

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 If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission.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 rule-making 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 4—DEPARTMENT OF ECONOMIC DEVELOPMENT

Division 110—Missouri Dental Board Chapter 2—General Rules

PROPOSED AMENDMENT

4 CSR 110-2.170 Fees. The board is proposing to amend sections (1) and (2).

PURPOSE: The Missouri Dental Board is statutorily obligated to enforce and administer the provisions of Chapter 332, RSMo. Pursuant to section 332.031.3, RSMo, the board shall by rule and regulation set the amount of fees authorized by Chapter 332, RSMo so that the revenue produced is sufficient, but not excessive, to

cover the cost and expense to the board for administering the provisions of Chapter 332, RSMo. The Dental Well Being Committee was established pursuant to House Bill 343 of the 90th General Assembly and the Advisory Commission for Dental Hygienists was established pursuant to House Bill 567 of the 91st General Assembly.

This amendment also combines the application and initial licensure fees, allows the board to implement a biennial renewal and deletes the research and copying fees pursuant to section 610.026, RSMo which states fees for copying records shall not exceed the actual cost of document search and duplication.

(1) The following fees are established by the Missouri Dental Board:

(A) Application Fees*

1. Dentist (includes initial Missouri jurisprudence exam fee) [\$200.00] **\$230.00**
2. Dental Specialist (includes initial specialist exam fee, if applicable) [\$300.00] **\$330.00**
3. Dental Hygienist (includes initial Missouri jurisprudence exam fee) [\$125.00] **\$155.00**

[(C) Initial Licensure Fee (in addition to (1)(A) above)]

1. Dentist \$ 30.00
2. Dental Specialist \$ 30.00
3. Dental Hygienist \$ 30.00

[(D)] (C) [Annual] Biennial License Renewal Fee

1. Dentist License [\$115.00] **\$250.00**
2. Dental Specialist License [\$125.00] **\$270.00**
3. Dental Hygienist License [\$ 60.00] **\$130.00**

[(E)] (D) Renewal Penalty Fee—Dentist/Dental

Specialist/Dental Hygienist \$100.00

(Renewal forms postmarked by the post office December 1 or after will be considered delinquent. Should November 30 fall on a Saturday, Sunday or legal holiday, renewal forms postmarked by the post office on the next business day will not be considered delinquent.)

[(F)] (E) Certification/Permit Fees

1. Dentists
 - A. General Anesthesia
 - (I) Permit Fee (per person per site) \$100.00
 - (II) Renewal Fee (per person per site) \$100.00
 - B. Parenteral Conscious Sedation
 - (I) Permit Fee (per person per site) \$100.00
 - (II) Renewal Fee (per person per site) \$100.00

2. Dental Hygienists
 - A. Administration of Nitrous Oxide Analgesia \$ 10.00
 - B. Local Anesthesia \$ 10.00

3. Dental Assistants
 - A. Monitoring Nitrous Oxide Analgesia \$ 10.00

[(G)] (F) Miscellaneous Fees

1. Corporation Name Approval \$ 15.00
2. Verification of Licensure—Dentist/Dental Specialist/Dental Hygienist \$ 20.00
3. Duplicate **Original** Certificate \$ 50.00
4. Photocopies of Records (initial page) \$ 1.00
5. Photocopies of Records (per copy page thereafter) \$.50
6. Research (per hour of staff time requiring more than one (1) hour for researching and making copies of board records) \$ 10.00

4. Duplicate Renewal License (over two (2) per duplicate) \$5.00

[(7)] **5. Uncollected Fee (for any uncollectible check or other uncollectible financial instrument) \$ 25.00**

*** All application fees authorized by the Missouri Dental Board include the fee for the initial jurisprudence examination, the initial specialist examination fee, if applicable, and the initial licensure fee.**

(3) All licenses will be renewed *[annually]* **biennially** and will expire on November 30 of each **even-numbered** year.

AUTHORITY: section 332.031.3, RSMo [Supp. 1997] 2000. Emergency rule filed June 30, 1981, effective July 9, 1981, expired Nov. 6, 1981. Original rule filed June 30, 1981, effective Oct. 11, 1981. For intervening history, please consult Code of State Regulations. Amended: Filed Dec. 14, 2001.

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 cost private entities an estimated ninety-seven thousand four hundred forty dollars (\$97,440) biennially and five thousand two hundred thirty dollars (\$5,230) annually for the life of the rule. It is anticipated that the total cost for private entities will recur for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee. A detailed fiscal note, which estimates the cost of compliance with this rule, has been filed with the secretary of state.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Dental Board, Sharlene Rimiller, Executive Director, PO Box 1367, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**FISCAL NOTE
PRIVATE ENTITY COST**

I. RULE NUMBER

Title: 4 – Department of Economic Development

Division: 110 – Missouri Dental Board

Chapter: 2 – General Rules

Type of Rulemaking: Proposed Amendment

Rule Number and Name: 4 CSR 110-2.170 Fees

Prepared November 29, 2001 by the Division of Professional Registration and the Missouri Dental Board

II. SUMMARY OF FISCAL IMPACT**Biennial Costs**

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 annual cost of compliance with the rule by the affected entities:
3,122	Licensed Dentists (Biennial License Renewal –\$20 increase)	\$62,440
603	Licensed Dental Specialists (Biennial License Renewal \$20 increase)	\$12,060
2,294	Licensed Dental Hygienists (Biennial License Renewal –\$10 increase)	\$22,940
Total annual cost of compliance for the life of the rule		\$97,440.00

Annual Costs

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 annual cost of compliance with the rule by the affected entities:
1,046	Licensed Dentists, Dental Specialists and Hygienists (Duplication of Original License - \$5)	\$5,230
Total annual cost of compliance for the life of the rule		\$5,230

III. WORKSHEET

See table above.

IV. ASSUMPTIONS

- The board is implementing a biennial renewal for its licensees and increasing biennial renewal fees by \$20 for dentists and dentist specialists and \$10 for dental hygienists. The calculations shown in the table above reflect only those increases.
- The Dental Well Being Committee was established pursuant to House Bill 343 of the 90th General Assembly and the Advisory Commission for Dental Hygienists was established pursuant to House Bill 567 of the 91st General Assembly.
- It is anticipated that the total annual cost will recur each year for the life of the rule, may vary with inflation and is expected to decrease annually at the rate projected by the Legislative Oversight Committee.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 110—Missouri Dental Board
Chapter 2—General Rules**

PROPOSED AMENDMENT

4 CSR 110-2.240 Continuing Dental Education. The board is proposing to amend subsection (1)(B), section (2), subsection (2)(A), (2)(C), and (2)(H), sections (3), (4), and (5), and add new language in section (6).

PURPOSE: This amendment adjusts the continuing education requirements in order to comply with a biennial renewal.

(1) Definitions.

(B) Time block—*[A three (3)-year time period with starting dates of December 1, 1993 through November 30, 1996; December 1, 1996 through November 30, 1999; December 1, 1999 through November 30, 2002]* **A two (2)-year period with starting dates of December 1, 2002 through November 30, 2004; December 1, 2004 through November 30, 2006** and repeating in this sequence from that date.

