

Volume 35, Number 16
Pages 1161-1236
August 16, 2010

SALUS POPULI SUPREMA LEX ESTO

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



ROBIN CARNAHAN
SECRETARY OF STATE

MISSOURI
REGISTER

The *Missouri Register* is an official publication of the state of Missouri, under the authority granted to the secretary of state by sections 536.015, RSMo Supp. 2009 and 536.033, RSMo 2000. Reproduction of rules is allowed; however, no reproduction shall bear the name *Missouri Register* or "official" without the express permission of the secretary of state.

The *Missouri Register* is published semi-monthly by

SECRETARY OF STATE

ROBIN CARNAHAN

Administrative Rules Division

James C. Kirkpatrick State Information Center
600 W. Main
Jefferson City, MO 65101
(573) 751-4015

DIRECTOR

WAYLENE W. HILES

•

EDITORS

CURTIS W. TREAT

SALLY L. REID

ASSOCIATE EDITOR

SARAH JORGENSON

•

PUBLICATION TECHNICIAN

JACQUELINE D. WHITE

•

ADMINISTRATIVE ASSISTANT

LAUREN A. BAUMAN

•

SPECIALIST

ADAM T. SANDBERG

ISSN 0149-2942, USPS 320-630; periodical postage paid at Jefferson City, MO
Subscription fee: \$56.00 per year

POSTMASTER: Send change of address notices and undelivered copies to:

MISSOURI REGISTER

Office of the Secretary of State

Administrative Rules Division

PO Box 1767

Jefferson City, MO 65102

The *Missouri Register* and *Code of State Regulations* (CSR) are now available on the Internet. The Register address is <http://www.sos.mo.gov/adrules/moreg/moreg.asp> and the CSR is <http://www.sos.mo.gov/adrules/csr/csr.asp>. These websites contain rulemakings and regulations as they appear in the Registers and CSR. These websites do not contain the official copies of the Registers and CSR. The official copies remain the paper copies published by the Office of the Secretary of State pursuant to sections 536.015 and 536.031, RSMo Supp. 2009. While every attempt has been made to ensure accuracy and reliability, the Registers and CSR are presented, to the greatest extent practicable as they appear in the official publications. The Administrative Rules Division may be contacted by email at rules@sos.mo.gov.

The secretary of state's office makes every effort to provide program accessibility to all citizens without regard to disability. If you desire this publication in alternate form because of a disability, please contact the Division of Administrative Rules, PO Box 1767, Jefferson City, MO 65102, (573) 751-4015. Hearing impaired citizens should contact the director through Missouri relay, (800) 735-2966.



IN THIS ISSUE:

EXECUTIVE ORDERS	1165	SOURCE GUIDES	
PROPOSED RULES		RULE CHANGES SINCE UPDATE	1221
Department of Transportation		EMERGENCY RULES IN EFFECT	1225
Missouri Highways and Transportation Commission	1173	EXECUTIVE ORDERS	1227
Public Defender Commission		REGISTER INDEX	1230
Office of State Public Defender	1180		
ORDERS OF RULEMAKING			
Department of Conservation			
Conservation Commission	1182		
Department of Economic Development			
Public Service Commission	1183		
Department of Transportation			
Missouri Highways and Transportation Commission	1211		
Department of Mental Health			
Director, Department of Mental Health	1211		
Certification Standards	1211		
Elected Officials			
Secretary of State	1211		
IN ADDITIONS			
Department of Transportation			
Missouri Highways and Transportation Commission	1213		
CONTRACTOR DEBARMENT LIST	1215		
DISSOLUTIONS	1216		

Register Filing Deadlines	Register Publication Date	Code Publication Date	Code Effective Date
April 1, 2010	May 3, 2010	May 31, 2010	June 30, 2010
April 15, 2010	May 17, 2010	May 31, 2010	June 30, 2010
May 3, 2010	June 1, 2010	June 30, 2010	July 30, 2010
May 17, 2010	June 15, 2010	June 30, 2010	July 30, 2010
June 1, 2010	July 1, 2010	July 31, 2010	August 30, 2010
June 15, 2010	July 15, 2010	July 31, 2010	August 30, 2010
July 1, 2010	August 2, 2010	August 31, 2010	September 30, 2010
July 15, 2010	August 16, 2010	August 31, 2010	September 30, 2010
August 2, 2010	September 1, 2010	September 30, 2010	October 30, 2010
August 16, 2010	September 15, 2010	September 30, 2010	October 30, 2010
September 1, 2010	October 1, 2010	October 31, 2010	November 30, 2010
September 15, 2010	October 15, 2010	October 31, 2010	November 30, 2010
October 1, 2010	November 1, 2010	November 30, 2010	December 30, 2010
October 15, 2010	November 15, 2010	November 30, 2010	December 30, 2010
November 1, 2010	December 1, 2010	December 31, 2010	January 30, 2011
November 15, 2010	December 15, 2010	December 31, 2010	January 30, 2011
December 1, 2010	January 3, 2011	January 29, 2011	February 28, 2011
December 15, 2010	January 18, 2011	January 29, 2011	February 28, 2011

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>

Missouri Participating Libraries

The *Missouri Register* and the *Code of State Regulations*, as required by the Missouri Documents Law (section 181.100, RSMo Supp. 2009), are available in the listed participating libraries, as selected by the Missouri State Library:

