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Matt Blunt

Secretary of State

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

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HOW TO CITE RULES AND RSMo

RULES—Cite material in the *Missouri Register* by volume and page number, for example, Vol. 26, *Missouri Register*, page 27. The approved short form of citation is 26 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 in 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—Cite material in the RSMo by date of legislative action. The note in parentheses gives the original and amended legislative history. The Office of the Revisor of Statutes recognizes that this practice gives users a concise legislative history.

FROM THIS ANGLE . . .

August 28th update needed?

Please be sure to double check the effective date of any statute enacted in this legislative session that has an effective date of August 28th to see if it will affect your rulemakings in any manner. You may very well need to modify/update/amend/rescind.

Please call or e-mail us at www.rules@sosmail.state.mo.us if you need any assistance in this regard.

Forms – Our Forms

Have you visited our new website yet? If not, please go to our homepage at www.sos.state.mo.us. From there you may access "Administrative Rules" homepage where you will see a link to "Forms". There you will locate the transmittal, fiscal note and affidavit forms which are provided in a downloadable, fillable format for your convenience. We believe that you will find this is a very helpful tool.

Have you considered . . .

When updating your rulemakings in any manner, please be sure to check:

1) Telephone numbers, area codes, the addition of websites and/or e-mail addresses.
2) When inserting a new section number, double check the remaining sections – are they renumbered? Do references to other sections also need to be renumbered within these sections?

These types of changes must be made by the agency that promulgated the rulemaking.

Do you really need your forms in your rules?!

Many agencies are now removing forms from their rulemakings. When removing the forms, most agencies are referring the reader to their website for the most current version of their downloadable, fillable form. This accomplishes two things a. assures your rule and the related forms current; b. eliminates the need to constantly amend your rulemakings in order to keep your forms current.

Timelines . . .

Are you new to the rulemaking process? Are you having difficulty calculating your timelines for filing your rulemakings with JCAR and our office, as well as the effective dates, publication dates, etc? If so, please call us – we will be pleased to sit down with you and assist you in the proper procedure for counting your dates and times. Many agencies do not realize that in some cases "legislative" days are longer period of time than normal days.

The new rulemaking manual contains excellent charts to assist you with your counting . . . however, we are *also* here to assist you in any step of the rulemaking process.

Lynne C. Angle
Director, Administrative Rules

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

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

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

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

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

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

Proposed Amendment Text Reminder:
Boldface text indicates new matter.
[Bracketed text indicates matter being deleted.]

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 6—Wildlife Code: Sport Fishing: Seasons, Methods, Limits

PROPOSED AMENDMENT

3 CSR 10-6.525 Paddlefish. The commission proposes to amend section (5).

PURPOSE: This amendment prohibits the possession of extracted paddlefish eggs while on waters of the state or adjacent banks.

(5) **Extracted paddlefish eggs may not be possessed while on waters of the state or adjacent banks, and may not be transported.** Paddlefish eggs may not be bought, sold, **or** offered for sale *[or transported]*.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. Original rule filed June 13 1994, effective Jan. 1, 1995. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed July 2, 2002.*

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 John W. Smith, Deputy Director, Department of Conservation, PO Box 180, 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 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 7—Wildlife Code: Hunting: Seasons, Methods, Limits

PROPOSED AMENDMENT

3 CSR 10-7.435 Deer: Seasons, Methods, Limits. The commission proposes to amend subsection (1)(E) and paragraph (3)(A)1.

PURPOSE: This amendment requires all hunters to wear (fluorescent) orange during the youth-only, November, and antlerless-only portions of firearms deer hunting season, clarifies the exceptions to this requirement and outlines age parameters for the youth-only portion of firearms deer hunting season.

(1) General Provisions.

(E) During all portions of the firearms deer hunting season, all persons while **deer** hunting or while accompanying a person hunting deer on a Youth Deer and Turkey Hunting Permit shall wear a cap or hat, and a shirt, vest or coat having the outermost color commonly known as daylight fluorescent orange, blaze orange or hunter orange which shall be plainly visible from all sides while being worn. Camouflage orange garments do not meet this requirement. **This requirement shall apply to all hunters during the youth-only, November, and antlerless-only portions of the firearms deer hunting season. The following are exceptions to this requirement.**

1. This requirement shall not apply to migratory game bird hunters, to archery deer hunters during the muzzleloader portion, to *[archery]* **all** hunters during the antlerless-only portion in units 28–32 and 38–57, or to hunters using archery methods while hunting within municipal boundaries where discharge of firearms is prohibited or on federal or state public hunting areas where deer hunting is restricted to archery methods.

(3) Firearms Deer Hunting Season.

(A) The firearms deer hunting season is comprised of four (4) portions:

1. During the youth-only portion (November 2 through November 3, 2002), a Missouri resident who is *[under sixteen (16)]* **at least six (6) but not older than fifteen (15)** years of age and holding a valid firearms deer hunting permit may take one (1) deer of either sex in any unit as provided in this rule. Deer taken during this portion of the firearms deer hunting season must be included in the total firearms deer hunting season limits.

2. During the November portion (November 16 through November 26, 2002), a person holding a firearms deer hunting permit may take deer as provided in this rule.

3. During the muzzleloader portion (December 7 through December 15, 2002), a person holding a firearms deer hunting permit may take deer as provided in this rule. Deer may be taken only with a muzzleloading or cap-and-ball firearm not capable of being loaded from the breach, not smaller than .40 caliber, and capable of firing only a single projectile at one (1) discharge. A person, while in the act of pursuing or hunting deer on a firearms deer hunting permit during this portion of the firearms deer hunting season may have and use more than one (1) muzzleloading or cap-and-ball firearm, but may have no other firearm, longbow or crossbow on his/her person.

4. During the antlerless-only portion (December 19 through December 22, 2002), a person holding a firearms deer hunting permit may take only antlerless deer in units 1 through 27, 33 through 37, 58 and 59 as provided in this rule.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. This version of rule filed June 30, 1975, effective July l0, 1975. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed July 2, 2002.*

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 John W. Smith, Deputy Director, Department of Conservation, PO Box 180, Jefferson City, MO 65l02. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 20—Pharmacy Program

PROPOSED RULE

13 CSR 70-20.320 Pharmacy Reimbursement Allowance

PURPOSE: This rule establishes a Pharmacy Federal Reimbursement Allowance and the methodologies to determine the formula for the amount of allowance each pharmacy is required to pay for the privilege of providing outpatient prescription drugs.

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

(A) Definitions.

1. Department—Department of Social Services.

2. Director—Director of Department of Social Services.

3. Division—Division of Medical Services.

4. Monthly gross retail prescription receipts—For ease of administration for the department as well as the industry, this shall be an annual amount. The basis of tax for fiscal year 2003 will be the prescription sales for calendar year 2001.

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

1. The PRA owed for existing pharmacies shall be calculated by multiplying the pharmacy's total gross retail prescription receipts by the tax rate determined by the department.

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

3. The initial PRA owed by a newly licensed pharmacy shall be calculated by estimating the total prescription sales and multiplying the estimate by the tax rate determined by the department.

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

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

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

1. Pharmacy name;
2. Contact;
3. Telephone number;
4. Address;
5. Federal tax ID number;
6. Medicaid pharmacy number (if applicable);
7. Pharmacy sales (total);
8. Medicaid pharmacy sales ; and
9. Number of paid Medicaid prescriptions.

(D) The department shall prepare a confirmation schedule of the information provided by each pharmacy and the amount of PRA that is due from the pharmacy.

(E) Each pharmacy shall review the information prepared by the department and the amount of PRA calculated by the department to verify that the information is correct.

1. If the information supplied by the department is incorrect, the facility, within thirty (30) calendar days of receiving the confirmation schedule must notify the division and explain the correction.

2. If the division does not receive corrected information within thirty (30) calendar days, it will be assumed to be correct, unless the pharmacy files a protest in accordance with subsection (2)(D) of this regulation.

(2) Payment of the PRA.

(A) Offset.

1. Each pharmacy may request that its PRA offset against any Missouri Medicaid payment due to that pharmacy.

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

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

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

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

(B) Check.

1. If no offset has been authorized by the pharmacy, the division will begin collecting the pharmacy reimbursement allowance on the first day of each month for the preceding months.

2. The PRA shall be remitted by the pharmacy to the department. The remittance shall be made payable to the Director of the Department of Revenue and be deposited in the state treasury to the credit of the Pharmacy Reimbursement Allowance Fund.

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

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

2. For any delinquent PRA, the department may:

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

B. Cancel or refuse to issue, extend or reinstate the Medicaid provider agreement; or

C. Seek denial, suspension or revocation of license granted under Chapter 198, RSMo.

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

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

(E) PRA Rates.

1. The PRA tax rates will be done in bands and will be determined by the ratio of paid Medicaid claims to total prescription sales.

2. The maximum rate shall be six percent (6%).

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

AUTHORITY: section 208.201, RSMo 2000. Emergency rule filed June 20, 2002, effective July 1, 2002, expires Feb. 27, 2003. Original rule filed July 15, 2002.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions fifty-nine thousand three hundred thirty-three dollars ($59,333) in State Fiscal Year 2003.

PRIVATE COST: This proposed rule will cost private entities fifty-five million dollars ($55 million) in State Fiscal Year 2003.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Office of the Director, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. If to be hand-delivered, comments must be brought to the Division of Medical Services at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.*

FISCAL NOTE
PUBLIC COST

RULE NUMBER

Rule Number and Name:	**13 CSR 70-20.320**
Type of Rulemaking:	**Proposed Rule**

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Social Services	**$59,333 SFY 2003**

III. WORKSHEET

This cost assumes one FTE and related office expense and equipment.

IV. ASSUMPTIONS

This cost assumes one FTE and related office expense and equipment. The responsibilities of the FTE would include, but not limited to coordination and communication of the PRA with the providers, posting checks, and preparation of financial reports related to PRA.

Salary	**36,992**
Fringe	**13,354**
Equipment & Expense	**8,987**
Total	**59,333**

FISCAL NOTE
PRIVATE COST

I. RULE NUMBER

Rule Number and Name:	13 CSR 70-20.320
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
650		**$55 million SFY 2003**

II. WORKSHEET

The basis of the tax is all gross retail prescription receipts. The estimate of gross retail prescription receipts for fiscal year 2003 is $2.96 billion dollars. DMS assumed an average tax rate of 1.86% will generate an annual tax revenue of $55 million dollars.

