

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 or 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 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-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 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 220—State Board of Pharmacy Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the Missouri Board of Pharmacy under sections 338.010, 338.240 and 338.280, RSMo 1994 and 338.140, RSMo Supp. 1998, the board amends a rule as follows:

4 CSR 220-2.010 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 2, 1999 (24 MoReg 1841). Based on comments received, the board made minor wording changes to section (8) of this proposed amendment. The affected portion of the text is reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: Two comments were received.

COMMENT: One comment suggested that the term "for injection" be added in Section (8).

RESPONSE AND EXPLANATION OF CHANGE: The Board concurred and suggested changes were made.

COMMENT: One comment requested that immunization drugs be added to the list in subsection (8)(A), based on statistics in Missouri relating to immunizations and also in order to make immunizations more easily available for the elderly.

RESPONSE AND EXPLANATION OF CHANGE: The Board concurred and after language was agreed to regarding storage issues, the suggested changes were made.

4 CSR 220-2.010 Pharmacy Standards of Operation

(8) A home health care or hospice nurse who carries, as a part of a physician's protocol, an emergency kit containing heparin for injection, normal saline for injection, diphenhydramine for injection, epinephrine for injection, and immunizations for influenza, pneumonia and TB testing, does not need to obtain licensure as a pharmacist or a pharmacy.

(A) Drugs stored in a kit and carried by the nurse during the course of his/her normal work shift, shall be stored or transported at all times in accordance with manufacturer standards. Refrigerator units used for storing drugs must not be used for storing non-drug related items.

(B) The amount of drugs for use in a kit shall be limited to initial dosage amounts and does not include the stockpiling of a supply of drugs at the home health or hospice facility.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 220—State Board of Pharmacy Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the Missouri Board of Pharmacy under section 338.140, RSMo Supp. 1998 and Omnibus State Reorganization Act of 1974 (Appendix B), the board amends a rule as follows:

4 CSR 220-2.020 Pharmacy Permits is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 2, 1999 (24 MoReg 1841-1842). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 220—State Board of Pharmacy Chapter 2—General Rules

ORDER OF RULEMAKING

By the authority vested in the Missouri Board of Pharmacy under sections 338.140, RSMo Supp. 1998 and 338.280, RSMo 1994, the board amends a rule as follows:

4 CSR 220-2.160 Definition of Disciplinary Actions is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 2, 1999 (24 MoReg 1842). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 240—Public Service Commission
Chapter 2—Practice and Procedure**

ORDER OF RULEMAKING

By the authority vested in the Missouri Public Service Commission under section 386.410, RSMo Supp. 1998, the commission amends a rule as follows:

4 CSR 240-2.020 Meetings and Hearings is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 1999 (24 MoReg 2142). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No public hearing was held. Written comments were submitted.

COMMENT: A comment was received from the Missouri Press Association regarding the portion of subsection (3) that allows the commission to change the principal office of the commission with reasonable prior notice to the public. The comment argued that this amendment would allow the commission to move its principal office away from Jefferson City and thus would be contrary to Section 386.120.1, RSMo 1994, which requires that “[t]he principal office of the commission shall be at the state capital at the city of Jefferson City.” The comment suggests that if the commission’s office were moved away from Jefferson City, it would be harder for reporters to obtain information from the commission.

RESPONSE: The commission will not make any changes to the proposed amendment. The statute cited by the Press Association requires that the offices of the commission remain in Jefferson City and the commission has no intention of attempting to move its offices to any other city. However, the commission does expect to move to a new location within Jefferson City in the near future. The language of this rule will allow the Commission to make that move without again amending this rule.

COMMENT: A comment was received from Southwestern Bell Telephone Company regarding subsection (4) of the existing rule, which defines a quorum of commissioners for conducting business. That subsection is being repealed by this amendment. The comment supports the commission’s decision to eliminate the definition of quorum because the same definition already exists in statute and the inclusion of the definition in the rule is, therefore, redundant.

RESPONSE: The commission thanks Southwestern Bell Telephone Company for its comments. No other comments were received.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 240—Public Service Commission
Chapter 2—Practice and Procedure**

ORDER OF RULEMAKING

By the authority vested in the Missouri Public Service Commission under section 386.410, RSMo Supp. 1998, the commission amends a rule as follows:

4 CSR 240-2.030 Records of the Commission is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on September 1, 1999 (24 MoReg 2142–2143). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No public hearing was held. Written comments were submitted.

COMMENT: A comment was received from the Missouri Press Association regarding the portion of subsection (1) that allows the commission to establish the specific hours that case records will be available for public inspection at the office of the secretary of the commission. The comment pointed out that Section 386.120(5), RSMo 1994 requires that the offices of the commission be open during business hours. The comment suggests that this requirement also mandates that the commission’s file room be open during all business hours. The Missouri Press Association suggests that when the commission’s offices are open, the public has a right to expect access to the commission’s records.

RESPONSE: The commission will not make any changes to the proposed amendment. The statute cited by the Press Association requires that the offices of the commission be open during business hours every day except weekends and holidays. The statute does not require that the commission’s files remain available at all times that the office is open. Instead, the commission believes that it has the authority to place reasonable restrictions on the use of the file room in order to promote the efficient use of commission resources. No other comments were received.

**Title 5—DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 60—Vocational and Adult Education
Chapter 100—Adult Education**

ORDER OF RULEMAKING

By the authority vested in the State Board of Education under section 178.430, RSMo 1994, the board hereby amends a rule as follows:

5 CSR 60-100.010 is amended.

A notice of proposed rulemaking was not published because state program plans required under federal education acts or regulations are specifically exempt under section 536.021, RSMo. Public hearings were held on March 22, 1999 in Independence; March 23, 1999 in Jefferson City; March 24, 1999 in Sikeston; March 25, 1999 in St. Peters; and March 26, 1999 in Springfield. Comments received were considered prior to submitting the application to the United States Department of Education.

This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*. This rule describes Missouri’s adult education programs, services, and activities, in accordance with the Adult Education and Family Literacy Act of 1998 (Title II of the Workforce Investment Act of 1998, Public Law 105-659).

5 CSR 60-100.010 Missouri State Plan for Adult Education. The board is amending the Purpose, text of the rule and incorporation material by reference.

PURPOSE: This amendment, of incorporated by reference material, is needed to bring the program plan in compliance with federal statutes.

PURPOSE: This rule incorporates the current state plan for adult education, which serves as an agreement between state and federal governments regarding the conduct and administration of the program in Missouri.

PUBLISHER'S NOTE: The publication of the full text of the material that the adopting agency has incorporated by reference in this rule would be unduly cumbersome or expensive. Therefore, the full text of the material will be made available to any interested person at both the Office of the Secretary of State and the office of the adopting agency, pursuant to section 536.031.4, RSMo. Such material will be provided at the cost established by state law.

The Missouri State Board of Education is responsible for administering and supervising the adult education program at the state level to provide adult education and literacy services, including workplace literacy services, family literacy, and English literacy programs. Funds will be distributed to eligible providers such as local education agencies, public or private nonprofit agencies, community-based organizations, correctional education agencies, postsecondary educational institutions and other institutions that have the ability to provide comprehensive literacy services to adults and families for the purpose of providing instruction in adult education, which is designed to teach persons out of school who are sixteen (16) years of age or older to obtain sufficient mastery of basic educational skills to enable them to function effectively in society. The program priorities and objectives are—to assist adults to become literate and obtain the knowledge and skills necessary for employment and self-sufficiency, assist adults who are parents to obtain the educational skills necessary to become full partners in the educational development of their children, and assist adults in the completion of a secondary school education and/or obtain a high school equivalence certificate. These objectives are achieved by providing funds to eligible providers and by providing professional development for adult education staff members through local, state, regional and national sponsored training programs. Project applications are reviewed to assure their compliance with federal and state guidelines. Eligible providers are responsible for meeting federal and state performance measures incorporated in the five (5)-year program plan for adult education, which serves as an agreement between state and federal governments regarding the conduct and administration of the program in Missouri for Fiscal Years 2000-2004, as amended. The Missouri Adult Education State Plan 2000-2004 is hereby incorporated by reference and made a part of this rule.