(2) *[The board shall not issue a renewal of a dental or dental hygiene license unless the licensee completes and reports (on forms provided by the board) a total of seventy-five (75) hours and forty-five (45) hours of continuing dental education respectively at the conclusion of each time block.]* **In order to renew a license, each dentist shall submit satisfactory evidence of completion of fifty (50) hours of continuing education during the two (2)-year period immediately preceding the renewal period and each dental hygienist shall submit satisfactory evidence of completion of thirty (30) hours of continuing education during the two (2)-year period immediately preceding the renewal period.** Any hours acquired beyond the required number may be carried forward into the next time block not to exceed twenty-five (25) hours for dentists and fifteen (15) hours for dental hygienists. Of the *[seventy-five (75)]* **fifty (50)** hours required for dentists, not less than *[sixty (60)]* **forty (40)** must be hours directly related to the updating and maintaining of knowledge and skills in the treatment, health and safety of the individual dental patient. Of the *[forty-five (45)]* **thirty (30)** hours required for dental hygienists, not less than *[thirty-five (35)]* **twenty-five (25)** must be hours directly related to the updating and maintaining of knowledge and skills in the treatment, health and safety of the individual dental patient. One (1) hour of continuing education shall be granted for every fifty to sixty (50–60) minutes of contact (either academic or clinical) instruction.

(A) For the licensure renewal form due *[November 30, 1994]* **November 30, 2004**, and each subsequent renewal *[form year]* **period** after that, the licensee shall report the number of hours obtained for the *[year]* **two (2)-year period** just completed and shall attest to those hours by signing the form. Each licensee shall retain records documenting his/her completion of the required hours of continuing education for a minimum of six (6) years after the reporting period in which the continuing education was completed. The records shall document the licensee's attendance at the continuing education course including, but not limited to, retaining the titles of the courses taken, dates, locations, receipts, course sponsors, agendas and number of hours earned. The board may conduct an audit of licensees to verify compliance with the continuing education requirement. Licensees shall assist the board in its audit by providing timely and complete responses to the board's inquiries.

(C) A credential dental licensee will **only** be required to obtain *[either fifty (50) hours or]* twenty-five (25) hours of continuing education *[depending on whether]* **in order to renew if the**

individual became licensed *[before]* **during** the second *[or third]* year of the time block. A credential hygiene licensee will **only** be required to obtain *[either thirty (30) hours or]* fifteen (15) hours of continuing education *[depending on whether]* **in order to renew if** the individual became licensed *[before]* **during** the second *[or third year]* of the time block.

(H) A dental licensee who has obtained diplomate status through the ADA-recognized specialty board certification during the reporting period shall be deemed to have obtained *[seventy-five (75)]* **fifty (50)** hours of continuing education. The licensee shall provide the board with documentation evidencing the specialty board certification upon request.

(3) The board, solely in its discretion, may grant a **waiver or an extension** to a licensee who cannot complete the required hours of continuing education because of personal illness, military service, **foreign residency** or other circumstances beyond the licensee's control. The licensee may apply for a **waiver or an extension** of time to complete the continuing education requirements by making a written application at least forty-five (45) days before the end of the renewal period. *[The]* **Any licensee seeking a waiver or extension** shall provide full and complete written documentation explaining specifically and in detail the nature of the circumstances, why the circumstances were unforeseeable and beyond the licensee's control, the period during which the circumstances were in existence, the number of continuing education hours earned in the reporting period and the licensee's plan for completing the balance of the requirements **if an extension is granted**. The board, in its discretion, shall establish the length of extension granted, not to exceed the next renewal period.

(4) To reinstate the license of a dentist or dental hygienist whose license has been noncurrent for any reason, including retirement, for a period of *[two (2)]* **four (4)** years or less, that person shall obtain, in addition to any other requirements of law, all the continuing education that would have been required if the license had been current and active during that period. To reinstate the license of any dentist or dental hygienist whose license has been in a non-current state for any reason, including retirement for more than *[two (2)]* **four (4)** years, that person shall comply with the Missouri Dental Board rules as well as any other requirements for relicensure under Chapter 332, RSMo.

(5) Violation of any provision of this rule shall be deemed by the board to constitute misconduct, fraud, misrepresentation, dishonesty, unethical conduct or unprofessional, or any combination of these, in the performance of the functions, duties, or both, of a dentist or a dental hygienist, depending on the licensee's conduct. **In addition, a licensee who fails to complete and report in a timely fashion the required hours of continuing education and engages in the practice of dentistry or dental hygiene without the express written consent of the board shall be deemed to have engaged in the unauthorized practice of dentistry or dental hygiene.**

[[A]] **(6)** Continuing education required by the board as part of discipline imposed on a licensee shall not count toward compliance with the continuing education requirement of this rule.

[[B]] **All continuing education coursework taken on or after December 1, 1993, shall count toward the continuing education requirements of this rule.]**

AUTHORITY: sections 332.031, *[RSMo Supp. 1997 and]* 332.181 and 332.261, *RSMo [1994] 2000. Original rule filed Aug. 30, 1993, effective April 9, 1994. Amended: Filed June 27, 1995, effective Dec. 30, 1995. Amended: Filed Sept. 15, 1998, effective April 30, 1999. Amended: Filed Dec. 14, 2001.*

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Dental Board, Sharlene Rimiller, Executive Director, PO Box 1367, 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 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 210—State Board of Optometry
Chapter 2—General Rules**

PROPOSED AMENDMENT

4 CSR 210-2.030 [Annual] License Renewal. The board is proposing to amend the title of the rule, sections (4), (5), (6), (7), (9), (10), (11) and subsection (10)(D).

PURPOSE: The purpose of this amendment allows the board to implement a biennial renewal.

(4) A period of sixty (60) days ['] grace is established following the date by which every registered optometrist must renew his/her certificate of registration. The board shall cause a certificate to be renewed if the renewal is sought and fees are paid before the expiration of the grace period. No certificate shall be renewed after the grace period unless, within five (5) years, the holder submits the required reactivation fee plus satisfactory evidence of his/her attendance, for a minimum of twenty-four (24) hours, at education programs approved by the board.

(5) Every optometrist currently licensed in Missouri shall obtain, during each continuing education reporting period, a minimum of **[eight (8)] sixteen (16) hours** of approved continuing education (herein "C.E." credits) relevant to the practice of optometry. **A licensee shall obtain no less than eight (8) hours of approved continuing education during the first year of the continuing education reporting period and no less than eight (8) hours of approved continuing education in the second year of the reporting period.**

(6) The continuing education reporting period shall begin *[each year]* on September 1 and end on August 31 **of each even-numbered year**. C.E. credits earned after August 31 **of each even-numbered year** shall apply to the next reporting cycle unless the licensee pays the continuing education penalty fee. Payment of the continuing education penalty fee will provide a licensee with the ability to earn C.E. credits *[after August 31 but prior to January 1]* **between September 1 and December 31 of that even-numbered year. In any odd-numbered year, C.E. credits earned between September 1 and December 31 of that year may apply to the first year of the continuing education reporting period if the licensee pays the continuing education penalty fee.** A renewal license will not be issued until all renewal requirements have been met. If the licensee pays the continuing education penalty fee for C.E. credits earned late, those credits shall not be applied to the next reporting cycle.

