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SALUS POPULI SUPREMA LEX ESTO

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

ROBIN CARNAHAN

SECRETARY OF STATE

MISSOURI REGISTER

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Documents will be accepted for filing on all regular workdays from 8:00 a.m. until 5:00 p.m. We encourage early filings to facilitate the timely publication of the *Missouri Register*. Orders of Rulemaking appearing in the *Missouri Register* will be published in the *Code of State Regulations* and become effective as listed in the chart above. Advance notice of large volume filings will facilitate their timely publication. We reserve the right to change the schedule due to special circumstances. Please check the latest publication to verify that no changes have been made in this schedule. To review the entire year's schedule, please check out the website at http://www.sos.mo.gov/adrules/pubsched.asp

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HOW TO CITE RULES AND RSMo

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.

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 symbology 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 80—State Milk Board
Chapter 3—Production and Distribution of Grade A Retail Raw Milk and Milk Products

PROPOSED AMENDMENT

2 CSR 80-3.070 The Grading of Milk and Milk Products. The Missouri State Milk Board is amending paragraphs (1)(A)23. and 26.

PURPOSE: This amendment changes the necessary wording to conform with FDA and USDA recommendations.

(1) Grades shall be based on the following standards, the grading of milk products being identical with the grading of milk, except that the bacterial count standards shall be doubled in the case of cream. The grade of milk product shall be that of the lowest grade of milk product used in its preparation.

(A) Grade A retail raw milk is raw milk produced upon dairy farms conforming with all of the following items of sanitation. The bacterial plate count of the milk shall not exceed fifty thousand (50,000) per milliliter and not more than one hundred (100) coliform per milliliter as determined in accordance with 2 CSR 80-3.060.

1. Cow health. All herds and additions shall be tested and found free of tuberculosis before any milk is sold**,** and all herds shall be retested at least every twelve (12) months thereafter. The tests and retests shall be made and any reactors disposed of, in accordance with the latest requirements approved by the United States Department of Agriculture (USDA), for tuberculosis-free accredited herds, in effect at the time of the adoption of these regulations. A certificate identifying each animal signed by the veterinarian or attested to by the state authority, and filed as directed by the state authority, shall be evidence to the previously mentioned test.

A. All herds and additions shall be tested and found free of brucellosis before any milk is sold and all herds shall be retested at least every twelve (12) months thereafter. Tests and retests shall be made, and any reactors disposed of in accordance with the latest requirements by the USDA, in effect at the time of the adoption of these rules. A certificate identifying each animal, signed by the veterinarian and the director of the laboratory making the test and filed as directed by the state authority shall be evidence of the previous test.

B. Cows which show a complete induration of one (1) quarter or extensive induration in one (1) or more quarters of the udder upon physical examination whether secreting abnormal milk or not, shall be permanently excluded from the milking herd, provided that this shall not apply in the case of quarter that is completely dry. Cows giving bloody, stringy**,** or otherwise abnormal milk, but without entire or extensive induration of the udder, shall be excluded from the herd until reexamination shows that the milk has become normal.

C. For other diseases, such tests and examinations as the state authority may require after consultation with state livestock sanitary officials shall be made at intervals and by methods prescribed by him/her, and any diseased animals or reactors shall be disposed of as s/he may require.

2. Milking barn—lighting. A milking barn, stable**,** or parlor shall be provided. It shall be provided with adequate light, properly distributed for both day and night milking.

3. Milking barn—air space and ventilation. Sections of the milking barn, stable**,** or parlor where cows are kept or milked shall be well ventilated*[,]* and shall be so arranged as to avoid overcrowding.

4. Milking barn—floors, animals. The floors and gutters of that portion of the barn, stable**,** or parlor in which cows are milked shall be constructed of concrete, or other approved, impervious**,** and easily cleaned material. Floors and gutters shall be graded so as to drain properly and shall be kept clean and in good repair. No swine or fowl shall be permitted in the milking barn, stable**,** or parlor. If horses, dry cows, calves**,** or bulls should be stabled, they shall be confined in stalls, stanchions**,** or pens which shall be kept clean and in good repair.

5. Milking barn—walls and ceilings. The interior walls and the ceilings of the milking barn, stable**,** or parlor shall be whitewashed or painted as often as may be necessary or finished in an approved manner and shall be kept clean and in good repair. Where there is a second story above the milking barn, stable**,** or parlor the ceiling shall be tight. If feed should be ground or mixed, or sweet food should be stored, in a feed room or feed storage space which adjoins the milking space, it shall be separated by a dust-tight partition and door.

6. Cowyard—The cowyard shall be graded and drained as well as is practicable*[,]* and shall be so kept that there are no standing pools of water nor accumulations of organic waste; provided, that in loafing areas, cattle housing areas, or both, manure droppings shall be removed, or clean bedding added, at sufficiently frequent intervals

to prevent the accumulation of manure on cows' udders and flanks. Swine shall be kept out.

7. Manure disposal—All manure shall be removed and stored or disposed of in such a manner as to best prevent the breeding of flies and the access of cows to piles thereof.

8. Milkhouse or room—construction and equipment. There shall be provided a milkhouse or milkroom in which the cooling, handling**,** and storing of milk and milk products, and the washing, bactericidal treatment**,** and storing of milk containers and utensils shall be done.

A. The milkhouse or room shall be provided with a smooth floor, constructed of concrete or other impervious material, maintained in good repair and graded as to provide proper drainage.

B. It shall have walls and ceilings of such construction as to permit easy cleaning and shall be well painted or finished in an approved manner.

C. It shall be well lighted and well ventilated.

D. It shall have all openings effectively screened, including outward opening self-closing doors, unless other effective means are provided to prevent the entrance of flies.

E. It shall be used for no purposes other than those specified previously, except as may be approved by the state authority; it shall not open directly into a milking barn or stable, nor into any room used for domestic purposes; it shall have water piped into it; it shall be provided with adequate facilities for heating water to clean utensils; and it shall be equipped with three (3) compartment stationary, wash and rinse vats. The cleaning and other operations shall be located and conducted so as to prevent any contamination of the milk or cleaned equipment.

F. The milkhouse shall be partitioned to separate the handling of milk and storage of cleaned utensils from the cleaning and other operations, which shall be located and conducted as to prevent any contamination of the milk or of cleaned equipment. 2 CSR 80-3.100 shall be posted in the milkhouse.

9. Milkhouse or room—cleanliness and flies. The floors, walls, ceilings**,** and equipment of the milkhouse or room shall be kept clean at all times. All necessary means for the elimination of flies shall be used.

10. Toilet—Every dairy farm shall be provided with one (1) or more sanitary toilets, conveniently located and properly constructed, operated**,** and maintained so that the waste is inaccessible to flies and does not pollute the surface soil nor contaminate any water supply.

11. Water supply—Water for all dairy purposes shall be from a supply properly located, protected**,** and operated and shall be easily accessible, adequate**,** and of a safe, sanitary quality.

12. Utensils—construction. All multiuse containers, equipment**,** and other utensils used in the handling, storage**,** or transportation of milk or milk products shall be made of smooth, nonabsorbent, noncorrodible, nontoxic material, shall be so constructed as to be easily cleaned**,** and shall be kept in good repair. Joints and seams shall be welded or soldered flush. Woven-wire cloth shall not be used for strained milk. When milk is strained, strainer pads shall be used and shall not be reused. All milk pails obtained shall be of the seamless, hooded type. All single-service articles used shall have been manufactured, packaged, transported**,** and handled in a sanitary manner.

13. Utensils—cleaning. All multiuse containers, equipment**,** and other utensils used in the handling, storage**,** or transportation of milk and milk products shall be thoroughly cleaned after each usage.

14. Utensils—bactericidal treatment. All multiuse containers, equipment**,** and other utensils used in the handling, storage**,** or transportation of milk and milk products, before each usage, shall be subjected effectively to an approved bactericidal process utilizing steam, hot water, chemicals**,** or hot air.

15. Utensils—storage. All containers and other utensils used in the handling, storage**,** or transportation of milk or milk products**,** unless stored in bactericidal solutions, shall be stored so as to drain dry and so as not to become contaminated before being used.

16. Utensils—handling. After bactericidal treatment, containers**,** and other milk and milk product utensils shall be handled in such a manner as to prevent contamination of any surface with which milk or milk products come into contact.

17. Milking—udders and teats, abnormal milk. Milking should be done in the milking barn, stable**,** or parlor. The udders and teats of all milking cows shall be clean and wiped with an approved bactericidal solution at the time of milking. Abnormal milk shall be kept out of the milk supply and shall be handled and disposed of as to preclude the infection of the cows and the contamination of milk utensils.

18. Milking—flanks. The flanks, bellies**,** and tails of all milking cows shall be free from visible dirt at the time of milking. All brushing shall be completed before milking commences.

19. Milkers' hands. Milkers' hands shall be washed clean, rinsed with an effective bactericidal solution**,** and dried with a clean towel, immediately before milking and immediately after any interruption in the milking operation. Wet-hand milking is prohibited. Convenient facilities shall be provided for the washing of milkers' hands. No person with an infected cut or lesion on hands or arms shall milk cows or handle milk or milk utensils.

20. Clean clothing. Milkers and milk handlers shall wear clean outer garments while milking or handling milk, milk products, containers, utensils**,** or equipment.

21. Milk stools. Milk stools and surcingles shall be kept clean.

22. Removal of milk. Each pail or can of milk shall be removed immediately to the milkhouse or straining room. No milk shall be strained or poured in the barn, unless it is protected from flies and other contamination.

23. Cooling. Immediately after completion of milking, milk and milk products shall be cooled to *[fifty]* **forty-five** degrees Fahrenheit (*[50]***45** °F) or less*[,]* and shall be maintained at that temperature until delivery, as determined in accordance with 2 CSR 80-3.060.

24. Vehicles and surrounding. All vehicles used for the transportation of milk or milk products shall be constructed and operated so as to protect their contents from the sun, from freezing**,** and from contamination. All vehicles used for the distribution of milk or milk products shall have the distributor's name prominently displayed.

25. Bottling and capping. Milk and milk products not for pasteurization shall be bottled on the farm where produced. Bottling and capping shall be done in a sanitary manner by means of approved equipment and these operations shall be integral in one (1) machine. Caps or cap stock shall be purchased in sanitary containers and shall be kept in a clean, dry place until used.

26. Personnel health. The state health authority or physician authorized by him/her *[shall]* **may** examine and take a careful morbidity history of every person connected with a producer-distributor dairy, or about to be employed by one, whose work brings him/her into contact with the production, handling, storage**,** or transportation of milk, milk products, containers**,** or equipment. If the examination or history should suggest that the person may be a carrier of, or be infected with, the organisms of typhoid, paratyphoid fever**,** or any other communicable disease likely to be transmitted through milk, s/he shall obtain appropriate specimens of body discharge and cause them to be examined in a laboratory approved by the state health authority for the examination, and if the results justify, that person shall be barred from employment.

A. The person shall furnish information, submit to physical examinations**,** and submit laboratory specimens as the health officer may require for the purpose of determining freedom from infection.

B. No person with an infected cut or lesion on hands or arms shall handle milk, milk products, milk containers**,** or milk equipment.

*AUTHORITY: section 196.939, RSMo [Supp. 1993] **2000**. Original rule filed June 20, 1973, effective June 30, 1973. Amended: Filed April 30, 2010.*

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 State Milk Board office, Gene Wiseman, Executive Secretary, 1616 Missouri Blvd, PO Box 630, Jefferson City, MO 65102. Telephone 573-751-3830. 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 7—Wildlife Code: Hunting: Seasons, Methods, Limits

PROPOSED AMENDMENT

3 CSR 10-7.410 Hunting Methods. The commission proposes to amend subsection (1)(J) of this rule.

PURPOSE: This amendment removes the atlatl exception as a method to take deer as referenced in 3 CSR 10-7.431.

(1) Wildlife may be hunted and taken only in accordance with the following:

(J) Slingshot and atlatl. Slingshots *[and atlatls]* may be used to take wildlife (except deer and turkey) during the prescribed hunting seasons**, and atlatls may be used to take wildlife (except turkey) during the prescribed hunting seasons**. Darts containing any drug, poison, chemical, or explosive are prohibited.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. and section 252.240, RSMo 2000. Original rule filed July 22, 1974, effective Dec. 31, 1974. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed April 19, 2010.*

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 Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 7—Wildlife Code: Hunting: Seasons, Methods, Limits

PROPOSED AMENDMENT

3 CSR 10-7.431 Deer Hunting Seasons: General Provisions. The commission proposes to amend subsection (5)(C) of this rule.

PURPOSE: This amendment adds atlatl as a legal method to take deer as referenced in 3 CSR 10-7.410 and provides clarification for expanding-type ammunition.

(5) Deer Hunting Methods.

(C) Any legal method: archery and muzzleloader methods; **atlatl;** crossbows; shotguns; handguns or rifles firing **expanding-type** centerfire ammunition; and air-powered guns, .40 caliber or larger, charged only from an external high compression power source (external hand pump, air tank, or air compressor).

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. ***and section 252.240, RSMo 2000****. Original rule filed April 29, 2004, effective May 15, 2004. For intervening history, please consult the* ***Code of State Regulations****. Amended: Filed April 19, 2010.*

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 Tom A. Draper, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 5—DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION
Division 50—Division of School Improvement
Chapter 321—Consolidated Federal Programs

PROPOSED RESCISSION

5 CSR 50-321.010 General Provisions Governing the Consolidated Grants Under the Improving America's Schools Act. This rule set forth the general provisions governing programs operated by local educational agencies (LEAs) under Title I, Title II, Title IV, Title VI, and Migrant Education under the Improving America's Schools Act (IASA).

PURPOSE: This rule is being rescinded as IASA has been reauthorized under the No Child Left Behind Act of 2001.

AUTHORITY: section 178.430, RSMo 1994. Original rule filed April 29, 1997, effective Nov. 30, 1997. Amended: Filed April 21, 1999, effective Nov. 30, 1999. Rescinded: Filed April 27, 2010.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Department of Elementary and Secondary Education, ATTN: Becky Odneal, Chief Accountability Officer, School Improvement and Accountability, PO Box 480, Jefferson City, MO 65102-0480. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

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

PROPOSED AMENDMENT

10 CSR 10-6.020 Definitions and Common Reference Tables. The commission proposes to amend subsections (2)(A), (2)(C), (2)(L), (2)(V), and (3)(A). If the commission adopts this rule action, it will be submitted to the U.S. Environmental Protection Agency to replace the current rule in the Missouri State Implementation Plan. The evidence supporting the need for this proposed rulemaking is available for viewing at the Missouri Department of Natural Resources' Air Pollution Control Program at the address and phone number listed in the Notice of Public Hearing at the end of this rule. More information concerning this rulemaking can be found at the Missouri Department of Natural Resources' Environmental Regulatory Agenda website, www.dnr.mo.gov/regs/index.html.

PURPOSE: This rule defines key words and expressions used in chapters 1 through 6 and provides common reference tables. This amendment updates two (2) asbestos subpart references, updates Table 1—De Minimis Emission Levels, adds the compounds propylene carbonate and dimethyl carbonate to list of compounds which are excluded from the definition of volatile organic compound, and makes minor format changes for rule standardization. The evidence supporting the need for this proposed rulemaking, per section 536.016, RSMo, is a January 21, 2009, ***Federal Register Notice****.*

(2) Definitions.

(A) All terms beginning with "A."

1. Abatement project designer—An individual who designs or plans Asbestos Hazard Emergency Response Act (AHERA) asbestos abatement.

2. Act—The Clean Air Act, 42 U.S.C. 7401. References to the word Title pertain to the titles of the Clean Air Act Amendments of 1990, P.L. 101–595.

3. Actual emissions—The actual rate of emissions of a pollutant from a source operation is determined as follows:

A.*[1) a]***A**ctual emissions as of a particular date shall equal the average rate, in tons per year, at which the source operation or installation actually emitted the pollutant during the previous two (2)-year period and which represents normal operation. A different time period for averaging may be used if the director determines it to be more representative. Actual emissions shall be calculated using actual operating hours, production rates**,** and types of materials processed, stored**,** or combusted during the selected time period;

B.*[2) t]***T**he director may presume that source-specific allowable emissions for a source operation or installation are equivalent to the actual emissions of the source operation or installation; and

C.*[3) f]***F**or source operations or installations which have not begun normal operations on the particular date, actual emissions shall equal the potential emissions of the source operation or installation on that date.

4. Adequately wet—To sufficiently mix or penetrate with liquid to prevent the release of particulates. If visible emissions are observed coming from asbestos-containing material, then that material has not been adequately wetted. However, the absence of visible emissions is not sufficient evidence of being adequately wet.

5. Administrator—The regional administrator for Region VII, U.S. Environmental Protection Agency (EPA).

6. Adsorption cycle—The period during which the adsorption system is adsorbing and not desorbing.

7. Adverse impact on visibility—The visibility impairment which interferes with the protection, preservation, management**,** or enjoyment of the visitor's visual experience of a Class I area, which is an area designated as Class I in 10 CSR 10-6.060(11)(A) Table 1. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency**,** and time of visibility impairments, and how these factors correlate with the times of visitor use of the Class I area and the frequency and timing of natural conditions that reduce visibility.

8. Affected source—A source that includes one (1) or more emission units subject to emission reduction requirements or limitations under Title IV of the Act.

9. Affected states—All states contiguous to the permitting state whose air quality may be affected by the modification, renewal**,** or issuance of, or is within fifty (50) miles of, a source subject to permitting under Title V of the Act.

10. Affected unit—A unit that is subject to emission reduction requirements or limitations under Title IV of the Act.

11. AHERA—Asbestos Hazard Emergency Response Act of 1986 (P.L. 99–519).

12. Air cleaning device—Any method, process**,** or equipment which removes, reduces**,** or renders less obnoxious air contaminants discharged into the ambient air.

13. Air contaminant—Any particulate matter or any gas or vapor or any combination of them.

14. Air contaminant source—Any and all sources of emission of air contaminants whether privately or publicly owned or operated.

15. Air-dried coating—The coatings which are dried by the use of air or forced warm air at temperatures up to ninety degrees Celsius (90 °C) (one hundred ninety-four degrees Fahrenheit (194 °F)).

16. Air pollution—The presence in the ambient air of one (1) or more air contaminants in quantities, of characteristics**,** and of a duration which directly and approximately cause or contribute to injury to human, plant**,** or animal life or health, or to property or which unreasonably interfere with the enjoyment of life or use of property.

17. Allowable emissions—The emission rate calculated using the maximum rated capacity of the installation (unless the source is subject to enforceable permit conditions which limit the operating rate or hours of operation, or both) and the most stringent of the following:

A.*[1) e]***E**mission limit established in any applicable emissions control rule including those with a future compliance date**;** or

B.*[2) t]***T**he emission rate specified as a permit condition.

18. Allowance—An authorization, allocated to an affected unit by the administrator under Title IV of the Act, to emit, during or after a specified calendar year, one (1) ton of sulfur dioxide (SO_2).

19. Alternate site analysis—An analysis of alternative sites, sizes, production processes**,** and environmental control techniques for the proposed source which demonstrates that benefits of the proposed installation significantly outweigh the environmental and social costs imposed as a result of its location, construction**,** or modification.

20. Ambient air—All space outside of buildings, stacks**,** or exterior ducts.

21. Ambient air increments—The limited increases of pollutant concentrations in ambient air over the baseline concentration.

22. Anode bake plant—A facility which produces carbon anodes for use in a primary aluminum reduction installation.

23. Applicable requirement—All of the following listed in the Act:

A. Any standard or requirement provided for in the implementation plan approved or promulgated by EPA through rulemaking under Title I of the Act that implements the relevant requirements, including any revisions to that plan promulgated in 40 CFR part 52;

B. Any term or condition of any preconstruction permit issued pursuant to regulations approved or promulgated through rulemaking under Title I, including part C or D of the Act;

C. Any standard or requirement under section 111 of the Act, including section 111(d);

D. Any standard or requirement under section 112 of the Act, including any requirement concerning accident prevention under section 112(r)(7);

E. Any standard or requirement of the acid rain program under Title IV of the Act or the regulations promulgated under it;

F. Any requirements established pursuant to section 504(b) or section 114(a)(3) of the Act;

G. Any standard or requirement governing solid waste incineration, under section 129 of the Act;

H. Any standard or requirement for consumer and commercial products, under section 183(e) of the Act;

I. Any standard or requirement for tank vessels under section 183(f) of the Act;

J. Any standard or requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the Act;

K. Any standard or requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the administrator has determined that these requirements need not be contained in a Title V permit;

L. Any national ambient air quality standard or increment or visibility requirement under part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to section 504(e); and

M. Any standard or requirement established in sections 643.010–643.190, RSMo**,** of the Missouri Air Conservation Law and rules adopted under them.

