior authorization for the services shall result in no payment by the [Medicaid] MO HealthNet program.

(B) All prior authorization requests must be submitted in accordance with policies and procedures established by the [Division of Medical Services] MO HealthNet Division as stated in the respective [Medicaid] MO HealthNet Provider Manual and provider bulletins which are incorporated by reference and made a part of this rule as published by the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109, at its website at www.dss.mo.gov/mhd, June 15, 2009. This rule does not incorporate any subsequent amendments or additions.

(C) Prior authorization by the [state Medicaid] MO HealthNet agency shall approve the medical necessity of the covered services to be performed only. It shall not guarantee payment as the [recipient] participant must be eligible on the date the service was provided.

(E) All requests for prior authorization must be submitted to the [Recipient] Participant Services Unit of the [Division of Medical Services] MO HealthNet Division. The physician who is referring the patient for the nonemergency services[,] must call or write the [Division of Medical Services] MO HealthNet Division for authorization.

(6) The following are exempt from the requirement for prior authorization of nonemergency [Medicaid] MO HealthNet-covered services for out-of-state providers:

(A) All services provided individuals having both Medicare and [Medicaid] MO HealthNet coverage for which Medicare does provide coverage and is the primary payer (cross-/over claims);

(C) All foster care children living outside Missouri. Nonemergency services which routinely require prior authorization will continue to require prior authorization by out-of-state providers even though the service was provided to a foster care child. Foster care children are identified on the [Medicaid] MO HealthNet ID card with a Type of Assistance (TOA) indicator of “D” or “Z”; and

(7) All other policies and procedures applicable to the [Missouri Medicaid] MO HealthNet program will be in effect for services provided by out-of-state providers.

AUTHORITY: sections [207.020] 208.153 and 208.201, RSMo [1994] Supp. 2008. This rule was previously filed as 13 CSR 40-81.190. Emergency rule filed Sept. 18, 1981, effective Sept. 28, 1981, expired Jan. 13, 1982. Original rule filed Sept. 18, 1981, effective Jan. 14, 1982. Amended: Filed Oct. 21, 1994, effective June 30, 1995. Amended: Filed May 14, 2009.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of 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.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 4—Conditions of Participant Participation,
Rights and Responsibilities**

PROPOSED AMENDMENT

13 CSR 70-4.090 Uninsured Women’s Health Program. The division is amending the purpose statement and sections (1)–(3).

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, and updates the Uninsured Women’s Health Program information.

PURPOSE: This rule establishes the Uninsured Women's Health Program. This program will provide payment for women's health services for uninsured women who do not qualify for other medical assistance benefits, and would lose their [Medicaid] MO HealthNet eligibility sixty (60) days after the birth of their child or sixty (60) days after a miscarriage, and for women ages eighteen (18) to fifty-five (55) who have a net family income of at or below one hundred eighty-five percent (185%) of the Federal Poverty Level (FPL) and have assets totaling no more than two hundred fifty thousand dollars (\$250,000), in order to reduce the possibility of a family's future dependence on welfare as authorized pursuant to section 208.040, RSMo. The program is [also] authorized pursuant to [the] award of the [Missouri State Medicaid Section 1115 Health Care Reform Demonstration Proposal] Missouri's Women's Health Services Program approved by the Centers for Medicare and Medicaid Services.