IV. ASSUMPTIONS

The tax rate for each pharmacy will be calculated on "bands" and vary from less than .1% to the federal maximum of 6%. The pharmacy is positioned in a "band" based on its gross retail prescription sales and Medicaid volume. Adjustments will be made to the pharmacy's rate if its individual ratio of the Medicaid volume to gross retail prescription sales is statistically different than the norm for the band.

The tax monies received will be matched with federal matching funds to fund anticipated increases in the pharmacy program.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 35—Dental Program

PROPOSED AMENDMENT

13 CSR 70-35.010 Dental Benefits and Limitations, Medicaid Program. The division is amending sections (1), (4), (7), (8), and (9), and deleting the forms that follow this rule in the *Code of State Regulations*.

PURPOSE: This amendment changes the adult dental benefits and limitations of the Missouri Medicaid program to reflect the provisions of the State Fiscal Year 2003 budget as passed by the 91st General Assembly and signed by the governor.

(1) Administration. The Missouri Medicaid dental program shall be administered by the Division of Medical Services, Department of Social Services. The dental services covered and not covered, the limitations under which services are covered and the maximum allowable fees for all covered services shall be determined by the Division of Medical Services **and shall be made available through the Department of Social Services, Division of Medical Services website at www.dss.state.mo.us/dms, provider bulletins, and updates to the provider manual**. Dental services covered by the Missouri Medicaid program shall include only those which are clearly shown to be medically necessary. The division reserves the right to effect changes in services, limitations and fees with proper notification to Medicaid dental providers.

(4) Prior Authorization. Prior authorization shall be required in the following *[two (2)]* case**:***[s: a)]* initial placement or replacement of all full dentures (upper, lower or both) *[and b) placement or replacement of all partial dentures]*. When prior authorization is required, the form provided by the Division of Medical Services or its contracted agent shall be used. The dental service shall not be started until written approval has been received. Telephone approval shall not be given. Prior authorization shall be effective for a period of one hundred twenty (120) days from the date of written approval. Prior authorization approves the medical necessity of the requested dental service. It shall not guarantee payment for that service as the patient must be a Medicaid-eligible recipient on the date the service is performed. The division reserves the right to request documentation regarding any specific request for prior authorization.

(7) Dental Certification. A dental certification form as provided by the Division of Medical Services or its contracted agent shall be completed in the case of any denture*[, partial or full, except for those flipper-type partials identified in the Dental Services Provider Manual]*. This completed form shall be attached to the claim and the request for prior authorization.

(8) Dental Manual. A *Medicaid Dental Manual* shall be produced by the Division of Medical Services and *[shall be distributed to all dental providers participating in the Missouri Medicaid program. It shall contain a list of covered and noncovered services, the limitations under which services are covered and other pertinent data to supplement this rule. The Health Care Financing Administration's Common Procedure Coding System (HCPCS) Level 1, 2 or 3 procedure codes, which includes a modification of the American Dental Association's (ADA) Code on Dental Procedures and Nomenclature shall be used in the manual.]* **made available through the Department of Social Services, Division of Medical Services website at www.dss.state.mo.us/dms, provider bulletins, and updates to the provider manual.** Maximum allowable fees by the Missouri Medicaid Dental Program shall be *[published in]* **made available through the Department of Social Services, Division of Medical Services website at www.dss.state.mo.us/dms,** provider manuals and bulletins.

(9) Services, Covered and Noncovered. The list shown in this section represents the groupings of medically necessary services covered by the Missouri Medicaid program. **Only dentures and treatment of trauma to the mouth or teeth as a result of injury are covered dental services for Medicaid-eligible adults.** The *Medicaid Dental Manual* shall provide the detailed listing of procedure codes and pricing information.

[(A) Anesthesia. General anesthesia administered in the office is a covered service. General anesthesia administered in the hospital for dental care is payable to the hospital. Local anesthesia is not paid under a separate procedure code and is included in the treatment fee. Nitrous oxide is not covered;

(B) Crowns, Bridges, Inlays. A crown of chrome or stainless steel is a covered item. A crown of polycarbonate material is a covered item for an anterior tooth. Crowns of other materials are not covered. Cast restorations indicated by an early periodic screening diagnosis and treatment (EPSDT) screen are covered;]

[(C)] **(A)** Full Dentures. One (1) upper full denture, one (1) lower full denture, or one (1) complete set (upper and lower) of full dentures is covered. A full denture must be constructed of acrylic material and must meet the following criteria: full arch impression, bite registration, each tooth set individually in wax, try-in of teeth set individually in wax before denture processing, insertion of the processed denture and six (6)-month follow-up adjustments, to be a covered item. Service in the case of any full denture is not completed and shall not be claimed until the denture is placed. Noncovered items include temporary full dentures, full overdentures and immediate placement full dentures;

[(D) Partial Dentures. A partial denture shall replace permanent teeth and must be constructed of acrylic material to be a covered item. Service in the case of any partial denture is not completed and shall not be claimed until the denture is placed. Noncovered items include temporary partial dentures and partial overdentures. Immediate placement partial dentures are noncovered except for those flipper-type partials identified in the Dental Services Provider Manual under procedure codes D5820, D5820W5, D5820W6, D5820W9, D5821, D5821W5, D5821W6, D5821W9;

(E) Denture Adjustment and Repair. Denture adjustment is a covered service but not to the originating dentist of a new denture until six (6) months after the denture is placed. Repair of a broken denture may be accomplished on the same date of service as denture duplication or reline;

(F) Denture Duplication and Reline. Duplication of a partial or full denture is a covered service. Reline of a partial or full denture, either chair-side or laboratory, is covered. Duplications and relines are not covered within twelve (12) months of initial placement of an original denture. Additional denture relines or duplications are limited to once within three (3) years from the date of the last preceding reline or duplication. Denture duplication or reline may be accomplished on the same date of service as repair of a broken denture;]

[(G)] **(B)** Emergency Treatment. Emergency dental care does not require prior authorization and is covered whether performed by a licensed dentist or a licensed dentist specialist. Emergency care is provided after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that the absence of immediate medical attention reasonably could be expected to result in—placing the patient's health in serious jeopardy or serious impairment of bodily functions or serious dysfunction of any bodily organ or part. Emergency care not listed in the *Medicaid Dental Manual* shall be explained on the claim. An emergency oral

examination is not paid under a separate procedure code and is included in the treatment fee. Palliative treatment on the same date of service as other dental care on the same tooth is not covered. Denture dental services are not *[subject to]* **considered** emergency treatment *[consideration]*; **and**

[(H) Examinations, Visits, Consultations. An initial oral examination in the office is covered. Subsequent office medical services are covered. A professional visit to a nursing home is covered and shall include the fee for an oral examination. A professional visit to a hospital is covered and shall include the fee for an oral examination. A consultation by a dentist is a covered service and shall include the fee for an oral examination;

(I) Extractions. Extraction fees for permanent and deciduous teeth, as listed in the Medicaid Dental Manual, apply whether the service is performed in the office, hospital or ambulatory surgical center. Preoperative X rays involving extractions may be covered but postoperative X rays are not covered;

(J) Preventive Treatment. Fluoride treatment may be covered but is limited to the application of stannous fluoride or acid phosphate fluoride. Sodium fluoride treatments are not covered. Fluoride treatment shall include both the upper and lower arch and shall be a separate service from prophylaxis. Fluoride treatment for recipients under age twenty-one (21) is covered. Fluoride treatment for recipients age twenty-one (21) and over is limited to individuals with rampant caries, or those who are undergoing radiation therapy to head and neck, or those with diminished salivary flow, or individuals who are mentally retarded or have cemental or roof surface caries secondary to gingival recession. For recipients ages five through twenty (5–20), topical application of sealants as outlined in Section 19 of the Medicaid Dental Manual is covered. Dietary planning, oral hygiene instruction and training in preventive dental care are not covered;]

[(K)] **(C)** Hospital Dental Care. Dental services provided in an inpatient hospital or an outpatient hospital place of service are subject to the same general benefits and limitations applicable to all dental services and all are not selectively restricted based on place of service*[;]*.

[(L) Injections. Procedure codes for the injections which are covered shall be shown in Section 19 of the Dental Manual;

(M) Oral Surgery (or Other Qualified Dentist Specialist). Oral surgery is limited to medically necessary care. Cosmetic oral surgeries shall not be paid. Procedures as covered for a certified oral surgeon (or other qualified dentist specialist) shall be indicated in the Medicaid Dental Manual. A medically necessary oral surgery procedure not specifically listed in the Medicaid Dental Manual may be billed using the procedure code identified in the dental manual as Unspecified. The Unspecified procedure must be explained on the claim form.

(N) Orthodontic Treatment/Space Management Therapy. Medically necessary minor orthodontic appliances for interceptive and oral development as listed in the Medicaid Dental Manual are covered. Fixed space maintainers are covered for the premature loss of deciduous teeth. Medically necessary orthodontic treatment and space maintainers for recipients under age twenty-one (21) is covered when indicated by an EPSDT screen and prior authorized;

(O) Periodontic Treatment. A gingivectomy or gingivolplasty is allowed for epileptic patients on Dilantin therapy, or medically necessary drug-induced hyperplasia. Limited occlusal adjustment is covered when it is necessary as emergency treatment. Other periodontic procedures are not covered;

(P) Prophylaxis (Preventive). Prophylaxis may be a covered service for the upper arch, the lower arch or both arches. Prophylaxis shall be a separate service from fluoride treatment and shall include scaling and polishing of the teeth;

(Q) Pulp Treatment (Endodontic). A pulpotomy on deciduous teeth is covered and shall include complete amputation of the vital coronal nerve, with placement of a suitable drug over the remaining exposed tissue. The fee excludes final restoration. Pulp vitality tests and pulp caps are not covered;

(R) Restorations (Fillings). Fees for any restorative care listed in the Medicaid Dental Manual apply whether the service is performed in the office, hospital, ambulatory surgical center or nursing facility. Amalgam fillings are covered for Class I, Class II and Class V restorations on posterior teeth. A maximum fee shall apply for any one (1) posterior tooth and shall include polishing, local anesthesia and treatment base. Silicate cement, acrylic or composite fillings are not covered for Class I and Class II restorations but are covered for Class III, Class IV and Class V restorations on anterior teeth. A maximum fee shall apply for any one (1) anterior tooth and shall include polishing, local anesthesia and treatment base. Fillings of other materials are not covered, except when a sedative filling is necessary as emergency treatment. X rays may be covered;

(S) Root Canal Therapy (Endodontic). Root canal therapy is a covered service for permanent teeth. The fee excludes final restoration but includes all in treatment X rays. Preoperative and postoperative X rays may be reimbursed. An apicoectomy is a covered service for permanent teeth but not on the same day as a root canal. Excluding a pulpotomy, other endodontic procedures are not covered; and

(T) X rays. X rays shall not be submitted routinely with a request for prior authorization or with a claim, unless the practitioner shall have been specifically requested to submit X rays. X rays shall be taken at the discretion of the dental practitioner. Films which are not of diagnostic value shall not be claimed. X rays to be covered shall be of the intraoral type, except when a panoramic-type film is required. A preoperative full-mouth X-ray survey of permanent or deciduous teeth, or mixed dentition, is covered as described in the Medicaid Dental Manual. Medically necessary X rays of an edentulous mouth are covered.]