24. Approved source—A source of fuel which has been found by the department director, after the tests as s/he may require, to be in compliance with these rules.

25. Area of the state—Any geographical area designated by the commission.

26. Asbestos—The asbestiform varieties of chrysotile, crocidolite, amosite, anthophyllite, tremolite**,** and actinolite.

27. Asbestos abatement—The encapsulation, enclosure**,** or removal of asbestos-containing materials, in or from a building, or air contaminant source; or preparation of friable asbestos-containing material prior to demolition.

28. Asbestos abatement contractor—Any person who by agreement, contractual or otherwise, conducts asbestos abatement projects at a location other than his/her own place of business.

29. Asbestos abatement project—An activity undertaken to encapsulate, enclose**,** or remove ten (10) square feet or sixteen (16) linear feet or more of friable asbestos-containing materials from buildings and other air contaminant sources, or to demolish buildings and other air contaminant sources containing ten (10) square feet or sixteen (16) linear feet or more.

30. Asbestos abatement supervisor—An individual who directs, controls**,** or supervises others in asbestos abatement projects.

31. Asbestos abatement worker—An individual who engages in asbestos abatement projects.

32. Asbestos air sampling professional—An individual who by qualifications and experience is proficient in asbestos abatement air monitoring. The individual shall conduct, oversee**,** or be responsible for air monitoring of asbestos abatement projects before, during**,** and after the project has been completed.

33. Asbestos air sampling technician—An individual who has been trained by an air sampling professional to do air monitoring. That individual conducts air monitoring of an asbestos abatement project before, during**,** and after the project has been completed.

34. Asbestos-containing material (ACM)—Any material or product which contains more than one percent (1%) asbestos, by weight.

35. Asbestos debris—Material that results from removal or deterioration of asbestos-containing material.

36. Asbestos Hazard Emergency Response Act—(AHERA) of 1986 (P.L. 99–519).

37. Asbestos projects—An activity undertaken to remove or encapsulate one hundred sixty (160) square feet or two hundred sixty (260) linear feet or more of friable asbestos-containing materials or demolition of any structure or building or a part of it containing the previously mentioned quantities of asbestos-containing materials.

38. Asbestos removal project—An asbestos abatement project consisting of activities that involve, and are required, to take out friable asbestos-containing materials from any facility. This definition includes, but is not limited to, activities associated with the cleanup of loose friable asbestos-containing debris or refuse, or both, from floors and other surfaces.

39. ASME—American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017.

40. Asphalt prime coat—Application of low-viscosity liquid asphalt to an absorbent surface such as a previously untreated surface.

41. Asphalt seal coat—An application of a thin asphalt surface treatment used to waterproof and improve the texture of an absorbent surface or a nonabsorbent surface such as asphalt or concrete.

42. ASTM—American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

43. Automobile—A four (4)-wheel passenger motor vehicle or derivative capable of seating no more than twelve (12) passengers.

44. Automobile and light**-**duty truck surface coating operations—The application, flashoff**,** and curing of prime, primer-surfacer, topcoat**,** and final repair coatings during the assembly of passenger cars and light duty trucks excluding the following operations:

A. Wheel coatings;

B. Miscellaneous antirust coatings;

C. Truck interior coatings;

D. Interior coatings;

E. Flexible coatings;

F. Sealers and adhesives; and

G. Plastic parts coatings. (Customizers, body shops**,** and other repainters are not part of this definition.)

45. Automotive underbody deadeners—Any coating applied to the underbody of a motor vehicle to reduce the noise reaching the passenger compartment.

(C) All terms beginning with "C."

1. Carbon adsorption system—A device containing adsorbent material (for example, activated carbon, aluminum, silica gel); an inlet and outlet for exhaust gases; and a system to regenerate the saturated adsorbent. The carbon adsorption system must provide for the proper disposal or reuse of all volatile organic compounds (VOC) adsorbed.

2. Catalytic incinerator—A control device using a catalyst to allow combustion to occur at a lower temperature.

3. Category I nonfriable ACM—Asbestos-containing packings, gaskets, resilient floor covering**,** and asphalt roofing products containing more than one percent (1%) asbestos as determined using the method specified in 40 CFR part 763, subpart *[F]***E**, Appendix *[A]***E**, section 1, Polarized Light Microscopy.

4. Category II nonfriable ACM—Any material, excluding category I nonfriable ACM, containing more than one percent (1%) asbestos as determined using the method specified in 40 CFR part 763, subpart *[F]***E**, Appendix *[A]***E**, section 1, Polarized Light Microscopy that, when dry, cannot be crumbled, pulverized**,** or reduced to powder by hand pressure.

5. Circumvention—Building, erecting, installing**,** or using any article, machine, equipment, process**,** or method which, when used, would conceal an emission that would otherwise constitute a violation of an applicable standard or requirement. That concealment includes, but is not limited to, the use of gaseous adjutants to achieve compliance with a visible emissions standard, and the piecemeal carrying out of an operation to avoid coverage by a standard that applies only to operations larger than a specific size.

6. Clean room—An uncontaminated area or room which is a part of the worker decontamination enclosure system.

7. Clear coat—A coating which lacks color and opacity or is transparent and uses the undercoat as a reflectant base or undertone color. This term also includes corrosion preventative coatings used for the interior of drums or pails.

8. Closed container—A container with a cover fastened in place so that it will not allow leakage or spilling of the contents.

9. Coating applicator—An apparatus used to apply a surface coating.

10. Coating line—One (1) or more apparatus or operations which include a coating applicator, flash-off area**,** and oven where a surface coating is applied, dried or cured, or a combination of these.

11. Cold cleaner—Any device or piece of equipment that contains and/or uses liquid solvent, into which parts are placed to remove soils from the surfaces of the parts or to dry the parts. Cleaning machines that contain and use heated nonboiling solvent to clean the parts are classified as cold cleaning machines.

12. Commenced—An owner or operator has undertaken a continuous program of construction or modification or that an owner or operator has entered into a binding agreement or contractual obligation to undertake and complete within a reasonable time, a continuous program of construction or modification.

13. Commenced operation—The initial setting into operation of any air pollution control equipment or process equipment.

14. Commercial vehicle—A motor vehicle designed or regularly used for carrying freight and merchandise or more than eight (8) passengers.

15. Commission—The Missouri Air Conservation Commission established pursuant to section 643.040, RSMo.

16. Condensate (hydrocarbons)—A hydrocarbon liquid separated from natural gas which condenses due to changes in the temperature or pressure, or both, and remains liquid at standard conditions.

17. Condenser—Any heat transfer device used to liquefy vapors by removing their latent heats of vaporization including, but not limited to, shell and tube, coil, surface**,** or contact condensers.

18. Conservation vent—Any valve designed and used to reduce evaporation losses of VOC by limiting the amount of air admitted to, or vapors released from, the vapor space of a closed storage vessel.

19. Construction—Fabricating, erecting, reconstructing**,** or installing a source operation. Construction shall include installation of building supports and foundations, laying of underground pipe work, building of permanent storage structures**,** and other construction activities related to the source operation.

20. Containment—The area where an asbestos abatement project is conducted. The area must be enclosed either by a glove bag or plastic sheeting barriers.

21. Conveyorized degreaser—A type of degreaser in which the parts are loaded continuously.

22. Criteria pollutant—Air pollutants for which air quality standards have been established in 10 CSR 10-6.010.

23. Crude oil—A naturally occurring mixture which consists of hydrocarbons and sulfur, nitrogen**,** or oxygen derivatives, or a combination of these, of hydrocarbons which is a liquid at standard conditions.

24. Custody transfer—The transfer of produced crude oil or condensate, or both, after processing or treating, or both, in the producing operations, from storage tanks or automatic transfer facilities to pipelines or any other forms of transportation.

25. Cutback asphalt—Any asphaltic cement that has been liquefied by blending with VOC liquid diluents.

(L) All terms beginning with "L."

1. Lacquers—A surface coating that is basically solutions of nitrocellulose in VOCs, with plasticizers and other resins added to improve the quality of the film.

2. Light-duty truck—Any motor vehicle rated at eight thousand five hundred pounds (8,500 lbs.) gross weight or less or a derivation of this vehicle which is designed primarily for the purpose of transportation of property.

3. Liquid-mounted seal—A primary seal mounted in continuous contact with the liquid between the tank wall and the floating roof around the circumference of the tank.

4. Lower explosive limit (LEL)—The lower limit of flammability of a gas or vapor at ordinary ambient temperatures expressed in percent of the gas or vapor in air by volume.

5. Lowest achievable emission rate (LAER)—That rate of emissions which reflects—

A.*[1) t/***T**he most stringent emission limitation which is contained in any state implementation plan for a class or category of source, unless the owner or operator of the proposed source demonstrates that the limitations are not achievable**;** or

B.*[2) t/***T**he most stringent emission limitation which is achieved in practice by the class or category of source, whichever is more stringent. LAER shall not be less stringent than the new source performance standard limit.

(V) All terms beginning with "V."

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

2. Vapor tight—When applied to a delivery vessel or vapor recovery system as one that sustains a pressure change of no more than seven hundred fifty (750) pascals (three inches (3") of H_2O) in five (5) minutes when pressurized to a gauge pressure of four thousand five hundred (4,500) pascals (eighteen inches (18") of H_2O) or evacuated to a gauge pressure of one thousand five hundred (1,500) pascals (six inches (6") of H_2O).

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

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

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

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

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

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

CAS #	Compound
138495428	1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee)
431890	1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea)
375031	1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (n-$C_3F_7OCH_3$*[,]* **or** HFE-7000)
690391	1,1,1,3,3,3-hexafluoropropane (HFC-236fa)
679867	1,1,2,2,3-pentafluoropropane (HFC-245ca)
24270664	1,1,2,3,3-pentafluoropropane (HFC-245ea)
431312	1,1,1,2,3-pentafluoropropane (HFC-245eb)
460731	1,1,1,3,3-pentafluoropropane (HFC-245fa)
431630	1,1,1,2,3,3-hexafluoropropane (HFC-236ea)
406586	1,1,1,3,3-pentafluorobutane (HFC-365mfc)
422560	3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca)
507551	1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb)
354234	1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a)

1615754	1-chloro-1-fluorethane (HCFC-151a)
163702076	1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ($C_4F_9OCH_3$ or HFE-7100)
163702087	2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OCH_3$)
163702054	1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OC_2H_5$ or HFE-7200)
163702065	2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ($(CF_3)_2CFCF_2OC_2H_5$)
297730939	3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE-7500)
71556	1,1,1-trichloroethane (methyl chloroform)
67641	acetone
25497294	1-chloro 1,1-difluoroethane (HCFC-142b)
75456	chlorodifluoromethane (HCFC-22)
593704	chlorofluoromethane (HCFC-31)
76153	chloropentafluoroethane (CFC-115)
63938103	2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124)
75718	dichlorodifluoromethane (CFC-12)
1717006	1,1-dichloro 1-fluoroethane (HCFC-141b)
1320372	1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-114)
34077877	1,1,1-trifluoro 2,2-dichloroethane (HCFC-123)
75376	1,1-difluoroethane (HFC-152a)
75105	difluoromethane (HFC-32)
74840	ethane
353366	ethylfluoride (HFC-161)
74828	methane
79209	methyl acetate
75092	methylene chloride (dichloromethane)
98566	parachlorobenzotrifluoride (PCBTF)
354336	pentafluoroethane (HFC-125)
127184	perchloroethylene (tetrachloroethylene)
359353	1,1,2,2-tetrafluoroethane (HFC-134)
811972	1,1,1,2-tetrafluoroethane (HFC-134a)
75694	trichlorofluoromethane (CFC-11)
26523648	1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113)
306832	1,1,1-trifluoro 2,2-dichloroethane (HCFC-123)
27987060	1,1,1-trifluoroethane (HFC-143a)
75467	trifluoromethane (HFC-23)
107313	methyl formate ($HCOOCH_3$)*[,]*
0	*[(1)]* 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane ($C_2F_5CF(OCH_3)CF(CF_3)_2$ or HFE-7300)
108327	**propylene carbonate ($C_4H_6O_3$)**
616386	**dimethyl carbonate ($C_3H_6O_3$)**
Perfluorocarbon compounds in the following classes:	
0	Cyclic, branched or linear, completely fluorinated alkanes
0	Cyclic, branched or linear, completely fluorinated ethers with no unsaturations
0	Cyclic, branched or linear, completely methylated siloxanes
0	Cyclic, branched or linear, completely fluorinated tertiary amines with no unsaturations
0	Sulfur-containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine

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

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

CAS #	Compound
540885	t-butyl acetate

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

(A) Table 1—*De Minimis* Emission Levels.

Air Contaminant	Emission Rate
Carbon monoxide	100.0
Nitrogen *[dioxide]***oxides**	40.0
Particulate Matter	
PM	25.0
PM_{10}	15.0
$PM_{2.5}$	**10.0**
SO_2 ($PM_{2.5}$ precursor)	**40.0**
NO_x ($PM_{2.5}$ precursor) (emissions of nitrogen oxides are considered precursors to $PM_{2.5}$ unless the state or EPA successfully demonstrates that emissions in a specific area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations)	**40.0**
Sulfur dioxide	40.0
Ozone *[(to be measured as VOC)*	*40.0]*
VOC (Ozone precursor)	**40.0**
NO_x (Ozone precursor)	**40.0**
Lead	0.6
[Mercury	*0.1*
Beryllium	*0.0004*
Asbestos	*0.007]*
Fluorides	3.0
(Excluding hydrogen fluoride)	
[Sulfur] **Sulfuric** acid mist	7.0
[Vinyl chloride	*1.0]*
Hydrogen sulfide	10.0
Total reduced sulfur (including hydrogen sulfide)	10.0
Reduced Sulfur Compounds (including hydrogen sulfide)	10.0
Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.5×10^{-6}
Municipal waste combustor metals (measured as particulate matter)	15.0
Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride)	40.0
Municipal solid waste landfill emissions (measured as nonmethane organic compounds)	50.0
Hazardous Air Pollutant (each)	10.0
Sum of Hazardous Air Pollutants	25.0

Note: All rates in tons per year.

AUTHORITY: sections 643.050 and 643.055, RSMo 2000. Original

rule filed Aug. 16, 1977, effective Feb. 11, 1978. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed April 26, 2010.*

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing on this proposed amendment will begin at 9:00 a.m., July 28, 2010. The public hearing will be held at the Country Club Hotel and Spa, Monte Carlo Room, 250 Racquet Club Drive, Lake Ozark, Missouri. Opportunity to be heard at the hearing shall be afforded any interested person. Interested persons, whether or not heard, may submit a written or email statement of their views until 5:00 p.m., August 4, 2010. Written comments shall be sent to Chief, Air Quality Planning Section, Missouri Department of Natural Resources' Air Pollution Control Program, PO Box 176, Jefferson City, MO 65102-0176. Email comments shall be sent to apcprule-spn@dnr.mo.gov.

Title 17—BOARDS OF POLICE COMMISSIONERS
Division 20—St. Louis Board of Police Commissioners
Chapter 3—Rules for Couriers

PROPOSED AMENDMENT

17 CSR 20-3.015 Administration and Command of the Private Security Section. The board of police commissioners of the Metropolitan Police Department of the City of St. Louis is amending sections (1), (2), and (3).

PURPOSE: This amendment expands the private security section's authority to include corporate security advisors as defined herein.

(1) Board of Police Commissioners. The St. Louis Board of Police Commissioners (also referred to as the board) is established by state statute and consists of five (5) members, four (4) of whom are appointed by the governor. The Mayor of the City of St. Louis serves *ex officio*. The board has sole charge and control of the Metropolitan Police Department of the City of St. Louis and of the licensing, regulation**,** and discipline of all **corporate security advisors**, private security officers, private watchmen**,** and couriers in the City of St. Louis. Private detectives are licensed by the license collector's office of the City of St. Louis, not by the board of police commissioners. The board relegated that responsibility to the city license collector's office.

(2) Private Security Section. The private security section is responsible for the interviewing, investigating, processing, licensing, inspection**,** and *[supervising]* **supervision** of all persons working or acting as licensed security officers or any other variety of titles in the City of St. Louis. The private security section is further responsible for issuing and transferring all such licenses, for reinstatements, for periodic inspection of license holders, for liaison with all suppliers of security personnel in the city, **and** for maintenance of a personnel file on all applicants in the City of St. Louis *[and for publishing, within the department, information of all terminations of employment of security personnel. The private security section also conducts background investigations on private detective/investigator applicants as requested by the license collector's office. The decision to issue a license is made by the license collector's office]*.

(3) Private Security Personnel. The St. Louis Metropolitan Police Department private security program has *[three (3)]* **four (4)** distinct classifications of personnel. A definition of each classification is listed as follows:

(A) Corporate Security Advisor. A person employed to provide all services rendered by a private security officer, as well as other specialized corporate security services related to the protection of his/her employer's/principal's resources and personnel. A licensed corporate security advisor may carry a firearm and protective devices in accordance with the guidelines established in these rules. S/he shall be authorized to exercise the same police powers granted to private security officers while on his/her employer's/principal's property. However, the corporate security advisor's power and authority shall not be restricted to that property, but shall be coextensive with the geographic limits of the City of St. Louis and St. Louis County (as defined in 17 CSR 20-5.055);

*[(A)]***(B)** Private Security Officer. A person employed with certain police powers (as defined in 17 CSR 20-*[3]***2**.065) to protect life or property on or in designated premises. The private security officer's powers exist only within the established property owned or leased by the contracting employer and to incidents occurring on the premises. The **private** security officer may carry a firearm providing this individual is qualified (as defined in 17 CSR 20-*[3]***2**.055). Authorization to carry a firearm is designated on the badge/identification (ID) card. The private security officer, whether armed or unarmed, may carry a *[slapper]* baton, nightstick, *[aerosol tear gas]* **pepper mace,** and handcuffs **after training requirements have been satisfied**;

*[(B)]***(C)** Courier. A person employed to carry out the assignment of protecting and transporting property from one (1) designated area to another. The person shall be in an approved *[military style]* **company** uniform. The courier has no power of arrest. The courier may carry a firearm provided this individual is qualified (as defined in 17 CSR 20-3.055), which is designated on the badge/ID card; and

*[(C)]***(D)** Private Watchman. A person employed without police powers and without authorization to carry weapons or protective devices. This individual will perform the tasks of observation and reporting on or in a licensed premise or designated area. This may include patrolling the public street. *[The private watchman has a distinctive grey, military style uniform.]* **The private watchman shall be in an approved company uniform.** The private watchman has no power of arrest. Note: *[Only the private security officer and private courier classifications will be permitted to hold two (2) licenses. Each classification is licensed separately and functions as a distinct entity. (This licensing does not include the private watchmen classification.)]* **The private watchman will only be allowed to obtain additional licenses in the private watchman classification**.

AUTHORITY: section 84.340, RSMo [1986] ***2000****. Original rule filed April 8, 1988, effective July 11, 1988. Amended: Filed April 28, 2010.*

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions less than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will cost private entities less 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 Private Security Division, Sgt. Sherri Smith, 5600 Oakland, Tower "G" 330, St. Louis, MO 63110, FAX: 314-644-9053, or email at slsmith@slmpd.org; with copies to Mark Lawson, General Counsel, Legal Division, St. Louis Metropolitan Police Department, 1200 Clark, St. Louis, MO 63103, FAX: 314-444-5611, mlawson@slmpd.org

*and Captain John W. Hayden, IAD Commander, 1200 Clark, St. Louis, MO 63103, FAX: 314-444-5711, jwhayden@slmpd.org. 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 17—BOARDS OF POLICE COMMISSIONERS
Division 20—St. Louis Board of Police Commissioners
Chapter 3—Rules for Couriers

PROPOSED AMENDMENT

17 CSR 20-3.025 Definitions. The board of police commissioners of the Metropolitan Police Department of the City of St. Louis is amending sections (4), (5), (6), (7), (8), (9), (10), and (11).

PURPOSE: This amendment standardizes common terms unique to the private security field and expands approved instruments for protection to include pepper mace.

(4) Firearm—Gun, double action .38 Special caliber revolver *[only]* **or approved semi-automatic pistol**.

(5) License—The document which is issued to each of the licensed security personnel by the board of police commissioners authorizing the holder to perform specific security duties in the City of St. Louis as designated by the license. **The "Metro" license currently issued allows the holder to perform security duties in the City of St. Louis and St. Louis County.**

(6) Protective devices—The only approved instruments used for personal protection are *[slapper,]* baton, nightstick**,** *[aerosol tear gas and handcuffs]* **and pepper mace**. **Training is required before these items may be carried on duty.**

(7) Resignation—The voluntary inactivation of a security license by the individual holding that license.