(1) Uninsured women who do not qualify for other medical assistance benefits, and would lose their [Medicaid] MO HealthNet eligibility sixty (60) days after the birth of their child or sixty (60) days after a miscarriage, and women ages eighteen (18) to fifty-five (55) who have a net family income of at or below one hundred eighty-five percent (185%) of the Federal Poverty Level (FPL) and have assets totaling no more than two hundred fifty thousand dollars (\$250,000), shall be eligible to receive medical services to the extent and in the manner provided in this regulation. Uninsured women who do not qualify for other medical assistance benefits, and would lose their [Medicaid] MO HealthNet eligibility sixty (60) days after the birth of their child or sixty (60) days after a miscarriage regardless of income, and women ages eighteen (18) to fifty-five (55) who have a net family income of at or below one hundred eighty-five percent (185%) of the Federal Poverty Level (FPL) and have assets totaling no more than two hundred fifty thousand dollars (\$250,000), will continue to be eligible for women's health services only, regardless of income, for twelve (12) consecutive months. Women's health services are defined as: pelvic exams and pap tests, sexually transmitted disease testing and treatment (the treatments of medical complications occurring from the sexually transmitted disease are not covered for this program), family planning counseling/education on various methods of birth control, United States Department of Health and Human Services approved methods of contraception including sterilization and x-ray services related to the sterilization, and drugs (excluding antiretrovirals), supplies or devices related to the women's health services described in this rule when they are prescribed by a physician or advanced practice nurse, subject to the National Drug Rebate Program requirements.

(2) Uninsured women who do not qualify for other benefits, and would lose their [Medicaid] MO HealthNet eligibility sixty (60) days after the birth of their child or sixty (60) days after a miscarriage, and women ages eighteen (18) to fifty-five (55) who have a net family income of at or below one hundred eighty-five percent (185%) of the Federal Poverty Level (FPL) and have assets totaling no more than two hundred fifty thousand dollars (\$250,000), are not required to pay a co-payment for women's health services.

(3) The Department of Social Services, [Division of Medical Services] MO HealthNet Division shall provide for granting an opportunity for a fair hearing to any applicant or [recipient] participant whose claim for benefits under the [Missouri Medicaid] Section 1115, [Health Care Reform Demonstration Proposal] Missouri's Women's Health Services Program is denied by the [Division of Medical Services] MO HealthNet Division. There are established positions of state hearing officers within the Department of Social Services, Division of Legal Services in order to comply with all pertinent federal and state law and regulations. The state hearing officers shall have authority to conduct state level

hearings of an appeal nature and shall serve as direct representative of the director of the [Division of Medical Services] MO HealthNet Division.

AUTHORITY: sections 208.040, RSMo Supp. 2004] and 208.201 RSMo Supp. 2008 and section 660.017, RSMo 2000. Emergency rule filed Sept. 13, 1999, effective Sept. 23, 1999, terminated Oct. 15, 1999. Original rule filed Aug. 16, 1999, effective March 30, 2000. For intervening history, please consult the Code of State Regulations. Amended: Filed: May 14, 2009.

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions \$1,087,453 in general revenue annually.

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of 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.

**FISCAL NOTE
PUBLIC COST**

- I. Department Title:** Department of Social Services
Division Title: MO HealthNet Division
Chapter Title: Chapter 4—Conditions of Participant Participation, Rights and Responsibilities

Rule Number and Name:	13 CSR 70-4.090 Uninsured Women's Health Program
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Social Services/ MO HealthNet Division	\$1,087,453 General Revenue

III. WORKSHEET

An estimated 81,788 new eligibles are expected to enroll with a cost of \$10,874,532 for a 12 month period. This cost includes both state GR and federal cost. The federal financial participation rate of the payment for most of these procedures is 90% (rather than the normal rate of approximately 60%). The remaining percentage is funded by state general revenue.

IV. ASSUMPTIONS

The agency assumes that 81,788 new eligibles will enroll at an annual estimated cost per eligible of \$132.96.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—[Division of Medical Services]
MO HealthNet Division
Chapter 55—Nurse-Midwife Program

PROPOSED AMENDMENT

13 CSR 70-55.010 [Medicaid] MO HealthNet Program Benefits for Nurse-Midwife Services. The division is amending the title, the purpose statement, and sections (1)–(7).

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 reference to program recipients to participants, and incorporates by reference provider manuals and provider bulletins.

PURPOSE: The purpose of this rule is to establish, via regulation, the Department of Social Services' [Division of Medical Services] MO HealthNet Division guidelines regarding [Medicaid] MO HealthNet coverage and reimbursement for services provided by nurse-midwives as mandated in Title 42 CFR 440.220(1).