*AUTHORITY: sections 208.152, [RSMo Supp. 1990,] 208.153[, RSMo Supp. 1991] and 208.201, RSMo [Supp. 1987] **2000**. This rule was previously filed as 13 CSR 40-81.040. Original rule filed Jan. 21, 1964, effective Jan. 31, 1964. For intervening history, please consult the **Code of State Regulations**. Emergency amendment filed June 27, 2002, effective July 7, 2002, expires Feb. 27, 2003. Amended: Filed July 15, 2002.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Office of the Director, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. If to be hand-delivered, comments must be brought to the Division of Medical Services at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.*

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 40—Optical Program

PROPOSED AMENDMENT

13 CSR 70-40.010 Optical Care Benefits and Limitations—Medicaid Program. The division is amending sections (1), (4), (5), (6), (7), and (8).

PURPOSE: This amendment changes optical services offered for adults by providing that eyeglasses will no longer be covered for adults, except one pair following cataract surgery.

(1) Administration. The Optical Care program shall be administered by the Division of *[Family]* **Medical** Services, Department of Social Services. The optical care services covered and not covered, the program limitations and the maximum allowable fees for all covered services shall be determined by the Division of *[Family]* **Medical** Services **and shall be made available through the Department of Social Services, Division of Medical Services website at www.dss.state.mo.us/dms, provider bulletins, and updates to the provider manual**. Services covered shall include only those which are clearly shown to be medically necessary.

(4) Types of Service Reimbursed by Medicaid for Each Profession.
(A) Optometrist or Optometric Clinic.
1. Eye examinations.
2. Eyeglasses **for adults, only following cataract surgery**.
3. Artificial eyes.
4. Special ophthalmological services.
(B) Opticians or Optical Dispensers.
1. Eyeglasses **for adults, only following cataract surgery**.
2. Artificial eyes.
(D) Physicians (MD or DO).
1. Eye examinations.
2. Eyeglasses **for adults, only following cataract surgery**.
3. Artificial eyes.
4. Special ophthalmological services.

(6) Covered Services.
(C) Glasses (frames and lenses, under 4.00 diopters **for adults, only following cataract surgery**).
[(D) Frames.
(E) Temple.
(F) Lenses, single vision.
(G) Lenses, bifocal, Kryptok.
(H) Lenses, bifocal, Flat top.
(I) Lenses, bifocal, Executive.
(J) Lenses, trifocal.]
[(K)] **(D)** Lenses, cataract.
[(L)] **(E)** Special frames (prior authorization required).
[(M)] **(F)** Special lens (medical necessity required).
[(N)] **(G)** Miscellaneous repairs (medical necessity required).
[(O)] **(H)** Scleral shell, stock or custom.
[(P)] **(I)** Artificial eye, stock or custom.
[(Q)] **(J)** Artificial eye, refitting.
[(R)] **(K)** Artificial eye prosthesis check/polishing/cleaning.
[(S)] **(L)** Rose I and Rose II tints (medical necessity required).
[(T)] **(M)** Photochromatic (prior authorization required).
[(U)] **(N)** Orthoptic and/or pleoptic training, with continuing optometric direction and evaluation (visual therapy/training) (prior authorization required).
[(V)] **(O)** Fitting of contact lens for treatment of disease, including supply of lens (therapeutic bandage lens) (medical necessity required).
[(W)] **(P)** Visual field examination with optometric diagnostic evaluation; tangent screen, Autoplot or equivalent (prior authorization required).
[(X)] **(Q)** Electro-oculography, with medical diagnostic evaluation (prior authorization required).
[(Y)] **(R)** Visually evoked potential (response) study, with medical diagnostic evaluation (prior authorization required).
[(Z)] **(S)** Quantitative perimetry, for example, several isopters on Goldmann perimeter or equivalent (prior authorization required).
[(AA)] **(T)** Static and kinetic perimetry or equivalent.
[(BB)] **(U)** Serial tonometry with optometric diagnostic evaluation (separate procedure), one (1) or more sessions, same day.
[(CC)] **(V)** Tonography with optometric diagnostic evaluation, recording indentation tonometer method or perilimbal suction method.
[(DD)] **(W)** Color vision examination, extended, for example, anomaloscope or equivalent.
[(EE)] **(X)** Dark adaptation examination, with optometric diagnostic evaluation.

(7) Program Limitations.
[(D) Eyeglasses are covered by Medicaid when the prescription is at least 0.75 diopters for one (1) eye or 0.75 diopters for each eye.
(E) Only one (1) pair of eyeglasses is allowed every two (2) years (within any twenty-four (24)-month period of time) for all Medicaid recipients regardless of age.
(F) All claims for eyeglasses or lenses must contain the prescription and the name of the prescribing physician (MD or DO) or optometrist (OD).
(G) The original eyeglass prescription and laboratory invoices listing costs for optical materials, lenses and/or frames provided; and the charge for grinding, edging or assembling of glasses must be kept on file by the provider for five (5) years and furnished to DOSS upon request.
(H) Special frames are covered under the Missouri Medicaid program if they are required for medical reasons and are prior authorized by DOSS. Special frames may be authorized if the patient requires special lenses (over 4.00 diopters for one (1) eye or over 4.00 diopters for each eye and are extra thick or heavy), the structure of the patient's face requires special frames (a very large face, wide-set eyes) or the patient needs glasses with pads because of nose surgery. The Prior Authorization Request Form must be completed and signed by the prescribing physician or optometrist.
(I) Special lenses are covered under the Missouri Medicaid program if they are medically justified and the prescription is plus or minus 4.00 diopters for one (1) eye or 4.00 diopters for each eye, cataract lenses or special bifocal lenses (for example, plastic Executive lenses). A Medical Necessity Form stating the reason special lenses are required must be completed and signed by the prescribing physician or optometrist and attached to the claim form.
(J) Plastic lenses may be dispensed under the Missouri Medicaid program. Reimbursement will be at the same rate as comparable glass lenses. Additional payment will be allowed for plastic lenses that meet the definition of special lenses and are medically justified.
(K) Photochromatic lenses are covered only if medically necessary and prior authorized by the DOSS Medical Consultant. The Prior Authorization Request Form must be completed and signed by the prescribing physician or Optometrist.
(L) Tinted lenses (Rose I and Rose II) are covered if medically necessary. A Medical Necessity Form completed and signed by the prescribing physician or optometrist must be attached to the claim form for the glasses.
(M) Replacement of optical materials and repairs in excess of program limitations may be covered if medically necessary or required for employment training, or educational purposes as follows:

1. Replacement of complete eyeglasses (frames and lenses)—Prior authorization required.

A. Lenses and frames broken (recipient must show provider the broken glasses or Medicaid will not pay for the glasses).

B. Lost.

C. Destroyed.

D. Stolen.

E. Repair of existing glasses would exceed the Medicaid allowable amount for new frames and lenses;

2. Lenses—Medical Necessity Form required.

A. Scratched.

B. Broken.

C. Prescription change or at 1east 0.50 diopters or greater (old and new prescription must appear on the Medical Necessity and claim forms); or

3. Frames—Prior authorization required. Temples, fronts or both broken and repair would exceed the Medicaid allowable amount for new frames.

(N) Repair of frames or replacement of parts of frames (temples) are covered as follows (Medical Necessity Form required):

1. The cost of the repairs do not exceed the Medicaid allowable amount for new frames; and

2. Repair would provide a serviceable frame for the recipient.

(O) Temples may never be billed in addition to complete new eyeglasses and new frames.]

[(P)] **(D)** Prior authorization is required for all optical services for Missouri Medicaid recipients residing in a nursing home, boarding home or domiciliary home when the service is provided in the nursing home. The provider must submit a Prior Authorization Request Form to DOSS before the service is provided in order for Medicaid payment to be made.

[(Q)] **(E)** An eye refraction is included in the reimbursement for a comprehensive or limited eye examination. Because the eye refraction is not covered by Medicare but is covered by Medicaid, providers may bill Medicaid for an eye refraction when the patient has Medicare and Medicaid coverage.

[(R)] **(F)** Eyeglasses may be covered by Medicaid for *[a prescription of less than 0.75 diopters if medically necessary]* **adults following cataract surgery**. *[A Medical Necessity Form must be completed by the prescribing physician or optometrist and attached to the claim form. Eyeglasses less than 0.75 diopters will be approved for the following reasons:*

1. Child under age eighteen (18) who requires glasses for school performances;

2. Visual acuity 20/40 or less; or

3. Protective eyewear for persons with sight in only one (1) eye.]

[(S)] **(G)** Any warranties extended by optical companies for optical materials to private-pay patients must also apply to those same materials dispensed to Medicaid recipients.

[(T)] **(H)** Medicaid allows one (1) artificial eye per eye (one (1) left and one (1) right) within a five (5)-year period. If the artificial eye is lost, destroyed, cracked or deteriorated, payment will be allowed for replacement if a Medical Necessity Form is completed and attached to the claim.

[(U)] **(I)** Optometrist may be reimbursed for visual therapy training when there is a prognosis for substantial improvement or correction of an ocular or vision condition. These conditions include amblyopia, eccentric (nonfoveal) monocular fixation, suppression, inadequate motor or sensory fusion and strabismus (squint). Orthoptic and pleoptic training must be prior authorized by the DOSS Optometric Consultant. The number of training sessions are limited to one (1) per day, two (2) per week and a maximum of twenty (20) sessions may be requested on the Prior Authorization Request Form. If the patient shows significant improvement after the initial twenty (20) sessions and the optometrist feels that further progress could be made, DOSS may grant prior authorization for additional training sessions not to exceed a total of forty (40) sessions.