*[(7)]***(8)** Revocation—The *[inactivating]* **permanent inactivation** of a license by the board of police commissioners *[for just cause]* **in accordance with the rules and procedures set out herein.**

*[(8)]***(9)** Suspension—The temporary *[suspension]* **inactivation** of a license pending an administrative investigation determined by the board of police commissioners.

*[(9)]***(10)** Termination—The *[inactivating]* **inactivation** of a license through resignation, cancellation, expiration**,** or revocation.

*[(10)]***(11)** Weapons—Instruments used as protective devices**,** as listed in section (6), including a firearm, *[slapper,]* baton, nightstick**,** *[aerosol tear gas and handcuffs]* **and pepper mace**.

*AUTHORITY: section 84.340, RSMo [1986] **2000**. Original rule filed April 8, 1988, effective July 11, 1988. Amended: Filed April 28, 2010.*

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions less than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will cost private entities less than five hundred dollars ($500) in the aggregate.

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Title 17—BOARDS OF POLICE COMMISSIONERS
Division 20—St. Louis Board of Police Commissioners
Chapter 3—Rules for Couriers

PROPOSED AMENDMENT

17 CSR 20-3.035 Licensing. The board of police commissioners of the Metropolitan Police Department of the City of St. Louis is amending sections (2), (3), (7), and (8).

PURPOSE: This amendment imposes additional standards for obtaining a private security license and authorizes additional licenses for a courier who wishes to work for more than one (1) employer.

(2) Standards. Each applicant for a license to work as a courier in the City of St. Louis shall meet the standards set by the board of police commissioners, which require that an applicant—

(E) Not be licensed as a courier and private **investigator**/detective at the same time;

(J) Be able to pass a character investigation by this department **as indicated through a criminal record check**;

(M) Never have had a security license revoked **or denied** by another jurisdiction for a criminal law violation;

(3) Issuance/Denial of License. When an applicant has successfully completed the requirements set by the board of police commissioners, the board will issue a license. An applicant may be denied a license for any of the following reasons:

(E) Any facts or actions which make the applicant unsuitable or ineligible for licensing; *[and]*

(F) Resigned under investigation, resigned under charges**,** or was discharged from *[the police force of the City of St. Louis.]* **any police force;**

(G) Has been denied a security license by any agency; and

(H) The employer is not in good standing with the board of police commissioners.

(7) Secondary Employment License.

[(A) A second license may be approved by the board of police commissioners and issued by the private security section to a courier who—

1. Works for a private entity (employer) and wants to take a second job working for a second private entity (employer); or

2. Is licensed to a security agency and desires also to work a secondary job for a private employer.

A. A second license will not be issued to allow a courier to work at two (2) security agencies.

B. A courier desiring a second license must present a letter of permission from the first (primary) employer and a letter of intent to hire from the (secondary) employer.]

(A) Additional licenses may be approved by the board of police commissioners and issued by the private security section to a courier who wishes to work for more than one (1) employer. A courier desiring additional licenses must present a letter of intent to hire from the secondary employer(s) and pay the fee required for the additional license(s).

(8) License Renewals. A courier's license is valid for one (1) year from date of issue**,** and it must be renewed in the month it expires.

(C) If firearms-qualified, the courier wishing to receive a license, must schedule for requalification through an approved firearms course. **The courier must also submit a urine specimen for drug testing according to the provisions of these rules and regulations, unless otherwise exempt.**

(D) A license not renewed during the month it was issued automatically expires **on the last day of the month** unless the holder has applied to the commander of the private security section and received an extension of time. **Such extension will be noted with a sticker on the license. This sticker will indicate the adjusted expiration date of the license.**

AUTHORITY: section 84.340, RSMo [1986] 2000. Original rule filed April 8, 1988, effective July 11, 1988. Amended: Filed April 28, 2010.

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions less than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will cost private entities less than five hundred dollars ($500) in the aggregate.

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Title 17—BOARDS OF POLICE COMMISSIONERS
Division 20—St. Louis Board of Police Commissioners
Chapter 3—Rules for Couriers

PROPOSED AMENDMENT

17 CSR 20-3.045 Personnel Records and Fees. The board of police commissioners of the Metropolitan Police Department of the City of St. Louis is amending section (2).

PURPOSE: This amendment provides the fees for processing private security candidates are non-refundable.

(2) Fees. The board of police commissioners will establish, from time-to-time, a set of fees for various services provided by the private security section. The schedule of fees is posted in the private security section office. *[Fees are not returnable, except on the day they are paid.]* **No fees will be refunded for any reason after the date of application and must be paid in full at the time of application.**

AUTHORITY: section 84.340, RSMo [1986] 2000. Original rule filed April 8, 1988, effective July 11, 1988. Amended: Filed April 28, 2010.

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions less than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will cost private entities less than five hundred dollars ($500) in the aggregate.

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Title 17—BOARDS OF POLICE COMMISSIONERS
Division 20—St. Louis Board of Police Commissioners
Chapter 3—Rules for Couriers

PROPOSED AMENDMENT

17 CSR 20-3.055 Training. The board of police commissioners of the Metropolitan Police Department of the City of St. Louis is amending sections (1), (2), (4), (5), (6), (7), and (8).

PURPOSE: This amendment revises the training requirements of all licensed courier candidates.

(1) Exemptions. **First-time** *[A]***a**pplicants with prior law enforcement experience or accepted training shall be required to successfully complete only the firearms qualification. **Full-time state-certified police officers and retired St. Louis City police officers will be exempt from the basic classroom training. They must still complete firearms training.**

(2) Length and Content. The training period consists of *[seven (7) hours. Within that period three (3) hours are devoted to firearms training, responsibility and liability]* **four (4) hours**. Classroom activities consist of selected *[police]* **security** subjects and departmental regulations.

(4) Final Test. Each applicant must take a written test on the subject matter presented in class and must attain a passing score of at least seventy percent (70%).

(A) Applicants who fail to achieve a seventy percent (70%) score will be allowed to take one (1) make-up test.

(B) The applicant will be supplied with all training materials and allowed to take the basic class in thirty (30) days at his/her expense. Upon successful completion of the subsequent training and test, the applicant will be issued a license.

(C) A second failure will cause the applicant to be ineligible for licensing.

*[(4)]***(5)** Firearms Qualification. On the firing range an applicant must display the ability to safely and properly handle his/her revolver and must achieve a score at or above the standard established by the board of police commissioners.

(A) An applicant who displays an inability to handle a revolver safely and properly will be disqualified from carrying a *[sidearm]* **firearm**.

(B) An applicant who does not attain the minimum score on the firing range will *[be given two (2) additional opportunities to qualify. The retest time will be determined by the department armorer]* **not be issued an armed license.**

*[(5)]***(6)** Unarmed Courier License. An applicant who does not wish

to have an armed license or who cannot attain the minimum required score on the firing range may be issued a restricted license allowing him/her to work as an unarmed licensed courier.

*[(6)]***(7)** Training Fee. A nonrefundable training fee established by the board of police commissioners must be paid before an applicant is enrolled in a training session.

*[(7)]***(8)** Oath **or Affirmation**. Prior to issuance of his/her license, the applicant must swear *[to uphold]* **or affirm** the following:

*I DO SOLEMNLY SWEAR **OR AFFIRM** that I am a citizen of the United States, or a legal resident alien, that I will faithfully support the **Constitution of the United States**, the **Constitution and Laws of the State of Missouri**, and the Charter and City Ordinances of the City of St. Louis; [that I have never been discharged from the police force of the City of St. Louis;] that I have never been convicted of a felony; that I have no physical or mental disability or habit that disqualifies me from performing the duties of a courier; that I will wear such dress, badge/ID card or emblem as the Board of Police Commissioners from time-to-time may designate; that I will, to the best of my skill and ability, diligently and faithfully, without partiality or prejudice, discharge my duties according to the **Constitution and Laws of the State of Missouri** and Charter and Ordinances of the City of St. Louis; that I will strictly obey all lawful orders and regulations of the Board of Police Commissioners of the City of St. Louis, the Chief of Police, or any officer placed by them over me; that I will not cease to perform my duties until my resignation is accepted by the Board of Police Commissioners; that I will not become a member of, or affiliate myself with, any organization of any kind or character whatsoever, membership in which will or may impose upon me obligations inconsistent with the full performance of my duties as a Courier, or inconsistent with the oath herein taken to carry out the orders of the Board of Police Commissioners and to comply with its lawful orders, rules and regulations, or which will or may, in any degree interfere with the performance of my duties as a licensed Courier.*

*AUTHORITY: section 84.340, RSMo [1986] **2000**. Original rule filed April 8, 1988, effective July 11, 1988. Amended: Filed April 28, 2010.*

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions less than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will cost private entities less than five hundred dollars ($500) in the aggregate.

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Title 17—BOARDS OF POLICE COMMISSIONERS
Division 20—St. Louis Board of Police Commissioners
Chapter 3—Rules for Couriers

PROPOSED AMENDMENT

17 CSR 20-3.065 Authority. The board of police commissioners of the Metropolitan Police Department of the City of St. Louis is amending subsection (1)(A).

PURPOSE: This amendment extends the authority of all couriers licensed by the board of police commissioners of the City of St. Louis to act in St. Louis County.

(1) Authority. The licensed courier has the authority to bear a firearm during the time s/he is assigned to protect and transport property from one (1) designated area to another.

(A) The courier has the authority to conduct his/her activity on the public thoroughfares of the City of St. Louis **and St. Louis County**;

*AUTHORITY: section 84.340, RSMo [1986] **2000**. Original rule filed April 8, 1988, effective July 11, 1988. Amended: Filed April 28, 2010.*

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions less than five hundred dollars ($500) in the aggregate.

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Title 17—BOARDS OF POLICE COMMISSIONERS
Division 20—St. Louis Board of Police Commissioners
Chapter 3—Rules for Couriers

PROPOSED AMENDMENT

17 CSR 20-3.075 Duties. The board of police commissioners of the Metropolitan Police Department of the City of St. Louis is amending subsection (1)(B).

PURPOSE: This amendment clarifies the superseding authority of St. Louis Metropolitan Police Department on-duty police officers in relation to licensed couriers.

(1) Duties. It is the duty of every licensed courier to—

(B) Cooperate with St. Louis police officers in the performance of their duties.

1. In any situation where police are present, the judgment of the **St. Louis Metropolitan Police on-duty police** officer(s) shall prevail. They are responsible for the proper handling and reporting of the incident in accordance with departmental policies;

2. Failure to cooperate with a St. Louis police officer may be cause for disciplinary action against a **licensed** courier; and

3. Failure to assist a law enforcement agency or to aid in prosecution of a crime may be cause for disciplinary action against a courier; and

*AUTHORITY: section 84.340, RSMo [1986] **2000**. Original rule filed April 8, 1988, effective July 11, 1988. Amended: Filed April 28, 2010.*

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions less than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will cost private entities less than five hundred dollars ($500) in the aggregate.

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Title 17—BOARDS OF POLICE COMMISSIONERS
Division 20—St. Louis Board of Police Commissioners
Chapter 3—Rules for Couriers

PROPOSED AMENDMENT

17 CSR 20-3.085 Uniforms. The board of police commissioners of the Metropolitan Police Department of the City of St. Louis is amending section (2).

PURPOSE: This amendment revises the proper uniform attire for all licensed couriers.

(2) All couriers should be aware of the following guidelines:

(A) All couriers are required to wear *[a]* **an approved company** uniform which, at a minimum, shall consist of trousers or skirt*[,]* **and** shirt or blouse *[and uniform cap]*;

*AUTHORITY: section 84.340, RSMo [1986] **2000**. Original rule filed April 8, 1988, effective July 11, 1988. Amended: Filed April 28, 2010.*

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions less than five hundred dollars ($500) in the aggregate.

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Title 17—BOARDS OF POLICE COMMISSIONERS
Division 20—St. Louis Board of Police Commissioners
Chapter 3—Rules for Couriers

PROPOSED AMENDMENT

17 CSR 20-3.095 Equipment. The board of police commissioners of the Metropolitan Police Department of the City of St. Louis is amending sections (1), (2), and (3).

PURPOSE: This amendment revises the furnishing of equipment to licensed couriers.

(1) Equipment Issue. At the conclusion of the training period and upon final approval by the board of police commissioners, each courier shall receive from the private security section one (1) badge/identification (ID) card*[, one (1) license]* and one (1) courier's manual. These items are**,** and remain**,** departmental property. They must be returned to the private security section by any courier who resigns, is suspended**,** or has his/her license revoked.

(2) Equipment Responsibility. *[Each licensee deposits a fee for the department-issued badge/ID card and license. The fee is refundable to any courier when his/her period of service ends; provided, that the license is not revoked.]* During employment, it is the responsibility of the courier to care for and safeguard this departmental property.

(3) Badge/ID Card. The badge/ID card which is issued by the private security section to a licensed courier is an easily recognized symbol of authority and responsibility.

(B) This badge/ID card must be worn over the breast on the outermost garment **in plain view**. It must be returned to the private security section upon resignation, suspension, **cancellation,** or revocation of the license.

*AUTHORITY: section 84.340, RSMo [1986] **2000**. Original rule filed April 8, 1988, effective July 11, 1988. Amended: Filed April 28, 2010.*

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Title 17—BOARDS OF POLICE COMMISSIONERS
Division 20—St. Louis Board of Police Commissioners
Chapter 3—Rules for Couriers

PROPOSED AMENDMENT

17 CSR 20-3.105 Weapons. The board of police commissioners of the Metropolitan Police Department of the City of St. Louis is amending sections (4), (5), (7), and (8).

PURPOSE: This amendment revises the types of weapons available for use by licensed couriers.

(4) Inspection and Registration. All firearms used by private couriers must be inspected by the department armorer **or his/her designee** and must be registered and on file in the private security section. **Armed couriers may only use a duty weapon which is either personally owned by them or owned by their agency.**

(B) Couriers must carry double action .38 Special caliber revolvers. The carrying of any other caliber weapon, including automatics, derringers, .357 Magnums**,** and shotguns, is prohibited. **EXCEPTION: Couriers employed by an armored car service company, while protecting and transporting property from one (1) designated area to another, may carry a .38 Special caliber revolver or a semiautomatic pistol in either 9mm or .40 caliber, double-action only.**

(D) Couriers are required to annually requalify with their firearms during the month of license renewal **and at six (6)-month intervals**.

(5) Discharge of Firearms. A courier may not discharge a firearm in the performance of his/her duties (other than for practice or training at a firing range or similar authorized location) except when reasonably necessary to protect him/herself or another from death or serious *[bodily]* **physical** harm*[; or when a suspect resists to a degree that poses a threat to the life or body safety of the couriers or others]*. **Note: Couriers are not permitted to discharge their weapons to destroy an injured or dangerous animal unless their safety or the safety of a third party is directly threatened.**

(7) Safety First Rules for Gun Handling. The licensed courier is responsible at all times for his/her weapon whether in or out of his/her possession. The following rules must be learned and obeyed:

(F) When the weapon is unattended, it must be safe from children and curious people; *[and]*

(G) Ammunition carried on duty must be new factory-service ammunition. No reloads or wad cutter ammunition is permitted*[.]***; and**

(H) Under no circumstances is a weapon, whether loaded or unloaded, to be stored in a vehicle.

(8) Nonlethal Weapons. Couriers may only carry the following nonlethal defensive weapons or equipment:

(A) *[Leather pocket baton or slapper]* **Pepper mace (o.c. spray), after completion of approved training**;

(B) *[Aerosol tear gas dispenser]* **Metal baton not more than twenty-six inches (26") long when fully extended and not weighing more than twenty-one (21) ounces, after completion of approved training**; and

(C) *[Baton or nightstick]* **Wooden nightstick not more than twenty-six inches (26") long and not weighing more than twenty-one (21) ounces, after completion of approved training. Note: Private security officers, couriers, and corporate security advisors will only be authorized to carry an impact weapon after they have received training by a board-approved instructor. It is the responsibility of the employer to provide board-approved training in the proper use of this equipment. An agency has the right to determine which of these items may be carried by its licensed security employees**.

*AUTHORITY: section 84.340, RSMo [1986] **2000**. Original rule filed April 8, 1988, effective July 11, 1988. Amended: Filed April 28, 2010.*

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Title 17—BOARDS OF POLICE COMMISSIONERS
Division 20—St. Louis Board of Police Commissioners
Chapter 3—Rules for Couriers

PROPOSED AMENDMENT

17 CSR 20-3.115 Field Inspection. The board of police commissioners of the Metropolitan Police Department of the City of St. Louis is amending section (3).

PURPOSE: This amendment extends the cooperation required of licensed couriers to include personnel assigned to the private security section of the St. Louis Metropolitan Police Department.

(3) Failure to Cooperate. Failure by any license holder to cooperate with a commissioned member of the St. Louis Police Department **or with personnel assigned to the private security section** in the inspection procedures will constitute grounds for disciplinary action.

*AUTHORITY: section 84.340, RSMo [1986] **2000**. Original rule filed April 8, 1988, effective July 11, 1988. Amended: Filed April 28, 2010.*

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions less than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will cost private entities less 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 Private Security Division, Sgt. Sherri Smith, 5600 Oakland, Tower "G" 330, St. Louis, MO 63110, FAX: 314-644-9053, or email at slsmith@slmpd.org; with copies to Mark Lawson, General Counsel, Legal Division, St. Louis Metropolitan Police Department, 1200 Clark, St. Louis, MO 63103, FAX: 314-444-5611, mlawson@slmpd.org and Captain John W. Hayden, IAD Commander, 1200 Clark, St. Louis, MO 63103, FAX: 314-444-5711, jwhayden@slmpd.org. 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 17—BOARDS OF POLICE COMMISSIONERS
Division 20—St. Louis Board of Police Commissioners
Chapter 3—Rules for Couriers

PROPOSED AMENDMENT

17 CSR 20-3.125 Complaint/Disciplinary Procedures. The board of police commissioners of the Metropolitan Police Department of the City of St. Louis is amending sections (3), (5), (6), (8), and (9).

PURPOSE: This amendment revises the complaint/disciplinary procedures governing licensed couriers.

(3) Suspension. In instances where a courier is arrested for a felony **or serious misdemeanor**, the commander or watch commander of the district or any officer acting in that capacity will suspend the courier.

(5) Notification/Appeal. Whenever the license of a courier is suspended or revoked by the board of police commissioners, the private security section shall notify the licensee in writing of the action. **This notice will be mailed to his/her last address of record.** The licensee shall have (10) days from the date of posting notice to request a review of the disciplinary action. The request shall be directed in writing to the commander of the private security section. The request shall state additional supporting facts in his/her defense, rebuttal of the board of police commissioner's decision, or both.

(B) The commander, within thirty (30) days of appeal, *[shall render a decision affirming or reversing the original disciplinary action. The commander shall then send his/her decision and report to the board of police commissioners for final action]* **shall submit the appeal in a report to the board of police commissioners for final action**.

(C) Judgments and decisions of the board concerning appeals in disciplinary matters are final**, and once the board has ruled, the matter is permanently closed**.

(6) Disciplinary Action, Punishment, or Both.