Jefferson County Library PO Box 1486, 3021 High Ridge High Ridge, MO 63049-1486 (314) 677-8689	Learning Resources Center Mineral Area College PO Box 1000 Park Hills, MO 63601-1000 (573) 431-4593	Hearnes Learning Resources Ctr. Missouri Western State University 4525 Downs Drive St. Joseph, MO 64507-2294 (816) 271-5802	Library Missouri University of Science and Technology 1870 Miner Circle Rolla, MO 65409-0060 (573) 341-4007
Jefferson College Library 1000 Viking Drive Hillsboro, MO 63050-2441 (314) 789-3951 ext. 160	Cape Girardeau Public Library 711 N. Clark Cape Girardeau, MO 63701-4400 (573) 334-5279	Library North Central Missouri College PO Box 111, 1301 Main Street Trenton, MO 64683-0107 (660) 359-3948 ext. 325	Lebanon-Laclede County Library 135 Harwood Ave. Lebanon, MO 65536-3017 (417) 532-2148
St. Louis Public Library 1301 Olive St. St. Louis, MO 63103-2389 (314) 539-0376	Kent Library Southeast Missouri State University One University Plaza Cape Girardeau, MO 63701-4799 (573) 651-2757	Spiva Library Missouri Southern State University 3950 East Newman Road Joplin, MO 64801-1595 (417) 625-9342	University Library Southwest Baptist University 1600 University Ave. Bolivar, MO 65613-2597 (417) 328-1631
St. Louis University Law Library 3700 Lindell Blvd. St. Louis, MO 63108-3478 (314) 977-2742	Riverside Regional Library PO Box 389, 204 South Union St. Jackson, MO 63755-0389 (573) 243-8141	Missouri State Library 600 West Main, PO Box 387 Jefferson City, MO 65102-0387 (573) 751-3615	Barry-Lawrence Regional Library 213 6th St. Monett, MO 65708-2147 (417) 235-6646
Eden/Webster Library Eden Theological Seminary/ Webster University 475 East Lockwood Ave. St. Louis, MO 63119-3192 (314) 961-2660 ext. 7812	Rutland Library Three Rivers Community College 2080 Three Rivers Blvd. Poplar Bluff, MO 63901-2393 (573) 840-9656	Missouri State Archives 600 West Main, PO Box 778 Jefferson City, MO 65102-0778 (573) 526-6711	Lyons Memorial Library College of the Ozarks General Delivery Point Lookout, MO 65726-9999 (417) 334-6411 ext. 3551
Thomas Jefferson Library University of Missouri-St. Louis 8001 Natural Bridge Road St. Louis, MO 63121-4499 (314) 516-5084	James C. Kirkpatrick Library University of Central Missouri 142 Edwards Library Warrensburg, MO 64093-5020 (660) 543-4149	Elmer Ellis Library University of Missouri-Columbia 106 B Ellis Library Columbia, MO 65211-5149 (573) 882-0748	Garnett Library Missouri State University—West Plains 304 Cleveland West Plains, MO 65775-3414 (417) 255-7945
Washington University Law Library Washington University Campus Box 1171, Mudd Bldg., One Brookings Dr. St. Louis, MO 63130-4899 (314) 935-6443	Kansas City Public Library 14 West 10th Street Kansas City, MO 64105 (816) 701-3546	Library State Historical Society of Missouri 1020 Lowry St. Columbia, MO 65211-7298 (573) 882-9369	Springfield-Greene County Library 4653 S. Campbell Springfield, MO 65801-0760 (417) 874-8110
St. Louis County Library 1640 S. Lindbergh Blvd. St. Louis, MO 63131-3598 (314) 994-3300 ext. 247	Law Library University of Missouri-Kansas City 5100 Rockhill Road Kansas City, MO 64110-2499 (816) 235-2438	Daniel Boone Regional Library PO Box 1267, 100 West Broadway Columbia, MO 65205-1267 (573) 443-3161 ext. 359	Meyer Library Missouri State University PO Box 175, 901 S. National Springfield, MO 65804-0095 (417) 836-4533
Library Maryville University 13550 Conway Road St. Louis, MO 63141-7232 (314) 529-9494	Miller Nichols Library University of Missouri-Kansas City 5100 Rockhill Road Kansas City, MO 64110-2499 (816) 235-2438	School of Law University of Missouri-Columbia 224 Hulston Hall Columbia, MO 65211-0001 (573) 882-1125	
Pickler Memorial Library Truman State University 100 E. Normal Kirksville, MO 63501-4221 (660) 785-7416	B.D. Owens Library Northwest Missouri State University 800 University Drive Maryville, MO 64468-6001 (660) 562-1841	Smiley Memorial Library Central Methodist University 411 Central Methodist Square Fayette, MO 65248-1198 (660) 248-6279	
	St. Joseph Public Library 927 Felix Street St. Joseph, MO 64501-2799 (816) 232-8151		

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.

The Secretary of State shall publish all executive orders beginning January 1, 2003, pursuant to section 536.035.2, RSMo Supp. 2009.

EMERGENCY DECLARATION

WHEREAS, the severe storms and heavy rains that have occurred in the northern areas of Missouri on June 8, 2010, and June 12, 2010, have resulted in flooding and the closure of roadways; and

WHEREAS, the high stream flows from these storm events have resulted in significant scour damage to the bridge piers of the U.S. Route 24 Bridge over the Grand River on the border of Carroll and Chariton Counties; and

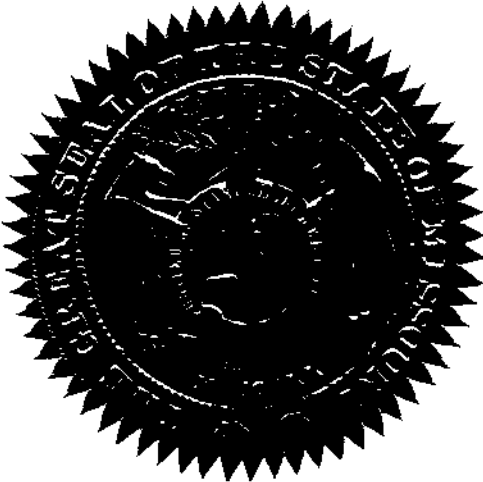
WHEREAS, as a result of the scour damage, the Missouri Department of Transportation has had to close the bridge to ensure the safety of the traveling public; and

WHEREAS, U.S. Route 24 is a vital east/west commerce and transportation link for the area; and


WHEREAS, such conditions constitute an emergency as is contemplated by the terms of Sections 125 and 120(e) of Title 23, U.S.C.

NOW THEREFORE, I, JEREMIAH W. (JAY) NIXON, GOVERNOR OF THE STATE OF MISSOURI, by virtue of the authority vested in me by the Constitution and Laws of the State of Missouri, do hereby proclaim that an emergency exists concerning the damage and structural integrity of the U.S. Route 24 bridge over the Grand River, which is a vital commerce and transportation link for this region of the state.