[(V)] **(J)** Fitting of contact lens for treatment of disease, including supply of lens (therapeutic bandage lens) is covered if it is prescribed by a physician, (MD or DO), as a bandage to cover a diseased condition of the eye, such as a bandage over an abrasion of the skin. The lens must be plain with no corrective power. Diagnosis for which the lens should be reimbursed are Bullous Kerotopathy, Corneal Ulcers, Ocular Pemphigoid and other corneal exposure problems. A Medical Necessity Form completed and signed by the prescribing physician must be attached to the claim form.

[(W)] **(K)** Visual field examination with optometric diagnosis evaluation, tangent screen, Autoplot or equivalent, are covered when performed by an optometrist and prior authorized by DOSS. The following criteria will be considered in granting prior authorization:

1. Elevated intraocular pressure;
2. Best corrected visual acuity of 20/40 or less in either eye;
3. Headaches not attributed to refractive error; and
4. Reduction of confrontation fields.

[(X)] **(L)** Quantitative perimetry, for example, several isopters on Goldmann perimeter, or equivalent is covered.

[(Y)] **(M)** Serial tonometry with optometric diagnostic evaluation (separate procedure), one (1) or more sessions on the same day is covered when performed by an optometrist. Routine tonometry is included in the reimbursement for a comprehensive examination and cannot be billed separately.

(8) Noncovered Services.

(W) Eyeglasses for adults, except one (1) pair following cataract surgery.

*AUTHORITY: sections [207.020] **208.152, 208.153 and 208.201**, RSMo [1986] **2000**. This rule was previously filed as 13 CSR 40-81.170. Emergency rule filed April 10, 1981, effective April 20, 1981, expired July 10, 1981. Original rule filed April 10, 1981, effective July 11, 1981. Emergency amendment filed June 27, 2002, effective July 7, 2002, expires Feb. 27, 2003. Amended: Filed July 15, 2002.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Office of the Director, Division of Medical Services, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. If to be hand-delivered, comments must be brought to the Division of Medical Services at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.*

Title 20—DEPARTMENT OF INSURANCE
Division 100—Division of Consumer Affairs
Chapter 1—Improper or Unfair Claims Settlement Practices

PROPOSED AMENDMENT

20 CSR 100-1.010 Definitions. The department is amending section (1) of this rule.

PURPOSE: This amendment changes the term "agent" to "insurance producer" or "producer."

(1) Definitions. As used in the Unfair Claims Settlement Practices Act at sections 375.1000 to 375.1018, RSMo and in the regulations promulgated pursuant thereto—

(A) *[Agent]* **Insurance producer or producer** means any individual, corporation, association, partnership or other legal entity authorized to represent an insurer with respect to a claim;

(G) Notification of claim means any notification, whether in writing or by other means acceptable under the terms of an insurance policy to an insurer or its *[agent]* **insurance producer**, by a claimant, which reasonably apprises the insurer of the facts pertinent to a claim;

AUTHORITY: section 374.045, RSMo [Supp. 1997] 2000. This rule was previously filed as 4 CSR 190-10.060(1). Original rule filed Aug. 5, 1974, effective Aug. 15, 1974. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed July 12, 2002.*

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed amendment at 10:00 a.m. on September 17, 2002. The public hearing will be held at the Harry S Truman State Office Building, Room 530, 301 West High Street, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to this proposed amendment, until 5:00 p.m. on September 17, 2002. Written statements shall be sent to Carolyn H. Kerr, Department of Insurance, PO Box 690, Jefferson City, MO 65102.

SPECIAL NEEDS: If you have any special needs addressed by the Americans With Disabilities Act, please notify us at (573) 751-6798 or (573) 751-2619 at least five (5) working days prior to the hearing.

Title 20—DEPARTMENT OF INSURANCE
Division 100—Division of Consumer Affairs
Chapter 1—Improper or Unfair Claims Settlement Practices

PROPOSED AMENDMENT

20 CSR 100-1.020 Misrepresentation of Policy Provisions. The department is amending section (2) of this rule.

PURPOSE: This amendment changes the term "agent" to "insurance producer."

(2) No *[agent]* **insurance producer** shall conceal from any first-party claimant the benefits, coverages or other provisions of any insurance policy when these benefits, coverages or other provisions are pertinent to a claim.

AUTHORITY: section 374.045, RSMo [Supp. 1996] 2000. This rule was previously filed as 4 CSR 190-10.060(3). Original rule filed Aug. 5, 1974, effective Aug. 15, 1974. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed July 12, 2002.*

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

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Title 20—DEPARTMENT OF INSURANCE
Division 100—Division of Consumer Affairs
Chapter 1—Improper or Unfair Claims Settlement Practices

PROPOSED AMENDMENT

20 CSR 100-1.200 Claims Practices When Retrospective Premiums Paid. The department is amending provisions of this rule.

PURPOSE: This amendment changes the term "agent" to "insurance producer."

No insurer, *[agent]* **insurance producer** or representative shall permit or allow a policyholder, whether corporate or individual, to engage in the settlement of third-party liability claims against that policyholder's liability coverage on behalf of the insurer when premiums payable for third-party liability coverage are calculated or are to be modified on the basis of third-party liability losses, loss payments or settlement expenses.

AUTHORITY: section 374.045, RSMo [1986] 2000. This rule was previously filed as 4 CSR 190-10.055. Original rule filed Aug. 5, 1974, effective Aug. 15, 1974. Amended: Filed July 12, 2002.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed amendment at 10:00 a.m. on September 17, 2002. The public hearing will be held at the Harry S Truman State Office Building, Room 530, 301 West High Street, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to this proposed amendment, until 5:00 p.m. on September 17, 2002. Written statements shall be sent to Carolyn H. Kerr, Department of Insurance, PO Box 690, Jefferson City, MO 65102.

SPECIAL NEEDS: If you have any special needs addressed by the Americans With Disabilities Act, please notify us at (573) 751-6798 or (573) 751-2619 at least five (5) working days prior to the hearing.

Title 20—DEPARTMENT OF INSURANCE
Division 200—Financial Examination
Chapter 1—Financial Solvency and Accounting Standards

PROPOSED AMENDMENT

20 CSR 200-1.010 Financial Condition of Insurance Companies. The department is amending subsection (2)(N) of this rule.

PURPOSE: This amendment changes the terms "agent" and "agency" to "insurance producer."

(2) An insurer may require additional scrutiny when one (1) or more of the following conditions are found to exist by the director of the Department of Insurance:

(N) One (1) *[agent or agency]* **insurance producer** produces a material amount of the gross written premiums of an insurer;

AUTHORITY: section 374.045, RSMo [Supp. 1993] 2000. This rule was previously filed as 4 CSR 190-11.005. Original rule filed Aug. 1, 1990, effective Dec. 31, 1990. Amended: Filed July 2, 1991, effective Dec. 31, 1991. Amended: Filed April 29, 1992, effective Dec. 3, 1992. Amended: Filed July 12, 2002.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed amendment at 10:00 a.m. on September 17, 2002. The public hearing will be held at the Harry S Truman State Office Building, Room 530, 301 West High Street, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to this proposed amendment, until 5:00 p.m. on September 17, 2002. Written statements shall be sent to Carolyn H. Kerr, Department of Insurance, PO Box 690, Jefferson City, MO 65102.

SPECIAL NEEDS: If you have any special needs addressed by the Americans With Disabilities Act, please notify us at (573) 751-6798 or (573) 751-2619 at least five (5) working days prior to the hearing.

Title 20—DEPARTMENT OF INSURANCE
Division 200—Financial Examination
Chapter 2—Reinsurance and Assumptions

PROPOSED AMENDMENT

20 CSR 200-2.700 Reinsurance Mirror Image Rule. The department is amending sections (2) and (3) of this rule.

PURPOSE: This amendment effectuates or aids in the interpretation of a law related to the business of insurance, section 375.246.5, RSMo.

(2) Mirror Image, Proof.

(B) In order to receive any credit for reinsurance ceded, the ceding insurer must **be able to** show to the satisfaction of the director of the Department of Insurance, the liability amount established by the assuming insurer with respect to this reinsurance. This showing may be made by any proof deemed reasonable by the director, but this proof must, at a minimum, consist of *[the audited and actuarially certified financial statements of the assuming insurer. These financial statements of the assuming insurer must be provided to the director before June 15 of each year. Failure to provide these financial statements shall result in disallowance of any credit taken by the ceding insurer.]* **a report obtained by the ceding insurer from the assuming insurer as to the total unearned premium reserve or reserve liability held by it and by all retrocessionaires or by the assuming insurer and from each of the retrocessionaires with respect to the net unearned premium reserve or reserve liability held by each of them. Each such report shall be:**

1. In writing, signed by an officer of the assuming insurer or the retrocessionaire providing it and obtained by the ceding insurer prior to the filing date of the ceding insurer's annual and quarterly statement; and

2. Maintained by the ceding insurer for three (3) years or until the conclusion of the next regular examination conducted by this state's insurance department, whichever is later. If the *[financial statements]* **proof** provided fails to meet the standards of subsection (2)(A) of this rule, the ceding insurer will be required to amend its financial statements by making adjustments to its credits for reinsurance as provided in subsections (2)(A) and (C) of this rule and subsections (3)(A) and (D).

(D) Notwithstanding the provisions of this rule, credit taken by a ceding insurer for reinsurance ceded shall not exceed the amount of the reserve the ceding insurer would have set up if it had retained the business.