(B) Licensed couriers, whether on or off duty, are subject to disciplinary action for violations of these rules. Offenses may include, but not be limited to, the following:

1. Conviction of a felony, misdemeanor**,** or city ordinance;
2. Intoxication or drinking on duty;
3. Possession or illegal use of narcotic or potent drugs (controlled substance);
4. Assumption of police authority when not on duty;
5. Conduct contrary to the public peace and welfare;
6. Interference with any police officer engaged in the performance of his/her duties;
7. Overbearing or oppressive conduct during the performance of duty;
8. Failure to obey a reasonable order by an officer of the St. Louis Metropolitan Police Department;
9. Any conduct or actions which might jeopardize the reputation or integrity of the St. Louis Metropolitan Police Department or its members;
10. Failure to comply with the restrictions of a firearm, while traveling in either direction, without deviation between their residences and places of assignment by the most direct route (not to exceed one (1) hour);
11. Carrying any weapon other than *[a .38 Special caliber revolver]* **an approved firearm** while performing the duties of a courier;
12. Failure to have a weapon inspected by the department armorer **or his/her designee**, not having a record of this weapon on file with the private security section, or both;
13. Carrying more than one (1) authorized *[revolver]* **firearm** on duty;
14. Failure to wear a valid badge/ID card issued by this department on the breast of the outermost garment of courier uniform*[,]* while on duty;
15. Serving or acting as a licensed courier for any agency or other business entity other than the one listed on his/her badge/ID card;
16. Failure to conform to uniform requirements;
17. Working as a licensed courier while under suspension;
18. Carrying or using a firearm while performing the duties of a licensed courier when not firearms-qualified;
19. Any conduct constituting a breach of security or confidence;
20. Neglect of duty;
21. Failure to notify the private security section when and *[of]* **if** arrested on any charge;
22. Failure to aid in prosecution;
23. Defacing or altering the badge/ID card; *[and]*
24. Carrying unauthorized nonlethal weapons, protective devices, or both*[.]***;**

25. Submitting a urine specimen which tests positive for controlled substances;

26. Failure to maintain on file at the private security section a current address and telephone number;

27. Failure to surrender badge/ID card to the private security section when license has been suspended;

28. Failure to cooperate in an investigation conducted by the private security section;

29. Identifying himself/herself as a police officer; and

30. Engaging in a vehicular pursuit.

(8) *[When a license is ordered revoked by the Board of Police Commissioners, the badge/ID deposit fee will be forfeited to the board. Licensed couriers who are under investigation by this department for any alleged violations of any rules will be allowed the discretionary resignation for their commission and in these instances will have the badge/ID deposit fee refunded, provided all department-issued equipment is surrendered in the private security section.]* **Individuals who resign while under investigation will not be considered for a license in the future.**

[(9) Individuals who resign while under investigation will not be considered for a license in the future.]

*AUTHORITY: section 84.340, RSMo [1986] **2000**. Original rule filed April 8, 1988, effective July 11, 1988. Amended: Filed April 28, 2010.*

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions less than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will cost private entities less 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 Private Security Division, Sgt. Sherri Smith, 5600 Oakland, Tower "G" 330, St. Louis, MO 63110, FAX: 314-644-9053, or email at slsmith@slmpd.org; with copies to Mark Lawson, General Counsel, Legal Division, St. Louis Metropolitan Police Department, 1200 Clark, St. Louis, MO 63103, FAX: 314-444-5611, mlawson@slmpd.org and Captain John W. Hayden, IAD Commander, 1200 Clark, St. Louis, MO 63103, FAX: 314-444-5711, jwhayden@slmpd.org. 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 17—BOARDS OF POLICE COMMISSIONERS
Division 20—St. Louis Board of Police Commissioners
Chapter 3—Rules for Couriers

PROPOSED AMENDMENT

17 CSR 20-3.135 Drug Testing. The board of police commissioners of the Metropolitan Police Department of the City of St. Louis is amending sections (1), (2), and (3).

PURPOSE: This amendment revises the drug testing procedures, the range of punishment for a positive test, and the list of drugs for which drug testing will be administered to private security officers.

(1) Applicability. The following shall apply to all individuals seeking certification in any category of armed courier, as well as to all individuals seeking renewal or reinstatements of certification:

(B) If the results of an individual's urinalysis test are positive, that is indicative of the presence of illegal drugs in the sample, the following penalties shall apply:

1. If the individual is an applicant for initial certification, s/he shall be denied certification and shall not be permitted to reapply for a period of one (1) year;

2. If the individual is an applicant for renewal of certification, his/her certification shall be suspended *[and shall not be renewed for a period of one (1) year; and]* **and an investigation conducted. The results of the investigation will be forwarded to the board of police commissioners. The board may revoke a license for one (1) year based on a positive drug test;**

3. If the individual is an applicant for reinstatement of certification, reinstatement shall be denied for a period of one (1) year; **and**

4. A second positive drug test will permanently exclude the individual from holding a courier license;

(C) Urinalysis testing pursuant to this rule shall consist of a drug screen test and, if the test results are positive, a confirmatory test. The drug screen test shall be the Enzyme Multiplied Immunoassay Test (EMIT) which detects the following:

1. Marijuana (Cannabinoids THC);
2. Phencyclidine (PCP);
3. Amphetamines;
4. Barbiturates;
5. Cocaine;
6. Propoxyphene;
7. Opiates;
8. Benzodiazepines; *[and]*
9. Methadone; **and**
10. **Methaqualone;**

(2) Laboratory and Testing Procedures. *[The private courier may employ the laboratory of his/her choice for analysis of specimens; provided, that the laboratory is reputable and is operating within the statutes, laws, ordinances or guidelines established by Missouri and any county or municipality of this state to govern or control those facilities; and further that the laboratory complies with all of the provisions of this rule as follows:]* **Couriers will use the laboratory under contract with the board of police commissioners for collections and analysis of specimens. The testing laboratory will comply with all the provisions of this regulation including the following:**

(E) *[Laboratory results must be delivered via the United States mail, postage prepaid, to the Metropolitan Police Department, Private Security Section;]* **Laboratory results must be delivered via fax from Quest Diagnostics or by inquiry of the Quest Diagnostics Integrated Solutions online system;**

*AUTHORITY: section 84.340, RSMo [1986] **2000**. Original rule filed April 16, 1990, effective June 28, 1990. Amended: Filed June 30, 1992, effective Feb. 26, 1993. Amended: Filed April 28, 2010.*

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions less than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will cost private entities less 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 Private Security Division, Sgt. Sherri Smith, 5600 Oakland, Tower "G" 330, St. Louis, MO 63110, FAX: 314-644-9053, or email at slsmith@slmpd.org; with copies to Mark Lawson, General Counsel, Legal Division, St. Louis Metropolitan Police Department, 1200 Clark, St. Louis, MO 63103, FAX: 314-444-5611, mlawson@slmpd.org and Captain John W. Hayden, IAD Commander, 1200 Clark, St. Louis, MO 63103, FAX: 314-444-5711, jwhayden@slmpd.org. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

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

PROPOSED RESCISSION

20 CSR 2150-5.100 Collaborative Practice. This rule defined collaborative practice arrangement terms and delimited geographic areas; methods of treatment; review of services; and drug/device dispensing or distribution pursuant to prescription.

PURPOSE: This rule is being rescinded and readopted in order to amend current language that defines collaborative practice arrangement terms and delimits geographic areas; methods of treatment; review of services; and drug/device dispensing or distribution pursuant to prescription. New language addresses changes in law with the passage of Senate Bill 724 (2008) that was effective August 28, 2008, regarding collaborative practice arrangements and Advanced Practice Registered Nurse controlled substance prescriptive authority.

*AUTHORITY: sections 334.104.3 and 335.036, RSMo Supp. 2007 and section 334.125, RSMo 2000. This rule originally filed as 4 CSR 150-5.100. Original rule filed Jan. 29, 1996, effective Sept. 30, 1996. For intervening history, please consult the **Code of State Regulations**. Rescinded: Filed April 30, 2010.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Board of Registration for the Healing Arts, PO Box 4, Jefferson City, MO 65102, by facsimile at 573-751-3166, or via email at healingarts@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

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

PROPOSED RULE

20 CSR 2150-5.100 Collaborative Practice

PURPOSE: This rule defines collaborative practice arrangement terms and delimits geographic areas; methods of treatment; review of services; and drug/device dispensing or distribution pursuant to prescription.

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) For the purpose of these rules, the following definitions shall apply:

(A) Advanced practice nurse—A registered professional nurse (RN) who is also an advanced practice registered nurse (APRN) as defined in section 335.016(2), RSMo;

(B) Controlled substance prescriptive authority—the eligibility and certificate granted by the Missouri State Board of Nursing (MSBN) to an APRN who has been delegated the authority to prescribe controlled substances from Schedules III, IV, and/or V in a written collaborative practice arrangement by the collaborating physician as defined in 335.019, RSMo;

(C) Collaborative practice arrangements—Refers to written agreements, jointly agreed upon protocols, or standing orders, all of which shall be in writing, for the delivery of health care services;

(D) Population-based public health services—Health services provided to well patients or to those with narrowly circumscribed conditions in public health clinics or community health settings that are limited to immunizations, well child care, human immunodeficiency virus (HIV) and sexually transmitted disease care, family planning, tuberculosis control, cancer and other chronic disease, wellness screenings, services related to epidemiologic investigations, and prenatal care; and

(E) Registered professional nurse—An RN as defined in section 335.016(16), RSMo, who is not an APRN.

(2) Geographic Areas.

(A) The collaborating physician in a collaborative practice arrangement shall not be so geographically distanced from the collaborating RN or APRN as to create an impediment to effective collaboration in the delivery of health care services or the adequate review of those services.

(B) The use of a collaborative practice arrangement by an APRN who provides health care services that include the diagnosis and initiation of treatment for acutely or chronically ill or injured persons shall be limited to practice locations where the collaborating physician, or other physician designated in the collaborative practice arrangement, is no further than fifty (50) miles by road, using the most direct route available, from the collaborating APRN if the APRN is practicing in federally designated health professional shortage areas (HPSAs). Otherwise, in non-HPSAs, the collaborating physician and collaborating APRN shall practice within thirty (30) miles by road of one another.

(C) An APRN who desires to enter into a collaborative practice arrangement at a location where the collaborating physician is not continuously present shall practice together at the same location with the collaborating physician continuously present for a period of at least one (1) month before the collaborating APRN practices at a location where the collaborating physician is not present. It is the responsibility of the collaborating physician to determine and document the completion of the same location practice described in the previous sentence.

(D) A collaborating physician shall not enter into a collaborative practice arrangement with more than three (3) full-time equivalent APRNs. This limitation shall not apply to collaborative arrangements of hospital employees providing inpatient care service in hospitals as defined in Chapter 197, RSMo, or population-based public health services as defined in this rule.

(3) Methods of Treatment.

(A) The methods of treatment and the authority to administer, dispense, or prescribe drugs delegated in a collaborative practice arrangement between a collaborating physician and collaborating APRN shall be within the scope of practice of each professional and shall be consistent with each professional's skill, training, education, competence, licensure, and/or certification and shall not be further delegated to any person except that the individuals identified in sections 338.095 and 338.198, RSMo, may communicate prescription drug orders to a pharmacist.

(B) The methods of treatment and authority to administer and dispense drugs delegated in a collaborative practice arrangement between a collaborating physician and a collaborating RN shall be within the scope of practice of each professional and shall be consistent with each professional's skill, training, education, and competence and shall not be delegated to any other person except the individuals identified in sections 338.095 and 338.198, RSMo, may communicate prescription drug orders to a pharmacist.

(C) The collaborating physician shall consider the level of skill, education, training, and competence of the collaborating RN or APRN and ensure that the delegated responsibilities contained in the collaborative practice arrangement are consistent with that level of skill, education, training, and competence.

(D) Guidelines for consultation and referral to the collaborating physician or designated health care facility for services or emergency care that is beyond the education, training, competence, or scope of practice of the collaborating RN or APRN shall be established in the collaborative practice arrangement.

(E) The methods of treatment, including any authority to administer or dispense drugs, delegated in a collaborative practice arrangement between a collaborating physician and a collaborating RN shall be delivered only pursuant to a written agreement, jointly agreed-upon protocols, or standing orders that shall describe a specific sequence of orders, steps, or procedures to be followed in providing patient care in specified clinical situations.

(F) The methods of treatment, including any authority to administer, dispense, or prescribe drugs, delegated in a collaborative practice arrangement between a collaborating physician and a collaborating APRN shall be delivered only pursuant to a written agreement, jointly agreed-upon protocols, or standing orders that are specific to the clinical conditions treated by the collaborating physician and collaborating APRN.

(G) Methods of treatment delegated and authority to administer, dispense, or prescribe drugs shall be subject to the following:

1. The physician retains the responsibility for ensuring the appropriate administering, dispensing, prescribing, and control of drugs utilized pursuant to a collaborative practice arrangement in accordance with all state and federal statutes, rules, or regulations;

2. All labeling requirements outlined in section 338.059, RSMo, shall be followed;

3. Consumer product safety laws and Class B container standards shall be followed when packaging drugs for distribution;

4. All drugs shall be stored according to the *United States Pharmacopeia* (USP), (2010), published by the United States Pharmacopeial Convention, 12601 Twinbrook Parkway, Rockville, Maryland 20852-1790, 800-227-8772; http://www.usp.org/ recommended conditions, which is incorporated by reference. This does not include any later amendments or additions;

5. Outdated drugs shall be separated from the active inventory;

6. Retrievable dispensing logs shall be maintained for all prescription drugs dispensed and shall include all information required by state and federal statutes, rules, or regulations;

7. All prescriptions shall conform to all applicable state and federal statutes, rules, or regulations and shall include the name, address, and telephone number of the collaborating physician and collaborating APRN;

8. An RN shall not, under any circumstances, prescribe drugs. The administering or dispensing of a controlled substance by an RN or APRN who has not been delegated authority to prescribe in a collaborative practice arrangement, pursuant to 19 CSR 30-1.066, shall be accomplished only under the direction and supervision of the collaborating physician, or other physician designated in the collaborative practice arrangement, and shall only occur on a case-by-case determination of the patient's needs following verbal consultation between the collaborating physician and collaborating RN or APRN. The required consultation and the physician's directions for the administering or dispensing of controlled substances shall be recorded in the patient's chart and in the appropriate dispensing log. These recordings shall be made by the collaborating RN or APRN and shall be cosigned by the collaborating physician following a review of the records;

9. In addition to administering and dispensing controlled substances, an APRN, as defined in section 335.016, RSMo, may be delegated the authority to prescribe controlled substances listed in Schedules III, IV, and V of section 195.017, RSMo, in a written collaborative practice arrangement, except that, the collaborative practice arrangement shall not delegate the authority to administer any controlled substances listed in Schedules III, IV, and V of section 195.017, RSMo, for the purpose of inducing sedation or general anesthesia for therapeutic, diagnostic, or surgical procedures. Schedule III narcotic controlled substance prescriptions shall be limited to a one hundred twenty (120)-hour supply without refill.

10. An APRN may not prescribe controlled substances for his or her own self or family. Family is defined as spouse, parents, grandparents, great-grandparents, children, grandchildren, great-grandchildren, brothers and sisters, aunts and uncles, nephews and nieces, mother-in-law, father-in-law, brothers-in-law, sisters-in-law, daughters-in-law, and sons-in-law. Adopted and step members are also included in family.

11. An APRN or RN in a collaborative practice arrangement may only dispense starter doses of medication to cover a period of time for seventy-two (72) hours or less with the exception of Title X family planning providers or publicly funded clinics in community health settings that dispense medications free of charge. The dispensing of drug samples, as defined in 21 U.S.C. section 353(c)(1), is permitted as appropriate to complete drug therapy;

12. The collaborative practice arrangement shall clearly identify the controlled substances the collaborating physician authorizes the collaborating APRN to prescribe and document that it is consistent with each professional's education, knowledge, skill, and competence.

13. The medications to be administered, dispensed, or prescribed by a collaborating RN or APRN in a collaborative practice arrangement shall be consistent with the education, training, competence, and scopes of practice of the collaborating physician and collaborating RN or APRN.

(H) When a collaborative practice arrangement is utilized to provide health care services for conditions other than acute self-limited or well-defined problems, the collaborating physician, or other physician designated in the collaborative practice arrangement, shall examine and evaluate the patient and approve or formulate the plan of treatment for new or significantly changed conditions as soon as is practical, but in no case more than two (2) weeks after the patient has been seen by the collaborating APRN or RN.

(I) Nothing in these rules shall be construed to permit medical diagnosis of any condition by an RN pursuant to a collaborative practice arrangement.

(4) Review of Services.

(A) In order to assure true collaborative practice and to foster effective communication and review of services, the collaborating physician, or other physician designated in the collaborative practice arrangement, shall be immediately available for consultation to the collaborating RN or APRN at all times, either personally or via telecommunications.

(B) The collaborative practice arrangement between a collaborating physician and a collaborating RN or APRN shall be signed and dated by the collaborating physician and collaborating RN or APRN before it is implemented, signifying that both are aware of its content and agree to follow the terms of the collaborative practice arrangement. The collaborative practice arrangement and any subsequent notice of termination of the collaborative practice arrangement shall be in writing and shall be maintained by the collaborating professionals for a minimum of eight (8) years after termination of the collaborative practice arrangement. The collaborative practice arrangement shall be reviewed at least annually and revised as needed by the collaborating physician and collaborating RN or APRN. Documentation of the annual review shall be maintained as part of the collaborative practice arrangement.

(C) Within thirty (30) days of any change and with each physician's license renewal, the collaborating physician shall advise the Missouri State Board of Registration for the Healing Arts whether he/she is engaged in any collaborative practice agreement, including collaborative practice agreements delegating the authority to prescribe controlled substances and also report to the board the name of each licensed RN or APRN with whom he/she has entered into such agreement. A change shall include, but not be limited to, resignation or termination of the RN or APRN; change in practice locations; addition of new collaborating professionals.

(D) An RN or an APRN practicing pursuant to a collaborative practice arrangement shall maintain adequate and complete patient records in compliance with section 334.097, RSMo.

(E) The collaborating physician shall complete a review of a minimum of ten percent (10%) of the total health care services delivered by the collaborating APRN. If the APRN's practice includes the prescribing of controlled substances, the physician shall review a minimum of twenty percent (20%) of the cases in which the APRN wrote a prescription for a controlled substance. If the controlled substance chart review meets the minimum total ten percent (10%) as described above, then the minimum review requirements have been met. The collaborating APRN's documentation shall be submitted for review to the collaborating physician at least every fourteen (14) days. This documentation submission may be accomplished in person or by other electronic means and reviewed by the collaborating physician. The collaborating physician must produce evidence of the chart review upon request of the Missouri State Board of Registration for the Healing Arts. This subsection shall not apply during the time the collaborating physician and collaborating APRN are practicing together as required in subsection (2)(C) above.

(F) If a collaborative practice arrangement is used in clinical situations where a collaborating APRN provides health care services that include the diagnosis and initiation of treatment for acutely or chronically ill or injured persons, then the collaborating physician shall be present for sufficient periods of time, at least once every two (2) weeks, except in extraordinary circumstances that shall be documented, to participate in such review and to provide necessary medical direction, medical services, consultations, and supervision of the health care staff. In such settings the use of a collaborative practice arrangement shall be limited to only an APRN.

(G) The collaborating physician and collaborating RN or APRN shall determine an appropriate process of review and management of abnormal test results which shall be documented in the collaborative practice arrangement.

(H) The Missouri State Board of Registration for the Healing Arts and the Missouri State Board of Nursing separately retain the right and duty to discipline their respective licensees for violations of any state or federal statutes, rules, or regulations regardless of the licensee's participation in a collaborative practice arrangement.

(5) Population-Based Public Health Services.

(A) In the case of the collaborating physicians and collaborating registered professional nurses or APRN practicing in association with public health clinics that provide population-based health services as defined in section (1) of this rule, the geographic areas, methods of treatment, and review of services shall occur as set forth in the collaborative practice arrangement. If the services provided in such settings include diagnosis and initiation of treatment of disease or injury not related to population-based health services, then the provisions of sections (2), (3), and (4) above shall apply.

AUTHORITY: sections 334.104.3 and 335.036, RSMo Supp. 2009 and section 334.125, RSMo 2000. This rule originally filed as 4 CSR 150-5.100. Original rule filed Jan. 29, 1996, effective Sept. 30, 1996. For intervening history, please consult the ***Code of State Regulations****. Rescinded and readopted: Filed April 30, 2010.*

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Board of Registration for the Healing Arts, PO Box 4, Jefferson City, MO 65102, by facsimile at 573-751-3166, or via email at healingarts@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2200—State Board of Nursing
Chapter 4—General Rules

PROPOSED RESCISSION

20 CSR 2200-4.100 Advanced Practice Nurse. *This rule specified the criteria necessary for registered professional nurses to be recognized by the Missouri State Board of Nursing and therefore eligible to practice as advanced practice nurses and use certain advanced practice nurse titles.*

PURPOSE: This rule is being rescinded and readopted to meet the current trends in the regulation of advanced practice registered nurses and to reorganize the existing language for the ease of reading.

AUTHORITY: section 335.016(2) and 335.036, RSMo Supp. 2007. This rule originally filed as 4 CSR 200-4.100. Original rule filed Nov. 15, 1991, effective March 9, 1992. For intervening history, please consult the ***Code of State Regulations****. Rescinded: Filed April 30, 2010.*

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Board of Nursing, PO Box 656, Jefferson City, MO 65102, by facsimile at 573-751-0075, or via email at nursing@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2200—State Board of Nursing
Chapter 4—General Rules

PROPOSED RULE

20 CSR 2200-4.100 Advanced Practice Registered Nurse

PURPOSE: This rule specifies the criteria necessary for registered professional nurses to be recognized by the Missouri State Board of Nursing; and therefore, eligible to practice as advanced practice registered nurses and use certain advanced practice registered nurse titles.