AUTHORITY: section 178.430, RSMo 1994. Original rule filed Oct. 15, 1975, effective Oct. 26, 1975. For interviewing history, please consult the *Code of State Regulations*. Amended: Filed Oct. 29, 1999.

PUBLIC ENTITY COST: This order of rulemaking will cost state agencies or political subdivisions in the aggregate of \$7,559,848 for Fiscal Year 2000 based on the monies expected to be available from the U.S. Department of Education. The estimate will vary annually during the five-year plan based on increases or decreases to appropriated amounts.

**FISCAL NOTE
PUBLIC ENTITY COST**

I. RULE NUMBER

Title: 5 Department of Elementary and Secondary Education

Division: 60 Vocational and Adult Education

Chapter: 100 Adult Education

Type of Rulemaking: Order of Rulemaking

Rule Number and Name: 5 CSR 60-100.010 Missouri State Plan for Adult Education

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated cost of Compliance in the Aggregate	
Department of Elementary and Secondary Education (Reimburse Education Agencies)	Title II Adult Education and Literacy Act of the Workforce Investment Act of 1998	\$ 7,559,848
	Total	\$ 7, 559,848

III. WORKSHEET

The cost estimate presented above is the combined total of the monies expected to be available from the U.S. Department of Education and the General Assembly appropriations to the Department of Elementary and Secondary Education to be disbursed for Fiscal Year 2000. The estimate will vary annually based on increases or decreases to appropriated amounts.

IV. ASSUMPTIONS

Reimbursements to grantees are based on the actual costs of staffing, training and professional development activities, equipment, materials and supplies, etc. Grantees must agree to expend funds to meet the intended purposes of the granting program and in accordance with their approved application.

**Title 5—DEPARTMENT OF ELEMENTARY AND
SECONDARY EDUCATION
Division 60—Vocational and Adult Education
Chapter 120—Vocational Education**

ORDER OF RULEMAKING

By the authority vested in the State Board of Education under section 178.430, RSMo 1994, the board hereby amends a rule as follows:

5 CSR 60-120.010 is amended.

A notice of proposed rulemaking was not published because state program plans required under federal education acts or regulations are specifically exempt under section 536.021, RSMo. Public hearings were held on March 29, 1999, in Macon and Columbia; March 30, 1999 in Kansas City and Springfield; and March 31, 1999 in Cape Girardeau and St. Peters. Comments received were considered prior to submitting the application to the United States Department of Education.

This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*. This rule describes Missouri's federal vocational education programs, services, and activities, in accordance with the Carl D. Perkins Vocational and Technical Education Act of 1998, Public Law 105-332.

5 CSR 60-120.010 State Plan for Vocational Education

PURPOSE: This amendment, of incorporated by reference material, is needed to bring the program plan in compliance with federal statutes.

PUBLISHER'S NOTE: The publication of the full text of the material that the adopting agency has incorporated by reference in this rule would be unduly cumbersome or expensive. Therefore, the full text of the material will be made available to any interested person at both the Office of the Secretary of State and the office of the adopting agency, pursuant to section 536.031.4, RSMo. Such material will be provided at the cost established by state law.

(1) The State Department of Elementary and Secondary Education, in consultation with the teachers, eligible recipients, parents, students, interested community members, representatives of special populations, representatives of business and industry, representatives of labor organizations, and the governor, prepares the state plan. The plan identifies specific groups of individuals to be served and indicates the types of programs, services and activities which may be provided. It enumerates the goals and objectives which serves as a basis for the statewide effort to provide for the vocational education needs of the people of Missouri.

(2) The Missouri state plan for vocational education contains the administrative provisions for the delivery of the state's federally assisted vocational education program. The Missouri State Plan for Vocational Education State Fiscal Year 2000-2004 is hereby incorporated by reference and made a part of this rule.

(3) Rules pertaining to the State Board of Education which is responsible for the administration of the state plan, statements of assurance, methods of joint planning and coordination, procedures on local applications and procedures to establish and meet the state level of performance for the four (4) core indicators of performance are contained in the plan.

(4) Operational procedures concerning the allocation of funds for vocational programs are contained in the plan. These procedures deal with funding allocations and procedures for secondary, post-secondary and adult vocational education programs. Additional

procedures pertaining to tech prep education and staff development activities are also included.

AUTHORITY: section 178.430, RSMo 1994. Original rule filed Aug. 22, 1974, effective Sept. 2, 1974. For intervening history, please consult the Code of State Regulations. Amended: Filed Oct. 29, 1999.

PUBLIC ENTITY COST: This order of rulemaking will cost state agencies or political subdivisions in the aggregate of \$23,163,466 for Fiscal Year 2000 based on the monies expected to be available from the U.S. Department of Education. The estimate will vary annually during the five-year plan based on increases or decreases to appropriated amounts.

**FISCAL NOTE
PUBLIC ENTITY COST**

I. RULE NUMBER

Title: 5 Department of Elementary and Secondary Education

Division: 60 Vocational and Adult Education

Chapter: 120 Vocational Education

Type of Rulemaking: Order of Rulemaking

Rule Number and Name: 5 CSR 60-120.010 State Plan for Vocational Education

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated cost of Compliance in the Aggregate
Department of Elementary and Secondary Education (Reimburse Education Agencies)	Title I (Vocational Education Assistance to States) \$20,939,820
	Title II (Tech Prep Education) \$ 2,223,646
	Total \$23,163,466

III. WORKSHEET

The cost estimate presented above is the combined total of the monies expected to be available from the U.S. Department of Education and the General Assembly appropriations to the Department of Elementary and Secondary Education to be disbursed for Fiscal Year 2000. The estimate will vary annually based on increases or decreases to appropriated amounts.

IV. ASSUMPTIONS

Reimbursements to grantees are based on the actual costs of staffing, training and professional development activities, equipment, materials and supplies, etc. Grantees must agree to expend funds to meet the intended purposes of the granting program and in accordance with their approved application.

**Title 6—DEPARTMENT OF HIGHER EDUCATION
Division 10—Commissioner of Higher Education
Chapter 2—Higher Education Student Financial
Assistance Program**

ORDER OF RULEMAKING

By the authority vested in the Commissioner of Higher Education under section 173.260, RSMo Supp. 1998, the commissioner amends a rule as follows:

6 CSR 10-2.100 Public Service Officer or Employee's Child Survivor Grant Program is **amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 1, 1999 (24 MoReg 1650-1651). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 1—Organization and Administration**

ORDER OF RULEMAKING

By the authority vested in the Missouri Gaming Commission under sections 313.004 and 313.805, RSMo 1994, the commission amends a rule as follows:

11 CSR 45-1.090 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 1, 1999 (24 MoReg 1652). The subsection with changes is reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: One comment was received concerning this rule. Larry Kinser, General Manager of the Argosy Casino commented that with mandated 2 hour cruises, their current 21 hour gaming day would lose an hour. He suggested that the rule allow the last cruise to be three hours.

RESPONSE AND EXPLANATION OF CHANGE: The Commission finds the comment to be reasonable and amends the rule to allow last cruise of the gaming day to be three hours.