(3) A ceding insurer shall not be required to comply with section (2), if and only if the ceding insurer can meet one (1) of the following exceptions:

(B) The assuming insurer is organized under **or entered through** the laws of and regulated by a state or territory which is accredited by the National Association of Insurance Commissioners (NAIC) under the NAIC's financial accreditation standards review program. This exception applies to subsections (2)(A)–(C); or

(C) The credit taken by the ceding insurer does not exceed all funds actually paid to the assuming insurer with respect to the reinsurance of the liability amount against which the credit was taken. This exception applies to *[all]* subsections **(A)–(C)** of section (2); or

(D) The difference between 1) the insurer's unearned premium or reserve liability carried together by both the ceding and assuming insurers, and 2) the liability which would have been carried by the ceding insurer had it not reinsured the risk, reflects reasonable differences in reported in-force volumes due to timing differences in reporting between ceding and assuming insurers. The sum of all such differences may not exceed one-half of one percent (0.5%) of the ceding insurer's admitted assets as of December 31 next preceding in order for this exception to apply. This exception applies only to subsection (2)(A) of this rule*[.]***; or**

(E) The assuming insurer provides security, consisting of cash or securities held in trust, to the ceding insurer in an amount not less than the amount of the credit taken by the ceding insurer, provided that:

1. The security and the holder thereof meet the standards of subsections 2 and 3 of section 375.246, RSMo;

2. The qualified United States financial institution that serves as trustee of the cash or securities held in trust, is not an "affiliate" (as that term is defined in section 382.010(1), RSMo) of the assuming insurer or of the ceding insurer;

3. If the amount of such security is less than the credit taken by the ceding insurer, then this credit taken will be disallowed to the extent it exceeds the amount of the security; and

4. The exception created by this subsection applies to subsections (A)–(C) of section (2).

AUTHORITY: section 374.045, RSMo [Supp. 1993] 2000. Original rule filed Aug. 20, 1993, effective May 9, 1994. Amended: Filed July 12, 2002.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed amendment at 10:00 a.m. on September 17, 2002. The public hearing will be held at the Harry S Truman State Office Building, Room 530, 301 West High Street, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to this proposed amendment, until 5:00 p.m. on September 17, 2002. Written statements shall be sent to Carolyn H. Kerr, Department of Insurance, PO Box 690, Jefferson City, MO 65102.

SPECIAL NEEDS: If you have any special needs addressed by the Americans With Disabilities Act, please notify us at (573) 751-6798 or (573) 751-2619 at least five (5) working days prior to the hearing.

Title 20—DEPARTMENT OF INSURANCE
Division 200—Financial Examination
Chapter 3—Insurance Taxes Other than Surplus Lines

PROPOSED RULE

20 CSR 200-3.300 Retaliatory Tax Supplement Filing

PURPOSE: The purpose of this rule is to effectuate or aid in the interpretation of section 375.916, RSMo, as that section relates to fees charged for the appointment and termination of appointment of insurance producers.

(1) On or before February 10 of each year, each foreign insurer authorized to transact the business of insurance in this state shall file a statement with the director that contains the following information with respect to the year ended December 31 immediately preceding:

(A) The total number of insurance producers appointed by the insurer who are authorized to sell, solicit or negotiate contracts of insurance in this state on behalf of the insurer as of January 1 of such year; and

(B) The number of insurance producers added during such year to the register required by section 375.022, RSMo; and

(C) The number of insurance producers terminated during such year from such register; and

(D) The total number of insurance producers appointed by the insurer as of December 31 of such year (such number shall equal the sum of subsections (A) and (B) less subsection (C) of this section); and

(E) A schedule of fees charged by the insurer's state or country of domicile for the appointment, termination, or renewal of appointment of insurance producers.

AUTHORITY: section 374.045, RSMo 2000. Original rule filed July 12, 2002.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed rule at 10:00 a.m. on September 17, 2002. The public hearing will be held at the Harry S Truman State Office Building, Room 530, 301 West High Street, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to this proposed rule, until 5:00 p.m. on September 17, 2002. Written statements shall be sent to Carolyn H. Kerr, Department of Insurance, PO Box 690, Jefferson City, MO 65102.

SPECIAL NEEDS: If you have any special needs addressed by the Americans With Disabilities Act, please notify us at (573) 751-6798 or (573) 751-2619 at least five (5) working days prior to the hearing.

Title 20—DEPARTMENT OF INSURANCE
Division 200—Financial Examination
Chapter 6—Surplus Lines

PROPOSED AMENDMENT

20 CSR 200-6.100 Surplus Lines Insurance Forms. The department is amending section (1) and Appendix 1, and reprinting Appendix 3 that follows this rule in the *Code of State Regulations*.

PURPOSE: This amendment changes the terms "broker" and "producing broker" to "producer," and the term "surplus licensee" to "surplus lines licensee."

(1) Forms.

(A) Appendix 1 of this rule**, included herein,** is the form prescribed by the director for the confidential written report required by section 384.031, RSMo.

(B) Appendix 3 of this rule**, included herein,** is the form prescribed by the director for the annual report required by section 384.057, RSMo.

APPENDIX 1

MISSOURI DEPARTMENT OF INSURANCE SURPLUS LINES FILING

STATE OF MISSOURI—DEPARTMENT OF INSURANCE
P.O. BOX 690, JEFFERSON CITY, MO 65102

(SUBMIT IN DUPLICATE)

RISK #_____

_____% _____
SURPLUS LINE INSURER AND % OF PARTICIPATION — SURPLUS LINES LICENSEE

_____% _____
SURPLUS LINE INSURER AND % OF PARTICIPATION — *[PRODUCING BROKER]* **PRODUCER**

1. NAME AND ADDRESS OF INSURED: _____
2. COMPLETE DESCRIPTION OF RISK AND ITS LOCATION: _____
3. COMPLETE DESCRIPTION OF COVERAGE (no abbreviation): _____
4. SPECIFIC REASON FOR SURPLUS LINES PLACEMENT: _____
5. IF MULTI-STATE RISK, ALLOCATION BASIS MUST BE ATTACHED.
6. POLICY NUMBER _____ DATE EFFECTIVE_____

DATE TERMINATES_____ PREMIUM EFFECTIVE _____
(If multi-state coverage, attach tax allocation basis)
7. IF NOT A DIRECT PLACEMENT WITH SURPLUS LINES INSURER(S), NAME AND ADDRESS OF AMERICAN BROKERAGE FIRM OF LLOYD'S CORRESPONDENT:

_____
NAME ADDRESS

****

THIS PORTION TO BE USED FOR AMENDED FILINGS ONLY

(Fill in above: RISK #, SURPLUS LINES LICENSEE'S NAME and NAME AND ADDRESS OF INSURED)

THE FOLLOWING INFORMATION IS HEREBY MADE A PART OF THE ABOVE NUMBERED ORIGINAL FILING

ADDITIONAL PREMIUM _____ DATE EFFECTIVE _____

RETURN PREMIUM _____ DATE EFFECTIVE _____

ADDITIONAL INFORMATION NOT SUBMITTED ON ORIGINAL FILING: _____
_____

****

I DO HEREBY CERTIFY TO THE BEST OF MY KNOWLEDGE, THAT THE ABOVE IS A TRUE AND ACCURATE RECORD OF THE SURPLUS LINES INSURANCE PROCURED PURSUANT TO CHAPTER 384, RSMO _____

_____ _____
DIRECTOR OF INSURANCE — SURPLUS **LINES** LICENSEE'S *[BROKER'S]* **PRODUCER'S** SIGNATURE

FILED:_____

THIS FORM IS DUE WITHIN THIRTY (30) DAYS OF THE EFFECTIVE DATE OF COVERAGE.

APPENDIX 3
SURPLUS LINES LICENSEE'S TAX REPORT
STATE OF MISSOURI--DEPARTMENT OF INSURANCE
P.O. BOX 690, JEFFERSON CITY, MO 65102

UNDER PROVISIONS OF THE MISSOURI SURPLUS LINES LAW, CHAPTER 384, RSMo, THIS REPORT IS FOR THE TWELVE (12)-MONTH PERIOD ENDING _____, _____ FOR THE INSURANCE PLACED IN COMPANIES NOT ADMITTED TO DO BUSINESS IN THE STATE OF MISSOURI. THIS REPORT MUST BE MADE BEFORE MARCH 2 OF THE YEAR NEXT SUCCEEDING THE YEAR IN WHICH THE INSURANCE WAS SO PROCURED.

NAME _____
(LAST) (FIRST) (MIDDLE)

ADDRESS _____
(STREET) (CITY) (STATE) (ZIP CODE)

RISK NUMBER	NAME AND ADDRESS OF INSURED	PREMIUM DEBIT	PREMIUM CREDIT

Total Debits
Less Credits
NET PREMIUMS

TAX DUE ON NET PREMIUMS (5%) $_____

STATE OF _____)
) SS.
COUNTY OF _____)

_____ BEING DULY SWORN UPON HIS OATH ACCORDING TO LAW STATES THAT THE FOREGOING REPORT(S) IS TRUE ACCORDING TO HIS BEST KNOWLEDGE AND BELIEF.

_____
SURPLUS LINES LICENSEE'S SIGNATURE

SUBSCRIBED AND SWORN TO BEFORE ME THIS _____ DAY OF _____, _____

MY TERM EXPIRES _____ _____
(NOTARY PUBLIC)

AUTHORITY: section 374.045, RSMo [Supp. 1998] 2000. This rule was previously filed as 4 CSR 190-10.103. Original rule filed May 4, 1987, effective Aug. 1, 1987. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed July 12, 2002.*

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed amendment at 10:00 a.m. on September 17, 2002. The public hearing will be held at the Harry S Truman State Office Building, Room 530, 301 West High Street, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to this proposed amendment, until 5:00 p.m. on September 17, 2002. Written statements shall be sent to Carolyn H. Kerr, Department of Insurance, PO Box 690, Jefferson City, MO 65102.

SPECIAL NEEDS: If you have any special needs addressed by the Americans With Disabilities Act, please notify us at (573) 751-6798 or (573) 751-2619 at least five (5) working days prior to the hearing.

Title 20—DEPARTMENT OF INSURANCE
Division 200—Financial Examination
Chapter 6—Surplus Lines

PROPOSED AMENDMENT

20 CSR 200-6.300 Surplus Lines Insurance Fees and Taxes. The department is amending sections (2) and (4) of this rule.

PURPOSE: This amendment changes the term "broker" to "insurance producer."

(2) The fees may include, but are not limited to, policy fees, inspection fees, fees charged by *[a broker]* **an insurance producer** acting as a managing general agent for a surplus lines insurer or any other fee charged by surplus lines insurer for the placement of surplus lines insurance.

(4) Fees paid by an insured to *[a broker]* **an insurance producer** and retained by *[a broker]* **an insurance producer** pursuant to *[a broker]* **an insurance producer** service agreement as permitted by 20 CSR 700-1.100 shall not be considered premium for purposes of the premium tax imposed by sections 384.051 and 384.059, RSMo.

AUTHORITY: section 374.045, RSMo [1986] 2000. This rule was previously filed as 4 CSR 190-10.105. Original rule filed Jan. 17, 1990, effective June 11, 1990. Amended: Filed Sept. 24, 1991, effective Feb. 6, 1992. Amended: Filed July 12, 2002.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed amendment at 10:00 a.m. on September 17, 2002. The public hearing will be held at the Harry S Truman State Office Building, Room 530, 301 West High Street, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to this proposed amendment, until 5:00 p.m. on September 17, 2002. Written statements shall be sent to Carolyn H. Kerr, Department of Insurance, PO Box 690, Jefferson City, MO 65102.