(1) Definitions.

(A) Accredited college or university—An institution of learning awarded accreditation status by the appropriate regional accreditation body for higher education certified by the Council on Post Secondary Accreditation to conduct such accreditations.

(B) Advanced—Means content and competency at a level beyond that of a baccalaureate prepared nurse.

(C) Advanced nursing education program—

1. Prior to July 1, 1998, completion of a formal postbasic educational program from or formally affiliated with an accredited college, university, or hospital of at least one (1) academic year, which includes advanced nursing theory and clinical nursing practice, leading to a graduate degree or certificate with a concentration in an advanced practice nursing clinical specialty area.

2. From and after July 1, 1998, completion of a graduate degree from an accredited college or university with a concentration in an advanced practice nursing clinical specialty area, which includes advanced nursing theory and clinical nursing practice. From and after January 1, 2009, program shall provide a minimum of five hundred (500) faculty-supervised clinical hours.

(D) Advanced pharmacology course—A course that offers content in pharmacokinetics and pharmacodynamics, pharmacology of current/commonly used medications, and the application of drug therapy to the treatment of disease and/or the promotion of health;

(E) Advanced practice registered nurse (APRN)—As defined in 335.016, RSMo.

(F) Advanced practice nursing clinical specialty—Recognized advanced body of nursing knowledge and specialized acts of advanced professional nursing practice.

(G) Certificate of controlled substance prescriptive authority—Eligibility granted by the Missouri State Board of Nursing (MSBN) to an APRN to apply with the Missouri Bureau of Narcotics and Dangerous Drugs (BNDD) and the federal Drug Enforcement Agency (DEA) for authority to prescribe controlled substances from Schedules III–V as delegated in a collaborative practice arrangement between a collaborating physician and a collaborating APRN.

(H) Nationally recognized certifying body—A non-governmental agency approved by the MSBN that validates by examination, based on pre-determined standards, an individual nurse's qualifications and knowledge for practice in a defined functional or clinical area of nursing.

(I) Nationally recognized professional nursing organization—A membership entity for registered professional nurses (RNs) in the United States whose intention is national in scope and exists, in part, for the ongoing purposes of—

1. Fostering high standards for professional nursing practice;

2. Promoting the professional development and general welfare

of registered professional nurses;

3. Improving the health and well-being of individuals, families, and communities in collaboration with other health care providers; and

4. Engaging in action at the national level on matters of professional policy and national health policy.

(J) Preceptorial experience—A designated portion of a formal educational program that is offered in a healthcare setting and affords students the opportunity to integrate theory and role in both the clinical specialty/practice area and advanced nursing practice through direct patient care/client management.

(K) Qualified preceptor—An APRN with a current unrestricted RN license who has a scope of practice which includes prescribing and has met the requirements for prescriptive authority; a licensed practitioner of medicine or osteopathy with unrestricted prescriptive authority.

(2) To Obtain APRN Recognition.

(A) After June 30, 1997, the MSBN shall maintain an up-to-date roster of RNs recognized as eligible to practice as an APRN, which shall be available to the public. A copy of the current roster can be obtained by contacting the MSBN.

1. Temporary recognition—available to new graduate APRNs only—An RN who is a graduate registered nurse anesthetist, graduate nurse midwife, graduate nurse practitioner, or graduate clinical nurse specialist and desires to begin practice in their advanced practice role prior to the successful completion of their certification examination must be recognized by the MSBN and shall satisfy the following:

A. Hold a current unencumbered license to practice in Missouri, or another compact state as an RN;

B. Submit completed Document of Recognition application and fee to the MSBN. Incomplete application forms and evidence will be considered invalid. Fees are not refundable;

C. Provide evidence of having successfully completed an advanced nursing education program as defined in subsection (1)(B) of this rule;

D. Register to take the first available certification examination administered by a nationally recognized certifying body acceptable to the MSBN;

E. Agree to notify the MSBN and employer of results within five (5) working days of receipt of results. If notification is of unsuccessful results, then agree to cease practice as an APRN immediately;

F. Be restricted from any prescriptive authority;

G. Have never been denied certification or had any certification suspended, revoked, or cancelled by an MSBN approved nationally recognized certifying body; and

H. Shall be recognized for a period not greater than four (4) months from the date of graduation, pending a certification decision by an MSBN approved nationally recognized certifying body.

(B) Initial Recognition—RNs who are certified registered nurse anesthetists (CRNA), certified nurse midwives (CNM), certified nurse practitioners (CNS), or certified clinical nurse specialists applying for recognition from the MSBN for eligibility to practice as advanced practice registered nurses shall—

1. Hold a current unencumbered license to practice in Missouri or another compact state as an RN; and

2. Provide evidence of completion of appropriate advanced nursing education program as defined in subsection (1)(C) of this rule; and

3. Submit completed Document of Recognition application and appropriate fee to the MSBN. Incomplete application forms and evidence will be considered invalid. Fees are not refundable; and

4. Submit documentation of current certification in their respective advanced nursing clinical specialty area by an MSBN approved nationally recognized certifying body, meeting the requirements of this rule; or

5. Before January 1, 2010, applicants for whom there is no appropriate certifying examination shall also provide the following documentation:

A. Evidence of successful completion of three (3) graduate credit hours of pharmacology offered by an accredited college or university within the previous five (5) years prior to the date of application to the board; and

B. Evidence of a minimum of eight hundred (800) hours of clinical practice in the advanced practice nursing clinical specialty area within two (2) years prior to date of application to the board; and

6. Each applicant is responsible for maintaining and providing documentation of satisfactory, active, up-to-date certification/recertification/maintenance and/or continuing education/competency status to the MSBN.

7. To be eligible for controlled substance prescriptive authority, the APRN applicant must:

A. Submit evidence of completion of an advanced pharmacology course that shall include at least three hundred (300) hours of preceptorial experience in the prescription of drugs, medicines, and therapeutic devices with a qualified preceptor. Evidence shall be submitted in the form of one (1) of the following:

(I) An official final transcript from their advanced practice program; or

(II) A letter from the school describing how this was integrated into the curriculum; or

(III) Evidence of successful completion of three (3) credit hours post baccalaureate course in advanced pharmacology from an accredited college or university within the last five (5) years; or

(IV) Evidence of successful completion of forty-five (45) continuing education units in pharmacology within the last five (5) years; and

B. Provide evidence of a minimum of one thousand (1,000) hours of practice in an advanced practice nursing category prior to application for a certificate of controlled substance prescriptive authority. The one thousand (1,000) hours shall not include clinical hours obtained in the advanced practice nursing education program. The one thousand (1,000) hours may include transmitting a prescription order orally or telephonically or to an inpatient medical record from protocols developed in collaboration with and signed by a Missouri licensed physician. The APRN applicant shall complete the form provided by the MSBN and include this form with the Document of Recognition application or at such time as the APRN has completed the required hours of practice; and

C. Has had controlled substance prescriptive authority delegated in a collaborative practice arrangement under section 334.104, RSMo, with a Missouri licensed physician who has an unrestricted federal Drug Enforcement Administration (DEA) number and who is actively engaged in a practice comparable in scope, specialty, or expertise to that of the APRN. Submit the completed "Statement of Controlled Substance Delegation" form provided by the MSBN as part of the application process to the MSBN.

8. Once the APRN has received controlled substance prescriptive authority from the MSBN, he/she may apply for a BNDD registration number and a federal DEA registration number. Restrictions that may exist on the collaborative physician's BNDD registration may also result in restrictions on the BNDD registration for the APRN. The instructions and the application needed for BNDD registration can be found at www.dhss.mo.gov/BNDD. For information regarding federal DEA registration see www.DEADiversion.usdoj.gov.

(C) Continued Recognition—In order to maintain a current Document of Recognition, the APRN shall—

1. Maintain current RN licensure in Missouri or in another compact state. An RN license placed on inactive or lapsed status will automatically lapse the Document of Recognition regardless of current certification status; and

2. APRNs shall notify the MSBN within five (5) working days of any change in status, documentation, or other changes that may

affect their recognition as an APRN; and

3. Provide evidence of recertification by a certifying body, approved by the MSBN, to the MSBN prior to the current expiration date. It is the APRN's responsibility to be sure that their recertification credentials have been received by the MSBN; or

4. If approved by the MSBN as noncertified prior to January 1, 2010, every two (2) years shall provide evidence of—

A. A minimum of eight hundred (800) hours of clinical practice in their advanced practice nursing clinical specialty and in the advanced practice role; and

B. A minimum of sixty (60) contact hours in their advanced practice nursing clinical specialty area offered by an accredited college or university; and

5. Adhere to all requirements of the BNDD and the federal DEA; and

6. APRNs who fail to satisfy any of the applicable requirements of subsections (2)(A)–(C) of this rule shall lose their recognition as an APRN in Missouri. Loss of recognition as an APRN results in ineligibility to call or title oneself or practice as an APRN but does not prevent the individual from practicing as an RN within his/her education, training, knowledge, judgment, skill, and competence. To regain recognition as an APRN, the individual must complete the application process described in paragraphs (2)(B)1.-8. of this rule.

(3) Titling.

(A) After June 30, 1997, only an RN meeting the requirements of this rule and recognized by the MSBN as an APRN shall have the right to use any of the following titles or their abbreviations in clinical practice: advanced practice registered nurse (APRN); certified advanced practice registered nurse; nurse anesthetist; certified registered nurse anesthetist (CRNA); nurse midwife; certified nurse midwife (CNM); nurse practitioner (NP); certified nurse practitioner; certified nurse specialist (CNS); or certified clinical nurse specialist.

(B) RNs recognized as APRN nurses by the MSBN shall specify their RN title and clinical nursing specialty area designation, and may include certification status, if applicable, for purposes of identification and documentation.

(C) APRNs will be held accountable by the MSBN for representing themselves accurately and fully to the public, their employers, and other health care providers.

(4) Scope of Practice.

(A) RNs recognized by the MSBN as being eligible to practice as an APRN shall function clinically—

1. Within the state of Missouri Nursing Practice Act, Chapter 335, RSMo, and all other applicable rules and regulations;

2. Within the professional scope and standards of their advanced practice nursing clinical specialty area and consistent with their formal advanced nursing education and national certification, if applicable, or within their education, training, knowledge, judgment, skill, and competence as an RN; and

3. Within the regulations set forth by the BNDD and the federal DEA if deemed eligible to prescribe controlled substances by the MSBN.

(5) Certifying Body Criteria.

(A) In order to be a certifying body acceptable to the MSBN for APRN status, the certifying body must meet the following criteria:

1. Be national in the scope of its credentialing;

2. Have no requirement for an applicant to be a member of any organization;

3. Have formal requirements that are consistent with the requirements of the APRN rule;

4. Have an application process and credential review that includes documentation that the applicant's advanced nursing education, which included theory and practice, is in the advanced practice nursing clinical specialty area being considered for certification;

5. Use psychometrically sound and secure examination instruments based on the scope of practice of the advanced practice nursing clinical specialty area;

6. Issue certification based on passing an examination and meeting all other certification requirements;

7. Provide for periodic recertification/maintenance options which include review of qualifications and continued competence; and

8. Have an evaluation process to provide quality assurance in its certification, recertification, and continuing competency components.

(B) Each listed certifying body and/or its policies and procedures for certification shall be subject to at least annual review by the MSBN to determine whether criteria for recognition under this rule are being maintained.

(C) The MSBN shall identify, keep on file, and make available to the public the current list of nationally recognized certifying bodies acceptable to the board of nursing. Nationally recognized certifying bodies may be added or deleted from the board of nursing's list of nationally recognized certifying bodies based on the criteria set forth in this rule. A copy of the current list can be obtained by contacting the Missouri State Board of Nursing, PO Box 656, Jefferson City, MO 65102, by calling (573) 751-0681, or on the website at www.pr.mo.gov/nursing.asp.

AUTHORITY: section 335.016(2) and 335.036, RSMo Supp. 2009. This rule originally filed as 4 CSR 200-4.100. Original rule filed Nov. 15, 1991, effective March 9, 1992. For intervening history, please consult the ***Code of State Regulations****. Rescinded and readopted: Filed April 30, 2010.*

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions approximately one thousand six hundred eighty-six dollars and fifty-six cents to two thousand nine hundred eighty-seven dollars and forty-nine cents ($1,686.56 to $2,987.49) 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.

PRIVATE COST: This proposed rule will cost private entities approximately one hundred ninety-one thousand four hundred ninety-six dollars and eighty cents to seven hundred forty thousand nine hundred twenty-six dollars and eighty cents ($191,496.80 to $740,926.80) 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.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the State Board of Nursing, Lori Scheidt, Executive Director, PO Box 656, Jefferson City, MO 65102, by fax at (573) 751-0075, or via email at nursing@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

PUBLIC FISCAL NOTE

I. RULE NUMBER

Title 20 - Department of Insurance, Financial Institutions and Professional Registration
Division 2200 - State Board of Nursing
Chapter 4 - General Rules
Proposed Rule - 20 CSR 2200-4.100 Advanced Practice Registered Nurse
Prepared March 5, 2010 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance	
State Board of Nursing		$1,686.56 to $2,987.49
	Total Annual Cost of Compliance for the Life of the Rule	**$1,686.56 to $2,987.49**

III. WORKSHEET

The Senior Office Support Assistant provides support to the Practice Administrator and performs complex clerical functions. The Practice Administrator performs responsible professional administrative and supevisory nursing work in the management of nursing services in a facility for the physically or mentally ill or disabled.

Personal Service Dollars

STAFF	ANNUAL SALARY RANGE	SALARY TO INCLUDE FRINGE BENEFIT	HOURLY SALARY	COST PER MINUTE	TIME PER APPLICATION	COST PER APPLICATION	NUMBER OF ITEMS	TOTAL COST
Practice Administrator	$51,156 to $53,292	$76,095 to $79,272	$36.58 to $38.11	$0.61 to $0.64	5 minutes	$3.05 to $3.18	470 Applicants	$609.73 to $1,492.70
Senior Office Support Assistant	$24,576 to $25,380	$36,557 to $37,753	$17.58 to $18.15	$0.29 to $0.30	5 minutes	$1.46 to $1.51	470 Applicants	$292.92 to $710.89
							Total Personal Service Costs	**$902.66 to $2,203.59**

Expense and Equipment Dollars

Item	Cost	Quantity	Total Cost Per Item
Correspondence Mailing	$0.65	120	$78.00
Application Mailing	$7.35	50	$367.50
License Printing and Postage	$0.72	470	$338.40
	Total Expense and Equipment Costs		**$783.90**

IV. ASSUMPTION

1. Employee's salaries were calculated using the annual salary multiplied by 48.75% for fringe benefits and then divided by 2080 hours per year to determine the hourly salary. The hourly salary was then divided by 60 minutes to determine the cost per minute. The cost per minute was then multiplied by the amount of time individual staff spent on the processing of applications or renewals. The total cost was based on the cost per application multiplied by the estimated number of applications.
2. The board anticipates all 470 current APRNs to apply for controlled substance authority, of the 470 only 50 are anticpated to request the board office mail an application packet to them as the applications will be made available on the website. The board anticipates having to send 120 correspondence letters to applicants for items requried for their application(s).
3. It is anticipated that the total 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.

PRIVATE FISCAL NOTE

I. RULE NUMBER

Title 20 - Department of Insurance, Financial Institutions and Professional Registration
Division 2200 - State Board of Nursing
Chapter 4 - General Rules
Proposed Rule - 20 CSR 2200-4.100 Advanced Practice Registered Nurse
Prepared March 5, 2010 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 amendment:	Classification by type of the business entities which would likely be affected:	Estimated annual cost of compliance with the amendment by affected entities:
470	Applicants for APRN Status and Controlled Substance Prescriptive (APRN Application Fee @ $150.00)	$70,500.00
470	Applicants for APRN Status and Controlled Substance Prescriptive (Notary @ $2.00)	$940.00
470	Applicants for APRN Status and Controlled Substance Prescriptive (Transcript @ $10.00)	$4,700.00
470	Applicants for APRN Status and Controlled Substance Prescriptive Authority (Postage @ $0.44)	$206.80
470	Applicants for APRN Status and Controlled Substance Prescriptive (Recognition by an Accerdited Certifying Body @ $31.00-$1200.00)	$14,570.00-$564,000.00

470	APRN seeking Controlled Substance Prescriptive Authority (Missouri Bureau of Narcotics and Dangerous Drugs Registration @ $30.00)	$14,100.00
470	APRN seeking Controlled Substance Prescriptive Authority (Federal Drug Enforcement Agency Registration @ $184.00)	$86,480.00
	Estimated Annual Cost of Compliance for the Life of the Rule	**$191,496.80 to $740,926.80**

III. WORKSHEET

See Table Above

IV. ASSUMPTION

1. The figures reported above are based on FY09-FY10 actuals.
2. The costs accounted for in this fiscal note are not all new costs. The APRN Application, Notary, Transcript, Postage, and Certifying Body Recognition fees are all costs that already exist. The BNDD Registration and Federal DEA Registration are new costs icurred. However, all costs associated with a rule must be re-accounted for when rescinding and readopting a rule.
3. 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 2200—State Board of Nursing
Chapter 4—General Rules

PROPOSED RESCISSION

20 CSR 2200-4.200 Collaborative Practice. This rule defined collaborative practice arrangement terms and delimited geographic areas; methods of treatment; review of services; and drug/device dispensing or distribution pursuant to prescription.

PURPOSE: This rule is being rescinded and readopted in order to amend current language that defines collaborative practice arrangement terms and delimits geographic areas; methods of treatment; review of services; and drug/device dispensing or distribution pursuant to prescription. New language addresses changes in law with the passage of Senate Bill 724 (2008) that was effective August 28, 2008, regarding collaborative practice arrangements and Advanced Practice Registered Nurse controlled substance prescriptive authority.

AUTHORITY: sections 334.104.3 and 335.036, RSMo Supp. 2007. This rule originally filed as 4 CSR 200-4.200. Original rule filed Jan. 29, 1996, effective Sept. 30, 1996. For intervening history, please consult the ***Code of State Regulations****. Rescinded: Filed April 30, 2010.*

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the State Board of Nursing, Lori Scheidt, Executive Director, PO Box 656, Jefferson City, MO 65102, by fax at (573) 751-0075, or via email at nursing@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2200—State Board of Nursing
Chapter 4—General Rules

PROPOSED RULE

20 CSR 2200-4.200 Collaborative Practice

PURPOSE: This rule defines collaborative practice arrangement terms and delimits geographic areas; methods of treatment; review of services; and drug/device dispensing or distribution pursuant to prescription.

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) For the purpose of these rules, the following definitions shall apply:

(A) Advanced practice nurse—A registered professional nurse (RN) who is also an advanced practice registered nurse (APRN) as defined in section 335.016(2), RSMo;

(B) Controlled substance prescriptive authority—the eligibility and certificate granted by the Missouri State Board of Nursing (MSBN) to an APRN who has been delegated the authority to prescribe controlled substances from Schedules III, IV, and/or V in a written collaborative practice arrangement by the collaborating physician as defined in 335.019, RSMo;

(C) Collaborative practice arrangements—Refers to written agreements, jointly agreed upon protocols, or standing orders, all of which shall be in writing, for the delivery of health care services;

(D) Population-based public health services—Health services provided to well patients or to those with narrowly circumscribed conditions in public health clinics or community health settings that are limited to immunizations, well child care, human immunodeficiency virus (HIV) and sexually transmitted disease care, family planning, tuberculosis control, cancer and other chronic disease, wellness screenings, services related to epidemiologic investigations, and prenatal care; and

(E) Registered professional nurse—An RN as defined in section 335.016(16), RSMo, who is not an APRN.

(2) Geographic Areas.

(A) The collaborating physician in a collaborative practice arrangement shall not be so geographically distanced from the collaborating RN or APRN as to create an impediment to effective collaboration in the delivery of health care services or the adequate review of those services.

(B) The use of a collaborative practice arrangement by an APRN who provides health care services that include the diagnosis and initiation of treatment for acutely or chronically ill or injured persons shall be limited to practice locations where the collaborating physician, or other physician designated in the collaborative practice arrangement, is no further than fifty (50) miles by road, using the most direct route available, from the collaborating APRN if the APRN is practicing in federally designated health professional shortage areas (HPSAs). Otherwise, in non-HPSAs, the collaborating physician and collaborating APRN shall practice within thirty (30) miles by road of one another.

(C) An APRN who desires to enter into a collaborative practice arrangement at a location where the collaborating physician is not continuously present shall practice together at the same location with the collaborating physician continuously present for a period of at least one (1) month before the collaborating APRN practices at a location where the collaborating physician is not present. It is the responsibility of the collaborating physician to determine and document the completion of the same location practice described in the previous sentence.