FURTHER, I direct that this Emergency Declaration shall become effective immediately upon signature and shall continue in effect until the repairs to the U.S. Route 24 Bridge have been made and the bridge deemed safe for use by the traveling public.




IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 2nd day of July, 2010.



Jeremiah W. (Jay) Nixon
Governor

ATTEST:



Robin Carnahan
Secretary of State

**EXECUTIVE ORDER
10-24**

WHEREAS, the Constitutions of the United States and of the State of Missouri afford to all persons equal protection under the law; and

WHEREAS, the Congress of the United States and the General Assembly of the State of Missouri have enacted legislation prohibiting discrimination in public accommodations, housing and employment on the basis of race, color, religion, national origin, sex, ancestry, age, and disability; and

WHEREAS, personnel practices and procedures within the executive branch of the State of Missouri should not discriminate, through disparate treatment or disparate impact, against anyone, in violation of any federal or state civil rights statute, executive order, rule, regulation, or judicial decision; and

WHEREAS, the employment practices of the State of Missouri and the operation of its services and facilities should serve as a model for business, industry, and labor; and

WHEREAS, Title VII of the Civil Rights Act of 1964 and the Missouri Human Rights Act prohibit employment discrimination based on race, color, religion, national origin, sex, ancestry, age, and disability.

NOW, THEREFORE, I, Jeremiah W. (Jay) Nixon, Governor of the State of Missouri, in recognition of the obligations of the State of Missouri and by virtue of the authority vested in me by the Constitution and laws of the State of Missouri do hereby promulgate the following Code of Fair Practices for the Executive Branch of State Government.

ARTICLE I

The executive branch of the State of Missouri shall ensure that all present and prospective employees are afforded equal opportunity at all levels and phases of employment within state government with respect to, but not limited to, hiring, recruiting, training, benefits, promotions, transfers, layoffs, demotions, terminations, rate of compensation, and recalls from layoffs. It shall be the responsibility of the State Office of Equal Employment Opportunity to monitor all departments of the executive branch of state government and assist them to ensure equal employment opportunity. The State of Missouri shall work to ensure that there will be no vestiges of discrimination against persons on account of race, color, religion, national origin, sex, ancestry, age, sexual orientation, veteran status, or disability; not only in employment practices but in the provision of services and the operation of facilities.

ARTICLE II

State Equal Employment Opportunity Officer

The Governor shall designate a State Officer, hereinafter referred to as the State Equal Employment Opportunity (EEO) Officer. The State EEO Officer shall report to the Governor and the Commissioner of Administration. He or she shall have primary responsibility for assisting in the coordination and implementation of workforce diversity programs throughout all departments of the executive branch of state government, and for advising the Governor on issues regarding equal employment opportunity, workforce diversity, and efforts to administer workforce diversity action goals and timetables for implementation throughout the departments of the executive branch.

The State EEO Officer shall be the state's chief compliance officer for the executive branch of state government to ensure that the State of Missouri is complying with all federal and state laws concerning equal employment opportunity and workforce diversity. He or she shall assist each department in developing a Workforce Diversity Plan. Additionally, the State EEO Officer shall review progress reports of the departments and shall meet biannually with each department director to evaluate departmental results and determine the course of future workforce diversity goals, timetables, recruiting, planning, and implementation. The results of each meeting shall be reported in writing to the Commissioner of Administration.

Not later than January first of each calendar year, the State EEO Officer shall provide a report to the Governor and the Commissioner of Administration that summarizes the activities of each department pursuant to this Order and that contains recommendations for additional programs to accomplish the purposes of this Order.

Subject to appropriations, the Commissioner of Administration shall provide the State EEO Officer with such facilities, staff, resources, equipment, and supplies as are necessary to carry out the duties set forth herein. The State EEO Officer shall submit a proposal each fiscal year to the Commissioner of Administration, detailing the needs of the Office of Equal Employment Opportunity.

ARTICLE III

Workforce Diversity Council

Each department director shall designate an individual with sufficient experience and authority within the department to be able to communicate on behalf of the department and to implement recommendations of the Council, to serve on the State Workforce Diversity Council, hereinafter referred to as the "Council."

The Council shall:

- Meet quarterly and be chaired by the State EEO Officer;
- Work to ensure that all employees of the state are educated on issues involving diversity;
- Make such recommendations as it believes necessary to the State EEO Officer to assist in the implementation of this Order; and
- Assist the State EEO Officer in formulating policy and issues that affect workforce diversity in the executive branch of state government.

The Council designee shall be the chief liaison to his or her department concerning equal employment opportunity and workforce diversity issues and shall make recommendations and report any changes, trends and new occurrences with respect to workforce diversity to their respective departments.

ARTICLE IV

Workforce Diversity Program

The Workforce Diversity Program will demonstrate the State of Missouri's good faith effort to eliminate any potential discriminatory barriers to employment, while enhancing the state's effort to provide equal employment opportunity and improve workforce diversity.

The Program shall:

- Ensure awareness of workforce diversity before hiring decisions are made;
- Prohibit the departments in the executive branch from engaging in unlawful discriminatory practices; and
- Place a strong emphasis on recruitment, retention, and upward mobility as methods to enhance the State of Missouri's work force through equal employment opportunity and workforce diversity.

ARTICLE V

Workforce Diversity Plan

Each department of the executive branch shall submit a revised Workforce Diversity Plan to the State EEO Officer by September 30th of each year. The primary responsibility for developing the Workforce Diversity Plan will rest with each department director. The State EEO Officer shall review and approve each submitted plan to ensure it significantly complies with the provisions and purposes of this Order.

Each Workforce Diversity Plan shall contain the following items:

- A departmental policy statement on Equal Employment Opportunity and Workforce Diversity;
- Identification of individuals who will be responsible for implementation of the Workforce Diversity Plan within the department;
- A utilization and availability analysis presented in a form and manner as determined by the Office of Equal Opportunity;
- Identification of problem areas and proposed actions and timelines;
- A statement on how progress will be monitored and reported;
- A description of departmental recruiting practices that will be used to diversify the department's work force;
- Procedures used to ensure all tests for employment and promotion are nondiscriminatory; and
- Identification of diversity training needs within the department and plans to address those needs.