SPECIAL NEEDS: If you have any special needs addressed by the Americans With Disabilities Act, please notify us at (573) 751-6798 or (573) 751-2619 at least five (5) working days prior to the hearing.

Title 20—DEPARTMENT OF INSURANCE
Division 200—Financial Examination
Chapter 6—Surplus Lines

PROPOSED AMENDMENT

20 CSR 200-6.500 Standards for Determining the Availability of Coverage. The department is amending section (1) of this rule.

PURPOSE: This amendment changes the terms "agent" and "broker" to the term "insurance producer."

(1) For purposes of section 384.017, RSMo, an available market shall be deemed not to exist for the type and quality of coverage required by the insured if, at the time of the request, the surplus lines licensee and the licensee's producing *[agent or broker]* **insurance producer**, if any, have been unable, after the exercise of due diligence, to obtain such coverage from both—

(A) Those admitted insurers with whom the surplus lines licensee and any producing *[agent or broker]* **insurance producer** have been appointed to act, respectively, as *[agents]* **insurance producers**; and

(B) Those other admitted insurers to whom the surplus lines licensee and any producing *[agent or broker]* **insurance producer** have reasonable access and from whom they either knew they could obtain coverage or from whom they would typically be able to obtain coverage, during the normal course of business.

AUTHORITY: section 374.045, RSMo [1986] 2000. Original rule filed Aug. 4, 1992, effective May 5, 1993. Amended: Filed July 12, 2002.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed amendment at 10:00 a.m. on September 17, 2002. The public hearing will be held at the Harry S Truman State Office Building, Room 530, 301 West High Street, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to this proposed amendment, until 5:00 p.m. on September 17, 2002. Written statements shall be sent to Carolyn H. Kerr, Department of Insurance, PO Box 690, Jefferson City, MO 65102.

SPECIAL NEEDS: If you have any special needs addressed by the Americans With Disabilities Act, please notify us at (573) 751-6798 or (573) 751-2619 at least five (5) working days prior to the hearing.

Title 20—DEPARTMENT OF INSURANCE
Division 200—Financial Examination
Chapter 8—Risk Retention

PROPOSED AMENDMENT

20 CSR 200-8.100 Federal Liability Risk Retention Act. The department is amending subsections (3)(H) and (3)(L), and (4)(E) and (4)(F) of this rule.

PURPOSE: This amendment changes the terms "agent" and "broker" to "insurance producer."

(3) Risk Retention Group. Every risk retention group chartered in states other than this state, seeking to do business as a risk retention group in this state, shall observe and abide by the laws of this state as follows. Each risk retention group shall register, before offering insurance in this state, with the director by submitting for approval to the director the information concerning the risk retention group as is prescribed in this rule.

(H) Licensing.

1. A risk retention group shall solicit members in Missouri only through *[appointed agents]* **insurance producers** licensed by the director for general casualty.

2. *[A broker]* **An insurance producer** licensed by the director for general casualty, on behalf of a client seeking insurance, may place insurance with any duly registered purchasing group or risk retention group in the same manner as placing insurance with an authorized insurance company.

(L) Application for Registration.

1. A risk retention group currently registered with the director shall complete and file with the director the Application for Registration set forth in Exhibit A**, included herein**. The application must be filed no later than September 6, 1991. The risk retention group should notify the director of any change in the information in the application within thirty (30) days of any change. Failure to file or to update changes in the application will result in a forfeiture of the risk retention group's registration status with the director.

2. All new applicants for registration must complete and file with the director the Application for Registration set forth in Exhibit A. New applicants must submit a one hundred dollar ($100) registration fee with the application.

3. All currently registered risk retention groups must pay an annual renewal fee of one hundred dollars ($100) beginning on July 1, 1991. Failure to pay the renewal fee will result in a forfeiture of registration.

4. All new applicants shall not be required to pay the annual fee as described in subsection (4)(E) until the year following the year the applicant initially registered with the director.

(4) Purchasing Group. Every purchasing group seeking to do business in this state shall register with the director by submitting for approval to the director the information concerning the purchasing group as is prescribed in this rule.

(E) Application for Registration.

1. A purchasing group currently registered with the director shall complete and file with the director the application for registration set forth in Exhibit B**, included herein**. The application must be filed by no later than September 6, 1991. The purchasing group should notify the director of any change in the information in the application within thirty (30) days of any change. Failure to file or to update changes in the application will result in a forfeiture of the purchasing group's registration status with the director.

2. All new applicants for registration must complete and file with the director the application for registration set forth in Exhibit B. New applicants must submit a one hundred dollar ($100) registration fee with the application.

3. All currently registered purchasing groups must pay an annual renewal fee of one hundred dollars ($100) beginning on July 1, 1991. Failure to pay the renewal fee will result in a forfeiture of registration.

4. All new applicants shall not be required to pay the annual fee as described in subsection (4)(E) until the year following the year the applicant initially registered with the director.

(F) Licensing.

1. A purchasing group located in Missouri shall procure insurance with an admitted company through an *[agent or broker]* **insurance producer** licensed by the director for general casualty and insurance with a nonadmitted company through a surplus lines licensee licensed by the director.

2. Any purchasing group soliciting members in Missouri shall do so through an *[agent]* **insurance producer** licensed by the director for general casualty.

EXHIBIT A

APPLICATION FOR REGISTRATION AS A RISK RETENTION GROUP
(All information should be typed.)

1. List the corporate name of the Risk Retention Group.

_____

(Name *must* include the phrase "Risk Retention Group")

List any DBAs of the Risk Retention Group.

_____

2. The primary activity of this Risk Retention Group consists of assuming and spreading all, or any portion, of the liability exposure of its members.

3. The Risk Retention Group is organized for the primary purpose of conducting the activity described under item 2.

4. The Risk Retention Group is chartered and licensed as a liability insurance company under the laws of the State of _____, and is authorized to engage in the following lines of insurance under the laws of its chartering state:

_____

_____

_____

5. The Risk Retention Group does not exclude any person from membership in the Group solely to provide for members of the Group a competitive advantage over such a person.

6. Ownership of the Risk Retention Group consists of one or the other of the following (check one):

_____ the owners of the Group are the only persons who comprise the membership of the Group and who are provided insurance by the Group;

_____ the sole owner of the Group is _____

_____

(Give name and address of the organization)

An organization whose members only comprise the membership of the Group, and whose owners are only persons who comprise the membership of the Group and who are provided insurance by the Group.

7. The Risk Retention Group is composed of members who are engaged in the following described business or activities, which are similar or related with respect to the liability to which such members are exposed by virtue of related, similar or common business, trade, product, services, premises or operations (Give general description of business or activities engaged in by Group members.):

_____

_____

_____

8. List the name, address and telephone number of each officer of the Risk Retention Group and the key officer or staff person (*not* an employee of the Group's management company) responsible for overseeing "hands on management" of the Group. (Attach additional pages if necessary.)

8A. List the name, address and telephone number of the company responsible for management of the insurance operations of this Risk Retention Group. (If none, answer none.)

8B. List the name, address and telephone number of the principal agent or broker responsible for marketing the Group's insurance policies. (If none, answer none.)

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9. The activities of the Risk Retention Group do not include the provision of insurance other than:
(a) Liability insurance for assuming and spreading all or any portion of the similar or related liability exposure of its Group members; and
(b) Reinsurance with respect to the similar or related liability exposure of another Risk Retention Group (or a member of such other Risk Retention Group) engaged in businesses or activities which qualify such other Risk Retention Group (or member) under item 6. for membership in this Group.

10. The Risk Retention Group will comply with the unfair claim settlement practices laws of the state of Missouri.

11. The Risk Retention Group will pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on the Group under the laws of this state.

12. The Risk Retention Group has designated the insurance director of this state to be its agent solely for the purpose of receiving service of legal documents or process.

13. The Risk Retention Group will submit to examination by the insurance director to determine the Group's financial condition, if—
(a) The insurance director of the Group's chartering state has not begun or has refused to initiate an examination of the Group; and
(b) Any such examination by the insurance director is coordinated so as to avoid unjustified duplication and unjustified repetition.

14. The Risk Retention Group will comply with a lawful order issued in a delinquency proceeding commenced by the insurance director upon a finding of financial impairment, or in a voluntary dissolution proceeding.

15. The Risk Retention Group will comply with the laws of this state concerning deceptive, false or fraudulent acts or practices, including any injunctions regarding such conduct obtained from a court of competent jurisdiction.

16. The Risk Retention Group will comply with an injunction issued by a court of competent jurisdiction upon petition by the insurance director alleging that the Group is in hazardous financial condition or is financially impaired.

17. The Risk Retention Group will provide the following notice, in ten (10)-point type, in any insurance policy issued by the Group:

NOTICE

"This policy is issued by your Risk Retention Group. Your Risk Retention Group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your Risk Retention Group."

18. The Risk Retention Group has submitted to the insurance director, as part of this application and *before* it has offered any insurance in this state, a copy of the plan of operation or feasibility study which it has filed with the insurance director of its chartering state. This plan or study discloses the name of the state in which the Group is chartered, as well as the Group's principal place of business, and such plan or study further includes the coverages, deductibles, coverage limits, rates and rating classification systems for each line of insurance the Group intends to offer. The Group will promptly submit to the insurance director any revisions of such plan or study to reflect any changes to the plan including, but without limitation, additional lines of liability insurance which the Group intends to offer, and any change in the designation of the Group's chartering state.

19. The Risk Retention Group will submit its annual financial statement to the insurance director by March 1 of each year. The annual financial statement will be certified by an independent public accountant and include a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist.

20. The Risk Retention Group will not solicit or sell insurance to any person in this state who is not eligible for membership in the Group.

21. The Risk Retention Group will not solicit or sell insurance in this state, or otherwise operate in this state, if the Group is financially impaired or is in a hazardous financial condition We do hereby swear and affirm that the aforementioned statements and information are true and correct.

_____ _____
President or Chief Executive Officer Secretary

Sworn before me this _____ day of _____, _____.