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) Administration. The Nurse-Midwife Program shall be administered by the Department of Social Services, [Division of Medical Services] **MO HealthNet Division**. The medical services covered and not covered, the program limitations, and the maximum allowable fees for all covered services shall be determined by the Department of Social Services, [Division of Medical Services] **MO HealthNet Division**, and shall be included in the Nurse-Midwife Program provider manual and provider bulletins, which are incorporated by reference and made a part of this rule as published by the Department of Social Services, **MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109**, at its website at www.dss.mo.gov/mhd, June 15, 2009. This rule does not incorporate any subsequent amendments or additions.

(2) Persons Eligible. Any person who is eligible for [Medical Assistance Program] **MO HealthNet** benefits from the Department of Social Services and is in need of medical services in accordance with the procedures described in this regulation.

(3) Provider Participation. To be eligible for participation in the [Missouri Medicaid] **MO HealthNet Nurse-/m/Midwife Program**, a provider must meet the following criteria:

(A) Be currently licensed and maintain an active license as a registered nurse.

1. A nurse-midwife who resides in or outside Missouri and who practices in whole or in part in Missouri must be a currently licensed registered nurse (RN) in Missouri.

2. A nurse-midwife who provides services, in whole or in part, to [Missouri Medicaid recipients] **MO HealthNet participants** in a state other than Missouri must be a currently licensed registered nurse (RN) in that state and be legally authorized under that state's law to practice as a nurse-midwife; and

(4) [Medicaid] **MO HealthNet** reimbursement for nurse-midwives

will be limited to the following types of care in accordance with federal and state laws. The [Medicaid] **MO HealthNet Nurse-Midwife Provider Manual** will contain a listing of covered and noncovered services:

(5) Nurse-midwives may be reimbursed by [Medicaid] **MO HealthNet** for services performed in the following locations:

(6) Reimbursement. [Medicaid] **MO HealthNet** reimbursement for service(s) rendered will be the lower of the provider's usual and customary charge to the general public or the [Medicaid] **MO HealthNet** maximum allowable amount.

(7) General Regulations. This rule shall not encompass all of the general regulations of the [Medicaid] **MO HealthNet** Program. These regulations, however, shall be in effect for nurse-midwife services.

AUTHORITY: sections [207.020 and] 208.152, 208.153, and 208.201, RSMo [1986] Supp. 2008. This rule was previously filed as 13 CSR 40-81.045. Original rule filed Sept. 1, 1987, effective Dec. 1, 1987. Emergency amendment filed Nov. 18, 1987, effective Dec. 1, 1987, expired March 30, 1988. Amended: Filed Nov. 19, 1987, effective March 11, 1988. Amended: Filed May 14, 2009.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of 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.

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

The agency is also required to make a brief summary of the general nature and extent of comments submitted in support of or opposition to the proposed rule and a concise summary of the testimony presented at the hearing, if any, held in connection with the rulemaking, together with a concise summary of the agency's findings with respect to the merits of any such testimony or comments which are opposed in whole or in part to the proposed rule. The ninety (90)-day period during which an agency shall file its order of rulemaking for publication in the *Missouri Register* begins either: 1) after the hearing on the proposed rulemaking is held; or 2) at the end of the time for submission of comments to the agency. During this period, the agency shall file with the secretary of state the order of rulemaking, either putting the proposed rule into effect, with or without further changes, or withdrawing the proposed rule.

Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 30—Division of Administrative and Financial Services
Chapter 640—School Buildings

ORDER OF RULEMAKING

By the authority vested in the State Board of Education under sections 160.459 and 161.092, RSMo Supp. 2008, the board adopts a rule as follows:

5 CSR 30-640.100 Rebuild Missouri Schools Program is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on January 16, 2009 (34 MoReg 113-114). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—MO HealthNet Division
Chapter 60—Durable Medical Equipment Program

ORDER OF RULEMAKING

By the authority vested in the MO HealthNet Division under sections 208.153 and 208.201, RSMo Supp. 2008, the division amends a rule as follows:

13 CSR 70-60.010 Durable Medical Equipment Program is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 17, 2009 (34 MoReg 286-288). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 400—Life, Annuities and Health
Chapter 1—Life Insurance and Annuity Standards

ORDER OF RULEMAKING

By the authority vested in the director of the Department of Insurance, Financial Institutions and Professional Registration under section 374.045, RSMo Supp. 2008 and sections 376.380, 376.670, and 376.676, RSMo 2000, the director amends a rule as follows:

20 CSR 400-1.170 Recognition of Preferred Mortality Tables in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 3, 2009 (34 MoReg 219). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing regarding this proposed amendment was held March 10, 2009, and the public comment period ended March 17, 2009. At the public hearing, the Division of Insurance Company Regulation staff explained the proposed amendment, and two (2) comments were made.

COMMENT #1: Dana Weile, with RGA Reinsurance Company, Reinsurance Group of America, Inc., commented in support of this amendment.

RESPONSE: No changes have been made to the rule as a result of this comment.

COMMENT #2: Bryan Cox, with American Council of Life Insurers, submitted a comment on March 12, 2009, in support of this amendment.

RESPONSE: No changes have been made to the rule as a result of this comment.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 700—Insurance Licensing
Chapter 3—Education Requirements

ORDER OF RULEMAKING

By the authority vested in the director of the Department of Insurance, Financial Institutions and Professional Registration under

section 374.045, RSMo 2000 and section 375.020, RSMo Supp. 2008, the director amends a rule as follows:

20 CSR 700-3.200 Continuing Education is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 17, 2009 (34 MoReg 309). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing regarding this proposed amendment was held March 24, 2009, and the public comment period ended March 27, 2009. At the public hearing, the Division of Insurance Company Regulation staff explained the proposed amendment. No other comments were made.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2150—State Board of Registration for the
Healing Arts
Chapter 5—General Rules**

ORDER OF RULEMAKING

By the authority vested in the State Board of Registration for the Healing Arts under section 334.125, RSMo 2000, the board withdraws an amendment as follows:

20 CSR 2150-5.020 Nonpharmacy Dispensing is withdrawn.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on January 16, 2009 (34 MoReg 128). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: The board received two (2) comments on the proposed amendment.

COMMENT: The Board of Pharmacy and the Missouri Pharmacy Association commented that the proposed amendment is set too broad and would allow unauthorized and unlicensed individuals to dispense medications with little or no supervision. Both agencies believe that the proposed amendment poses a large threat to the public by removing the “direct supervision” requirement.

RESPONSE: Based on the comments received, the board has decided to withdraw the current amendment and promulgate a new amendment to address the aforementioned concerns.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2165—Board of Examiners for Hearing
Instrument Specialists
Chapter 2—Licensure Requirements**

ORDER OF RULEMAKING

By the authority vested in the Board of Examiners for Hearing Instrument Specialists under sections 346.070, 346.075, 346.080, and 346.115.1(7), RSMo 2000, the board amends a rule as follows:

**20 CSR 2165-2.010 Hearing Instrument Specialist in Training
(Temporary Permits) is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 3, 2009 (34 MoReg 220–223). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The board received six (6) comments on the proposed amendment.

COMMENT #1: Nancy Frasier Ellis, BC-HIS, with Lake Professional Hearing Aid Center, commented that she is in support of the proposed amendment.

RESPONSE: The board appreciates the support from Ms. Frasier Ellis and, since her comment simply stated her support, no changes have been made to the proposed amendment.

COMMENT #2: Jacqueline Hartman questions why there is a need to burden the Hearing Instrument Specialist in Training (HISITs) with coursework/continuing education that has no relevance to the individual due to their limited skill. Ms. Hartman suggests switching the burden of additional coursework to the supervisors instead of the HISITs and requiring the supervisor to pass a practical exam every five (5) years to maintain the status as a registered supervisor. She also states that Missouri law is currently a danger to Missouri citizens and suggests it is time to tighten up the requirements to ensure that HISITs are properly trained.