All state agencies shall require participation by all employees in periodic training that cover the topics of:

- Discrimination;
- Sexual harassment;
- Cultural and work force diversity; and

- Other appropriate human relations training as determined by the Office of Administration, Division of Personnel. The Division of Personnel shall approve all Workforce Diversity Training provided by state agencies.

If the State EEO Officer determines that a department's Workforce Diversity Plan does not meet the requirements of this Order, he or she shall report the same to the Commissioner of Administration and the Governor, who shall take such actions and offer such assistance as they deem necessary to ensure that the department develops and files a Workforce Diversity Plan which meets the requirements of this Order.

ARTICLE VI

State Employment Services

All departments which provide employment referrals or placement services to public or private employers shall provide these services without regard to race, color, religion, national origin, sex, ancestry, age, sexual orientation, veteran status, or disability, and shall not engage in any unlawful acts in violation of federal or state discrimination laws. No job orders designed to exclude persons as mentioned above shall be filled unless by reason of a bona fide occupational qualification.

ARTICLE VII

State Services and Facilities

Every department shall offer its services to the public without discrimination. No state facility shall be used to promote any discriminatory practice, nor shall any department become a party to any agreement which permits any discriminatory practice prohibited by this Order, state or federal law.

ARTICLE VIII

Public Education

All state institutions of public education shall promote nondiscrimination in the provision of services and fairness in employment practices.

ARTICLE IX

Financial Assistance

Neither race, color, religion, national origin, sex, ancestry, age, sexual orientation, veteran status, disability, nor any other criteria in violation of federal or state discrimination laws shall be considered as a limiting factor in state administered programs involving grants, loans, or other distribution of funds to applicants for benefits authorized by law.

ARTICLE X

Health Care Service

All health care facilities licensed by the State of Missouri shall comply with all federal and state laws regarding discrimination in public accommodations including patient admissions and health care services as a condition of continued participation in any state program or eligibility for any form of state assistance or licensing.

ARTICLE XI

Training and Job Opportunities

All educational and vocational counseling, apprenticeship, and training programs involving state

participation shall encourage the development of an individual's fullest potential in a nondiscriminatory fashion. Job training programs will be administered without regard to race, color, religion, national origin, sex, ancestry, age, sexual orientation, veteran status, or disability, and shall not engage in any unlawful acts in violation of federal or state discrimination laws.

ARTICLE XII

State Licensing and Regulatory Agencies

No department, board, commission, or agency shall grant, deny or revoke any license, permit, registration, certification, charter or other regulatory instrument on the basis of race, color, religion, national origin, sex, ancestry, age, sexual orientation, veteran status, or disability, and shall not engage in any unlawful acts in violation of federal or state discrimination laws. Any test administered as a prerequisite to licensure by any board or licensing or regulatory agency shall be designed to preclude any discrimination.

ARTICLE XIII

Employee Organizations

Employee organizations that exist in whole or in part for the purpose of dealing with employers in the executive branch of state government concerning employee grievances, labor disputes, or terms of employment shall not, on account of race, color, religion, national origin, sex, ancestry, age, sexual orientation, veteran status, or disability:

- Exclude or expel from membership or otherwise discriminate against any individual;
- Limit, segregate, or classify members or applicants for membership in any way which would deprive or tend to deprive any individual of any benefit, advantage, or privilege; or
- Directly or indirectly create any condition which adversely affects the status of any employee.

ARTICLE XIV

Publication and Posting

Policies, procedures, and communications relating to this Order shall be distributed to all departments. Each department shall make the Workforce Diversity Plan accessible to all of its employees.

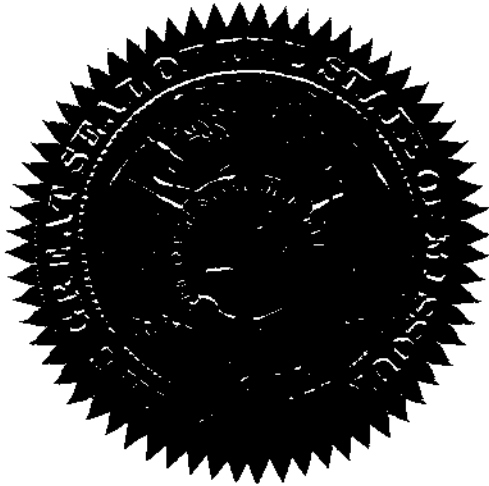
ARTICLE XV

Other Governmental Bodies


All local governments and instrumentalities of government in Missouri are requested to cooperate with this endeavor to address fair and equal employment opportunities within the state.

ARTICLE XVI

This Order shall take effect immediately and shall supersede paragraph one (1) of Executive Order 05-30.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Missouri, in the City of Jefferson, on this 9th day of July, 2010.



Jeremiah W. (Jay) Nixon
Governor

ATTEST:



Robin Carnahan
Secretary of State

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

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

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

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

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

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

Proposed Amendment Text Reminder:

Boldface text indicates new matter.

[Bracketed text indicates matter being deleted.]

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 16—Rest Areas**

PROPOSED RESCISSION

7 CSR 10-16.010 General Information. This rule provided guidelines to interested persons regarding the placement of publication vending machines on highway rest areas and other Missouri Highways and Transportation Commission property for vending sale or distribution of publications to the public.

PURPOSE: This rule is being rescinded and new rules adopted in order to more clearly define the Missouri Department of Transportation's procedures for the placement and operation of publication vending machines on interstate highway rest areas.