Notary Public, State of: _____ My Commission Expires: _____

STATE OF _____
DEPARTMENT OF INSURANCE
APPOINTMENT OF ATTORNEY TO ACCEPT SERVICE

The _____,
a Risk Retention Group (called the Group) duly organized under the laws of the State of _____, appoints the insurance director, of the state of Missouri, and his or her successors in office, to be its lawful attorney upon whom all legal process in any action or proceeding against it shall be served and further agrees that any lawful process against it which is served upon this attorney shall have the same legal validity as if served personally upon the Group. The Group gives the insurance director, and his or her successors, full authority to do every act necessary to be done under this appointment as fully as the Group could do if personally present, and ratifies all that the insurance director shall lawfully do under the power granted by this appointment. This authority may be withdrawn only upon a written notice of revocation and in any case shall continue in effect so long as any liability arising out of this appointment remains outstanding in the state. This instrument is executed pursuant to and shall be construed to constitute full compliance with Section 3(a)(1)(D) of the Liability Risk Retention Act of 1986. The Group designates

_____
whose address is _____
as the person to whom process against the Group served upon the director shall be forwarded.

IN WITNESS OF THIS APPOINTMENT, said Group, in pursuant to a resolution duly appointed by its Board of Directors, has caused this instrument to be executed in its name by its President and Secretary, and its corporate seal to be affixed at the City of _____.

State of _____ this _____ day of _____, _____.
Attest:

_____
Secretary

_____
(Name of risk Retention Group)

By:

STATE OF _____
APPLICATION FOR REGISTRATION AS A PURCHASING GROUP
(All information should be typed)

1. List the exact name of the Purchasing Group.

_____

_____

2. Indicate the form of organization or incorporation.

_____

3. The Purchasing Group is domiciled in the State of: _____

4. List any other names under which the Purchasing Group is or may be doing business in this state or any other state if different than item 3.

_____

_____

_____

5. List the complete physical address of the Purchasing Group.

_____

_____

_____

_____

6. List the name, address and telephone number of the principal staff person or officer of the Purchasing Group who has knowledge of its insurance program, including membership criteria, coverages and key personnel of the group's administrator and insurance carrier.

_____

_____

_____

_____

6A. List the name, address and telephone number of the firm that acts as the administrator of the Purchasing Group and the name of the principal account executive responsible for the group's insurance program. (If none, answer none.)

_____

_____

_____

_____

6B. List the name of the principal agent or broker responsible for the sale or purchase of the group's liability insurance. (If none, answer none.)

_____

_____

_____

_____

_____

7. List the names, addresses, and occupations of the principal officers and directors of the Purchasing Group. Attach additional pages if necessary.

Principal Officers	Principal Directors

8. The Purchasing Group is composed of members whose business or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations. Give a general description of business or activities engaged in by Purchasing Group members:

9. The Purchasing Group has as one of its purposes the purchase of liability insurance on a purchasing group basis.

10. The Purchasing Group purchases such liability insurance only for its members and only to cover their similar or related liability exposure, as described in item 8.

11. The purchasing group intends to purchase the following lines and classifications of liability insurance:

12. The Purchasing Group intends to purchase the liability insurance described in item 11. above from the following insurance company or companies. Give full name of company, state of domicile and FEIN:

13. List the name and address of the licensed agent or broker through whom purchases will be effected. *Complete this item only if purchase of insurance is to be made from a surplus lines insurer, rather than from a licensed insurer.*

14. If the purchasing group transacts insurance business by means of a "direct offering" (without using insurance agents to market its program), list the name and address of each person not listed in item 13. who will be transacting business on behalf of the Purchasing Group. (You need not include the names of licensed agents duly appointed by an admitted insurer.)

_____

_____

_____

15. Has any person transacting business on behalf of this Purchasing Group ever:

(A) Been arrested, indicted and convicted of a felony or is a felony charge currently pending against any such person? .....

(B) Had denied any application for a professional, vocational or business license? _____

(C) Had suspended or revoked any such license? _____

(D) Had withdrawn or surrendered any such application or license to avoid potential disciplinary action against licensee? .....

If the answer to any part of this question is yes, attach a supplementary statement explaining in full each such occurrence.

We do hereby swear and affirm that the aforementioned statements and information are true and correct.

_____ _____

President or Chief Executive Officer Secretary

Sworn before me this _____ day of _____, _____

Notary Public, State of _____ My Commission Expires _____

STATE OF _____

DEPARTMENT OF INSURANCE
APPOINTMENT OF ATTORNEY TO ACCEPT SERVICE

The _____,
a Purchasing Group (called the Group) duly organized under the laws of the State of _____,
appoints the insurance director, of the state of Missouri, and his or her successors in office, to be its lawful attorney upon whom all legal process in any action or proceeding against it shall be served and further agrees that any lawful process against it which is served upon this attorney shall have the same legal validity as if served personally upon the Group. The Group gives the insurance director, and his or her successors, full authority to do every act necessary to be done under this appointment as fully as the Group could do if personally present, and ratifies all that lawfully do under the power granted by this appointment. This authority may be withdrawn only upon a written notice of revocation and in any case shall continue in effect so long as any liability arising out of this appointment remains outstanding in the state. This instrument is executed pursuant to and shall be construed to constitute full compliance with Section 4(e) of the Liability Risk Retention Act of 1986.

The Group designates _____
whose address is _____
as the person to whom process against the Group served upon the director shall be forwarded.

IN WITNESS OF THIS APPOINTMENT, said Group, pursuant to a resolution duly appointed by its Board of Directors, has caused this instrument to be executed in its name by its President and Secretary, and its corporate seal to be affixed at the City of _____ State of _____ this _____ day of _____, _____

Attest:

_____ _____

Secretary (Name of Purchasing Group)

By:

_____

President

AUTHORITY: section 374.045.1(3), RSMo [Supp. 1998] 2000. This rule was previously filed as 4 CSR 190-11.190. Original rule filed Aug. 12, 1988, effective Jan. 13, 1989. Amended: Filed Feb. 4, 1991, effective July 8, 1991. Amended: Filed April 23, 1999, effective Nov. 30, 1999. Amended: Filed July 12, 2002.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed amendment at 10:00 a.m. on September 17, 2002. The public hearing will be held at the Harry S Truman State Office Building, Room 530, 301 West High Street, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to this proposed amendment, until 5:00 p.m. on September 17, 2002. Written statements shall be sent to Carolyn H. Kerr, Department of Insurance, PO Box 690, Jefferson City, MO 65102.

SPECIAL NEEDS: If you have any special needs addressed by the Americans With Disabilities Act, please notify us at (573) 751-6798 or (573) 751-2619 at least five (5) working days prior to the hearing.

Title 20—DEPARTMENT OF INSURANCE
Division 200—Financial Examination
Chapter 10—Managing General Agent (MGA)

PROPOSED AMENDMENT

20 CSR 200-10.200 Filings Required Within Thirty Days of Appointment of an MGA. The department is amending subsection (1)(A) of this rule.

PURPOSE: This amendment changes the term "agent" to "producer."

(1) Any insurer who is required under 20 CSR 200-10.100 to file for appointment of a managing general agent (MGA) must complete and file the following within thirty (30) days of that appointment:

(A) The Appointment Form MGA-1. (see 20 CSR 200-10.500) This form must list all information requested, including, but not limited to, the name and Missouri insurance *[agent's]* **producer's** license number of the MGA. Attached to Form MGA-1 shall be the following exhibits, unless the insurer has obtained an express waiver from the director:

1. A copy of a fidelity bond for the protection of the insurer in the minimum amount of one hundred thousand dollars ($100,000) with no deductible; and

2. A copy of the MGA's errors and omissions liability policy in the minimum amounts of one hundred thousand dollars ($100,000) per occurrence or claim and one (1) million dollars aggregate; and

AUTHORITY: section 374.045, RSMo [1986] 2000. This rule was previously filed as 4 CSR 190-11.340(3). Original rule filed Jan. 22, 1991, effective July 8, 1991. Amended: Filed Nov. 3, 1992, effective May 5, 1993. Amended: Filed July 12, 2002.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed amendment at 10:00 a.m. on September 17, 2002. The public hearing will be held at the Harry S Truman State Office Building, Room 530, 301 West High Street, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to this proposed amendment, until 5:00 p.m. on September 17, 2002. Written statements shall be sent to Carolyn H. Kerr, Department of Insurance, PO Box 690, Jefferson City, MO 65102.

SPECIAL NEEDS: If you have any special needs addressed by the Americans With Disabilities Act, please notify us at (573) 751-6798 or (573) 751-2619 at least five (5) working days prior to the hearing.

Title 20—DEPARTMENT OF INSURANCE
Division 300—Market Conduct Examinations
Chapter 2—Record Retention for Market Conduct Examinations

PROPOSED AMENDMENT

20 CSR 300-2.200 Records Required for Purposes of Market Conduct Examinations. The director is adding a new subsection to section (1), adding four (4) new subsections to section (2), and adding a new subsection to section (3). It also replaces the terms insurance "agent," "agency," and "broker" with the term insurance "producer."

PURPOSE: This amendment defines the term "third party vendor or service provider" and adds language relating to the types of records that insurers shall be required to maintain and provide to the department for the purpose of market conduct examinations relating to any third party vendor or service provider with whom it contracts.

(1) Definitions.

(H) The term "third party vendor or service provider" shall mean any person or entity participating in any aspect of the claims handling, claims payment, complaint handling, termination, rating, underwriting, or marketing process or providing information or assistance regarding the claims handling, claims payment, complaint handling, termination, rating, underwriting, or marketing process for a fee or pursuant to a contract, whether written or oral, with an insurer.

(2) Records Required.

(A) Every insurer, licensed to do business in this state shall maintain its books, records, documents and other business records in a manner so that the following practices of the insurer may be readily ascertained during market conduct examinations: claims handling and payment, complaint handling, termination, rating, underwriting and marketing.

(B) Every insurer, licensed to do business in this state, shall provide in a written contract entered into with any and all third party vendors or service providers which perform claims handling, claims payment, complaint handling, termination, rating, underwriting, or marketing processes on behalf of that insurer to have access to or maintain a copy of the books, records, documents, and other business records used or relied upon by the third party vendor or service provider with whom it contracts in the performance of the third party vendors' or service providers' duties in the claims handling, claims payment, complaint

handling, termination, rating, underwriting, or marketing processes on behalf of that insurer.

(C) During an examination, the insurer shall provide its written contract entered into with each third party vendor or service provider and such documents as set forth in subsection (2)(B) of this section within the time frames set forth in section (6) of this rule.