(D) A collaborating physician shall not enter into a collaborative practice arrangement with more than three (3) full-time equivalent APRNs. This limitation shall not apply to collaborative arrangements of hospital employees providing inpatient care service in hospitals as defined in Chapter 197, RSMo, or population-based public health services as defined in this rule.

(3) Methods of Treatment.

(A) The methods of treatment and the authority to administer, dispense, or prescribe drugs delegated in a collaborative practice arrangement between a collaborating physician and collaborating APRN shall be within the scope of practice of each professional and shall be consistent with each professional's skill, training, education, competence, licensure, and/or certification and shall not be further delegated to any person except that the individuals identified in sections 338.095 and 338.198, RSMo, may communicate prescription drug orders to a pharmacist.

(B) The methods of treatment and authority to administer and dispense drugs delegated in a collaborative practice arrangement between a collaborating physician and a collaborating RN shall be within the scope of practice of each professional and shall be consistent with each professional's skill, training, education, and competence and shall not be delegated to any other person except the individuals identified in sections 338.095 and 338.198, RSMo, may communicate prescription drug orders to a pharmacist.

(C) The collaborating physician shall consider the level of skill, education, training, and competence of the collaborating RN or APRN and ensure that the delegated responsibilities contained in the collaborative practice arrangement are consistent with that level of skill, education, training, and competence.

(D) Guidelines for consultation and referral to the collaborating physician or designated health care facility for services or emergency care that is beyond the education, training, competence, or scope of practice of the collaborating RN or APRN shall be established in the collaborative practice arrangement.

(E) The methods of treatment, including any authority to administer or dispense drugs, delegated in a collaborative practice arrangement between a collaborating physician and a collaborating RN shall be delivered only pursuant to a written agreement, jointly agreed-upon protocols, or standing orders that shall describe a specific sequence of orders, steps, or procedures to be followed in providing patient care in specified clinical situations.

(F) The methods of treatment, including any authority to administer, dispense, or prescribe drugs, delegated in a collaborative practice arrangement between a collaborating physician and a collaborating APRN shall be delivered only pursuant to a written agreement, jointly agreed-upon protocols, or standing orders that are specific to the clinical conditions treated by the collaborating physician and collaborating APRN.

(G) Methods of treatment delegated and authority to administer, dispense, or prescribe drugs shall be subject to the following:

1. The physician retains the responsibility for ensuring the appropriate administering, dispensing, prescribing, and control of drugs utilized pursuant to a collaborative practice arrangement in accordance with all state and federal statutes, rules, or regulations;

2. All labeling requirements outlined in section 338.059, RSMo, shall be followed;

3. Consumer product safety laws and Class B container standards shall be followed when packaging drugs for distribution;

4. All drugs shall be stored according to the *United States Pharmacopeia* (USP), (2010), published by the United States Pharmacopeial Convention, 12601 Twinbrook Parkway, Rockville, Maryland 20852-1790, 800-227-8772; http://www.usp.org/ recommended conditions, which is incorporated by reference. This does not include any later amendments or additions;

5. Outdated drugs shall be separated from the active inventory;

6. Retrievable dispensing logs shall be maintained for all prescription drugs dispensed and shall include all information required by state and federal statutes, rules, or regulations;

7. All prescriptions shall conform to all applicable state and federal statutes, rules, or regulations and shall include the name, address, and telephone number of the collaborating physician and collaborating APRN;

8. An RN shall not, under any circumstances, prescribe drugs. The administering or dispensing of a controlled substance by an RN or APRN who has not been delegated authority to prescribe in a collaborative practice arrangement, pursuant to 19 CSR 30-1.066, shall be accomplished only under the direction and supervision of the collaborating physician, or other physician designated in the collaborative practice arrangement, and shall only occur on a case-by-case determination of the patient's needs following verbal consultation between the collaborating physician and collaborating RN or APRN. The required consultation and the physician's directions for the administering or dispensing of controlled substances shall be recorded in the patient's chart and in the appropriate dispensing log. These recordings shall be made by the collaborating RN or APRN and shall be cosigned by the collaborating physician following a review of the records;

9. In addition to administering and dispensing controlled substances, an APRN, as defined in section 335.016, RSMo, may be delegated the authority to prescribe controlled substances listed in Schedules III, IV, and V of section 195.017, RSMo, in a written collaborative practice arrangement, except that, the collaborative practice arrangement shall not delegate the authority to administer any controlled substances listed in Schedules III, IV, and V of section 195.017, RSMo, for the purpose of inducing sedation or general anesthesia for therapeutic, diagnostic, or surgical procedures. Schedule III narcotic controlled substance prescriptions shall be limited to a one hundred twenty (120)-hour supply without refill.

10. An APRN may not prescribe controlled substances for his or her own self or family. Family is defined as spouse, parents, grandparents, great-grandparents, children, grandchildren, great-grandchildren, brothers and sisters, aunts and uncles, nephews and nieces, mother-in-law, father-in-law, brothers-in-law, sisters-in-law, daughters-in-law, and sons-in-law. Adopted and step members are also included in family.

11. An APRN or RN in a collaborative practice arrangement may only dispense starter doses of medication to cover a period of time for seventy-two (72) hours or less with the exception of Title X family planning providers or publicly funded clinics in community health settings that dispense medications free of charge. The dispensing of drug samples, as defined in 21 U.S.C. section 353(c)(1), is permitted as appropriate to complete drug therapy;

12. The collaborative practice arrangement shall clearly identify the controlled substances the collaborating physician authorizes the collaborating APRN to prescribe and document that it is consistent with each professional's education, knowledge, skill, and competence.

13. The medications to be administered, dispensed, or prescribed by a collaborating RN or APRN in a collaborative practice arrangement shall be consistent with the education, training, competence, and scopes of practice of the collaborating physician and collaborating RN or APRN.

(H) When a collaborative practice arrangement is utilized to provide health care services for conditions other than acute self-limited or well-defined problems, the collaborating physician, or other physician designated in the collaborative practice arrangement, shall examine and evaluate the patient and approve or formulate the plan of treatment for new or significantly changed conditions as soon as is practical, but in no case more than two (2) weeks after the patient has been seen by the collaborating APRN or RN.

(I) Nothing in these rules shall be construed to permit medical diagnosis of any condition by an RN pursuant to a collaborative practice arrangement.

(4) Review of Services.

(A) In order to assure true collaborative practice and to foster effective communication and review of services, the collaborating physician, or other physician designated in the collaborative practice arrangement, shall be immediately available for consultation to the collaborating RN or APRN at all times, either personally or via telecommunications.

(B) The collaborative practice arrangement between a collaborating physician and a collaborating RN or APRN shall be signed and dated by the collaborating physician and collaborating RN or APRN before it is implemented, signifying that both are aware of its content and agree to follow the terms of the collaborative practice arrangement. The collaborative practice arrangement and any subsequent notice of termination of the collaborative practice arrangement shall be in writing and shall be maintained by the collaborating professionals for a minimum of eight (8) years after termination of the collaborative practice arrangement. The collaborative practice arrangement shall be reviewed at least annually and revised as needed by the

collaborating physician and collaborating RN or APRN. Documentation of the annual review shall be maintained as part of the collaborative practice arrangement.

(C) Within thirty (30) days of any change and with each physician's license renewal, the collaborating physician shall advise the Missouri State Board of Registration for the Healing Arts whether he/she is engaged in any collaborative practice agreement, including collaborative practice agreements delegating the authority to prescribe controlled substances and also report to the board the name of each licensed RN or APRN with whom he/she has entered into such agreement. A change shall include, but not be limited to, resignation or termination of the RN or APRN; change in practice locations; addition of new collaborating professionals.

(D) An RN or an APRN practicing pursuant to a collaborative practice arrangement shall maintain adequate and complete patient records in compliance with section 334.097, RSMo.

(E) The collaborating physician shall complete a review of a minimum of ten percent (10%) of the total health care services delivered by the collaborating APRN. If the APRN's practice includes the prescribing of controlled substances, the physician shall review a minimum of twenty percent (20%) of the cases in which the APRN wrote a prescription for a controlled substance. If the controlled substance chart review meets the minimum total ten percent (10%) as described above, then the minimum review requirements have been met. The collaborating APRN's documentation shall be submitted for review to the collaborating physician at least every fourteen (14) days. This documentation submission may be accomplished in person or by other electronic means and reviewed by the collaborating physician. The collaborating physician must produce evidence of the chart review upon request of the Missouri State Board of Registration for the Healing Arts. This subsection shall not apply during the time the collaborating physician and collaborating APRN are practicing together as required in subsection (2)(C) above.

(F) If a collaborative practice arrangement is used in clinical situations where a collaborating APRN provides health care services that include the diagnosis and initiation of treatment for acutely or chronically ill or injured persons, then the collaborating physician shall be present for sufficient periods of time, at least once every two (2) weeks, except in extraordinary circumstances that shall be documented, to participate in such review and to provide necessary medical direction, medical services, consultations, and supervision of the health care staff. In such settings the use of a collaborative practice arrangement shall be limited to only an APRN.

(G) The collaborating physician and collaborating RN or APRN shall determine an appropriate process of review and management of abnormal test results which shall be documented in the collaborative practice arrangement.

(H) The Missouri State Board of Registration for the Healing Arts and the Missouri State Board of Nursing separately retain the right and duty to discipline their respective licensees for violations of any state or federal statutes, rules, or regulations regardless of the licensee's participation in a collaborative practice arrangement.

(5) Population-Based Public Health Services.

(A) In the case of the collaborating physicians and collaborating registered professional nurses or APRN practicing in association with public health clinics that provide population-based health services as defined in section (1) of this rule, the geographic areas, methods of treatment, and review of services shall occur as set forth in the collaborative practice arrangement. If the services provided in such settings include diagnosis and initiation of treatment of disease or injury not related to population-based health services, then the provisions of sections (2), (3), and (4) above shall apply.

AUTHORITY: sections 334.104.3 and 335.036, RSMo Supp. 2009. This rule originally filed as 4 CSR 200-4.200. Original rule filed Jan. 29, 1996, effective Sept. 30, 1996. For intervening history, please consult the ***Code of State Regulations****. Rescinded and readopted: Filed April 30, 2010.*

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the State Board of Nursing, Lori Scheidt, Executive Director, PO Box 656, Jefferson City, MO 65102, by fax at (573) 751-0075, or via email at nursing@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 7—Wildlife Code: Hunting: Seasons, Methods, Limits

ORDER OF RULEMAKING

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

3 CSR 10-7.432 is amended.

This rule establishes the archery deer hunting season, limits, and provisions for hunting and is excepted by section 536.021, RSMo, from the requirement for filing as a proposed amendment.

The Department of Conservation amended 3 CSR 10-7.432 by establishing archery deer hunting seasons.

3 CSR 10-7.432 Deer: Archery Hunting Season

(1) The archery deer hunting season is September 15, 2010, through January 15, 2011, excluding the November portion of the firearms deer hunting season. Use archery methods only; firearms may not be possessed.

SUMMARY OF PUBLIC COMMENTS: Seasons and limits are excepted from the requirement of filing as a proposed amendment under section 536.021, RSMo.

This amendment filed April 19, 2010, effective **July 1, 2010**.

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 7—Wildlife Code: Hunting: Seasons, Methods, Limits

ORDER OF RULEMAKING

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

3 CSR 10-7.433 is amended.

This rule establishes the firearms deer hunting season, limits, and provisions for hunting and is excepted by section 536.021, RSMo, from the requirement for filing as a proposed amendment.

The Department of Conservation amended 3 CSR 10-7.433 by establishing firearms deer hunting seasons.

3 CSR 10-7.433 Deer: Firearms Hunting Seasons

(1) The firearms deer hunting season is comprised of six (6) portions.

(A) Urban zones portion: October 8 through 11, 2010; use any legal deer hunting method to take antlerless deer in open zones.

(B) Youth portions: October 30 and 31, 2010, and January 1 and 2, 2011; for persons at least six (6) but not older than fifteen (15) years of age; use any legal deer hunting method to take one (1) deer statewide during the October 30 and 31, 2010, portion; use any legal deer hunting method to take deer statewide during the January 1 and 2, 2011, portion.

(C) November portion: November 13 through 23, 2010; use any legal deer hunting method to take deer statewide.

(D) Muzzleloader portion: December 18 through 28, 2010; use muzzleloader methods to take deer statewide.

(E) Antlerless portion: November 24 through December 5, 2010; use any legal deer hunting method to take antlerless deer in open counties.

SUMMARY OF PUBLIC COMMENTS: Seasons and limits are excepted from the requirement of filing as a proposed amendment under section 536.021, RSMo.

This amendment filed April 19, 2010, effective **July 1, 2010**.

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 7—Wildlife Code: Hunting: Seasons, Methods, Limits

ORDER OF RULEMAKING

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

3 CSR 10-7.435 is amended.

This rule establishes limits and provisions for deer hunting and is excepted by section 536.021, RSMo, from the requirement for filing as a proposed amendment.

The Department of Conservation amended 3 CSR 10-7.435 by establishing special deer harvest limits and restrictions.

3 CSR 10-7.435 Deer: Special Harvest Provisions

(1) Only antlerless deer and antlered deer with at least one (1) antler having at least four (4) antler points may be taken in the counties of Adair, Andrew, Atchison, Audrain, Barton, Bates, Benton, Boone, Buchanan, Caldwell, Callaway, Camden, Carroll, the portion of Cass county not included in the Kansas City urban zone, Cedar, Chariton, Clark, Clinton, Cole, Cooper, Daviess, DeKalb, the portion of Franklin County not included in the St. Louis urban zone, Gasconade, Gentry, Grundy, Harrison, Henry, Hickory, Holt, Howard, the portion of Jefferson County not included in the St. Louis urban zone, Johnson, Knox, Lafayette, Lewis, Lincoln, Linn, Livingston, Macon, Maries, Marion, Mercer, Miller, Moniteau, Monroe, Montgomery, Morgan, Nodaway, Osage, Pettis, Phelps, Pike, Pulaski, Putnam, Ralls, Randolph, Ray, Saline, Schuyler, Scotland, Shelby, St. Clair, Ste. Genevieve, Sullivan, Vernon, Warren, and Worth. No other antlered deer may be taken.

SUMMARY OF PUBLIC COMMENTS: Seasons and limits are excepted from the requirement of filing as a proposed amendment under section 536.021, RSMo.

This amendment filed April 19, 2010, effective **July 1, 2010**.

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 7—Wildlife Code: Hunting: Seasons, Methods, Limits

ORDER OF RULEMAKING

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

3 CSR 10-7.437 is amended.

This rule establishes limits and provisions for antlerless deer hunting and is excepted by section 536.021, RSMo, from the requirement for filing as a proposed amendment.

The Department of Conservation amended 3 CSR 10-7.437 by establishing deer harvest limits by county.

3 CSR 10-7.437 Deer: Antlerless Deer Hunting Permit Availability

(2) Firearms Deer Hunting Season.

(B) Only one (1) Resident or Nonresident Firearms Antlerless Deer Hunting Permit per person may be filled in the counties of: Barry, Barton, the portion of Christian County not included in the Springfield urban zone, Crawford, Dade, Dent, Douglas, the portion of Franklin County not included in the St. Louis urban zone, Jasper, the portion of Jefferson County not included in the St. Louis urban zone, Lawrence, Maries, McDonald, Newton, Ozark, Perry, Phelps, Polk, Pulaski, Ripley, Shannon, St. Francois, Ste. Genevieve, Stone, Taney, Texas, Washington, Webster, and Wright.

(C) Any number of Resident or Nonresident Firearms Antlerless Deer Hunting Permits may be filled in the counties of: Adair, Andrew, Atchison, Audrain, Bates, Benton, Boone, Buchanan, Caldwell, Callaway, Camden, Carroll, Cass, Cedar, Chariton, the portion of Christian County included in the Springfield urban zone, Clark, Clay, Clinton, Cole, Cooper, Dallas, Daviess, DeKalb, the portion of Franklin County included in the St. Louis urban zone, Gasconade, Gentry, Greene, Grundy, Harrison, Henry, Hickory, Holt, Howard, Howell, Jackson, the portion of Jefferson County included in the St. Louis urban zone, Johnson, Knox, Laclede, Lafayette, Lewis, Lincoln, Linn, Livingston, Macon, Marion, Mercer, Miller, Moniteau, Monroe, Montgomery, Morgan, Nodaway, Oregon, Osage, Pettis, Pike, Platte, Putnam, Ralls, Randolph, Ray, St. Charles, St. Clair, St. Louis, Saline, Schuyler, Scotland, Shelby, Sullivan, Vernon, Warren, and Worth.

SUMMARY OF PUBLIC COMMENTS: Seasons and limits are excepted from the requirement of filing as a proposed amendment under section 536.021, RSMo.

This amendment filed April 19, 2010, effective **July 1, 2010**.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 4—Standards of Conduct

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under section 386.410, RSMo 2000, the commission rescinds a rule as follows:

4 CSR 240-4.020 Conduct During Proceedings **is rescinded**.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on December 15, 2009 (34 MoReg 2590). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The public comment period ended January 21, 2010, and a public hearing on the rescission and the rule proposed to replace it was held January 22, 2010. Timely written comments were received from Southwestern Bell Telephone Company, d/b/a AT&T Missouri; The Missouri Energy Development Association (MEDA); CenturyLink; the Office of the Public Counsel (OPC); and the Secretary/General Counsel of the Missouri Public Service Commission (commission). In addition, the following witnesses offered testimony at the public hearing on January 22, 2010: Steven C. Reed, Secretary/General Counsel for the commission; Leo Bub for AT&T Missouri; Paul Boudreau for MEDA; Becky Kilpatrick for CenturyLink; Lewis Mills for OPC; John Coffman for AARP and the Consumers Council of Missouri; and Stephen Kidwell for AmerenUE. The testimony and comments supported the rescission of the existing rule and offered recommendations for changes in the rule that will replace the rule that is being rescinded.
RESPONSE: The commission will rescind the rule.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 4—Standards of Conduct

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under section 386.410, RSMo 2000, the commission adopts a rule as follows:

4 CSR 240-4.020 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on December 15, 2009 (34 MoReg 2590–2592). Relevant portions of those sections with

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

SUMMARY OF COMMENTS: The public comment period ended January 21, 2010, and a public hearing on the proposed rule was held January 22, 2010. Timely written comments were received from Southwestern Bell Telephone Company, d/b/a AT&T Missouri; The Missouri Energy Development Association (MEDA); CenturyLink; the Office of the Public Counsel; and the Secretary/General Counsel of the Missouri Public Service Commission (commission). In addition, the following witnesses offered testimony at the public hearing on January 22, 2010: Steven C. Reed, Secretary/General Counsel for the commission; Leo Bub for AT&T Missouri; Paul Boudreau for MEDA; Becky Kilpatrick for CenturyLink; Lewis Mills, Public Counsel; John Coffman for AARP and the Consumers Council of Missouri; and Stephen Kidwell for AmerenUE. The testimony and comments generally supported the adoption of the rule but offered specific recommendations for changes in the rule.

COMMENT #1: AT&T, CenturyLink, AmerenUE, and MEDA urge the commission to make the rule consistent with section 386.210.1, RSMo, by adding a provision that specifically excepts from the ban on ex parte communications those communications that occur outside an agenda meeting or public forum that must be disclosed under section 386.210.3(3), RSMo. CenturyLink and MEDA also comment that the scope of the rule should be no narrower than the statute.

Public counsel also commented about how to make the rule consistent with section 386.210, RSMo. The commenters disagree, however, about the language in section 386.210.1, RSMo, which protects the authority of the commission to confer "with the members of the public, any public utility or similar commission of this and other states." AT&T reads that clause as if there were a comma behind public utility, such that the statute would protect the commission's ability to confer with members of the public, any public utility, or a similar commission of this and other states. AT&T is thus concerned that the proposed rule does not protect the statutory "right" of a utility to communicate with the commission so long as the communication is subsequently disclosed. It, therefore, asks the commission to add such an exception to the proposed rule. Public counsel reads the statute more narrowly as protecting the commission's authority to confer with members of the public and other public utility or similar type commissions, without giving any special protection to the commission's communications with public utilities. It contends that aspect of the proposed rule should not be changed.

RESPONSE AND EXPLANATION OF CHANGE: Whatever the correct interpretation of the statute, the disagreement between AT&T and public counsel is largely irrelevant. The statute does not exclude a public utility from the broader "public" and the commission would have the same ability to communicate with a public utility as any other entity under that statute. Since the proposed rule specifically excepts other communications allowed under section 386.210.3, RSMo, from the prohibition against ex parte communications, the commission will make the regulation consistent with the statute by adding a new subsection (3)(C) which creates a method for ex parte communications to be disclosed. In addition, the commission will add a new subsection (10)(E) creating an exception for disclosed communications allowed by section 386.210.3(3), RSMo.