(7) *[For the license renewal due on September 1, 1999, and each subsequent renewal thereafter, the]*Licensees shall report the number of C.E. credits earned during the *[preceding]* continuing education reporting period on *[a continuing education report]* **the renewal** form provided by the board. *[The*

continuing education report form shall be mailed, or faxed, directly to the board office on or before August 31 of each year, or as soon thereafter as possible but by no later than the end of the renewal period (October 31).] The licensee shall not submit the record of C.E. attendance to the board except in the case of a board audit.

(9) Violation of any provision of this rule shall be deemed by the board to constitute misconduct, fraud, misrepresentation, dishonesty, unethical conduct or unprofessional conduct in the performance of the functions or duties of an optometrist depending on the licensee's conduct. In addition, a licensee who has failed to complete and report in a timely fashion the required **[eight (8)] sixteen (16) hours** of continuing education and engages in the active practice of optometry without the express written authority of the board shall be deemed to have engaged in the unauthorized practice of optometry.

(10) The following guidelines govern the attendance of educational optometric programs for *[annual]* license renewal:

(D) With the exception of any of the previously mentioned educational organizations, any other regularly organized group of optometrists that wishes to sponsor an educational program to meet the standard for *[annual]* license renewal in Missouri shall submit two (2) copies of the program schedule and outline to the board's executive director not fewer than sixty (60) days prior to the date of the program **and shall pay the continuing education sponsor fee.** The outline must indicate the program's subject matter, the number of hours required for its presentation and the identity and qualifications of the speakers and instructors. The board shall review the schedule and outline. If the program meets the standards set out in subsections (10)(A)-(B), the board may grant approval. The board will not consider requests for approval of any program submitted following the meeting; and

(11) The license renewal period shall commence on November 1 *[of each year]* and end on October 31 of each **even-numbered** year.

AUTHORITY: sections 336.080 and 336.160.1, RSMo [1994] 2000. Original rule filed Dec. 19, 1975, effective Dec. 29, 1975. For intervening history, please consult the *Code of State Regulations*. Amended: Filed Dec. 14, 2001.

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 as the board is merely implementing a biennial renewal for its licensees.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Board of Optometry, Sharlene Rimiller, Executive Director, PO Box 1335, 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 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 210—State Board of Optometry
Chapter 2—General Rules
PROPOSED AMENDMENT**

4 CSR 210-2.070 Fees. The board is amending section (1).

PURPOSE: This amendment establishes the fees for biennial renewals and deletes the research and copying fees pursuant to section 610.026, RSMo which states fees for copying records shall not exceed the actual cost of document search and duplication.

(1) The following fees are established by the State Board of Optometry:

(D) Biennial Renewal Fee	[§ 110.00] \$220.00
[(M) Photocopies of Records Fee (initial page)]	\$ 1.00
[(N) Photocopies of Records Fee (per copy after one (1))]	\$.25
[(O) Research Fee (per hour, requiring more than one (1) hour of staff time)]	\$ 10.00]
[(P)] (M) Uncollectible Fee (uncollectible check or other uncollective financial instrument)	\$ 25.00
[(Q)] (N) Law Book Requests Fee	\$ 5.00***
[(R)] (O) [Annual] Biennial Continuing Education Sponsor Fee	\$ 25.00
[(S)] (P) Continuing Education Penalty Fee (reporting continuing education hours obtained after the end of the reporting period)	\$ 50.00

**When administered separately from the National Board of Examiners in Optometry (NBEO) [Clinical Skills/Visual Recognition and Interpretation of Clinical Signs (VRICS)] Patient Assessment and Management (PAM) exam.

AUTHORITY: section 336.160, RSMo [1994] Supp. 2001. Emergency rule filed June 30, 1981, effective July 9, 1981, expired Nov. 11, 1981. Original rule filed June 30, 1981, effective Oct. 12, 1981. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 14, 2001.

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 as the board is merely implementing a biennial renewal for its licensees.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Board of Optometry, Sharlene Rimiller, Executive Director, PO Box 1335, 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 4—DEPARTMENT OF ECONOMIC DEVELOPMENT Division 240—Public Service Commission Chapter 2—Practice and Procedure

PROPOSED RULE

4 CSR 240-2.045 Electronic Filing

PURPOSE: This rule prescribes the procedure for electronic filing before the commission.

(1) Any item or document otherwise required or permitted to be filed with the commission may be filed electronically by accessing the commission's Internet web site and following the instructions for electronic filing found there.

(2) Any item or document filed electronically shall, if received during business hours of the commission's records room, be considered filed as of that day, otherwise, such item or document shall be considered filed as of the next following business day.

(3) The electronic filing of an item or document as described in this rule shall satisfy an obligation to file the same if accomplished no later than the date upon which such filing is required.

AUTHORITY: section 386.410, RSMo 2000. Original rule filed Dec. 7, 2001.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Dale Hardy Roberts, Secretary, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. Comments should refer to Case No. AX-2002-156 and be filed with an original and six (6) copies. No public hearing is scheduled.

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

PROPOSED AMENDMENT

4 CSR 240-2.075 Intervention. The commission is amending section (6) and adding a new section (7).

PURPOSE: The purpose of this amendment is to clarify the proceedings applicable to *amici curiae* and to impose on intervenors an obligation to file a responsive pleading.

(6) Any person not a party to a case may petition the commission for leave to file a brief as an *amicus curiae*. **The petition for leave must state the petitioner's interest in the matter and explain why an *amicus* brief is desirable and how the matters asserted are relevant to the determination of the case. The brief may be submitted simultaneously with the petition for leave. Except by leave of the commission, the brief must be filed no later than seven (7) days after the parties have filed their initial briefs. If leave to file a brief as an *amicus curiae* is granted, the brief shall be deemed filed on the date submitted. An *amicus curiae* may not file a reply brief.**

(7) Any party whose application to intervene is granted shall, within thirty (30) days thereafter or such other period as the commission may order, file a responsive pleading to the application, complaint or tariff that is the subject of the contested case, specifically admitting or denying each fact asserted therein.

AUTHORITY: section 386.410, RSMo [Supp. 1998] 2000. Original rule filed March 10, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed Dec. 7, 2001.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Dale Hardy Roberts, Secretary, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. Comments should refer to Case No. AX-2002-157 and be filed with an original and six (6) copies. No public hearing is scheduled.

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

PROPOSED AMENDMENT

4 CSR 240-2.115 [Nonunanimous] Stipulations and Agreements. The commission is changing the title of the rule, amending sections (1) and (2) and deleting section (3).

PURPOSE: The purpose of this amendment is to clarify the proceedings applicable to, and the effects of, stipulations and agreements in commission practice.