11 CSR 45-1.090 Definitions

(5) Definitions beginning with E—

(H) Excursion—A two (2)-hour period approved by the commission that an excursion gaming boat shall operate and, if required, cruise, provided; however, that when circumstances beyond the control of the Class A licensee arise that create an inability to track the five hundred dollar (\$500)-loss limit for any excursion, as provided in 11 CSR 45-6.040, the excursion shall automatically terminate and the following excursion must consist of the remaining time scheduled for the terminated excursion plus the entire time of the immediately following scheduled excursion. This period of time shall include reasonable time for boarding and exiting the boat, which shall be established by the commission based on the licensee's ability to enforce the five hundred dollar (\$500)-loss limit. The commission may allow patrons to board and exit the boat at will if the licensee can demonstrate that the five hundred dollar (\$500)-loss limit can be enforced and that the integrity of the admission fee collection process can be main-

tained. Gaming may be permitted at any time during the excursion. The commission shall approve all schedules of excursion prior to the schedule becoming effective. The provisions of this definition to the contrary notwithstanding, the commission may approve an excursion schedule that includes a single three (3)-hour excursion if it is the last excursion of the gaming day.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 9—Internal Control System**

ORDER OF RULEMAKING

By the authority vested in the Missouri Gaming Commission under section(s) 313.004, 313.800 and 313.805, RSMo 1994, the commission amends a rule as follows:

11 CSR 45-9.030 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 1, 1999 (24 MoReg 1652-1668). Changes have been made in Appendix A. which is incorporated by reference. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Gaming Commission held two public meetings on this rule. A meeting was held in Maryland Heights on April 4, 1999, and a meeting was held in Kansas City on May 5, 1999. The Commission received several comments on this proposed amendment from individuals attending the two public meetings. In addition, the Commission received comments from individuals during the open comment period. The Commission also held a hearing in Jefferson City on August 3, 1999, and one comment was received.

**COMMENTS RECEIVED AT THE MARYLAND HEIGHTS
MEETING (4/27/99)**

Proponents:

Vern Jennings (General Manager at Harrah's and president of the Missouri Riverboat Gaming Association) stated that he supported open boarding, as he felt the current boarding restriction is inconvenient for gaming patrons.

Bill Sinclair (patron) stated he supported open boarding, as he did not like to wait in lines. He also stated he felt current boarding requirements were hard on the elderly.

Edward Corbet (patron) stated he supported open boarding. He further stated that he lived in Sikeston and occasionally patronized the Aztar Casino. If he happened to get there after boarding had closed he would sometimes continue on to Tunica, Mississippi, instead of waiting for the next session.

Kathy Franke (patron) stated that she supported open boarding. She stated the waiting in lines made people feel like cattle.

Devonna Young (employee of the President Casino) stated she supported open boarding. She stated that the boarding restriction makes it hard to give good service to patrons, that they have to hurry patrons through ticketing, and that it makes identifying disassociated persons and underage persons harder.

Darrell Lyons (Aztar employee) stated he supported open boarding. He further stated that he believes removing the boarding restriction will improve crowd control and communication. He stated that the current system creates safety issues, such as people running down the ramp to get on the boat.

Shannon Bowman (Harrah's employee) stated that open boarding would help cage people, decrease the waiting time for patrons accessing the cage and the rush that cage employees experience. She said that removing the boarding restriction will give employees more time to check ID's to identify underage patrons and disassociated persons.

Brian Bondy (Maryland Heights Chamber of Commerce) stated that current boarding times has a negative impact on tourism.

Beverly Blackman stated that she believes open boarding will make for a safer environment. She stated current rules were confusing.

Lana Blow stated that she supported open boarding.

Lawrence Spearman stated that open boarding would make it safer and easier for the handicapped and elderly to access the gaming facilities.

Opponents:

Harold Hendrick (Christian Civic Foundation) stated that he was opposed to open boarding and to further liberalizing the gaming rules and regulations. He further commented that gambling affects suicide rates. In addition, he expressed concern about gaming companies' contributions to political campaigns. Mark Andrews (Casino Watch) stated that he and his organization are opposed to open boarding. He further stated that the Commission should not change the rules, and should leave that to the legislature. He stated that open boarding would further devastate families. He also presented petitions containing 39 signatures of individuals opposed to open boarding.

Kerry Messer (Missouri Family Network) stated that he was opposed to open boarding. He stated that the Commission is a regulatory agency and should not be acting as a public policy agency. He further stated that voters wanted cruising boats, and that he was worried about the erosion of the public trust.

Bill Mead stated that he was concerned because the people weren't getting technical information from the gaming companies.

COMMENTS RECEIVED AT THE KANSAS CITY MEETING (5/5/99)

Proponents:

Larry Kinser (Argosy General Manager, Missouri Riverboat Gaming Assoc.) stated that open boarding will improve patrons' entrance experiences, help employees enforce regulatory obligations like the \$500 limit, and will improve state and local revenues.

Bob Arnold (patron) stated that he supported open boarding. He expressed frustration with the lines created by the boarding restriction. He also said that he had become separated from others in his party before, and that current rules prevented him from going back into the casino.

Charlene George (patron) said she supported open boarding. She said the current regulations are inconvenient and create safety problems.

Frank Sorentino (Harrah's employee) stated that he supported open boarding. He said that the boarding restriction makes it hard to give good customer service.

Toni Smith (Hilton employee) stated that she supports open boarding. As a security officer, the environment under open boarding would be safer and it would make it easier to enforce the regulations.

Deb Ball (Argosy employee) stated that she supports open boarding. She stated that waiting in lines creates stress, rage and artificial chaos for the patrons, thus making it hard on employees.

Michael St. Pierre (Harrah's North K.C. General Manager) said he supports open boarding and that the current system is not convenient to guests.

Ron Haile stated that the current system is aggravating.

Marly Yance stated that boarding times are unnecessary and inconvenient. She stated she is an adult and does not need to be treated like a child. She said that she did not like anti-gaming groups trying to dictate what she can and cannot do. She is tired of them trying to force their beliefs on people like her.

Ann Daniels (Riverside City Administrator) stated that she supported open boarding. She said that it would level the playing field for one-boat operators like the Argosy.

Alice Ledbetter stated that she supported open boarding and the lifting of the "cattle call." She further stated she was old enough to know when to gamble.

Julie Franklin (Harrah's employee) stated that she supported open boarding. She stated that she thought it was a safety issue, but would also help employee morale.

Shirley Manley stated that she supported open boarding. She said that people run to the machines, and sometimes even fight over machines. She further stated she did not like lines.

Opponents:

John Stein (United Methodist Church) said he was opposed to open boarding. He stated that the Commission should be the watchdog of the people, not the lapdog of the industry. He disputed the videos exhibited by the industry, and disputed the alleged rush of the patrons.

Steve Ash stated that he was opposed to open boarding. He stated that the industry was getting everything that they wanted. He stated that open boarding would make it easier to violate the loss limit, which already had lead to the death of his father.

Peggy Eshelman (United Methodist Church) stated she was opposed to open boarding as it will expand the accessibility of gambling, leading to further abuse.

Neutral Testimony

Keith Spare (Missouri Council on Problem Gambling) stated that there is not enough money to treat problem gamblers. More funding is necessary to effectively combat problem gambling in Kansas as well as Missouri.

COMMENTS RECEIVED AT THE RULES HEARING (8/3/99)

Bill Brasher (Missouri Riverboat Gaming Association) stated that his organization supports the rules allowing open boarding.

COMMENTS RECEIVED DURING THE COMMENT PERIOD

Brent Evans (State Representative for Dist. 92) stated that he was concerned about the protection of tax revenue, and in particular, accounting for stayover patrons.