The commission also determined that providing a window in which cases could be discussed in a post-mortem fashion, especially with its own staff, would be needed. Therefore, the commission added a new section (13) allowing this communication to take place within thirty (30) days of a case being finally adjudicated. So that there is not confusion about that deadline, the commission added the definition of "finally adjudicated" in new subsection (1)(I). Because of this change, the remaining subsections in section (1) are renumbered.

While making these changes, the commission determined that certain organizational changes would make the rule more understandable. Thus, old sections (2) and (3) were combined as new section (3), and new section (3) was titled "Ex Parte Communications." In addition, proposed section (10) was moved to become new subsection (3)(D) since it relates to ex parte communications specifically.

Because of this reorganization and others explained below, old sections (2) and (3) and their subsections and paragraphs are renumbered as follows: the first sentence of section (2) becomes subsection (3)(A); the first and second sentences of section (3) become subsection (3)(B); and subsections (3)(A)–(C) become paragraphs (3)(B)1.–3. Also, old section (5) becomes section (7); sections (6)–(8) become sections (4)–(6); section (9) becomes section (15); and section (11) becomes section (14). All references to these sections throughout the rule are amended accordingly. Finally, paragraph (3)(B)3. relates only to ex parte communications and therefore should only refer to the reporting provisions of newly numbered section (4) and not to the other section which is deleted.

COMMENT #2: AT&T expressed concern that the proposed rule is unclear about who has the duty to provide notice of an extra-record communication that is unrelated to the pending case, when the communication is initiated by a commissioner, judge, or advisory staff. In particular, subsection (4)(B) as proposed allows extra-record communications between the commission and a utility regarding problems related to utility service, but requires the person initiating the communication to disclose that communication as required by proposed sections (6), (7), and (8), as applicable.

RESPONSE AND EXPLANATION OF CHANGE: Proposed sections (6), (7), and (8) require the person initiating the extra-record communication to provide notice of that communication. Those sections would apply to communications initiated by someone at the commission the same as they would apply to communications initiated by someone outside the commission. No change to those sections is made as a result of the comment. Upon review of the rule, however, the commission determines that other changes to the extra-record portions of the rule would help its clarity.

The reference to disclosure under proposed subsections (4)(A) and (B) is confusing. The commission intends for that section to set out communications which are not considered ex parte communications even though they fall under the definition in subsection (1)(G). Thus, the commission will delete the second sentence of proposed section (4) and add the clause "if they would otherwise be an ex parte communication" in its place.

The reporting provisions relating to extra-record communications are intended to apply to communications by individuals, not communications that are made by parties or regulated utilities. Because the term "person" is defined as including many different types of entities and parties, the commission clarifies the definition of "extra-record communication" by replacing the word "person" with the word "individual." This change makes proposed subsection (4)(A) unnecessary in that a communication from a member of the general assembly or other governmental official would be an individual making an extra-record communication under the definition in subsection (1)(G).

Proposed section (4) has numerous changes described elsewhere in this order, and therefore, the commission has renumbered this section as section (10). Also, the subsections are relettered so that former subsections (4)(B), (D), (E), and (F) become subsections (10)(A), (B), (C), and (D), respectively. Also, to clarify between whom the communications have occurred, the commission makes the first word "Communication" plural in newly numbered subsections (10)(C) and (10)(D) and inserts after it the phrase "between the commission, a commissioner, member of the technical advisory staff, or presiding officer and a party or anticipated party." The commission also clarifies that "all" parties must be present and not just any one party under subsection (10)(D) and thus changes "any other party" to "all other parties." In addition, the commission makes plural and capitalizes "Communications" in new subsection (10)(A) and removes a period at the end of paragraph (10)(A)3. The commission

also removes the words "that is not a pending case" from newly numbered section (5) because it is confusing to reference a "pending" anticipated case.

COMMENT #3: Public counsel suggests the thirty (30)-day prior restriction on communications regarding anticipated contested cases should be expanded to at least one hundred twenty (120) days so that parties and the public will be notified of communications that occur well before the filing of such a contested case to prevent the appearance of improper lobbying shortly before the filing. Public counsel generally comments also that the rule should not prevent communication but should be more inclusive of what is to be reported and made open to the public.
RESPONSE AND EXPLANATION OF CHANGE: The commission is mindful of the concern expressed by public counsel to have as much public notification as possible. The commission will expand the definition of "anticipated contested case" found in subsection (1)(A) from thirty (30) days to sixty (60) days to include more time before the case is filed. Further, the commission believes that there should almost never be communications regarding utility specific substantive issues with any potential party. In the rare circumstances where a communication is required, the rule provides for full disclosure to be made. The commission has included section (11) to prohibit such communications. Additionally, section (8) provides notice of communications concerning regulatory issues that are not specific to a single utility, with regulated entities outside of the anticipated contested case or contested case period of time. The commission also deletes the word "anticipated" from subsection (1)(B) to clarify that an anticipated party is a potential party to a contested case.

Because the reporting requirements for anticipated contested cases are limited to the sixty (60)-day window in the definition, the commission has amended the definition of "substantive issue" in subsection (1)(O) by deleting the words "or anticipated contested case" and adding the words "which have been or are likely to be" in the first sentence. This change will broaden the scope of filings that should be submitted after a communication about a substantive issue so that those reports are not limited to the sixty (60) days prior to the case being filed.

The definition of "extra-record communication" in subsection (1)(H) has also been modified so that general regulatory policy issues are not exempt from disclosure requirements unless purely de minimis or immaterial. This change will include more communications under the disclosure provisions. The commission also adds the word "contested" to clarify that extra-record communications are not intended to include communications related to case filings and other communications which are in the record of the case but may not necessarily be presented at a hearing.

In addition, the commission expands the definition of person in subsection (1)(L) to include "any entity regulated by the commission" as opposed to just public utilities and expands the restrictions on ex parte communications to include those involving "anticipated contested cases" which is added in new subsection (3)(B).

The commission has also amended the definition of general regulatory policy in newly numbered subsection (1)(J) by giving it a specific definition. The proposed definition pointed to section 386.210.4, RSMo, however that statute does not define general regulatory policy. Because the new definition is more specific, it was necessary for the commission to include the words "an issue or case" in place of "case" under new subsection (3)(B).

The commission also removes the word "rate" in new subsection (3)(B) so that the rule consistently refers to all cases. Because of that change the commission deletes the definition of "rate case" in proposed subsection (1)(N) as it is no longer necessary.

Further, the commission adds a new section (2) which provides that a regulated entity that intends to file a case likely to be a contested case file a notice describing the type of case and the issues likely to be presented to the commission at least sixty (60) days before filing the case. Any case filed without having first filed the required notice is to be rejected by the commission unless the commission waives the rule for good cause shown. The commission originally determined that this rule had no fiscal impact on private entities. Because of the additional filing requirements in new section (2) of the rule, the commission determines that private entities may have a fiscal impact. Therefore, attached to this order of rulemaking is a revised private entity fiscal note.

To eliminate some of the redundancy and burden on the parties filing notices, the commission has removed the physical service requirements under newly numbered subsections (4)(A) and (B). This requirement is no longer necessary with the commission's electronic filing and information system (EFIS). With that system the parties to the official case will receive electronic notice of these filings.

COMMENT #4: Subsection (6)(B) of the proposed rule requires the person who initiates an extra-record communication to file a memorandum disclosing and describing the communication. As an alternative, the rule allows a recording or transcription of the conversation to be filed. Public counsel commented that the requirement should be flipped so that a recording or transcription would be the default and a descriptive memorandum would be allowed only if no recording or transcription were available. Public counsel suggests that a few handheld tape recorders should be available to the commissioners to facilitate such recordings.
RESPONSE AND EXPLANATION OF CHANGE: This rule attempts to balance the need for openness against the need for the commission and commissioners to conduct commission business. It is not reasonable to expect the commissioners and other commission employees to record or transcribe every extra-record communication that may occur. The commission determines, however, that the rule should provide additional information to the public about how it conducts its business and, specifically, what contacts it has with regulated entities. Therefore, the commission will add new sections (8) and (9).

New section (9) provides that the commissioners will have public electronic calendars on the commission's website detailing their relevant communications. New section (8) details which communications shall be reported and the method for reporting those communications. The additions of these sections should provide maximum openness to the public while not being so cumbersome that the commissioners cannot conduct commission business.

While reviewing the rule and these comments the commission also determined that the words "for ensuring the public trust" in the purpose clause of the rule are not accurate as the commission cannot in fact "ensure" the public trust. The commission determines that "to promote the public trust" is a more accurate representation of the purpose of the rule and therefore, the commission has made that amendment to the purpose clause.

COMMENT #5: Public counsel suggests the rule include a provision making the commissioner's electronic calendars and appointments more accessible to the public.
RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with the comment of public counsel and has included new sections (8) and (9) as described above. In addition, so that the rule is consistent, the commission added "(8)" in the text of new section (10), subsections (14)(B) and (C), and section (15).

COMMENT #6: Public counsel suggests adding a provision to the rule that would require commissioners, the presiding officer, or technical advisory staff to file a disclosure of an extra-record communication if the initiating party fails to do so.
RESPONSE AND EXPLANATION OF CHANGE: Proposed sections (6)–(8) deal with the issue of reporting extra-record communications. Those sections have been renumbered and are now sections (4)–(6). New sections (4) and (5) provide for the person who initiates an extra-record communication to give notice of the communication. New section (6) provides for the commissioner, technical advisory

staff, or the presiding officer to give notice of the extra-record communication related to a pending case when the person initiating the communication does not do so. The commission is not changing new section (6) substantially, but determines that it should specify that the person filing the notice do so as soon as practicable.

While reviewing these sections pursuant to this comment, the commission determined that the requirement in new section (4) that an extra-record communication "shall be filed on the next business day following" the communication may not be practical. Therefore, the commission determines that the time for filing should be changed to "within three business days." In addition, for consistency the commission will change "within five business days" to "within three business days" for the filing in new section (5). Finally, the commission notes that the end of the last sentence in new section (5) is redundant and the commission shall delete "and shall also include all information regarding the communication that subsections (6)(A) and (B) require."

COMMENT #7: MEDA is concerned that the proposed rule does not include the old rule's restrictions on attorney and party conduct outside the hearing process. It proposes the old rule's restrictions be incorporated into the new rule. Steve Reed, General Counsel/Secretary of the commission, filed a comment offering the same suggestion.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with these comments. The previous rule is being rescinded simultaneously with this rule and certain of its provisions should remain. Therefore, the commission has included new subsections (F) and (G) to proposed section (11) now renumbered as section (14). The commission is also including new sections (11) and (12). New subsections (14)(F) and (G) and new section (12) are similar to language from the previous rule. New section (11) is also similar to the language in section (2) of the previous rule, however, the commission has revised that section so that it applies to all persons, not just attorneys, who are likely to become a party to a future contested case.

In addition, to include an attorney's law firm as provided in the previous rule, the commission has added "or any law firm the attorney is associated with" to the introductory language of newly numbered section (14). Also, "extra-record" was deleted from new subsection (14)(B) and the specific sections are referenced instead. The words "ex parte" are added in place of "pre-filing extra record" in subsection (14)(D) to make the rule consistent. And to make the rule consistent and provide for the best notice to the public, language necessary to include section (11) was added to new section (15) and subsections (14)(A), (B), and (C). Finally, because new subsections (14)(F) and (G) were added, the word "and" was removed from subsection (14)(D), and the period was replaced with a semicolon in subsection (14)(E).

COMMENT #8: MEDA asks the commission to include some additional "safe harbor" provisions that would expand proposed subsection (4)(B)'s list of communications from a utility that are exempted from the definition of an ex parte contact.

RESPONSE AND EXPLANATION OF CHANGE: The commission agrees with MEDA's comment and in response has added and amended the language of the subsection which is now numbered subsection (10)(A). The commission has amended paragraph (10)(A)4. so that it is more general as to the security or reliability of utility facilities, and not just an imminent threat. The commission has also added paragraphs 6.–9. so that subsection (10)(A) exempts from ex parte communications matters before state and federal agencies and committees, information regarding a regional transmission organization, labor matters not part of a pending case, and matters related to the safety of personnel. Further, the commission clarified the definition of ex parte communication in subsection (1)(G) so that it does not include the communications exempted in new section (10) or communications that are de minimis or immaterial.

COMMENT #9: Steven Reed, General Counsel/Secretary of the commission, proposed that language in subsection (4)(D) of the proposed rule concerning the commission's investigative powers be made more general to avoid limiting any powers the commission may have beyond the three (3) statutory chapters delineated in the proposed rule.

RESPONSE AND EXPLANATION OF CHANGE: The commission has made the change suggested by Mr. Reed. Rather than refer to investigative powers as established in Chapters 386, 393, and 700, RSMo, proposed subsection (4)(D), renumbered subsection (10)(D), now simply refers to investigative powers established by Missouri law. Because of this change, proposed subsection (4)(C), which created an exemption for communications related to Chapter 700, RSMo, is no longer necessary, and the commission has deleted that subsection.

COMMENT #10: Steven Reed, General Counsel/Secretary of the commission, suggested that the new rule should incorporate a provision from the old rule that prohibits appearances by former commissioners or commission employees in a case in which they were directly involved while at the commission.

RESPONSE AND EXPLANATION OF CHANGE: Mr. Reed's suggestion is well taken, and the old rule's prohibition has been included in the final rule as new section (16).

COMMENT #11: Steven Reed, General Counsel/Secretary of the commission, suggested that the new rule should include a definition of "Staff" to distinguish the commission's staff, who are treated as a party that appears before the commission in a contested case, from the commission's technical advisory staff, who are held under this rule to the same communication and disclosure standards as the commissioners.

RESPONSE AND EXPLANATION OF CHANGE: After reviewing the rule, the commission determined that rather than include a new definition of staff, the commission will clarify the rule where necessary. Thus, the commission has changed the definition of party so that where another rule otherwise defines the role of the staff of the commission as only advisory, the commission staff will not be considered a party under this rule. Also, in new subsection (10)(B) the words "any employee of the commission" is substituted for "commission staff."

COMMENT #12: AARP and the Consumers Council of Missouri also commented jointly through their counsel that they were in agreement with public counsel's comments and with those made by MEDA in that the rule should apply equally to all parties and should promote vigorous and robust communication, make a distinction between contested cases and legislative matters, and provide for attorney conduct during proceedings.

RESPONSE: The commission addressed these comments elsewhere in the rule and therefore makes no additional changes in response to this comment.

EXPLANATION OF OTHER NON-SUBSTANTIVE CHANGES: As the commission has reexamined the proposed rule, it has found several instances in which the proposed rule can be made more understandable by making minor language changes and a punctuation change without changing the substance of the rule. Those changes, referring to the current numbering, are: an unnecessary period is removed from subsection (1)(G); in section (7) the word "evidence" replaces the words "the record"; and in section (10) the words "violate section" is removed and the more accurate phrase "be prohibited by or subject to the disclosure and notice requirement of sections" is added.

4 CSR 240-4.020 Ex Parte and Extra-Record Communications

PURPOSE: To set forth the standards to promote the public trust in the commission with regard to pending filings and cases. This rule

regulates communication between the commission, technical advisory staff, and presiding officers, and anticipated parties, parties, agents of parties, and interested persons regarding substantive issues that are not part of the evidentiary record.

(1) Definitions.

(A) Anticipated contested case—Any case that a person anticipates, knows, or should know will be filed before the commission within sixty (60) days and that such person anticipates or should anticipate will be or become a contested case.

(B) Anticipated party—A person who anticipates, knows, or should know that such person will be a party to a contested case.

(G) Ex parte communication—Any communication outside of the contested case hearing process between the commission, a commissioner, a member of the technical advisory staff, or the presiding officer assigned to the proceeding and any party or anticipated party, or the agent or representative of a party or anticipated party, regarding any substantive issue. Ex parte communications shall not include a communication regarding general regulatory policy allowed under section 386.210.4, RSMo, communications listed in section (3) of this rule, or communications that are de minimis or immaterial.

(H) Extra-record communication—Any communication outside of the contested hearing process between the commission, a commissioner, a member of the technical advisory staff, or the presiding officer assigned to the proceeding and any individual interested in a contested case or anticipated contested case regarding any substantive issue. Extra-record communications shall not include communications that are de minimis or immaterial.

(I) Finally adjudicated—A decision of the commission in a contested case which is no longer subject to appeal.

(J) General regulatory policy—Any topic that is not specific to a single entity regulated by the commission and such topic is not reasonably believed by any person who is a party to the communication to be a subject within a contested case or anticipated contested case of which the person or such person's principal is or will be a party. Any communication regarding the merits of an administrative rule, whether a concept or a pending rulemaking, or legislation, whether a concept or a pending piece of legislation, shall at all times be considered a communication regarding a general regulatory policy allowed under section 386.210.4, RSMo.

(K) Party—Any applicant, complainant, petitioner, respondent, or intervenor in a contested case before the commission. Commission staff and the public counsel are also parties unless they file a notice of their intention not to participate in the relevant proceeding within the period of time established for interventions by commission rule or order, or where staff serves in an advisory capacity pursuant to any commission rule.

(L) Person—Any individual, partnership, company, corporation, cooperative, association, political subdivision, entity regulated by the commission, party, or other entity or body that could become a party to a contested case.

(M) Presiding officer—Means a commissioner, or a law judge licensed to practice law in the state of Missouri and appointed by the commission to preside over a case.

(N) Public counsel—Shall have the same meaning as in section 386.700, RSMo.

(O) Substantive issue—The merits, specific facts, evidence, claims, or positions which have been or are likely to be presented or taken in a contested case. The term substantive issue does not include procedural issues, unless those procedural issues are contested or likely to materially impact the outcome of a contested case.

(2) Any regulated entity that intends to file a case likely to be a contested case shall file a notice with the secretary of the commission a minimum of sixty (60) days prior to filing such case. Such notice shall detail the type of case and issues likely to be before the commission.

(A) Any case filed which is not in compliance with this section shall not be permitted and the secretary of the commission shall reject any such filing.

(B) A party may request a waiver of this section for good cause.

(3) Ex Parte Communications.

(A) No party or anticipated party shall initiate, participate in, or undertake, directly or indirectly, an ex parte communication.

(B) A commissioner, technical advisory staff, or the presiding officer assigned to a proceeding shall not initiate, participate in, or undertake, directly or indirectly, an ex parte communication regarding a contested case or anticipated contested case. However, it shall not constitute participation in or undertaking an ex parte communication if such person—

1. Does not initiate the communication;

2. Immediately terminates the communication, or immediately alerts the initiating person that the communication is not proper outside the hearing process and makes a reasonable effort to terminate the communication; and

3. Files notice in accordance with section (4) of this rule, as applicable.

(C) Should an ex parte communication occur, the party or anticipated party involved in such communication shall file a notice in the case file if such exists or if not, with the secretary of the commission. Such notice shall provide the information required in section (4) of this rule.

(D) The secretary of the commission shall create a repository for any notice of ex parte communication filed in advance of an anticipated contested case. Once such a case has been filed, the secretary shall promptly file any such notices in the official case file for each discussed case.

(4) A person who initiates an extra-record communication regarding a pending case shall within three (3) business days following such communication give notice of that communication as follows:

(A) If the communication is written, the initiating person or party shall file a copy of the written communication in the official case file for each discussed case; or

(B) If the communication is not written, the initiating person shall file a memorandum disclosing the communication in the official case file for each discussed case. The memorandum must contain a list of all participants in the communication; the date, time, location, and duration of the communication; the means by which the communication took place; and a summary of the substance of the communication and not merely a listing of the subjects covered. Alternatively, a recording or transcription of the communication may be filed, as long as that recording or transcription indicates all participants and the date, time, location, duration, and means of communication.

(5) A person who initiates an extra-record communication regarding an anticipated contested case shall, within three (3) business days of the later of becoming a party to the contested case or the conversion of the case to a contested case, give notice of the extra-record communication. The notice shall be made in the manner set forth in subsections (4)(A) and (B).

(6) In addition to sections (4) or (5) of this rule, if an extra-record communication regarding a pending case is initiated by a person not a party to the discussed case, the commissioner, the technical advisory staff, or the presiding officer assigned to the discussed case shall give notice of the extra-record communication in the manner set forth in subsections (4)(A) and (B) as soon as practicable after learning of the person's failure to file such notice.