AUTHORITY: section 29 of Art. IV, Mo. Const., sections 226.020,

226.150, 226.750–226.790, and 227.030, RSMo Supp. 1995, Title 23, United States Code section III (b), and Title 23, Code of Federal Regulations part 752. Emergency rule filed Jan. 19, 1996, effective Feb. 1, 1996, expired July 29, 1996. Original rule filed Jan. 16, 1996, effective July 30, 1996. Rescinded: Filed July 2, 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 Transportation, Pamela J. Harlan, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 16—Rest Areas**

PROPOSED RESCISSION

7 CSR 10-16.020 Definitions. This rule provided definitions of terms.

PURPOSE: This rule is being rescinded and readopted in order to more clearly define the terms used for the Missouri Department of Transportation's procedures for the placement and operation of publication vending machines on interstate highway rest areas.

AUTHORITY: section 29 of Art. IV, Mo. Const., sections 226.020, 226.150, 226.750–226.790, and 227.030, RSMo Supp. 1995, Title 23, United States Code section III (b), and Title 23, Code of Federal Regulations part 752. Emergency rule filed Jan. 19, 1996, effective Feb. 1, 1996, expired July 29, 1996. Original rule filed Jan. 16, 1996, effective July 30, 1996. Rescinded: Filed July 2, 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 Transportation, Pamela J. Harlan, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 16—Rest Areas**

PROPOSED RULE

7 CSR 10-16.020 Definitions

PURPOSE: This rule provides definitions of terms used in 7 CSR 10-16.020 through 7 CSR 10-16.050.

(1) Definitions. When used in administrative rules 7 CSR 10-16.020 through 7 CSR 10-16.050, the following words and phrases have the meaning set forth in this rule:

(A) "Commission" means the Missouri Highways and Transportation Commission, and where appropriate, its authorized agents and representatives in the Missouri Department of Transportation;

(B) "Licensee" means the Association of Sheltered Workshop Managers, Inc., a not-for-profit Missouri organization, or a successor public agency or private not-for-profit entity which contracts with the commission, if the Association of Sheltered Workshop Managers, Inc. should ever cease to be the licensee at its own election or at the election of the commission;

(C) "License fee" means the fee charged by the commission's licensee to a publisher or the publisher's agent to lease publication vending machine space in a commission publication vending machine bin;

(D) "Newsrack" means any self-service or coin-operated box, container, storage unit, or other dispenser owned, installed, used, and maintained by a publisher for the display, sale, and/or distribution of publications in a rest area;

(E) "Publication" means a newspaper, pamphlet, newsletter, or magazine printed and distributed to convey news and information or other matters of public interest, which may include advertisements;

(F) "Publication vending machine" or "machine" means the individual units owned and installed by the commission in the publication vending machine bin and in which only one (1) publication may be offered for sale;

(G) "Publication vending machine bin" or "bin" means the device owned and installed by the commission, which is capable of holding up to four (4) publication vending machines and is placed at the rest areas in the sole discretion of the commission for the purpose of leasing space to a licensee or a publisher or its agent to sell publications;

(H) "Publisher" means any person who has paid a license fee to the commission's licensee to lease publication vending machine space in commission-owned machines to sell its publication; and

(I) "Rest area" or "rest and recreation area" means a commission roadside facility along a Missouri interstate highway with parking facilities for the rest, safety, or other needs of motorists. This term includes the facilities described in sections 226.750 through 226.790, RSMo, and in Title 23, *United States Code* section 111(b). This term shall also include any facility located in Missouri designated as a welcome center or tourist information center by the commission.

AUTHORITY: section 29 of Art. IV, Mo. Const., sections 226.020, 226.150, 226.750–226.790, and 227.030, RSMo 2000, Title 23, United States Code section III(b), and Title 23, Code of Federal Regulations part 752. Emergency rule filed Jan. 19, 1996, effective Feb. 1, 1996, expired July 29, 1996. Original rule filed Jan. 16, 1996, effective July 30, 1996. Rescinded and readopted: Filed July 2, 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 Missouri Department of Transportation, Pamela J. Harlan, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 16—Rest Areas**

PROPOSED RULE

7 CSR 10-16.025 Public Information

PURPOSE: This rule provides guidelines to interested persons regarding the placement and licensing of publication vending machine spaces on interstate highway rest areas for sale or distribution of publications to the public.

(1) Commission Jurisdiction. Rules 7 CSR 10-16.020 through 7 CSR 10-16.050 shall apply unless the state of Missouri through the Bureau of the Blind of the Division of Family Services decides to exercise its jurisdictional right to regulate and administer the vending of publications as provided in section 8.710, RSMo. Currently the commission has the authority to regulate and administer publication vending operations on rest areas because the Bureau of the Blind has declined to exercise regulation and administration over the vending of publications in such rest areas. However, the commission may not operate any commercial vending machines or other commercial facilities itself in rest and recreation areas, as provided in section 226.790, RSMo.

(2) How to Obtain Information. Information regarding publications vending operations in machines on rest and recreation areas may be obtained in person, or by writing, or phoning the State Maintenance Engineer, Maintenance Division, Missouri Department of Transportation, PO Box 270, 105 W. Capitol Avenue, Jefferson City, MO 65102-0270. The phone number of the division engineer is (573) 751-2785.

AUTHORITY: section 29 of Art. IV, Mo. Const., sections 226.020, 226.150, 226.750–226.790, and 227.030, RSMo 2000, Title 23, United States Code section III(b), and Title 23, Code of Federal Regulations part 752. Original rule filed July 2, 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 Missouri Department of Transportation, Pamela J. Harlan, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 16—Rest Areas**

PROPOSED RESCISSION

7 CSR 10-16.030 Eligibility Criteria. This rule provided eligibility criteria for publishers to place their publications in vending machines for sale to the public.

PURPOSE: This rule is being rescinded and new rules adopted in order to more clearly define the terms used for the Missouri

Department of Transportation's procedures for the placement and operation of publication vending machines on interstate highway rest areas.