William Brasher (Missouri Riverboat Gaming Association) stated his organization supported open boarding and hoped for a pilot project to begin as soon as possible.

Ed Looney (The Council on Compulsive Gambling of New Jersey) stated that relaxing the embarking regulation would affect compulsive gamblers, as it removes a period where such a person would have to stop and think and possibly stop the activity.

Nancy Harry sent in an e-mail expressing her opposition to open boarding.

Vicki Rich sent in a fax expressing her opposition to open boarding.

Bank of America, the Missouri Bankers Association, the Missouri Riverboat Gaming Association, and Global Cash Access sent in correspondence in opposition to the proposed portion of the rule that moved ATMs outside the gaming area. Comments about the rule indicated it was anti-consumer, presented safety issues, would decrease state/local/riverboat revenues, and would inconvenience patrons.

In addition, the Commission received an estimated 3,000 postcards from patrons opposing the language in the rule that requires ATM machines to be located outside the gaming area.

RESPONSE AND EXPLANATION OF CHANGE: The Commission has reviewed all of the comments received. The Commission feels that it has the authority to promulgate rules concerning open boarding. The initial boarding policy was not set by the legislature or mandated by the *Missouri Constitution*. The boarding restriction was not mentioned in the original referendum, which provided for continuously docked boats and did not mandate cruising. The original boarding restriction was created by the Commission to prevent continuously docked riverboats from having a competitive advantage over those that cruised. A 1998 report of the Joint Committee on Gaming and Wagering found that the boarding restriction was a regulatory matter and not required by statute. As it has been determined by the Commission, after consultation with the U.S. Coast Guard and the Army Corps of Engineers, that it is unsafe for these large passenger vessels to cruise the Missouri and Mississippi Rivers, it is appropriate for the Commission to find that the boarding restriction is no longer necessary, and promulgate rules accordingly.

In addition, the Commission feels that the boarding restriction creates a number of regulatory problems. The Commission agrees with the comments concerning the bottlenecks of people created by the current system, thus making it difficult for casino employees to meet their regulatory obligations to identify minors attempting to enter the casino, intoxicated patrons and problem gamblers who have voluntarily excluded themselves from the casino. The Commission agrees that the current boarding restrictions lead to the creation of large groups of people at the turnstiles and entrance, causing a potential safety hazard for the elderly and handicapped patrons.

The Commission is concerned about enforcing the \$500 limit. The Commission has examined the boarding process and this examination has shown that boarding restrictions are not effective in controlling the loss limit. Furthermore, because of the creation of artificial bottlenecks of patrons caused by the restriction, the enforcement of the \$500 limit is inhibited. The Commission feels that the best way to enforce the limit is to control the implements for buy-in. In addition, the Commission believes that with open boarding, employees of the boats will have more time to devote to the regulations prohibiting underage patrons and disassociated persons.

The Commission is also concerned about those patrons who exhibit compulsive gaming behavior. The Commission has focused its battle against problem gambling on education, prevention and treatment. Missouri's Disassociated Persons' Program is unique in the country. The Commission believes that open boarding will actually give employees of the gaming operations more time to identify such persons.

The Commission has reviewed the comments concerning the portion of the rule requiring the removal of ATM's from the gaming area. All of the comments concerning that portion of the rule were negative. The Commission has reviewed its initial proposal and has decided to delete section 20 of Section J of the Minimum Internal Control Standards from the proposed amendment to 11 CSR 45-9.030. The Commission feels that this issue should be separate from open boarding and will review it at another time.

11 CSR 45-9.030 Minimum Internal Control Standards

PUBLISHER'S NOTE: Section 20 of Section J of the Minimum Internal Control Standards, which is incorporated by reference, has been deleted.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 3—State Sales Tax**

ORDER OF RULEMAKING

By the authority vested in the director of revenue under section 144.270, RSMo 1994, the director rescinds a rule as follows:

12 CSR 10-3.003 Rulings is rescinded.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on August 16, 1999 (24 MoReg 2051). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 3—State Sales Tax**

ORDER OF RULEMAKING

By the authority vested in the director of revenue under section 144.270, RSMo 1994, the director rescinds a rule as follows:

12 CSR 10-3.056 Retreading Tires is rescinded.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on August 16, 1999 (24 MoReg 2051). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 3—State Sales Tax**

ORDER OF RULEMAKING

By the authority vested in the director of revenue under section 144.270, RSMo 1994, the director rescinds a rule as follows:

12 CSR 10-3.106 Vending Machines on Premises of Owner is rescinded.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on August 16, 1999 (24 MoReg 2051). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 3—State Sales Tax**

ORDER OF RULEMAKING

By the authority vested in the director of revenue under section 144.270, RSMo 1994, the director rescinds a rule as follows:

12 CSR 10-3.108 Vending Machines on Premises Other than Owner is rescinded.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on August 16, 1999 (24 MoReg 2051–2052). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 3—State Sales Tax

ORDER OF RULEMAKING

By the authority vested in the director of revenue under section 144.270, RSMo 1994, the director rescinds a rule as follows:

12 CSR 10-3.316 Replacement Machinery and Equipment is rescinded.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on August 16, 1999 (24 MoReg 2052). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 3—State Sales Tax

ORDER OF RULEMAKING

By the authority vested in the director of revenue under section 144.270, RSMo 1994, the director rescinds a rule as follows:

12 CSR 10-3.318 Ceramic Greenware Molds is rescinded.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on August 16, 1999 (24 MoReg 2052). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 3—State Sales Tax

ORDER OF RULEMAKING

By the authority vested in the director of revenue under section 144.270, RSMo 1994, the director rescinds a rule as follows:

12 CSR 10-3.320 New or Expanded Plant is rescinded.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on August 16, 1999 (24 MoReg 2052). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 3—State Sales Tax

ORDER OF RULEMAKING

By the authority vested in the director of revenue under section 144.270, RSMo 1994, the director rescinds a rule as follows:

12 CSR 10-3.324 Rock Quarries is rescinded.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on August 16, 1999 (24 MoReg 2052–2053). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 3—State Sales Tax

ORDER OF RULEMAKING

By the authority vested in the director of revenue under section 144.270, RSMo 1994, the director rescinds a rule as follows:

12 CSR 10-3.326 Direct Use is rescinded.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on August 16, 1999 (24 MoReg 2053). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 3—State Sales Tax

ORDER OF RULEMAKING

By the authority vested in the director of revenue under section 144.270, RSMo 1994, the director rescinds a rule as follows:

12 CSR 10-3.327 Exempt Machinery is rescinded.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on August 16, 1999 (24 MoReg 2053). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 3—State Sales Tax**

ORDER OF RULEMAKING

By the authority vested in the director of revenue under sections 144.030.2(5), RSMo Supp. 1999 and 144.270, RSMo 1994, the director rescinds a rule as follows:

12 CSR 10-3.848 Concrete Mixing Trucks is rescinded.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on August 16, 1999 (24 MoReg 2053). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 4—State Use Tax**

ORDER OF RULEMAKING

By the authority vested in the director of revenue under section 144.705, RSMo 1994, the director rescinds a rule as follows:

12 CSR 10-4.295 Rulings is rescinded.

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on August 16, 1999 (24 MoReg 2053-2054). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 12—DEPARTMENT OF REVENUE
Division 30—State Tax Commission
Chapter 3—Local Assessment of Property and Appeals
From Local Boards of Equalization**

ORDER OF RULEMAKING

By the authority vested in the State Tax Commission under sections 138.430 and 138.431, RSMo Supp. 1999, the commission adopts a rule as follows:

12 CSR 30-3.085 Mediation of Appeals is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 16, 1999 (24 MoReg 2054). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received by the State Tax Commission during the comment period.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 15—Division of Aging
Chapter 14—Intermediate Care and Skilled Nursing
Facility**

ORDER OF RULEMAKING

By the authority vested in the Division of Aging under section 198.079, RSMo 1994, the division amends a rule as follows:

13 CSR 15-14.012 Construction Standards for New Intermediate Care and Skilled Nursing Facilities and Additions to and Major Remodeling of Intermediate Care and Skilled Nursing Facilities is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in *Missouri Register* on August 16, 1999 (24 MoReg 2054). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 15—Division of Aging
Chapter 14—Intermediate Care and Skilled Nursing
Facility**

ORDER OF RULEMAKING

By the authority vested in the Division of Aging under section 198.079, RSMo 1994, the division amends a rule as follows:

13 CSR 15-14.022 Fire Safety Standards for New and Existing Intermediate Care and Skilled Nursing Facilities is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 16, 1999 (24 MoReg 2054-2055). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 10—Nursing Home Program**

ORDER OF RULEMAKING

By the authority vested in the director of the Division of Medical Services under sections 208.153 and 208.201, RSMo 1994, the director hereby amends a rule as follows:

13 CSR 70-10.040 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on July 1, 1999 (24 MoReg 1672-1673). The sections with changes are reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Division of Medical Services received one letter of comment on behalf of the Missouri Health Care Association regarding this proposed amendment during the thirty day comment period. Sections (1), (3), (6) and (7) were changed based on the comment.

COMMENT: The current regulation requires that a facility do a preadmission screening and resident review (PASARR) for mental illness and mental retardation. Adding “or related condition” creates a larger pool of people eligible for the Level II screen and since the phrase “related condition” is not defined it created the opportunity for inconsistent reviews and evaluations. We suggest the current language “developmentally disabled” be retained in subsections (6) and (7).

RESPONSE AND EXPLANATION OF CHANGE: The division will retain the current rule language regarding “developmentally disabled” in sections (6) and (7). In section (1), the division will incorporate by reference the controlling federal definition of mental illness and mentally retarded for purposes of “Preadmission screening for mentally ill individuals and individuals with mental retardation” at 42 CFR 483.20 (m)(2).

COMMENT: As proposed in subsection (7)(A)1, the phrase “as confirmed by and recommended by a Level II screening” has been eliminated and in its place the words “as determined by the Division of Aging” are substituted. This creates a duplication of effort between two state agencies since the Missouri Department of Mental Health performed the Level II screening and under the proposed amendment, the Missouri Division of Aging will review the evaluation of the Missouri Department of Mental Health.

RESPONSE AND EXPLANATION OF CHANGE: The division did not intend a duplication of effort and will clarify that the Division of Aging is the agency with the responsibility to communicate the Department of Mental Health decision to the nursing facility.

COMMENT: The modification of “severe/end stage” has been added to the diagnosis of chronic obstructive pulmonary disease. We suggest that the words “severe/end stage” be eliminated.

RESPONSE AND EXPLANATION OF CHANGE: The modification to consider the level of severity of the chronic obstructive pulmonary disease will be removed from the proposed regulation.

COMMENT: The comment suggested that the seven day emergency admission category be extended to 14 days because of Medicare requirements that the person be assessed on the fifth and 14th day after admission.

RESPONSE: To qualify for a Medicare stay an individual must have had a hospital stay of three or more days. Transfers from a hospital to a nursing facility do not meet the criteria for an emergency admission.

COMMENT: The third special admission category is “respite care.” The commenter suggested that the maximum period of admission be changed to at least fifty-two days to give persons the potential of having respite care at least one day a week.

RESPONSE: At this time the 42 day annual maximum will be retained in the regulation but Division of Medical Services and Division of Aging staff will be reviewing the need to extend the maximum number of days an individual may be admitted and remain in a facility in order to provide respite for the individual’s caregiver.

COMMENT: The “Private Entity Cost” stated in the proposed amendment of “not more than \$500 in the aggregate” is not accurate.

RESPONSE: The division does not agree that the changes proposed in this amendment will require additional screening or a higher cost to facilities for complying with the proposed changes. The rule is codifying current federal law and regulations and the state’s longstanding procedures.

13 CSR 70-10.040 Medicaid Eligibility and Preadmission Screening for Mentally Ill and Mentally Retarded Individuals

PUBLISHER’S NOTE: The publication of the full text of the material that the adopting agency has incorporated by reference in this rule would be unduly cumbersome or expensive. Therefore, the full text of that material will be made available to any interested person at both the Office of the Secretary of State and the office of the adopting agency, pursuant to section 536.031.4, RSMo. Such material will be provided at the cost established by state law.

(1) An individual who is admitted to a Medicaid certified bed on or after January 1, 1989, and has not been screened for mental illness and mental retardation prior to admission to a Medicaid-certified nursing facility (NF) bed or who does not have a valid special admission exemption will not be eligible for Title XIX payments to be made on his/her behalf for NF services.

(A) This rule incorporates by reference 42 Code of Federal Regulations (CFR) 483.20(m)(1) and (2).

(B) For purposes of this rule an individual is considered to have mental illness if the individual has a serious mental illness as defined in 42 CFR 483.102(b)(1) which is hereby incorporated by reference.

(C) For purposes of this rule an individual is considered to be mentally retarded if the individual is mentally retarded as defined in 42 CFR 483.102(b)(3), which is hereby incorporated by reference, or is a person with a related condition as described in 42 CFR 435.1009, which is hereby incorporated by reference.

(3) Preadmission screening and resident reviews (PASARR) will include an assessment of the individual’s:

(A) Physical condition;

(B) Mental condition; and

(C) Need for specialized services for mental illness or mental retardation.

(6) The preadmission screening and resident review process will be divided into two (2) parts: Level I and Level II.

(A) The purpose of a Level I screening is to identify a nursing facility applicant or resident who is known or suspected to be mentally ill, mentally retarded or developmentally disabled.

(7) Any individual identified to be or suspected to be mentally ill, mentally retarded or developmentally disabled by the Level I screening may require a Level II screening. A Level II screening must be performed prior to admittance into a certified bed located in an NF, unless a valid special admission category applies.

(A) The Level II screening shall be performed by the Department of Mental Health or its designee. If a review indicates that specialized services are required at a level of care that can only be furnished in an intermediate care facility for the mentally retarded (ICF/MR), within the Home and Community-Based Waiver for the Developmentally Disabled or an acute care mental hospital, that individual is inappropriate for admission or continued stay in an NF. This will be true even if the individual meets the eighteen (18)-point count under 13 CSR 15-9.030 needed for authorization of Medicaid nursing facility payments.

1. If an individual described in subsection (7)(A) has medical needs which can only be met in an NF, as confirmed by and recommended by a Level II screening and communicated to the nursing facility by the Division of Aging, that individual may be admitted or continue to remain in an NF. If the medical condition improves and nursing needs could be met in other settings, the individual shall be discharged.

2. Notice of a decision resulting from a Level II screening shall be sent by the Division of Aging to the referring entity who submitted the Level I screening forms and the proposed placement facility, if different.

(B) Any individual suspected of being mentally ill, mentally retarded or developmentally disabled by the Level II process and who has been admitted to an NF shall be subject to a Level II preadmission screening/resident review. Any individual determined through the Level II process to be mentally ill, mentally retarded or developmentally disabled and to require specialized services shall be discharged if a Level II screening determines nursing care needs can be met in other settings regardless of the point count under 13 CSR 15-9.030.