COMMENT #3: Scott George, with Mid-America Hearing Center, Inc., commented that HISITs are already in training as defined by the board, and the proposed amendment adds a significant burden to the small business hearing health care providers who are trying to grow and expand their practices. Mr. George stated that the fiscal note calculation is significantly flawed, as it left out travel expenses, such as airfare, lodging, and meals. He questioned the basis of the rule, asking if the high failure rates could be related to the new sixty (60) college-hour requirement effective on January 1. Lastly, Mr. George commented that the proposed amendment was promulgated without the participation of affected small business hearing health care providers as required by state statute.

COMMENT #4: Clarence J. “Jim” Jones, BC-HIS, submitted a comment questioning the reason for the amendment. Mr. Jones feels that additional education requirements for trainees seem pointless and the cost suggested is too low because it ignores the cost of travel, lodging, and loss of productivity.

COMMENT #5: Paul Gravett, a certified continuing education provider for over twenty (20) years, teacher of license preparation classes for over thirty (30) years, and former chairperson to the Oregon Hearing Aid Board, suggested we take into consideration Oregon’s process for addressing low quality of testing trainees. Mr. Gravett stated that the Oregon board first addressed supervisors by requiring that they hold a valid hearing aid license for at least eighteen (18) months, have no discipline in the preceding year, and attend approved classes on supervision. Secondly, the Oregon board changed the way the test was given and scored to where the student/trainee had to retake the whole exam if any one (1) section was failed, was only allowed to retake the exam twice in one (1) year; if they failed twice in one (1) year, they lost their temporary permit until they were able to pass the entire exam. Persons licensed in another state were allowed to take the exam without a supervisor but could not practice in the state. Mr. Gravett acknowledges that these ideas are met with mixed reviews, but they clearly place the burden for the quality of trainees in the laps of the supervisors. They provide for the trainee to get the education and training that the consumer deserves while assuring adequate supervision.

COMMENT #6: Sam Hopmeier, BC-HIS, former president of the Missouri Hearing Society and former member of and president for the Board of Governors of the International Hearing Society, argues that attending a national or state convention would not help anyone

pass a state licensing exam. Mr. Hopmeier agrees that there is a wealth of information to be had by attending such, but to an individual with limited prior exposure to the industry, it could be overwhelming and counter-productive. He believes that a high failure, or any failure, rate is due to the quality of the individual instruction received and suggests a state-wide program tailored to beginners in the profession. Mr. Hopmeier stated that focusing on the supervisors may not do the trick and believes that the student would be better served by a single source of disciplined education. He also noted that the fiscal note to attend a national convention, not in an individual's home city, is unrealistic. In addition, he stated that input from interested and effected parties would add to the quality of legislation. **RESPONSE:** The board appreciates the serious issues raised by the comments. The Board of Examiners for Hearing Instrument Specialists (BEHIS) consists of six (6) members of the profession (all of whom either own or work for a small business) and a public member. Because of the similarity of the concerns expressed, they are answered as a group—

Issue 1—Additional Training for HISIT.

Based on the examination results from March 2006 to March 2009, the board feels the proposed change is needed to ensure HISITs are obtaining sufficient education/training prior to becoming licensed to practice the fitting of hearing instruments. Of the one hundred seventeen (117) applicants that took the examination during that time period, fifty-seven (57) failed; thirty (30) passed the examination on the first attempt; nineteen (19) passed on the second attempt; five (5) passed on the third attempt; and one (1) passed on the fourth attempt. Three (3) applicants failed three (3) times, and one (1) applicant failed four (4) times. During its open meeting deliberations, the board considered all the examination results described above and determined the additional education/training is absolutely necessary to ensure that safe and competent practitioners are entering the profession.

Issue 2—Additional Supervisor Training.