AUTHORITY: section 29 of Art. IV, Mo. Const., sections 226.020, 226.150, 226.750–226.790, and 227.030, RSMo Supp. 1995, Title 23, United States Code section III (b), and Title 23, Code of Federal Regulations part 752. Emergency rule filed Jan. 19, 1996, effective Feb. 1, 1996, expired July 29, 1996. Original rule filed Jan. 16, 1996, effective July 30, 1996. Rescinded: Filed July 2, 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 Transportation, Pamela J. Harlan, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 16—Rest Areas**

PROPOSED RULE

7 CSR 10-16.035 Commission Responsibilities and Requirements

PURPOSE: This rule provides the commission's responsibilities and requirements for the placement of publication vending machines on interstate highway rest areas for sale or distribution of publications to the public.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) Location of Bins and Machines. In order to ensure the safety of patrons of rest areas, to protect the physical integrity of the rest area building and facilities, and to provide for the general aesthetics of the rest areas, no publication vending machine shall be installed at a rest area except those machines owned and installed by the commission. At each rest area, the commission may provide one (1) publication vending machine bin which may hold up to four (4) individual machines to allow the vending of publications as provided in 7 CSR 10-16.020 through 7 CSR 10-16.050. The commission shall, in its sole discretion, locate and install the bins on the exterior of the rest area buildings and adjacent to the entrance and exit doors of the rest areas. The commission, in its sole discretion, may provide additional bins if the commission determines sufficient room exists within the rest area to accommodate additional bins. No machine shall dispense more than one (1) publication.

(2) Procedures for Noncompliance with Rules.

(A) Prohibitions. A publisher shall not—

1. Install its own newsrack(s);

2. Fail to pay required license fee(s);
3. Damage commission bin(s) and/or machine(s); or
4. Fail to pay the cost of the commission's remedial action(s).

(B) Notice of Violation and Commission Remedial Action. The commission shall take any remedial action it deems necessary and appropriate to address the publisher's noncompliance with 7 CSR 10-16.020 through 7 CSR 10-16.050. Such remedial action shall include, but is not limited to, the following:

1. Seizure of the publisher's newsracks;
2. Revocation of the publisher's authority to participate in the publication vending machine program, removal of all the publisher's publications in any commission machines, and prevention of such publisher from future use of commission machines; and/or
3. Repair of the damaged commission bin(s) and/or machine(s).

(C) Timing and Costs of Remedial Action. The commission may take such remedial action(s) immediately and without prior approval of the publisher. The costs of any remedial actions taken by the commission under 7 CSR 10-16.035(2)(B) shall be paid by the publisher.

(D) Notice of Remedial Action. After the commission takes any remedial action(s) authorized by 7 CSR 10-16.030(2)(B), the commission shall within ten (10) days send written notice to the publisher, either by certified U.S. mail or by electronic mail, stating the alleged violation, the remedial action(s) taken by the commission, and the action(s) the publisher is required to take, including, but not limited to 1) retrieving the noncompliant publisher newsracks and 2) payment of all delinquent license fees and payment of all costs incurred by the commission to carry out the remedial action(s). If the commission is unable to determine the mailing address or electronic mail address of the publisher, it shall make reasonable effort to locate either the mailing address or the electronic address of the publisher in order to send the written notice. In the event the mailing address or electronic mail address cannot be determined in the ten (10) days, notice shall be satisfied by the commission posting a written notice consistent with this 7 CSR 10-16.030(2)(D) in a conspicuous place located at the rest area and on the Missouri Department of Transportation website.

(E) Opportunity for Informal Hearing. If the publisher disagrees with the allegation(s) of noncompliance and the remedial action(s) taken as set forth in the commission's written notice, the publisher shall have thirty (30) days from the date on the notice to request an informal hearing before the department's State Maintenance Engineer, or the State Maintenance Engineer's designee. Such request for an informal hearing shall be addressed to the Commission Secretary, PO Box 270, Jefferson City, MO 65102. Such informal hearing shall be conducted at a date, time, and location as determined by the department's State Maintenance Engineer, or the State Maintenance Engineer's designee. A publisher's failure to request a hearing within the time allowed under this 7 CSR 10-16.035(2)(E), or a publisher's failure to appear at the hearing, will result in the publisher's forfeiture of the opportunity for the informal hearing.

(3) The commission incorporates by reference in this rule the provisions of Title 23, Code of Federal Regulations (CFR) Part 752 as published by the United States Government Printing Office, 732 North Capitol Street NW, Washington DC 20401 on April 1, 2009. This rule does not incorporate any subsequent amendments or additions to 23 CFR Part 752.

AUTHORITY: section 29 of Art. IV, Mo. Const., sections 226.020, 226.150, 226.750–226.790, and 227.030, RSMo 2000, Title 23, United States Code section III (b), and Title 23, Code of Federal Regulations part 752. Original rule filed July 2, 2010.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions sixty-five thousand nine hundred sixty dollars (\$65,960) 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 Missouri Department of Transportation, Pamela J. Harlan, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

**FISCAL NOTE
PUBLIC ENTITY COST**

I. RULE NUMBER

Title: 7 - Department of Transportation

Division: 10 - Missouri Highways and Transportation Commission

Chapter: 16 - Rest Areas

Rule Number and Name:	7 CSR 10-16.035 – Commission Responsibilities and Requirements
Type of Rulemaking:	Proposed Rulemaking

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision.	Estimated Cost in the Aggregate.
Missouri Department of Transportation	\$ 65,960

III. WORKSHEET

41 newspaper bins x \$1550 per unit (cost per bin) = \$63,500

41 newspaper bins x \$60 per unit for installation (2 hours x \$30 per hour labor cost) = \$2,460

\$63,500 + \$2,460 = \$65,960

Total Estimated Costs for FY 11

\$65,960

IV. ASSUMPTIONS

1. Each newspaper bin is approximately \$1550.
2. Each rest area building will require the installation of at least one bin and some two because of two entrances.
3. Any other costs not identified in this fiscal note are unforeseeable.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 16—Rest Areas**

PROPOSED RESCISSION

7 CSR 10-16.040 Publication Vending Machine Specifications.
This rule provided publication vending machine specifications.

PURPOSE: This rule is being rescinded and new rules adopted in order to more clearly define the terms used for the Missouri Department of Transportation's procedures for the placement and operation of publication vending machines on interstate highway rest areas.