(1) *[A nonunanimous stipulation and agreement is any stipulation and agreement which is entered into by fewer than all parties and where one (1) or more parties requests a hearing of one (1) or more issues. If no party requests a hearing, the commission may treat the stipulation and agreement as a unanimous stipulation and agreement.]* Stipulations and Agreements.

(A) The parties may at any time file a stipulation and agreement as a proposed resolution of all or any part of a contested case. Any such stipulation and agreement must contain stipulated facts sufficient to support the resolution proposed by the parties. A stipulation and agreement shall be filed as a pleading.

(B) The commission may resolve all or any part of a contested case on the basis of a stipulation and agreement.

(2) *[If a hearing is requested, the commission shall grant the request.]* Nonunanimous Stipulations and Agreements.

(A) A nonunanimous stipulation and agreement is any stipulation and agreement which is entered into by fewer than all of the parties.

(B) Each party shall have seven (7) days from the filing of a nonunanimous stipulation and agreement to file an objection to the nonunanimous stipulation and agreement. Failure to file a timely objection shall constitute a full waiver of that party's right to a hearing. A conditional assent to a nonunanimous stipulation and agreement shall be regarded as a non-conditional assent and not as an objection.

(C) If no party timely objects to a nonunanimous stipulation and agreement, the commission may treat the nonunanimous stipulation and agreement as a unanimous stipulation and agreement.

(D) A nonunanimous stipulation and agreement to which a timely objection has been filed shall be considered to be merely a position of the signatory parties to the stipulated position.

(E) If a nonunanimous stipulation and agreement resolves only issues as to which a party has stated no position and filed no testimony, such party need not join in the nonunanimous stipulation and agreement for it to be considered unanimous and an objection filed by such party shall have no effect.

[(3) A nonunanimous stipulation and agreement shall be filed as a pleading. Each party shall have seven (7) days from the filing of the nonunanimous stipulation and agreement to file a request for a hearing. Failure to file a timely request for hearing shall constitute a full waiver of that party's right to a hearing.]

AUTHORITY: section 386.410, RSMo [Supp. 1998] 2000. Original rule filed June 9, 1987, effective Sept 15, 1987. Rescinded and readopted: Filed Aug. 24, 1999, effective April 30, 2000. Amended: Filed Dec. 7, 2001.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Public Service Commission, Dale Hardy Roberts, Secretary, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. Comments should refer to Case No. AX-2002-158 and be filed with an original and six (6) copies. No public hearing is scheduled.

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

PROPOSED RULE

4 CSR 240-2.117 Summary Disposition of Contested Cases

PURPOSE: This rule provides for disposition of a contested case by disposition in the nature of summary judgment or judgment on the pleadings.

(1) Summary Determination.

(A) Any party may by motion, with or without supporting affidavits, seek disposition of all or any part of a contested case by summary determination at any time after the filing of a responsive pleading, if there is a respondent, or at any time after the close of the intervention period. However, a motion for summary determination shall not be filed less than twenty (20) days prior to the hearing except by leave of the commission.

(B) Motions for summary determination shall state with particularity in separately numbered paragraphs each material fact as to which the movant claims there is no genuine issue, with specific references to the pleadings, testimony, discovery, or affidavits that demonstrate the lack of a genuine issue as to such facts. Each motion for summary determination shall have attached thereto a separate legal memorandum explaining why summary determination should be granted and testimony, discovery or affidavits not previously filed that are relied on in the motion. The movant shall serve the motion for summary determination upon all other parties not later than the date upon which the motion is filed with the commission.

(C) Not more than ten (10) days after a motion for summary determination is served, any party may file and serve on all parties a response in opposition to the motion for summary determination. Attached thereto shall be any testimony, discovery or affidavits not previously filed that are relied on in the response. The response shall admit or deny each of movant's factual statements in numbered paragraphs corresponding to the numbered paragraphs in the motion for summary determination, shall state the reason for each denial, shall set out each additional material fact that remains in dispute, and shall support each factual assertion with specific references to the pleadings, testimony, discovery, or affidavits. The response may also have attached thereto a legal memorandum explaining why summary determination should not be granted.

(D) For good cause shown, the commission may continue the motion for summary determination for a reasonable time to allow an opposing party to conduct such discovery as is necessary to permit a response to the motion for summary determination.

(E) The commission shall grant the motion for summary determination if the pleadings, testimony, discovery, affidavits, and memoranda on file show that there is no genuine issue as to any material fact and that any party is entitled to relief as a matter of law as to all or any part of the contested case. The commission may order summary determination against the moving party. An order granting summary determination shall include findings of fact and conclusions of law.

(F) If the commission grants a motion for summary determination, but does not dispose thereby of the entire contested case, it shall hold an evidentiary hearing to resolve the remaining issues. Those facts found in the order granting partial summary determination shall be established for purposes of the hearing.

(G) The commission may hear oral argument on a motion for summary determination.

(2) Determination on the Pleadings—On its own motion or on the motion of any party, the commission may dispose of all or any part of a contested case on the pleadings whenever such disposition is not otherwise contrary to law.

AUTHORITY: section 386.410, RSMo 2000. Original rule filed Dec. 7, 2001.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Dale Hardy Roberts, Secretary, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. Comments should refer to Case No. AX-2002-159 and be filed with an original and six (6) copies. No public hearing is scheduled.

**Title 9—DEPARTMENT OF MENTAL HEALTH
Division 10—Director, Department of Mental Health
Chapter 7—Core Rules for Psychiatric and Substance
Abuse Programs**

PROPOSED AMENDMENT

9 CSR 10-7.020 Rights, Responsibilities, and Grievances. The department proposes to delete section (8) and renumber section (9).

PURPOSE: This amendment removes the language on surrogates to avoid potential legal conflicts.

[(8) Surrogate Decision Maker. The organization's policies, procedures and practices shall ensure an opportunity for the individual to designate or establish a surrogate decision maker, in the event the individual may become incapable of understanding or unable to communicate his or her wishes regarding the treatment plan or a proposed service.]

[(9)] (8) Practices to Promote Safety and Well-Being. The organization shall demonstrate a commitment to the safety and well-being of the individuals it serves. The organization's policies, procedures and practices shall—

(A) Promote therapeutic progress by addressing matters such as medication compliance, missed appointments, use of alcohol and drugs, and other program expectations or rule;

(B) Encourage appropriate behavior by providing positive instruction and guidance; and

(C) Ensure safety by effectively responding to any threats of suicide, violence or harm. Any use of seclusion or restraint shall be in accordance with 9 CSR 10-7.060 Behavior Management.

AUTHORITY: sections 630.050 and 630.055, RSMo 2000. Original rule filed Feb. 28, 2001, effective Oct. 30, 2001. Amended: Filed Dec. 12, 2001.

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 by writing to Dewey Price, Mental Health Manager, Division of Alcohol and Drug Abuse, Department of Mental Health, PO Box 687, 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 9—DEPARTMENT OF MENTAL HEALTH
Division 10—Director, Department of Mental Health
Chapter 7—Core Rules for Psychiatric and Substance
Abuse Programs**

PROPOSED AMENDMENT

9 CSR 10-7.030 Service Delivery Process and Documentation. The department proposes to amend paragraph (1)(A)2.

PURPOSE: This amendment eliminates the requirement for programs to provide supports for persons that have not been admitted to substance abuse treatment.