(C) Special admission categories are as follows:

1. A person who qualifies for a special admission category shall have mental health screen performed as detailed per the following:

A. Terminal illness. The person is certified by a physician to be terminally ill. As defined by the Social Security Act an individual is considered to be terminally ill if there is a medical prognosis that the individual's life expectancy is six (6) months or less; and

B. Severely ill. The person is comatose, ventilator dependent, functions at brain stem level or has a diagnosis of chronic obstructive pulmonary disease, severe Parkinson's disease, Huntington's disease, Amyotrophic Lateral Sclerosis or congestive heart failure which results in a level of physical impairment so severe the individual could not be expected to benefit from specialized services; and

2. The following special admission categories may require a mental health evaluation following admission:

A. Direct transfer from a hospital—If a physician attests that the individual is likely to need thirty (30) days or less of nursing facility care for the condition for which the individual was hospitalized, no Level II screening is necessary and the individual is exempt from the PASARR process. Nursing facility payment will be made for no more than thirty (30) days. If it becomes apparent that the individual will need longer than thirty (30) days, the facility must immediately notify the Division of Aging. If a continued stay is approved, a Level II screening may be performed;

B. Emergency provisional admission—This category is for a situation in which an individual needs placement to protect the individual from serious physical harm to self or others. The nursing facility must contact the Division of Aging Elderly Abuse/Neglect hotline to make a formal request. This special admission category requires prior authorization by the Division of Aging as an emergency. No more than seven (7) days will be allowed for an emergency admission. The Division of Family Services will manage those dates based on information from the Division of Aging. If the resident needs to stay in the facility longer than seven (7) days, the facility must immediately notify the Division of Aging to determine continued stay. A Level II screening may be performed after the initial seven (7)-day period; and

C. Respite care—An individual may be admitted and remain in a facility for thirty (30) consecutive days or less with a forty-two (42)-day maximum in twelve (12) months in order to provide respite for the individual's caregiver. A Level II screening is not required. The Division of Family Services will control the nursing facility authorized payment dates by means of a form they send to the state office. No payment will be made to the nursing facility beyond the thirty (30) days. If a situation arises in which the stay is longer than thirty (30) days, the nursing facility must contact the Division of Aging. If a continued stay is authorized, a Level II screening may be performed.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 15—Hospital Program**

ORDER OF RULEMAKING

By the authority vested in the director of the Division of Medical Services under sections 208.152, 208.153, 208.201, and 208.471, RSMo 1994, the director hereby amends a rule as follows:

13 CSR 70-15.010 Inpatient Hospital Services Reimbursement Plan; Outpatient Hospital Services Reimbursement Methodology **is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 2, 1999 (24 MoReg 1916-1917). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 19—DEPARTMENT OF HEALTH
Division 20—Division of Environmental Health and
Communicable Disease Prevention
Chapter 20—Communicable Diseases**

ORDER OF RULEMAKING

By the authority vested in the Department of Health under sections 167.183 192.020, 192.067 and 192.802, RSMo 1994 and 191.656, 192.006 and 701.328, RSMo Supp. 1998, the department adopts a rule as follows:

19 CSR 20-20.075 Confidentiality of Information Obtained for reporting of Communicable, Environmental and Occupational Diseases and Conditions **is adopted.**

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 16, 1999 (24 MoReg 2055). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 19—DEPARTMENT OF HEALTH
Division 60—Missouri Health Facilities Review
Committee
Chapter 50—Certificate of Need Program**

ORDER OF RULEMAKING

By the authority vested in the Missouri Health Facilities Review Committee under section 197.320, RSMo Supp. 1999, the committee rescinds a rule as follows:

19 CSR 60-50.400 Letter of Intent Process **is rescinded.**

A notice of proposed rulemaking containing the proposed rescission was published in the *Missouri Register* on August 2, 1999 (24 MoReg 1918). No changes have been made in the proposed rescission, so it is not reprinted here. This proposed rescission becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 19—DEPARTMENT OF HEALTH
Division 60—Missouri Health Facilities Review
Committee
Chapter 50—Certificate of Need Program**

ORDER OF RULEMAKING

By the authority vested in the Missouri Health Facilities Review Committee under section 197.320, RSMo Supp. 1999, the committee adopts a rule as follows:

19 CSR 60-50.400 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 2, 1999 (24 MoReg 1918-1925). Changes have been made in the text of the proposed rule, so those sections are reprinted here. This proposed rule becomes effective thirty days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing was held on September 3, 1999, at 10:00 a.m. at the offices of the Certificate of Need Program, 915G Leslie Boulevard, Jefferson City, Missouri. Oral and written comments were received during the comment period.

COMMENT: In section (3) delete the phrase “requiring a CON application” for LTC bed expansions and replacements since these types of projects have a statutory right for expansion or replacement.

RESPONSE: The committee disagrees. The statute says the Committee “shall issue a certificate of need” for LTC bed expansions and replacements; therefore, an application is required to obtain a CON. The CONP staff developed and the Committee approved an abbreviated application and review process for these types of applications. In addition, the Division of Aging will not license a LTC facility in the absence of a CON or a letter from the Committee saying the facility doesn’t need one. No change was made to the proposed rule, as a result of this comment.

COMMENT: In section (3), add the phrase “for the previous 18 months preceding the letter of intent” immediately after “final Class I deficiencies” and before “by the Division of Aging” to eliminate ambiguity.

RESPONSE AND EXPLANATION OF CHANGE: The committee agrees, and the change was made by moving “and final Class I deficiencies” to follow “licensed bed occupancy” so that both are covered by the phrase “for the most recent six (6) consecutive calendar quarters.”

COMMENT: In subsections (4)(F)2. and 3., remove all references to “any health care facility not licensed under chapter 198” and replace with “any health care facility defined in 197.305(7)” to eliminate ambiguity.

RESPONSE: The committee disagrees. The definition of health care facilities in section 197.305(7) includes LTC facilities, and the intent of SB 326 was to allow bed expansions in facilities licensed under Chapter 198 only. Therefore, the phrase “any health care facility not licensed under Chapter 198” is more appropriate. No change was made to the proposed rule as a result of this comment.

COMMENT: In subsection (4)(F)8, remove the phrase “For facilities not licensed under Chapter 198” and replace with “any health care facility defined in section 197.305(7)” to eliminate ambiguity.

RESPONSE: The committee disagrees. This subsection has historically allowed hospital facilities to add LTC of up to 10 bed or 10 percent of its licensed capacity in any 24-month period. HB 1362 allowed this sort of expansion for LTC facilities, but only for a specific two-year window of opportunity, which expired on December 31, 1998. No change was made to the proposed rule as a result of this comment.

COMMENT: Section (1) means qualifying health care facilities for LTC bed expansions would have only 18 months to try to purchase beds after submitting the LOI. There is no such limitation in the statute on a facility’s right to purchase beds.

RESPONSE: The committee disagrees. It is assumed that, if a facility has made a good faith effort to purchase beds for 18 months pursuant to section 197.318.8(1) but was unsuccessful, then that facility would exercise its option to expand by adding new beds as allowed in section 197.318(1)(e). However, additional time to purchase beds could be obtained by filing a new LOI. No change was made to the proposed rule as a result of this comment.

COMMENT: Section (1) requires that an LOI must be filed at least 30 days before the LTC facility may file its CON application, and 19 CSR 60-50.420(1) requires that the CON application be submitted at least 41 days before the Committee’s meeting. There is no need, or authority, for requiring that a LTC facility submit its LOI for LTC bed expansions at least 71 days before the Committee’s meeting.