AUTHORITY: section 29 of Art. IV, Mo. Const., sections 226.020, 226.150, 226.750–226.790, and 227.030, RSMo Supp. 1995, Title 23, United States Code section III (b), and Title 23, Code of Federal Regulations part 752. Emergency rule filed Jan. 19, 1996, effective Feb. 1, 1996, expired July 27, 1996. Original rule filed Jan. 16, 1996, effective July 30, 1996. Rescinded: Filed July 2, 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 Transportation, Pamela J. Harlan, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 16—Rest Areas**

PROPOSED RULE

7 CSR 10-16.045 Licensee Responsibilities and Requirements

PURPOSE: This rule provides the licensee's responsibilities and requirements for the placement of publication vending machines on interstate highway rest areas for sale or distribution of publications to the public.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) Commission Licensee. The commission may grant to a licensee an exclusive license to authorize publishers to lease machine space. This licensee shall regulate and administer all machines at all Missouri rest and recreation areas in accordance with 1) a contract between the commission and the licensee and 2) 7 CSR 10-16.020 through 7 CSR 10-16.050, either by operating the machines itself or

by executing sub-licensing agreements with the publisher or the publisher's agent which such sub-licensing agreement shall become effective upon execution by both parties. However, that license between the commission and the licensee shall be terminated effective with the date that the Bureau of the Blind assumes regulation and jurisdiction of machines in rest areas, and upon the effective date of that occurrence all sub-licensing agreements between the licensee and a publisher or its agent shall be terminated.

(2) Machine Space Rental. The licensee may lease machine spaces within the bins to such publishers or such publishers' agents and such spaces shall be available only on a first-come, first-served basis. The licensee may maintain a waiting list for interested publishers for whom space in the existing bin is not available.

(3) License Fees Authorized. The licensee shall collect a license fee of twelve dollars (\$12) per year from each publisher or its agent for each machine space in a rest area to cover the administrative and maintenance costs the licensee, or its affiliated organization or agent, shall sustain due to the operation of the machine and the debris the machine will generate. Payment of this license fee to the licensee is a legal condition precedent before a publication may be vended in a rest area machine.

(4) Publication Display Requirements. The visible contents of the publication as displayed in the machine shall not be offensive to members of the general public. The licensee, through its authorized representatives, retains final approval of the manner in which a publication is ultimately displayed for sale or distribution in a machine in a rest area.

(5) Licensee Liability. The licensee shall be liable for damages sustained to the commission's bins, machines, and the contents thereof that is caused by the licensee or its agent(s).

(6) The commission incorporates by reference in this rule the provisions of Title 23, Code of Federal Regulations (CFR) Part 752 as published by the United States Government Printing Office, 732 North Capitol Street NW, Washington DC 20401 on April 1, 2009. This rule does not incorporate any subsequent amendments or additions to 23 CFR Part 752.

AUTHORITY: section 29 of Art. IV, Mo. Const., sections 226.020, 226.150, 226.750–226.790, and 227.030, RSMo 2000, Title 23, United States Code section III (b), and Title 23, Code of Federal Regulations part 752. Original rule filed July 2, 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 cost private entities twenty-eight thousand three hundred sixty-eight dollars (\$28,368) in the aggregate.

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

**FISCAL NOTE
PRIVATE ENTITY COST**

I. RULE NUMBER

Title: 7 - Department of Transportation

Division: 10 - Missouri Highways and Transportation Commission

Chapter: 16 - Rest Areas

Rule Number and Name:	7 CSR 10-16.045 – Licensee Responsibilities and Requirements
Type of Rulemaking:	Proposed Rulemaking

II. SUMMARY OF FISCAL IMPACT

Estimate of the Number of Entities by class which would likely be affected by the adoption of the rule:	Classification by types of business entities which would be affected:	Estimated Cost in the Aggregate.
10	Newspaper & travel information companies \$12 annual licensing fee	\$1,968
1	Commission licensee to administer the newspaper vending machine program	\$26,400

III. WORKSHEET

The licensee may impose a fee on each publisher or its agent for each vending machine space rented in a rest area, but no more than \$12/year to cover the administrative and maintenance costs the licensee, or its affiliated organization or agent, shall sustain due to the administration of the vending machine licensing system, and the debris the machine will generate.

$41 \text{ bins} \times 4 \text{ machines} \times \$12/\text{year} = \$1,968$

Sheltered Workshop expects to incur costs to administer the program (create and maintain a database and clean up newspaper debris at 41 rest areas at \$2,200/month x 12 months = \$26,400/year.

$\$1,968 + \$26,400 = \$28,368$

Total Estimated Costs for FY 11 \$28,368

IV. ASSUMPTIONS

1. A \$12/year rate will be charged by the licensee, the total amount of revenue generated is \$1,968.
2. Sheltered Workshop expects to incur \$26,400/year to administer the program.
3. Any other costs not identified in this fiscal note are unforeseeable.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 16—Rest Areas**

PROPOSED RULE

7 CSR 10-16.050 Publisher Responsibilities and Requirements

PURPOSE: This rule provides the publisher's responsibilities and requirements for the sale of publications in publication vending machines in interstate highway rest areas.

(1) Newsrack Prohibition. No bin or machine shall be installed at a rest area except the bins and machines owned and provided by the commission. If any newsrack is installed at a rest area by a publisher or its agent, such newsrack shall be removed from the rest area and stored by the commission, and all removal and storage costs incurred by the commission shall be borne by the licensee, or the publisher, or its agent.

(2) Coin Mechanism. The coin mechanism for a machine is the responsibility of the licensee, or the publisher or agent who rents the machine space from the licensee.

(3) Duration of Rental Agreement. Each agreement between a licensee and a publisher or the publisher's agent authorizing the rental of one (1) or more machine spaces may be for no less than (1) year in duration. Occupants of any rental space will be evicted from the rental space thirty (30) days after the expiration of the rental agreement unless renewed by agreement prior to the end of the thirty (30) days. Any renewal leases of machine space shall have all license fees paid in full to the licensee by the publisher or its agent from the date of the start of the renewal period. Failure to pay all license fees shall result in the cancellation of the license and assignment of the machine space to the next party on the licensee's waiting list pursuant to a validly executed agreement.