(1) Screening. Each individual requesting services shall have prompt access to a screening in order to determine eligibility and to plan an initial course of action, including referral to other services and resources, as needed.

(A) At the individual's first contact with the organization (whether by telephone or face-to-face contact), any emergency or urgent service needs shall be identified and addressed.

1. Emergency service needs are indicated when a person presents a likelihood of immediate harm to self or others. A person who presents at the program site with emergency service needs

shall be seen by a qualified staff member within fifteen (15) minutes of presentation. If emergency service needs are reported by telephone, the program shall initiate face-to-face contact within one (1) hour of telephone contact or shall immediately notify local emergency personnel capable of promptly responding to the report.

2. Urgent service needs are indicated when a person presents a significant impairment in the ability to care for self but does not pose a likelihood of immediate harm to self or others. A person with urgent service needs shall be seen within forty-eight (48) hours, or the program shall *[make appropriate arrangements to provide for necessary supports until the person can be seen for screening]* **provide information about treatment alternatives or community supports where available.**

3. Routine service needs are indicated when a person requests services or follow-up but otherwise presents no significant impairment in the ability to care for self and no apparent harm to self or others. A person with routine service needs should be seen as soon as possible to the extent that resources are available.

AUTHORITY: sections 630.050 and 630.055, RSMo 2000. Original rule filed Feb. 28, 2001, effective Oct. 30, 2001. Amended: Filed Dec. 12, 2001.

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 by writing to Dewey Price, Mental Health Manager, Division of Alcohol and Drug Abuse, Department of Mental Health, PO Box 687, 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 9—DEPARTMENT OF MENTAL HEALTH
Division 25—Fiscal Management
Chapter 2—Purchase of Service Contracting**

PROPOSED AMENDMENT

9 CSR 25-2.505 Protest and Appeal Procedures. The department is amending the purpose, removing sections (1) through (8) and adding three new sections.

PURPOSE: This amendment will clarify and simplify the protest and appeals procedures.

PURPOSE: [This rule prescribes procedures for offerors to protest or appeal departmental actions taken under this chapter.] This rule prescribes procedures for offerors to protest the department's competitive Request for Proposal solicitation process and/or appeal a department decision regarding the award of contract(s), as a result of a competitive Request for Proposal process.

[(1) An aggrieved offeror or provider may protest the solicitation process used in issuing a request for a proposal (RFP), appeal an award of a contractual agreement with a provider, or protest or appeal any other decision of the department. The aggrieved offeror or provider shall protest or appeal, in writing, to the director of the division for which the services are to be purchased (that is, directors of the Division of Mental Retardation and Developmental Disabilities, Division of Comprehensive Psychiatric

Services or Division of Alcohol and Drug Abuse) within ten (10) working days of the receipt of any department determination, RFP, award or contractual agreement of which aggrieved, except that in the case of award of contractual agreements for alcohol and drug abuse services, appeals shall be directed to the department director within five (5) working days of notification of the award. A notice of award for alcohol and drug abuse services shall be sent to the successful and unsuccessful offerors by registered mail.

(2) Upon receipt or a protest prior to award the decision to award shall be suspended until the protest is resolved. If an appeal of an award decision is received by the department and the appeal results in a cancellation of the prior award decision and the issuance of a new award, the department shall give notice of cancellation to the holder of the original award by the terms of the contract and the new award shall be effective upon the termination of the original award contract.

(3) The division director shall consult with the deputy director of administration (mental health) within ten (10) working days of receipt of the protest or appeal and shall issue a decision, in writing, to the involved parties. Within five (5) working days of receipt of a protest or appeal of an alcohol and drug abuse services contract award, the department director shall issue a decision in writing to the involved parties which shall be final.

(4) Any offeror or provider protesting or appealing under this rule shall include the name and address of the provider or offeror aggrieved, the RFP number, the complaint of the department action and (if awarded) the number of the contractual agreement. The offeror or provider shall state the grounds for the protest or appeal, include any supporting documentation to substantiate any claims made and specify the relief requested from the division/department director. If the documentation has not been provided to the aggrieved provider or offeror in time to protest or appeal as set out in this rule, the aggrieved offeror or provider shall indicated the expected availability date for providing the documentation.

(5) Within ten (10) working days of receipt of the appeal of the division director's decision, the department director shall issue a decision which shall be final.

(6) If the provider or offeror finds the decision to be unacceptable, the provider of offeror may appeal the division director's decision to the department director within ten (10) working days after receiving the division director's decision.

(7) If an aggrieved offeror or provider appeals the division director's decision, the aggrieved offeror or provider shall state the reasons why the division director's decision was not acceptable and why the aggrieved offeror or provider is appealing the division director's decision to the department director.

(8) At each step of the protest or appeal procedure in this rule, the element of time shall be measured by date stamp (or date plus initials, if no stamp) for date of receipt and postmark on envelope for date of issuance.]

(1) An aggrieved offeror may protest the solicitation process performed by the department with a competitive Request for Proposal (RFP).

(A) The aggrieved offeror shall issue a protest of the solicitation process, in writing, to the department's contract coordinator in the Office of Administration (Mental Health). The aggrieved offeror must submit the protest with reasonable promptness to their notice of the complaint and prior to the date of contract award.

(B) Any offeror protesting a solicitation process under this rule shall include in their written protest the name and address of the offeror aggrieved, the RFP number and their complaint of the solicitation process. The offeror shall include support documentation to substantiate any claims made and specify the relief requested from the department.

(C) Upon receipt of protest the contracts coordinator shall consult with the deputy director of administration (Mental Health). Upon the finding of facts the department shall take appropriate action and issue a written response to the involved parties within ten (10) state working days of receipt of the protest. The department's written response shall be final.

(2) An aggrieved offeror may appeal a department decision regarding the award of contract(s), as a result of a competitive Request for Proposal process.

(A) The aggrieved offeror shall issue an appeal of a contract award, in writing, to the director of the division for which the services are to be purchased (directors of the Division of Mental Retardation and Developmental Disabilities, Division of Comprehensive Psychiatric Services or Division of Alcohol and Drug Abuse) within ten (10) state working days of the department's issuance of a notice of contract award, of which aggrieved.

(B) Any offeror appealing a contract award under this rule shall include in their written appeal the name and address of the offeror aggrieved, the RFP number, the name of the contract award and their complaint. The offeror shall state the specific grounds for the appeal and include supporting documentation.

(C) Upon receipt of an appeal the division director shall consult with the deputy director of administration (Mental Health) and shall issue a written response to the involved parties within fifteen (15) state working days of receipt of the appeal. The division director's written response shall be a decision to accept or reject the appeal.

(D) If the offeror finds the written response of the division director to be unacceptable, the offeror may issue an appeal of the decision, in writing, to the department director within ten (10) state working days after the issuance of the division director's written response.

(E) If an aggrieved offeror appeals the division director's response, the aggrieved offeror shall state the specific reasons why the response was not acceptable and why the aggrieved offeror is appealing the response to the department director.