RESPONSE: The committee disagrees. The CON statute clearly set forth specific minimum time frames for submission of a LOI and the maximum time for making a decision on an application. By statute, the Committee has up to 130 days to make a decision on an application. The dates set forth in this subsection are clearly intended to shorten the time frame for qualifying proposals while still meeting statutory public notice requirements. No change was made to the proposed rule as a result of this comment.

COMMENT: Section (3) defines “LTC bed expansion or replacement” as including all the provisions of section 197.318.8 through 197.318.10 for which a CON application is required. Thus, a health care facility must ascertain when a CON application must be filed in order to determine the meaning of LTC bed expansion or replacement” within the rules, which would arbitrarily burden the health care facilities affected by this rule.

RESPONSE: The committee disagrees. The statutory cross-references clearly identify when a nursing home or residential care facility requires review. No change was made to the proposed rule as a result of this comment.

COMMENT: Section (3) appears to include the bed relocations authorized in section 197.318.8(4). If the definition of bed expansion includes such relocations, then 19 CSR 60-50.400 operates to require a health care facility intending to move its beds to another location within 6 miles to obtain a CON. Such a requirement is inconsistent with 197.318(4).

RESPONSE: The committee disagrees. The term “may” is permissive based on the judgement of the Committee. When exceptions or exemptions were intended, the Legislature elsewhere clearly used these terms. No change was made to the proposed rule as a result of this comment.

COMMENT: Subsection (4)(E) states that a health care facility that obtains a Non-Applicability CON letter must file a Periodic Progress Report (PPR) with the Committee before any additional beds are licensed or new services offered. There is no statutory authority requiring a PPR from all the facilities entitled to a Non-Applicability CON letter.

RESPONSE: The committee disagrees. This was not part of the Rules that were revised to implement SB 326, but a final PPR is required to assure that the final cost did not exceed the expenditure minimum promised by the applicant. The public has a right to expect honesty and dependability from such facilities. No change was made to the proposed rule as a result of this comment.

COMMENT: Subsections (4)(F)2., 3., and 8. require the submission of a CON application for certain projects undertaken by a “health care facility” or by “facilities” that are “not licensed under Chapter 198, RSMo” but do not indicate what the facilities are.

RESPONSE: The committee disagrees. These subsections were not part of the Rules that were revised to implement SB 326, but there has historically not been a problem ascertaining what health care facilities are under the statute since they are already concisely defined in section 197.305(7). No change was made to the proposed rule as a result of this comment.

COMMENT: In subsection (4)(A), change "CON letters" to "proposals."

RESPONSE AND EXPLANATION OF CHANGE: The committee agrees, and the change was made.

COMMENT: On form MO 580-2351, under "Part III: Deficiencies" add the phrase "prior to the LOI date shown above" to clarify the date certain, retrospectively, from which deficiencies will be reviewed by the DA.

RESPONSE: The committee disagrees. "Deficiencies" is the title of the section; the narrative below references "any Class I patient care deficiencies during the past 18 months." No change was made to the proposed rule as a result of this comment.

COMMENT: On form MO 580-2158, the reference to 197.305(8) should be 197.305(10).

RESPONSE AND EXPLANATION OF CHANGE: The committee agrees. The original reference was incorrect, but should actually be changed to "section 197.305(7)," and the change was made.

COMMENT: Form MO 580-1871 is outdated and unclear and should be streamlined.

RESPONSE AND EXPLANATION OF CHANGE: The committee agrees, and the change was made.

COMMENT: On form MO 580-2157, modify to include "(after 1/1/2003)" in the second column and "RCF/ICF/SNF" in the fifth column.

RESPONSE AND EXPLANATION OF CHANGE: The committee agrees, and the change was made.

COMMENT: On form MO 580-2158, change reference to "section 197.305(7)" from "section 197.305(8)," change reference from "section 197.305.12(e)" to "section 197.305.10(e)," and change reference from "section 197.305.12(g)" to "section 197.305.10(g)"

RESPONSE AND EXPLANATION OF CHANGE: The committee agrees, and the changes were made.

19 CSR 60-50.400 Letter of Intent Process

(3) A LTC bed expansion or replacement as defined in these rules includes all of the provisions pursuant to section 197.318.8 through 197.318.10, RSMo, requiring a CON application, but allowing abbreviated information requirements and review timeframes. When a LOI for a LTC bed expansion (except replacements) is filed, the Certificate of Need Program (CONP) staff shall immediately request certification for that facility of average licensed bed occupancy and final Class 1 patient care deficiencies for the most recent six (6) consecutive calendar quarters by the Division of Aging (DA), Department of Social Services through a LTC Facility Expansion Certification (Form MO 580-2351) to verify compliance with occupancy and deficiency requirements pursuant to section 197.318.8, RSMo. Occupancy data shall be taken from the DA's most recently published Quarterly Survey of Hospital and Nursing Home (or Residential Care Facility) Bed Utilization reports. For LTC bed expansions or replacements, the sellers and purchasers shall be defined as the owner(s) and operator(s) of the respective facilities, which includes building, land, and license. On the Purchase Agreement (Form MO 580-2352), both the owner(s) and operator(s) of the purchasing and selling facilities should sign.

(4) The CONP staff, as an agent of the Missouri Health Facilities Review Committee (committee), will review LOIs according to the following provisions:

(A) Major medical equipment is reviewed as an expenditure on the basis of cost, regardless of owners or operators, or location (mobile or stationary);

(B) The CONP staff shall test the LOI for applicability in accordance with the Expenditure Minimums Applicability Test (Form MO 580-2157); and the Exemptions and Exceptions Applicability Test (Form MO 580-2158);

(C) If the test verifies that a statutory exception or exemption is met on a proposed project, or is below all applicable expenditure minimums, the committee chairman may issue a nonapplicability CON letter indicating the application review process is complete; otherwise, the CONP staff shall add the proposal to a list of non-applicability proposals to be considered at a committee meeting;

(D) If an exception or exemption is not met, and if the proposal is above any applicable expenditure minimum, then a CON application will be required for the proposed project;

(E) A nonapplicability CON letter will be valid subject to the following conditions:

1. Any change in the project scope, including change in type of service, cost, operator ownership, or site, could void the effectiveness of the letter and require a new review; and

2. Final audited project costs, including a notarized project cost verification, must be provided on a Periodic Progress Report (Form MO 580-1871) before any additional beds are licensed or new services offered; and

(F) A CON application must be made if—

1. The project involves the development of a new health care facility costing in excess of one (1) million dollars;

2. The project involves a capital expenditure, excluding major medical equipment, by or on behalf of a health care facility not licensed under Chapter 198, RSMo, costing in excess of one (1) million dollars;

3. The project involves the acquisition or replacement of major medical equipment in an existing or proposed health care facility not licensed under Chapter 198, RSMo costing in excess of one (1) million dollars;

4. The project involves the acquisition or replacement of major medical equipment for a health care facility licensed under Chapter 198, RSMo, costing in excess for four hundred thousand dollars;

5. The project involves the acquisition of any equipment or beds in a long-term care hospital meeting the requirements found in 42 CFR section 412.23(e) at any cost;

6. The project involves a capital expenditure, but not additional beds, by or on behalf of an existing health care facility licensed under Chapter 198, RSMo, costing in excess of one (1) million dollars;

7. The project involves predevelopment costs in excess of one hundred and fifty thousand dollars (\$150,000);

8. For facilities not licensed under Chapter 198, RSMo, the project involves a change in licensed bed capacity of a health care facility or reallocation of an existing health care facility's licensed beds among services, physical facilities, or sites by more than ten (10) beds or ten percent (10%) of the total bed capacity, whichever is less over a two (2)-year period; or

9. Prior to January 1, 2003, the project involves additional long-term care (licensed or certified residential care facility I or II, intermediate care facility, or skilled nursing facility) beds or LTC bed expansions or replacements as defined in section (3) above of this rule, regardless of cost, with certain exemptions and exceptions.