(4) Termination of Sub-licensing Agreement. Both the licensee and the publisher or its agent shall have the right to terminate their sub-licensing agreement, provided no less than thirty (30)-days written notice is given. Upon termination of the sub-licensing agreement, the licensee shall refund to the publisher the portion of the license fee covering the entire term of the agreement paid in advance by the publisher that is equal to one-twelfth (1/12) of the annual license fee for any remaining unused months of the term of the agreement.

(5) Publisher Responsible for Damages to Bins and Machines. The total cost to purchase, install, and improve a bin or machine shall be borne by the commission. The licensee, or the publisher or its agent, shall bear the costs of installing, maintaining, and removing the coin mechanism. The publisher or its agent shall provide the licensee with the key or other device that allows for the removal of the coin mechanism. The publisher shall be responsible for any damage caused by it or its agents to the bin(s) or machine(s) and shall reimburse the commission any costs incurred by the commission in repairing the damage, including the cost of replacement of the bin(s) or machine(s), as determined in the commission's sole discretion.

(6) Restocking of Publications. Each licensee, or a publisher or its agent, shall restock the machines at all rest areas with the current edition of a publication at least as often as the publication is published, weekend or special editions excluded. The licensee, or a publisher or its agent, shall also remove any outdated issue of such publication from within each machine and remove all debris which is not properly placed in rest area trash containers from the rest area grounds.

(7) No Advertisements on Machines. Commission bins and machines

shall have no advertisement displayed.

(8) Notice Requirements. On a prominent place on each machine, the licensee, or a publisher or its agent, shall affix and display the following notice, "For Information Regarding Any Problems With Your Use of This Machine Call ____-____-____, or write _____." The notice shall provide the appropriate telephone number (with area code) and the mailing address of a contact person or agent for the licensee, or a publisher or its agent, for refund requests or other vending problems. Such notice shall be created by the licensee, and if applicable to a publisher, shall be based on information supplied by the publisher or its agent.

(9) Publisher Liability. Each publisher and its agents shall be liable for damage sustained to the commission's bins, machines, and the contents thereof that is caused by the publisher or its agents.

AUTHORITY: section 29 of Art. IV, Mo. Const., sections 226.020, 226.150, 226.750-226.790, and 227.030, RSMo 2000, Title 23, United States Code section III (b), and Title 23, Code of Federal Regulations part 752. Original rule filed July 2, 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 Missouri Department of Transportation, Pamela J. Harlan, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 18—PUBLIC DEFENDER COMMISSION
Division 10—Office of State Public Defender
Chapter 2—Definition of Eligible Cases**

PROPOSED AMENDMENT

18 CSR 10-2.010 Definition of Eligible Cases. The commission is amending sections (2) and (3) by removing reference to private counsel. The commission is amending section (2) to eliminate from eligibility defendants who have or who have attempted to waive counsel and where the court appoints or attempts to appoint the public defender as standby or hybrid counsel. The commission is amending section (3) by deleting subsection (B).

PURPOSE: The Missouri Supreme Court, in STATE ex rel. MISSOURI PUBLIC DEFENDER COMMISSION, J. MARTY ROBINSON, AND WAYNE WILLIAMS, Relators, v. THE HONORABLE KENNETH W. PRATTE, Respondent, 298 S.W.3d 870 (Mo banc 2009), struck down certain provisions of the rule that permitted the public defender to deny representation to defendants who at anytime during the pendency of their cases retained private counsel. The court invalidated sections 18 CSR 10-2.010(2) and (3). The commission is amending sections (2) and (3) by removing reference to private counsel. The commission is amending section (2) to eliminate from eligibility defendants who waive counsel and where the court appoints or attempts to appoint the public defender as standby or hybrid counsel. The commission is amending section (3) by deleting subsections (A) and (B) and by submitting a new definitions section (3)(A)1.

(2) *[The State Public Defender System shall not represent indigent defendants who have at any time during the pendency of the case retained private counsel. The public defender shall not be available to assume representation where private counsel is allowed by court order to withdraw from representation regardless of the cause for such order of withdrawal unless approved by the director. In certain circumstances, as determined by the director, the State Public Defender System shall provide state assistance in paying for reasonable expert witnesses or investigation expenses for indigent defendants represented by private counsel. This regulation, in whole or part, does not restrict the Missouri State Public Defender System from exercising its authority to contract cases to private counsel as provided by law.]*
Employees of the State Public Defender System shall not serve as hybrid, standby, or advisory counsel in any matter.

(3) *[Definition of Case.*

(A) For purposes of determining eligibility under section (2), the term "case" shall be defined as a criminal proceeding, matter, action, or appeal in which private counsel has been retained, and shall include the time from the initial retention of private counsel through sentencing, final judgment, or completion of the direct appeal.

(B) Where the state enters a nolle prosequi for any reason, and later refiles the same charge(s), or any charge(s) based on the same set of operative facts as the original charge(s), the refiled proceeding, matter or action shall constitute the same "case" as the prior proceeding, and the public defender shall not provide representation in the refiled proceeding, matter or action.]
Definition of Standby, Hybrid, and Advisory Counsel.

(A) For purposes of determining eligibility under this section—

1. The terms "standby," "hybrid," and "advisory counsel" are defined as attorneys who are appointed by the court to consult with or assist a defendant, appellant, or movant in the preparation or presentation of evidence or legal argument in any court or tribunal where that defendant, appellant, or movant has waived the right to counsel or asserted his right to full or partial self-representation.

AUTHORITY: sections 600.017(10) and 600.043, RSMo 2000 and sections 600.042.1(8) and 600.042.3, RSMo Supp. [2007] 2009. Original rule filed Jan. 9, 1985, effective April 11, 1985. Amended: Filed Feb. 14, 2002, effective Aug. 30, 2002. Amended: Filed Dec. 27, 2007, effective July 30, 2008. Amended: Filed July 8, 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: Daniel Gralike, Office of the State Public Defender, 1000 West Nifong, Woodrail State Office Building, Bldg. #7, Columbia, Missouri 65201. 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.*