(F) Within fifteen (15) state working days of receipt of the offeror's appeal of the division director's response, the department director shall issue a written response to the involved parties. The department director's written response shall be a decision to accept or reject the appeal. The department director's written response shall be final.

(3) At each step of the protest or appeal procedure the element of time shall be measured by date stamp or registered mail receipt for the date of receipt and U.S. mail postmark for the date of issuance.

AUTHORITY: sections 34.100, 630.050 and 630.405, RSMo 2000. Original rule filed Oct. 16, 1986, effective July 13, 1987. Emergency amendment filed May 15, 1990, effective May 25,

1990, expired Sept. 21, 1990. Amended: Filed Aug. 14, 1990, effective March 14, 1991. Amended: Filed Dec. 12, 2001.

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 by writing to John Long, Office of Administration, Department of Mental Health, PO Box 687, 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 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management
Commission
Chapter 3—Hazardous Waste Management System:
General**

PROPOSED AMENDMENT

10 CSR 25-3.260 Definitions, Modifications to Incorporations and Confidential Business Information. The commission is amending section (3).

PURPOSE: Senate Bill 577 was passed by the 2000 General Assembly. Part of the bill requires applicants for a hazardous waste transporter license to pay a fee consisting of an annual application fee, plus an annual use fee based upon tonnage, mileage, or a combination of both. Currently, license applicants pay a fee that is calculated on a flat "per vehicle" basis. There were two (2) reasons for changing the method by which the license fee is calculated. First, flat "per vehicle" fees have been successfully challenged in other states because they favor in-state transporters over out-of-state transporters. For example, a vehicle operating exclusively in Missouri throughout the year is assessed the same per vehicle fee as a vehicle only coming to Missouri once or twice a year. The intent of utilizing a use-based fee is to apportion the fee that a hazardous waste transporter pays based upon the actual amount of hazardous waste transported to, from, or through Missouri. Second, the change in calculation of the license fee was intended to increase the total revenues generated by hazardous waste transporter license fees from approximately three hundred fifty thousand dollars (\$350,000) annually to approximately six hundred thousand dollars (\$600,000) annually, as authorized by Senate Bill 577. This increase in revenue is attributed to the fact that transportation-related incidents account for a significant percentage of the department's emergency response costs and is intended to more fairly apportion these costs.

Portions of three (3) existing regulations contain language that reflects the current system of licensing transporters on a per vehicle basis. Each regulation must be amended to implement the new system. The Hazardous Waste Program is now prepared to propose the necessary amendments to the existing regulations.

(3) Missouri Specific Definitions. Definitions of terms used in 10 CSR 25. This section sets forth definitions which modify or add to those definitions in 40 CFR parts 60, 260–270, 273 and 279, and 49 CFR parts 40, 171–180, 383, 387 and 390–397.

(H) Definitions beginning with the letter H.

1. HSWA means the Hazardous and Solid Waste Amendments of 1984. These amendments were made to the Resource Conservation and Recovery Act by P.L. 98-616, November 8, 1984.

2. Hazardous constituent means any chemical compound listed in 40 CFR part 261 Appendix VIII as incorporated in 10 CSR 25-4.261. (This is different than the term hazardous waste constituent as defined in 40 CFR 260.10.)

3. Hazardous waste means any waste or combination of wastes as defined by or listed in 10 CSR 25-4, which, because of its quantity, concentration or physical, chemical or infectious characteristics, may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or which may pose a threat to the health of humans or other living organisms.

4. Hazardous waste transporter means any person or company conducting activities in Missouri which require a hazardous waste transporter license pursuant to 10 CSR 25-6.263. These activities may include, but are not limited to, transportation of hazardous wastes, used oil and infectious wastes by highway, railway or waterway.

[4.] 5. Holocene means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene period to the present, approximately the previous twelve thousand (12,000) years.

[5.] 6. Household hazardous waste means any household waste excluded from regulation as hazardous waste by 40 CFR 261.4(b)(1) but otherwise meets the definition of hazardous waste in paragraph (2)(H)3. of this rule.

(I) Definitions beginning with the letter I.

1. Identification number means the unique code assigned to each hazardous waste, each hazardous waste generator, transporter, facility or resource recovery facility pursuant to these rules.

2. International Registration Plan, referred to as IRP, is a system of reporting and apportioning fees to states and other jurisdictions based on the percentage of mileage accumulated while conducting business in those states or jurisdictions.

(M) Definitions beginning with the letter M.

1. Manifest means the shipping document form EPA 8700-22/MDNR-HWG 10 or EPA form 8700-22 which, in accordance with 10 CSR 25-5.262, shall be initiated by the generator.

2. Manifest document number means the U.S. EPA twelve (12)-digit identification number and the Missouri generator identification number assigned to the generator plus a consecutive five (5)-digit document number assigned to the manifest by the generator for recording and reporting purposes. (Note: These items are explained in the Missouri manifest instructions.)

3. Missouri hazardous waste mileage means the total fleet miles that materials requiring a hazardous waste transporter license are transported in Missouri over a period specified by rule. Additionally, all miles traveled transporting containers with residues of these materials, as defined at 49 CFR 171.8, will be included in the Missouri hazardous waste mileage.

[3.]4. Motor vehicle means a vehicle, machine, tractor, trailer or semitrailer or any combination of them, propelled or drawn by mechanical power and used upon the highways in transportation. It does not include a vehicle, locomotive or car operated exclusively on a rail(s).

(P) Definitions beginning with the letter P.

1. Post-closure disposal facility means a hazardous waste management facility which has disposed of hazardous waste, and which is required by applicable state and federal laws and regulations to have a permit to conduct post-closure activities, or to perform necessary post-closure activities under an enforceable document, as defined in 40 CFR 270.1(c)(7) and incorporated by reference in 10 CSR 25-7.270(1).

2. Professional engineer or registered engineer means a professional engineer licensed to practice by the Missouri Board of Architects, Professional Engineers and Land Surveyors.

3. Power unit for the purpose of this regulation is a truck with at least two (2) axles, regardless of licensed vehicle weight or configuration.

4. Preceding year is defined as the period of twelve (12) consecutive months immediately prior to July 1 immediately preceding the commencement of the license year for which license is sought.

(T) Definitions beginning with the letter T.

1. Training means formal instruction which supplements an employee's existing job knowledge and is designed to protect human health and the environment through increased awareness and improved job proficiency.

2. Transporter; see hazardous waste transporter.

[2.] 3. True vapor pressure means the pressure exerted when a solid or liquid is in equilibrium with its own vapor. The vapor pressure is a function of the substance and of the temperature.

[3.] 4. Twenty-four (24)-hour, twenty-five (25)-year storm means a storm of twenty-four (24)-hour duration for which the frequency of occurrence is once in twenty-five (25) years.

(V) Definitions beginning with the letter V.

1. Vapor recovery system means a system capable of collecting vapors and discharged gases and a vapor processing system capable of processing those vapors and gases so as to control emission of contaminants to the atmosphere. Emission not retained by vapor recovery systems, except for emissions regulated in 10 CSR 25, are regulated by rules adopted by the Missouri Air Conservation Commission, 10 CSR 10.