(7) Unless properly admitted into evidence in subsequent proceedings, an extra-record communication shall not be considered as part of the record on which a decision is reached by the commission, a commissioner, or presiding officer in a contested case.

(8) Any communication, other than public statements at a public event or de minimis or immaterial communications, between a commissioner or technical advisory staff and any regulated entity regarding regulatory issues, including but not limited to issues of general regulatory policy under section 386.210.4, RSMo, if not otherwise disclosed pursuant to this rule, shall be disclosed in the following manner:

(A) If the communication is written—

1. If no contested case or anticipated contested case is pending, no notice is required; or

2. If a contested case or anticipated contested case is pending, notice of extra-record communication shall be filed in accordance with section (4) of this rule. However, any information which is designated by the communicator as highly confidential or proprietary, under federal or state law, or commission rule, shall not be subject to disclosure; or

(B) If the communication is oral—

1. If no contested case or anticipated contested case is pending, the regulated entity shall provide a document to such commissioner or technical advisory staff detailing the participants in the communication, date, approximate time, location, means by which the communication took place, and the subjects covered; or

2. If a contested case or anticipated contested case is pending, notice shall be filed in the case file and posted on the commissioner's public calendar forty-eight (48) hours prior to such conversation. A representative of the office of the public counsel shall be provided an opportunity to attend the meeting in person or by other reasonable means.

A. Following such communication, a notice of extra-record communication shall be filed by the person who initiated the communication in accordance with section (4) of this rule.

B. Inadvertent communication, or any communication which becomes subject to this subparagraph, shall be terminated immediately, and a notice of extra-record communication shall be filed by the person initiating the communication in accordance with section (4) of this rule.

(9) Each commissioner shall include a public calendar on the commission's website which shall provide notice of communications required to be disclosed by section (8), regarding regulatory issues occurring after the effective date of this rule with representatives of entities regulated by the commission, regardless of whether a contested case is pending. However, communications which are de minimis or immaterial are not required to be disclosed. A commissioner's technical advisory staff shall note any such communications he/she is involved in on his/her commissioner's public calendar.

(10) The following communications shall not be prohibited by or subject to the disclosure and notice requirements of section (3) of this rule, if such communication would otherwise be an ex parte communication, or subject to section (8) of this rule:

(A) Communications between the commission, a commissioner, or a member of the technical advisory staff and a public utility or other regulated entity that is a party to a contested case, or an anticipated party to an anticipated contested case, notifying the commission, a commissioner, a member of the technical advisory staff, or the presiding officer assigned to the proceeding of—

1. An anticipated or actual interruption or loss of service;

2. Damage to or an incident or operational problems at a utility's facility;

3. An update regarding efforts to restore service after an interruption, loss of service, damages, or an incident or problems referred in paragraphs (10)(A)1. and 2.;

4. Security or reliability of utility facilities;

5. Issuance of public communications regarding utility operations, such as the status of utility programs, billing issues, security issuances, or publicly available information about a utility's finances. These communications may also include a copy of the public communication, but should not contain any other communications regarding substantive issues;

6. Information regarding matters before state or federal agencies and committees including but not limited to state advisory committees, the Federal Communications Commission, the Federal Energy Regulatory Commission, and the Nuclear Regulatory Commission;

7. Information regarding a regional transmission organization;

8. Labor matters not part of a pending case; or

9. Matters related to the safety of personnel;

(B) Communications between the commission, a commissioner, or a member of the technical advisory staff and any employee of the commission relating to exercise of the commission's investigative powers as established under Missouri law. If the communication concerns an anticipated case, notice shall be given in accordance with section (4) upon the filing of the case;

(C) Communications between the commission, a commissioner, a member of the technical advisory staff, or the presiding officer and a party or anticipated party concerning an issue or case in which no evidentiary hearing has been scheduled made at a public agenda meeting of the commission where such matter has been posted in advance as an item for discussion or decision;

(D) Communications between the commission, a commissioner, a member of the technical advisory staff, or the presiding officer and a party or anticipated party concerning a case in which no evidentiary hearing has been scheduled made at a forum where representatives of the public utility affected thereby, the office of public counsel, and all other parties to the case are present; and

(E) Communications between the commission, a commissioner, a member of the technical advisory staff, or the presiding officer and a party or anticipated party concerning a case in which no evidentiary hearing has been scheduled made outside a public agenda meeting or forum where representatives of the parties are present when disclosed as provided in section 386.210.3(3), RSMo.

(11) No person who is likely to be a party to a future case before the commission shall attempt to communicate with any commissioner or member of the technical advisory staff regarding any substantive issue that is likely to be an issue within a future contested case, unless otherwise allowed under this rule. Should such a communication occur, the person involved in the communication shall file a notice with the secretary of the commission. Such notice shall provide the information required in section (4) of this rule. Once such a case has been filed, the secretary shall promptly file any such notices in the official case file for each discussed case.

(12) It is improper for any person interested in a case before the commission to attempt to sway the judgment of the commission by undertaking, directly or indirectly, outside the hearing process to bring pressure or influence to bear upon the commission, its employees, or the presiding officer assigned to the proceeding.

(13) Notwithstanding any provision of this rule to the contrary, once a contested case has been finally adjudicated, the commission, a commissioner, a member of the technical advisory staff, or the presiding officer may communicate with any person regarding any procedural or substantive issues related to such case within thirty (30) days of the case being finally adjudicated, unless the same regulated entity has a contested case or anticipated contested case pending before the commission which includes such issues.

(14) An attorney, or any law firm the attorney is associated with, appearing before the commission shall—

(A) Make reasonable efforts to ensure that the attorney and any person whom the attorney represents avoid initiating, participating in, or undertaking an ex parte communication prohibited by section (3) or a communication prohibited by section (11);

(B) Make reasonable efforts to ensure that the attorney and any person whom the attorney represents gives notice of any communication as directed in section (4), (5), (8), or (11);

(C) Prepare a notice in accordance with section (4), (5), (8), or (11) when requested to do so by the commission, a commissioner, technical advisory staff, or the presiding officer assigned to a contested case;

(D) Make reasonable efforts to notify the secretary when a notice of ex parte communication is not transferred to a case file as set forth in subsection (3)(D);

(E) Comply with all the Missouri Rules of Professional Conduct;

(F) During the pendency of an administrative proceeding before the commission, not make or participate in making a statement, other than a quotation from or reference to public records, that a reasonable person would expect to be disseminated by means of public communication if it is made outside the official course of the proceeding and relates to any of the following:

1. Evidence regarding the occurrence or transaction involved;

2. The character, credibility, or criminal record of a party, witness, or prospective witness;

3. Physical evidence, the performance or results of any examinations or tests, or the refusal or failure of a party to submit to examinations or tests;

4. The attorney's opinion as to the merits of the claims, defenses, or positions of any interested person; and

5. Any other matter which is reasonably likely to interfere with a fair hearing; and

(G) Exercise reasonable care to prevent the client, its employees, and the attorney's associates from making a statement that the attorney is prohibited from making.

(15) The commission may issue an order to show cause why sanctions should not be ordered against any party or anticipated party, or the agent or representative of a party or anticipated party, engaging in an ex parte communication in violation of section (3) or (11) of this rule or a failure to file notice or otherwise comply with section (4), (5), or (8) of this rule. The commission may also issue an order to show cause why sanctions should not be ordered against any attorney who knowingly violates section (14) of this rule.

(16) No person who has served as a commissioner, presiding officer, or commission employee shall, after termination of service or employment with or on the commission, appear before the commission in relation to any case, proceeding, or application with respect to which that person was directly involved or in which that person personally participated or had substantial responsibility during the period of service or employment with the commission.

REVISED PRIVATE COST: The cost to private entities may be on average five thousand six hundred sixteen dollars and sixty-six cents ($5,616.66) annually in the aggregate for the life of the rule rather than the less than five hundred dollars ($500) in the aggregate as originally estimated.

REVISED FISCAL NOTE

PRIVATE COST

I. RULE NUMBER

Rule Number and Name	Type of Rulemaking
4 CSR 240-4.020 Rule Governing Ex Parte and Extra Record Communications	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Estimated number of entities that will likely be affected by adoption of the rule.	Types of entities that will likely be affected by adoption of the rule.	Estimated aggregate cost of compliance with the rule by the affected entities.
1000	Entities regulated by the Public Service Commission and Parties to Contested Cases including: twelve (12) large gas, electric, and steam utilities; one (1) large water and sewer utility; seventy-four (74) small water and sewer companies; and other regulated entities.	$5,616.66 per year for the life of the rule.

III. WORKSHEET

Average cost for a large utility to file a section (2) notice: ($1,000 + $3750 + $10,000)/3 = $4,916.66 per year[3]
Average cost for a small company to file a section (2) notice: $50 X 14 =$700 per year[7],[6]
Total cost per year to private entities: $4,916.66 + $700 = $5,616.66 per year

IV. ASSUMPTIONS

If adopted, this proposed rule will govern ex parte and extra record communications between the Commissioners and parties to cases before the Commission. The rule

defines ex parte and extra record communications, places prohibitions on the timing and content of certain communications, establishes exceptions to prohibited communications, and provides reporting requirements for certain communications. Section (2) of the rule would require a filing by a regulated entity 60 days prior to that entity filing a contested case unless a waiver is granted.

(1) In calculating this fiscal note the Commission assumed that an overwhelming majority of the filings made under section (2) would be made by the large utilities.
(2) Because of the utility size and complexity of the contested cases filed, the cost for the large utilities will be significantly higher for filing the notice than it would be for small utilities.
(3) The Commission received the following information from four entities regarding the fiscal cost:
    a. One large gas utility stated that the cost of complying with the rule would be in excess of $1000 per year with a majority of the cost arising from section (2).
    b. Two large electric utilities estimated that the average cost of filing a notice to comply with section (2) would exceed $300 and that together they would expect to file approximately 25 of these notices. ($300 X 25 = $7500/2 = $3750)
    c. One law firm who represents large utilities estimated that the cost to comply with section (2) would exceed $500 for the firm to prepare and file. The firm estimates that a large utility would likely file 20 such notices per year. ($500 X 20 = $10,000)
(4) Large utilities will file notices at an average cost and number similar to those suggested in the estimates received from those entities.
(5) Information in the Commission's 2009 Annual Report regarding the number of regulated entities and cases filed will be approximately the same for each fiscal year thereafter.
(6) Small water and sewer utilities will file only one notice per year required under by section (2) and only approximately 14 of 74 companies per year will be required to file such notices.
(7) It will cost a small water and sewer utility approximately $50 to file the notice required in section (2).
(8) The rule does not require other notices to be filed by private entities if no ex parte or extra record contacts are made. Thus, while the rule affects all regulated utilities, only the large utilities and small water and sewer utilities are likely to have a fiscal impact.
(9) The cost of filing ex parte or extra record notices is not significant.

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of a Proposed Rulemaking Regarding Ex Parte and Extra-Record Communications	)))	Case No. AX-2010-0128

CONCURRING OPINION OF CHAIRMAN ROBERT M. CLAYTON III

This Commissioner concurs in the Final Order of Rulemaking implementing a new code of ethics and standard of practice for Commissioners. Unanimously approved by the Commission, this rule takes significant steps toward "regulating" the types of communications that can occur among Commissioners and regulated entities. While this Commissioner believes that additional provisions could have been added to strengthen the rule, this measure assures greater transparency in such communications and further prohibits certain contacts that were previously lawfully conducted. The ultimate goal in adopting this rule is for the Commission to act in a manner that inspires greater public confidence in the difficult decisions we make.

While this Commissioner will not restate how the Commission has come about this rulemaking or the circumstances which led to legislative inquiries, concerns were raised in previous years which suggested a need for greater clarity on the type of conduct allowed by regulators and the utilities they regulate. Allegations were made against Commissioners relating to communications between Commissioners and regulated utilities which, in this Commissioner's opinion, greatly damaged the Commission's reputation for fair decision-making. The communications in question involved contacts prior to the filing of a major case, which was standard practice and remains legal pursuant to section 386.210 RSMo, as well as communications occurring while cases were under consideration. Parties not privy to the

conversations made additional arguments that the communications rose to the level of utilities conducting private, pre-briefing meetings with the intention of "gauging" commissioner reactions to utility proposals outside of the hearing process or even seeking a type of "preapproval" of proposals prior to the case being filed. Opposing parties were not invited to participate in the discussions and most opposing parties were not even aware that the meetings had taken place. Only after the discovery process were parties made aware of the meetings.

Press reports of these activities increased the level of public scrutiny of decisions made at the Public Service Commission. It is this Commissioner's opinion that in light of the multiple allegations made against the Commission, the increased frequency and complexity of the number of difficult cases coming before the Commission, and the sensitivity of the public to the impact of cases, reached a boiling point where the public was simply not believing or trusting the work of the Public Service Commission. Despite the fact that the agency that has been in existence since 1913 and has had the statutory responsibility to regulate utility monopolies for nearly 100 years, most are unaware of the work done, the role played or the rules in which decisions are made at the PSC.

The Commission must do better in explaining the purpose of the PSC, how it functions, the rules of engagement, the nature of the parties that appear before it, the types and extent of the power it wields and the limitations placed upon it. The Commission must do better in explaining to the public the challenges faced in the energy or telecommunications sectors and attempt to advise how the Commission looks at particular issues. Of the utmost of importance, the Commission must operate in a fair, transparent manner that avoids or eliminates any appearance of impropriety. With regard to the specific allegations of improper communications against the

agency, which arguably damaged its reputation, the public has a right to know the timing, the content and reasons for the communications that attempt to influence the decisions we make.

This rule takes several significant steps towards limiting, prohibiting or disclosing communications among regulated entities, utilities or other stakeholders. First, communications relating to matters that are or will become contested case issues in a rate case or other major case are prohibited. A utility no longer has the ability to "gauge" the reaction of a Commissioner in private or to determine whether an "issue" should be pursued or rejected based on a private, one-sided conversation. Current law prohibits these communications while a case is pending. In the rule, these communications are further prohibited prior to the filing of a case. Regardless of a case being filed in 60 days, 120 days or in 1 year, the Commission is taking a stand that "never" is the right time to have a private, non-disclosed conversation regarding a substantive "contested case" issue that will come before the commission for decision.

Secondly, communications that do not relate to a specific contested case but may relate to a General Regulatory Policy, as defined by section (1)(J), or specific issues that are expected to be in a contested case, will now be subject to additional disclosure. These discussions on general policy issues or rulemakings could include policy questions for smart grid technology, energy efficiency or integrated resource planning (each example is pending in a current non-contested workshop docket). If a case is pending or within the preceding 60 days in advance of the filing of the contested case, these discussions can occur only if 48 hours advance notice is given to the public, the public counsel is invited to attend and a complete disclosure of the conversation is added to the potential case. These communications can not be about the contested issues in the case to be filed but rather must be about some other company-specific issue or matters of General Regulatory Policy. Thirdly, Commissioners will be required to maintain a public

calendar that discloses meetings with regulated entities. While a Commissioner's calendar is publicly available, the new calendar will have a link directly connecting this calendar with the Commission's website for easy access by the public and stakeholders.

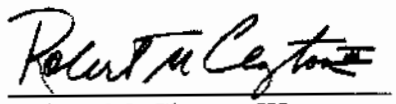
Fourthly, contacts by non-parties who have an interest in the case will also be required to be disclosed through extra-record communications as they relate to case-specific information involving customers and the public.

Lastly, it was this Commissioner's hope that all communications with regulated entities be subject to the public calendar reporting requirement as mentioned above. The Commission should always err on the side of disclosure and this Commissioner cannot think of an example, other than the concepts in section (10) of the rule, that should not be disclosed in the most basic manner. Unfortunately, that provision was removed during negotiations in open session.

This rule will still provide regulated entities and interested parties the access to the Commission that Missouri law requires and it will continue to provide customers of regulated entities access to the commission that they deserve. However, this rule will require such communications occur in the open rather than in secret. The Commission will have to monitor how this rule is implemented and determine whether future amendments are necessary to promote the public interest. This Commissioner sees this rule as a step in improving the reputation that the Commission has in making challenging decisions.

For the foregoing reasons, this Commission concurs.

Respectfully submitted,



Robert M. Clayton III
Chairman

Dated at Jefferson City, Missouri
on this 22nd day of March 2010.

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

ORDER OF RULEMAKING

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

10 CSR 10-6.050 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on December 15, 2009 (34 MoReg 2594–2595). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Department of Natural Resources' Air Pollution Control Program received three (3) comments from two (2) sources: TransMontaigne Operating Company and the U.S. Environmental Protection Agency (EPA).

COMMENT #1: TransMontaigne Operating Company requested a clarification on how emissions from roof landings and tank degassings are treated with respect to this regulation.
RESPONSE: If the emissions from roof landings and tank degassings exceed a permit limit or a limitation imposed in a state or federal rule, those excess emissions should be reported in accordance with this rule. No changes have been made to the rule as a result of this comment.

COMMENT #2: EPA commented that the time period for reporting excess emissions due to maintenance, start-up, or shutdown activities in subsection (3)(B) should be no more than two (2) business days and should match the time period for malfunctions in subsection (3)(A).
RESPONSE AND EXPLANATION OF CHANGE: As a result of this comment, the time period for reporting excess emissions due to maintenance, start-up, or shutdown activities in subsection (3)(B) has been changed to two (2) business days, as suggested.

COMMENT #3: EPA suggested that future amendments of this rule include a change to the reporting time limits so that facilities are required to provide notification as soon as possible, but not more than two (2) business days.
RESPONSE: As a result of this comment, a note was added to the rule comment file to change the reporting time limits to provide for notification as soon as possible, but not more than two (2) business days, the next time the rule is changed. No changes have been made to the rule at this time as a result of this comment.

10 CSR 10-6.050 Start-Up, Shutdown, and Malfunction Conditions

(3) General Provisions.

(B) The owner or operator shall notify the Missouri Department of Natural Resources' Air Pollution Control Program at least ten (10) days prior to any maintenance, start-up, or shutdown activity, which is expected to cause an excess release of emissions that exceeds one (1) hour. If notification cannot be given ten (10) days prior to any maintenance, start-up, or shutdown activity, which is expected to cause an excess release of emissions that exceeds one (1) hour, notification shall be given as soon as practicable prior to the maintenance, start-up, or shutdown activity. If prior notification is not given for any maintenance, start-up, or shutdown activity which resulted in an excess release of emissions that exceeded one (1) hour, notification shall be given within two (2) business days of the release. In all cases, the notification shall be a written report and shall include, at a minimum, the following:

1. Name and location of installation;
2. Name and telephone number of person responsible for the installation;
3. Identity of the equipment involved in the maintenance, start-up, or shutdown activity;
4. Time and duration of the period of excess emissions;
5. Type of activity and the reason for the maintenance, start-up, or shutdown;
6. Type of air contaminant involved;
7. Estimate of the magnitude of the excess emissions expressed in the units of the applicable emission control regulation and the operating data and calculations used in estimating the magnitude;
8. Measures taken to mitigate the extent and duration of the excess emissions; and
9. Measures taken to remedy the situation which caused the excess emissions and the measures taken or planned to prevent the recurrence of these situations.

Title 15—ELECTED OFFICIALS
Division 40—State Auditor
Chapter 4—Audits of Fire Protection Districts in St. Louis and Greene Counties

ORDER OF RULEMAKING

By the authority vested in the state auditor under section 321.690, RSMo 2000, the auditor amends a rule as follows:

15 CSR 40-4.010 Requirements for Districts **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2010 (35 MoReg 224). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 15—ELECTED OFFICIALS
Division 40—State Auditor
Chapter 4—Audits of Fire Protection Districts in St. Louis and Greene Counties

ORDER OF RULEMAKING

By the authority vested in the state auditor under section 321.690, RSMo 2000, the auditor amends a rule as follows:

15 CSR 40-4.020 Standards for Auditing and Financial Reporting **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2010 (35 MoReg 224). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 15—ELECTED OFFICIALS
Division 40—State Auditor
Chapter 4—Audits of Fire Protection Districts in St. Louis and Greene Counties

ORDER OF RULEMAKING

By the authority vested in the state auditor under section 321.690, RSMo 2000, the auditor amends a rule as follows:

15 CSR 40-4.030 Contents of Audit Reports **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2010 (35 MoReg 225). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 15—ELECTED OFFICIALS
Division 40—State Auditor
Chapter 4—Audits of Fire Protection Districts in St. Louis and Greene Counties

ORDER OF RULEMAKING

By the authority vested in the state auditor under section 321.690, RSMo 2000, the auditor amends a rule as follows:

15 CSR 40-4.040 Scope of Audit **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on February 1, 2010 (35 MoReg 225–226). 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.