(D) Every insurer must exercise due diligence to monitor and audit every third party vendor or service provider with whom it contracts so as to justify to itself at least annually that the methods and procedures used in the claims handling, claims payment, complaint handling, termination, rating, underwriting, or marketing processes are accurate, done so for an appropriate business purpose, and do not violate the laws of this state. The insurer must be able to produce documentation and otherwise demonstrate how it monitored, audited, and verified the accurateness, lawfulness, and appropriateness of the business purpose and services performed by the third party vendor or service provider on its behalf within the time frames set forth in section (6) of this rule.

(E) It will be insufficient compliance with this regulation for the insurer to solely submit to the examiner a letter or affidavit from the third party vendor or service provider certifying the accuracy, appropriateness, and compliance with the laws of this state as it relates to the methods and procedures used in the claims handling, claims payment, complaint handling, termination, rating, underwriting, or marketing processes without the accompanying documentation as set forth in subsections (2)(B), (2)(C), and (2)(D) of this rule.

(3) Records to be Maintained. The following records shall be maintained:

(A) A Missouri policy record file shall be maintained for each Missouri policy issued, and shall be maintained for the duration of the current policy term plus two (2) calendar years. Missouri policy records shall be maintained so as to show clearly the policy period, basis for rating and any imposition of additional exclusions from or exceptions to coverage. Missouri policy records need not be segregated from the policy records of other states so long as they are readily available to Missouri market conduct examiners as required under this rule. Missouri policy records shall include the following:

1. The actual, completed application for each contract.

A. The application shall bear the signature of the applicant whenever the insurer intends to retain any right to contest any warranty, representation or condition contained in the application.

B. The application shall bear a clearly legible means by which an examiner can identify any *[agent or broker]* **insurance producer** involved in the transaction. The examiners shall be provided with any information needed to determine the identity of said *[agent or broker]* **insurance producer**;

2. Any declaration pages (the initial page and any subsequent pages), the insurance contract, any certificates evidencing coverage under a group contract, any endorsements or riders associated with a policy, and any written or electronic correspondence to or from the insured pertaining to the coverage. If any of these records has already been filed with the department, a separate copy of the record need not be maintained in the individual policy files to which the record pertains, provided it is clear from the insurer's other records or systems that the record applies to a particular policy and that any data contained in the record relating to that policy can be retrieved or recreated;

3. Any binder with terms and conditions that differ from the terms and conditions of the policy subsequently issued; and

4. Any guidelines, manuals or other information necessary for the reconstruction of the rating and underwriting of the policy. The maintenance at the site of a market conduct examination of a single copy of each of the above shall satisfy this requirement. If any such rating or underwriting record is computer based, the records used to input the information into the computer system shall also be available to the examiners;

(B) A Missouri claim file shall be maintained for the calendar year in which the claim is closed plus three (3) years. The claim file shall be maintained so as to show clearly the inception, handling, and disposition of each claim. The claim file(s) shall be sufficiently clear and specific so that pertinent events and dates of these events can be reconstructed. A Missouri claim file(s) shall include the following:

1. Any notification of claim, proof of loss, claim form(s), proof of claim payment check/draft, notes, contract, declaration pages, certificates evidencing coverage under a group contract, endorsements or riders, work papers, any written communication, and any documented or recorded telephone communication related to the handling of a claim, including the investigation, payment and/or denial of the claim, and any claim manual(s) or other information necessary for reviewing the claim. Where a particular document pertains to more than one file, insurers may satisfy the requirements of this paragraph by making available, at the site of a market conduct examination, a single copy of each document;

2. Documents in a claim file received from an insured, the insured's *[agent]* **insurance producer**, a claimant, the department or any other insurer shall bear the initial date of receipt date-stamped by the insurer in a legible form in ink or some other permanent manner. Unless the company provides the examiners with written procedures to the contrary, the earliest date stamped on a document will be considered the initial date of receipt;

3. In cases of a total loss on property claims for a motor vehicle, trailer, boat or outboard motor, the claim file shall contain a copy of the certification described in section 144.027, RSMo attesting to the amount of the insurance proceeds and any deductible obligation paid by the claimant regarding the loss. The certification shall contain a statement informing the claimant that the sales tax credit is valid for only one hundred eighty (180) days; and

4. If an insurer, as its regular business practice, places the responsibility for handling certain types of claims upon company personnel other than its claims personnel, the insurer need not duplicate its files for maintenance by claims personnel. These claims records must be maintained as part of the records of the insurer's operations and must be readily available to examiners. Notwithstanding the definition of "claim" at subsection 20 CSR 100-1.010(1)(B), the time requirements for the retention of records for policy files stated at section 374.205.2(2), RSMo, apply to claims handled by the company's personnel who typically handle policy files;

(C) Records to be maintained relating to the insurer's compliance with Missouri's licensing requirements shall include the Missouri licensing records of each *[agency, agent and broker]* **insurance producer** associated with the insurer. Licensing records shall be maintained so as to show clearly the dates of the appointment and terminations of each *[agent]* **insurance producer**. In accordance with the provisions of section 375.158, RSMo, copies of the current licenses of each *[agent, agency and broker]* **insurance producer** not appointed by the insurer but to whom a commission will be paid shall be on file with the insurer prior to the payment of this commission. The date of the receipt by the insurer of the copy of the license shall be indicated by a date-stamp placed on the license. Unless the company provides the examiners with written procedures to the contrary, the earliest date stamped on a document will be considered the initial date of receipt;

(D) The Missouri complaint records required to be maintained under section 375.936(3), RSMo shall include a complaint log or register in addition to the actual written complaints. The complaint log or register shall show clearly the total number of complaints for a period of not less than the immediately preceding three (3) years, the classification of each complaint by line of insurance, the nature of each complaint, and the disposition of each complaint. The complaint log or register shall also contain a reference to the location of the file to which each complaint corresponds. If the insurer maintains

the file in a computer format, the reference in the complaint log or register for locating such documentation shall be an identifier such as the policy number or other code. Such codes shall be provided to the examiners at the time of an examination; *[and]*

(E) The insurer shall retain declined underwriting files for a period of three (3) years from the date of declination. The term "declined underwriting file" shall mean all written or electronic records concerning a policy for which an application for insurance coverage has been completed and submitted to the insurer or its *[agent]* **insurance producer** but the insurer has made a determination not to issue a policy or not to add additional coverage when requested. A declined underwriting file shall include an application, any documentation substantiating the decision to decline an issuance of a policy, any binder issued without the insurer issuing a policy, any documentation substantiating the decision not to add additional coverage when requested and, if required by law, any declination notification. Notes regarding requests for quotations which do not result in a completed application for coverage need not be maintained for purposes of this regulation*[.]*; **and**

(F) A copy of the contract that the insurer entered into with any and all third party vendors or service providers for the performance of the third party vendors' or service providers' duties in the claims handling, claims payment, complaint handling, termination, rating, underwriting, or marketing processes on behalf of the insurer.

(4) Form of Record.

(A) Any record required to be maintained by an insurer, may be in the form of paper; photograph; computer; magnetic, mechanical or electronic medium; or any process which accurately forms a durable reproduction of the record, so long as the record is capable of duplication to a hard copy that is as legible as the original document. Documents that require the signature(s) of the insured and/or insurer's *[agent]* **insurance producer**, shall be maintained in any format as listed above provided evidence of the signature(s) is preserved in that format.

AUTHORITY: sections 374.045, 375.012 and 536.016, RSMo [1994] 2000. This rule was previously filed as 4 CSR 190-11.050. Original rule filed Dec. 20, 1974, effective Dec. 30, 1974. Amended: Filed Sept. 5, 1975, effective Sept. 15, 1975. Amended: Filed April 4, 1991, effective Oct. 31, 1991. Amended: Filed Dec. 1, 1998, effective July 30, 1999. Amended: Filed July 12, 2002.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed amendment at 10:00 a.m. on September 17, 2002. The public hearing will be held at the Harry S Truman State Office Building, Room 530, 301 West High Street, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to this proposed amendment, until 5:00 p.m. on September 17, 2002. Written statements shall be sent to Carolyn H. Kerr, Department of Insurance, PO Box 690, Jefferson City, MO 65102.

SPECIAL NEEDS: If you have any special needs addressed by the Americans With Disabilities Act, please notify us at (573) 751-6798 or (573) 751-2619 at least five (5) working days prior to the hearing.

Title 20—DEPARTMENT OF INSURANCE
Division 400—Life, Annuities and Health
Chapter 1—Life Insurance and Annuity Standards

PROPOSED AMENDMENT

20 CSR 400-1.010 Policy Approval Criteria for Life Insurance and Annuity Contracts. The department is amending subsections (1)(C) and (2)(A) of this rule.

PURPOSE: This amendment changes the term "agent" to "insurance producer."

(1) No life insurance or annuity contract, including applications, riders, endorsements, policies and certificates, shall be approved for use in this state unless it conforms to the following:

(C) No application for a life insurance or annuity contract or any coverage pertaining thereto, shall contain a statement such as, "No information acquired by any representative of the company or conveyed to any prospective insured by such representative shall be binding upon the company unless written herein." The company may specifically disclaim any *[agent's]* **insurance producer's** authority to waive a complete answer to any question in the application, pass on insurability, make or alter any contract or waive any of the company's other rights or requirements;

(2) In addition to the requirements of section (1), each life insurance policy shall contain in substance the following provision, if applicable to the form of policy being filed:

(A) The policy, including the endorsements and attached application, if any, constitutes the entire contract of insurance. No change in the policy shall be valid until approved by an executive officer of the insurer and unless the approval is attached to the policy. No *[agent]* **insurance producer** has authority to change this policy or to waive any of its provisions;

AUTHORITY: section 374.045, RSMo [1986] 2000. This rule was previously filed as 4 CSR 190-13.230. Original rule filed May 13, 1983, effective Nov. 11, 1983. Amended: Filed Dec. 1, 1989, effective June 29, 1990. Amended: Filed July 12, 2002.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed amendment at 10:00 a.m. on September 17, 2002. The public hearing will be held at the Harry S Truman State Office Building, Room 530, 301 West High Street, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to this proposed amendment, until 5:00 p.m. on September 17, 2002. Written statements shall be sent to Carolyn H. Kerr, Department of Insurance, PO Box 690, Jefferson City, MO 65102.

SPECIAL NEEDS: If you have any special needs addressed by the Americans With Disabilities Act, please notify us at (573) 751-6798 or (573) 751-2619 at least five (5) working days prior to the hearing.