2. [Vehicle means a motor vehicle, rail car, vessel (as defined in 49 CFR 171.8) or aircraft used for the transportation of hazardous waste by any mode. Each cargo-carrying body (trailer, railroad freight car and so forth) is a separate vehicle] Vehicle, for the purpose of this regulation, refers to a power unit.

AUTHORITY: section 260.370 and 260.395, RSMo 2000. Original rule filed Dec. 16, 1985, effective Oct. 1, 1986. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 17, 2001.

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: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 9:00 a.m. on February 19, 2002 at the Department of Natural Resources Elm Street Conference Center, 1738 E. Elm, Jefferson City, Missouri. Any person wishing to speak at the hearing shall send a written request to the Secretary of the Hazardous Waste Management Commission at P.O. Box 176, Jefferson City, MO, 65102-0176. To be accepted, written requests to speak must be postmarked by midnight on February 5, 2002. Faxed or e-mailed correspondence will not be accepted.

Any person may submit written comments on this rule action. Written comments shall be sent to the Director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO, 65102-0176. To be accepted, written comments must be postmarked by midnight on March 1, 2002. Faxed or e-mailed correspondence will not be accepted.

Please direct all inquiries to the rules coordinator of the Hazardous Waste Program at (573) 751-3176.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management
Commission
Chapter 6—Rules Applicable to Transporters of
Hazardous Waste

PROPOSED AMENDMENT

10 CSR 25-6.263 Standards for Transporters of Hazardous Waste. The commission is amending subsections (2)(A) and (2)(D).

PURPOSE: Senate Bill 577 was passed by the 2000 General Assembly. Part of the bill requires applicants for a hazardous waste transporter license to pay a fee consisting of an annual application fee, plus an annual use fee based upon tonnage, mileage, or a combination of both. Currently, license applicants pay a fee that is calculated on a flat “per vehicle” basis. There were two (2) reasons for changing the method by which the license fee is calculated. First, flat “per vehicle” fees have been successfully challenged in other states because they favor in-state transporters over out-of-state transporters. For example, a vehicle operating exclusively in Missouri throughout the year is assessed the same per vehicle fee as a vehicle only coming to Missouri once or twice a year. The intent of utilizing a use-based fee is to apportion the fee that a hazardous waste transporter pays based upon the actual amount of hazardous waste transported to, from, or through Missouri. Second, the change in calculation of the license fee was intended to increase the total revenues generated by hazardous waste transporter license fees from approximately three hundred fifty thousand dollars (\$350,000) annually to approximately six hundred thousand dollars (\$600,000) annually, as authorized by Senate Bill 577. This increase in revenue is attributed to the fact that transportation-related incidents account for a significant percentage of the department’s emergency response costs and is intended to more fairly apportion these costs.

Portions of three (3) existing regulations contain language that reflects the current system of licensing transporters on a per vehicle basis. Each regulation must be amended to implement the new system. The Hazardous Waste Program is now prepared to propose the necessary amendments to the existing regulations.

(2) A hazardous waste transporter shall comply with the requirements of this section in addition to those set forth in section (1). Any reference to a 40 CFR cite in this section shall mean as that provision is incorporated in 10 CSR 25. Where contradictory or conflicting requirements exist in 10 CSR 25, the more stringent shall control. (Comment: This section has been organized in order within the corresponding subsection of this section. For example, the additional requirements being added to 40 CFR part 263 subpart A are found in subsection (2)(A).)

(A) In addition to the requirements in 40 CFR part 263 subpart A, the following shall apply:

1. I 40 CFR 263.10(a) and (c)(1), incorporated in this rule, substitute “the state of Missouri” for “United States”;

2. In the last paragraph of the note following 40 CFR 263.10(a), change “49 CFR parts 171 through 179” to “49 CFR parts 171 through 180 and parts 383, 387 and 390–397” and add the following to the note: “The parts of 49 CFR are incorporated to the extent that these regulations do not conflict with the laws and regulations of the state of Missouri, or, in the event the regulations conflict, the more stringent shall control. The equipment used in the transportation of hazardous waste shall meet the standards of the Missouri Department of Economic Development’s [Division of Transportation] Division of Motor Carrier and Railroad Safety, the United States Department of Transportation, or any combination of them, the Federal Railroad Administration, as applicable for the types of hazardous materials for which it will be

used. The equipment to be used in the transportation of hazardous waste shall be compatible with that waste and shall be adequate to protect the health of humans and prevent damage to the environment”;

3. License requirements for [motor vehicle operators] power unit transporters of hazardous waste, used oil or infectious waste. Transporters required by 10 CSR 25-6.263, 10 CSR 25-11.279(2)(E)1., or 10 CSR 80-7.010(4) to be licensed by the department shall comply with the following requirements:

A. [Motor vehicle operators] Power unit transporters shall submit to the department an application for a license on a form furnished by the department. The form shall be completed with the following information:

(I) The applicant’s name, address, location of the principal office or place of business and the legal owner of the applicant company;

(II) A description of the service proposed to be rendered;

(III) The applicant’s Environmental Protection Agency (EPA) identification number;

(IV) The [type] number of [transport vehicle] power units to be used;

(V) A certification that the applicant’s equipment and operating procedures meet the standards of the Missouri [Department of Economic Development’s Division of Transportation] Division of Motor Carrier and Railroad Safety, the Federal Department of Transportation (DOT), or the Federal Railroad Administration, or both;

(VI) [A description of each motor vehicle to be used including make, model, year, identification number, capacity, type (for cargo tanks the specification rating, DOT exemption, for both, and extension papers if applicable), and state and number of the license plate; except that if the applicant’s motor vehicles are short-term leased, with different motor vehicles leased for each job, the motor vehicle descriptions may be omitted] A description of each power unit to include make, model, year, vehicle identification number (VIN), licensed vehicle weight, and state and number of the license plate. Also required is a description of the trailers (cargo box, van, tank) and maximum trailer capacities used by the transporter;

(VII) A disclosure statement for the applicant, principal corporate officers and the holders of more than twenty percent (20%) of the applicant company. If any of these persons were involved in hazardous waste management before their association with the applicant company, the applicant shall submit this information to the department including the names of these persons and the names and locations of the companies with which they were associated; and

(VIII) For applicants who are not residents of Missouri, a written statement designating the director of the department as the authorized agent upon whom legal service may be made for all actions arising in Missouri from any operation of motor vehicles under authority of the department.

B. In addition to the completed application, an applicant shall submit each of the following:

(I) A fee as specified in 10 CSR 25-12.010;

(II) The insurance document(s) as specified in paragraph (2)(A)4. of this rule; and

(III) Statements, documents, or both, of the following, where applicable:

(a) If the applicant is a partnership, include an affidavit to this effect signed by the proprietor or include a copy of the partnership agreement. If no written partnership agreement has been entered into, include a statement summarizing the agreement between the parties which is signed by each of the partners and certified by a notary public;

(b) If the applicant is a Missouri corporation or a foreign corporation with authority to conduct business in Missouri or is a foreign corporation with facilities or employees in Missouri, a Certificate of Corporate Good Standing from the Missouri secretary of state shall be included. If the applicant is a nonresident corporation without facilities or employees in Missouri, a Certificate of Good Standing from the state or country of residence shall be included; and

(c) If the applicant is conducting its business under an assumed or fictitious name, a certified copy of the registration with the Missouri secretary of state of the assumed or fictitious name shall be included.