The board has held seminars at the Missouri Hearing Society meeting to provide supervisors with information; however, overall examination results have not improved.

Issue 3—Statutory Revisions.

The board is also concerned that the training requirements for HISITs is not sufficient to protect the public and believes the additional educational requirements of the proposed amendment will address this issue.

Issue 4—Fiscal Note Concerns.

An amended fiscal note has been filed with this final order.

Issue 5—The Rule was Improperly Promulgated.

Chapter 536, RSMo, requires a small business impact statement when a small business is directly impacted. There is no foundation for the claim that small businesses were not included in the rule-making process. Board members are the owners or employees of small businesses. One (1) member of the board is also a member of the board of directors of the profession's trade association, the Missouri Hearing Society. It is unfair to assume that the members of a professional board, who are actively involved day-to-day in the work of the profession, lack an understanding of what impact their actions have on their own livelihood. Although the increase in training of HISITs will undoubtedly have an indirect impact on the businesses that employ hearing instrument specialists, the proposed amendment does not mandate that small businesses pay the examination or other fees of their employees. BEHIS only has the statutory authority to license individuals. The distinction between licensure of individuals and the licensure of business entities is important and has been consistently applied since Executive Order 03-15, the predecessor to the statutory Small Business Regulatory Fairness Board,

was issued. The board also posted public notice of board meetings on the board's and Office of Administration's websites to provide advanced notice of the board's agenda for any upcoming meeting. The board is confident that the indirect increases to health care costs and the considerations of those planning on entering the profession will be minimal.

For the foregoing reasons, the board took no action to change the proposed amendment.

REVISED PRIVATE COST: This proposed amendment will cost private entities approximately six thousand five hundred twenty-eight dollars (\$6,528) annually for the life of the rule. It is anticipated that the costs will recur for the life of the rule, may vary with inflation and are expected to increase at the rate projected by the Legislative Oversight Committee.

REVISED PRIVATE FISCAL NOTE

I. RULE NUMBER

Title 20 - Department of Insurance, Financial Institutions and Professional Registration

Division 2165 - Board of Examiners for Hearing Instrument Specialists

Chapter 2 - Licensure Requirements

Proposed Amendment - 20 CSR 2165-2.010 Hearing Instrument Specialist in Training (Temporary Permits)

Amended April 20, 2009 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Estimate the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by type of the business entities which would likely be affected:	Estimated cost of compliance with the rule by affected entities:
34	Applicants for a Temporary Permit 6 Hours of Continuing Education Courses @ \$32 Per Credit Hour	\$6,528
	Estimated Annual Cost of Compliance for the Life of the Rule	\$6,528

III. WORKSHEET

See table above.

IV. ASSUMPTION

1. The numbers reported above are based on FY 08 Actuals.
2. The cost of the continuing education credits is based on the International Hearing Society annual convention. The cost was \$499.00 for 15.5 credits which averages a cost of \$32 per credit hour.
3. Due to varying geographic locations, it is impossible to estimate the cost of travel and lodging to attend the International Hearing Society annual convention.
4. It is anticipated that the total cost will recur for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2165—Board of Examiners for Hearing
Instrument Specialists
Chapter 2—Licensure Requirements**

ORDER OF RULEMAKING

By the authority vested in the Board of Examiners for Hearing Instrument Specialists under sections 346.085 and 346.115.1(7), RSMo 2000 and section 346.060, RSMo Supp. 2008, the board amends a rule as follows:

20 CSR 2165-2.030 Licensure by Examination **is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 3, 2009 (34 MoReg 224). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2165—Board of Examiners for Hearing
Instrument Specialists
Chapter 2—Licensure Requirements**

ORDER OF RULEMAKING

By the authority vested in the Board of Examiners for Hearing Instrument Specialists under section 346.115.1(7), RSMo 2000, the board amends a rule as follows:

20 CSR 2165-2.040 Licensure by Reciprocity **is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 3, 2009 (34 MoReg 224–225). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.