LTC Facility Expansion
CERTIFICATION by the Division of Aging, Department of Social Services

Part I: Facility Information

Name of Facility: _____

Address (no PO Box): _____

City, State, Zip, County: _____

Number and Type of Beds: ____ RCF ICF/SNF (circle RCF for residential care facility or ICF/SNF for intermediate care and skilled nursing facility)

Owner(s): _____

Operator(s): _____

Project Number: _____ Date LOI Filed: _____

Part II: Quarterly RCF/ICF/SNF Bed Occupancy Rate

Occupancy statistics for this facility for the most recent six consecutive calendar quarters prior to the LOI date shown above:

(circle appropriate quarter, insert the Calendar Year (CY), and complete information below)

Qtr 1 2 3 4 CY ____: ____% Qtr 1 2 3 4 CY ____: ____% Qtr 1 2 3 4 CY ____: ____%

Qtr 1 2 3 4 CY ____: ____% Qtr 1 2 3 4 CY ____: ____% Qtr 1 2 3 4 CY ____: ____%

Six-quarter average: ____%

Yes No For expansion through the **purchase** of beds, based on the Division of Aging's Quarterly Survey Data, the 90% bed occupancy requirement has been met.

Yes No For expansion through the **addition** of beds, based on the Division of Aging's Quarterly Survey Data, the 92% bed occupancy requirement has been met for under 40 LTC beds, or 93% for 40 bed or more LTC beds (see above).

Part III: Deficiencies

Yes No For expansion through the **purchase** or **addition** of beds, based on the Division of Aging's annual facility survey, the above-named facility has not had any final Class I patient care deficiencies during the past 18 months.

Part IV: Certification of Information

Statement: The above information is an accurate representation of the findings by the Division of Aging in accordance with appropriate CON rules.

Signature: _____

Title/Date: _____



Certificate of Need Program

PERIODIC PROGRESS REPORT

Instructions for Completion (see attached blank forms)

- Purpose:** To gather uniform data regarding the progress and compliance of approved Certificate of Need (CON) projects in accordance with §197.300 to §197.366 RSMo; and to provide data to develop, implement and manage a database for project tracking, monitoring, notification and follow-up.
- Used by:** Missouri Health Facilities Review Committee, CON Program Staff, and Project Contact Person.
- General:** Periodic Progress Reports (PPRs) must provide all requested data and information in a complete, concise and legible manner. Each PPR must indicate if it is an Intermediate or Final Report. PPRs which are incomplete, illegible and/or contain mathematical discrepancies may be returned to the Contact Person for appropriate corrective action.
- Project ID:** Any changes in this information must be brought to the attention of the CON Program Staff immediately upon occurrence.
- Add'l. Info.:** *Additional information MUST be attached to **substantiate** answers to the individual questions. All final PPRs must include documentation which substantiates all claims and expenditures.*

Individual Questions:

- 1. Have capital expenditures been incurred for the proposed construction and/or medical equipment?** The project is obligated A capital expenditure shall be deemed to have occurred if the applicant has at least one or more of the following:
- **Construction expenditures** assignable to a capital asset in accordance with generally accepted accounting principles and which are not chargeable to pre-development or operating costs, which may be documented by a signed AIA construction contract with starting and ending dates; and above-ground construction;
 - **Purchase Orders (POs)** which are signed and which include the date of purchase, delivery, installation and operational date; or
 - **Acquisition** of medical equipment or property by lease, transfer, or purchase which has been authorized by the applicant and includes the date of the lease, the annual cost, cost and date of buy-out; purchase date, delivery installation and operational dates; and transfer date, current value, installation and operational date.

If the answer to this question is "Yes," then attach copies of the appropriate signed construction contract (include pictures of construction activity), purchase order, or lease agreement (with original signatures).

If capital expenditure or expenditure for medical equipment has not been incurred, provide a detailed explanation and include the steps being taken to correct the situation within the time constraints of §197.315.9 RSMo. Indicate the nature, costs and the date that a capital expenditure will be incurred.

- 2. Are the expenditures for this reporting period/project-to-date included?**

List all project expenditures, by category, incurred during the reported period and project-to-date on the **Project Budget/Expenditures** form, **which must be notarized.**

- 3. Are the projected final costs within the limits approved? (Self-explanatory)**

Using current costs and expenditures, extrapolate final project costs to the project completion date. If total costs will exceed those approved by the Committee by more than 10%, specify and explain the area and category involved. Also, indicate the estimated filing date for your cost-overrun application.

- 4. Are there changes in the services or programs approved? (Explain any changes)**

- 5. Has the project contact person changed?** If "Yes," enclose a new CON Contact Person Correction Form.

- 6. Construction or installation is _____ % complete.**

*(If the project expenditures and construction are both 100% complete, provide a **final** project budget and expenditure report.)*



Certificate of Need Program

PERIODIC PROGRESS REPORT

Type of Progress Report:	
<input type="checkbox"/>	Intermediate
<input type="checkbox"/>	Final

All applicants granted a Certificate of Need (CON) by the Missouri Health Facilities Review Committee are required to submit periodic progress reports until such time as the project is complete (§197.315 (8) RSMo). These reports **must** be filed with the CON Program staff after the end of **each six (6) month reporting period** following the issuance of a CON.

Name of Project	Report Period
	Project Number
Address	Date CON Issued
	Approved Cost
Project Description	Contact Person
	Telephone

Yes **1. Capital expenditures have been incurred for construction and/or medical equipment.**
 No _____ Date construction started or equipment purchased. Provide copy of AIA contract and/or purchase order.

Yes ***2. Expenditures for this reporting period and project-to-date are included.**
 No _____ % of the total approved project amount that has been expended to date.

Yes **3. There are changes in the final costs of the project.**
 No *If "Yes," explain in detail and provide replacement pages for the approved application.*
 \$ _____ Estimated final project cost

Yes **4. There any changes in the services or programs approved scope of the project.**
 No *If "Yes" explain in detail and provide replacement pages for the approved application.*

Yes **5. The project contact person changed.**
 No *If "Yes," enclose a new Contact Person Correction Form (MO 580-1870).*

***6. _____ % of the construction or installation is complete.**
 _____ % of the installation is complete.

If Items 2 and 6 are both 100% complete, signify this as the **Final Report and submit documentation of final costs.*

Description of progress to date. Clearly explain expenditures, delays, changes in project progress, or lack of progress, of the approved project (use additional pages as needed):

Project Budget/Expenditures		Report Period: _____ to _____	
Description	Application	This Period	Project-to-date
1. General Construction Costs			
2. Site Work			
3. Subtotal Construction Costs			
4. Architectural/Engineering Fees			
5. Fixed Equipment			
6. Movable Equipment			
7. Land Acquisition			
8. Consultants' Fees/Legal Fees			
9. Interest During Construction			
10. Other Costs			
11. Subtotal Non-construction Costs			
12. TOTAL Project Development Costs			
Square footage: New Construction			
Renovated Space			
Total Project			
Costs per square foot: New Construction			
Renovated Space			

State of _____)
 County of _____)

Comes now _____ who, first being sworn, verifies that the foregoing expenditures constitute a full and complete accounting of the expenditures for this project.

 (Authorized Contact Person Signature)**

Subscribed and sworn before me, a Notary Public, on this _____ day of _____, 19 ____.

(Seal)

 (Signature of Notary Public)

My commission expires _____