C. License renewal.

(I). A hazardous waste transporter wishing to renew his/her license shall submit a license renewal application on a form furnished by the department and shall submit other applicable information, as specified in this section, to the department at least sixty (60) days prior to the expiration date of his/her current license. A Certificate of Corporate Good Standing must be submitted with the renewal. This certificate must have been issued in the twelve (12) months preceding the license expiration date. Insurance requirements must be satisfied as specified in paragraph (2)(A)4. of this rule **except for other than power unit carriers**. The renewal application shall be accompanied by a fee as specified in 10 CSR 25-12.

D. *[Motor vehicle additions and substitutions. Changes made to the motor vehicle listing as shown on the transporter's current license application or renewal form shall be reported to the department as follows: A motor vehicle may be added by submitting a written description of the vehicle to be added and paying a fee in accordance with 10 CSR 25-12. The licensing of a motor vehicle which is being added will become effective upon the transporter's receipt of the license certificate. One (1) motor vehicle may be substituted for another by submitting a description of the original motor vehicle and its replacement, returning the license certificate of the vehicle being replaced and paying a substitution fee in accordance with 10 CSR 25-12. A substitution made in this manner will be effective upon the transporter's receipt of the license certificate for the replacement vehicle.] Power unit additions, replacements and temporary permits. Changes made to the power unit listings as shown on the current license application or renewal form shall be reported to the department as follows: A power unit can be added by submitting a written description of the power unit to be added and paying a fee in accordance with 10 CSR 25-12.010. A power unit can be replaced for another without any charge by submitting a description of the original power unit and its replacement. A power unit can be issued a temporary permit for a thirty (30)-day period by submitting a written description of the power unit and paying a fee in accordance with 10 CSR 25-12.010.*

E. Proof of license. A transporter shall carry proof of license with each *[vehicle]* power unit transporting hazardous waste within Missouri. *[Proof of license shall consist of a Hazardous Waste Transporter License Certificate issued to the transporter by the department. Original certificates, not copies, shall be carried with each vehicle. The department will issue a sufficient number of originals for this purpose.] A legible copy of this certificate shall be in the possession of the driver of the *[vehicle]* power unit and shall be shown to representatives of the department, officers of the Missouri State Highway Patrol and other law enforcement officials upon demand;*

4. Insurance.

A. Transporters licensed in accordance with this chapter shall at all times have on file with the department a certification of public liability (bodily injury and property damage) insurance which shall include the required, uniform endorsements covering

each motor vehicle in accordance with 49 CFR part 387 incorporated by reference in this rule. The minimum level of insurance coverage shall not be less than one (1) million dollars combined single limit. (Comment: The federal regulations at 49 CFR 387.9 set forth certain conditions which require five (5) million dollars coverage.)

B. The certificate of insurance shall state that the insurer has issued to the motor carrier a policy of insurance which, by endorsement, provides automobile bodily injury and property damage liability insurance covering the obligations imposed upon the motor carrier by the provisions of the law of Missouri. The certificate shall be duly completed and executed by the insurer on Form E—Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance. The endorsements shall be attached to the insurance policy and shall form a part of that policy. The endorsements shall be made on Form F—Uniform Motor Carrier Bodily Injury and Property Damage Liability Insurance Endorsements. The certificate shall be duly completed and executed by the insurer. The surety bond shall be in the form set forth in Form G—Uniform Motor Carrier Bodily Injury and Property Damage Surety Bond. The bond shall be duly completed and executed by the surety and principal.

C. An insurer under the provisions of this rule shall submit to the department not fewer than thirty (30) days' notice of cancellation of motor carrier bodily injury and property damage liability insurance by filing with the department the form of notice set forth in Form K—Uniform Notice of Cancellation of Motor Carrier Insurance Policies. The notice shall be duly completed and executed by the insurer. A surety under the provisions of this rule shall give the department not fewer than thirty (30) days' notice of the cancellation of motor carrier bodily injury and property damage liability surety bond by filing with the department the form of notice set forth in Form L—Uniform Notice of Cancellation of Motor Carrier Surety Bond. The notice shall be duly completed and executed by the surety or motor carrier.

D. Forms E, F, G, K and L referred to in subparagraphs (2)(A)4.B. and C. of this rule are the standard forms determined by the National Association of Regulatory Utility Commissioners and promulgated by the Interstate Commerce Commission pursuant to the provisions of section 202(b)(2) of the Interstate Commerce Act, 49 U.S.C. section 302(b)(2), 1994.

E. Before any policy of insurance will be accepted by the department, the insurance company issuing the policy or the carrier offering the same, upon request of the department, shall furnish evidence satisfactory to the department that the insurance company issuing the policy is duly authorized to transact business in Missouri and that it is financially able to meet the obligations of the policy offered.

F. All insurance certificates and surety bonds filed with the department shall remain on file with the department and shall not be removed except with the written permission of the director.

G. A new certificate of insurance shall be filed for reinstatement of insurance which has been canceled;

5. Vehicle marking. The transportation vehicle used to ship hazardous waste shall be marked in accordance with 49 CFR 390.21(b) and (c);

6. No hazardous waste shall be accepted for transport unless it has been properly loaded and secured in accordance with 49 CFR 177.834;

7. Incompatible wastes. A waste shall not be added to an unwashed or uncleaned container that previously held an incompatible material;

8. In addition to the requirements in 40 CFR 263.10(c)(1), add the following requirements: A transporter who accepts shipments of hazardous waste from a person not required to register as a generator in accordance with 10 CSR 25-5.262, and in so doing accumulates one hundred kilograms (100 kg) or more of hazardous waste, becomes a generator and shall comply with 10 CSR 25-

5.262 in addition to the requirements of this rule. (Note: This provision is not intended to apply to municipal waste haulers who may unknowingly pick up small quantities of hazardous waste that may have been deposited in solid waste containers along their routes.);

9. In addition to the requirements in 40 CFR 263.11, add the following: "In the event that an EPA identification number has not been assigned, the department will assign an EPA identification number." The applicant shall also submit an application for license in accordance with this rule at the time of notification; and

10. In addition to the requirements in 40 CFR 263.12, the following rules apply to transfer facilities. (Note: Used oil transfer facilities are regulated under 10 CSR 25-11.279.):

A. A hazardous waste transported intrastate or into the state by motor carrier shall arrive at its destination in ten (10) calendar days or less from the date the initial transporter signs the manifest, or when the waste first enters the state, unless departmental approval is obtained prior to the expiration of the ten (10)-day period;

B. A hazardous waste destined for out-of-state treatment, storage or disposal shall leave the state in ten (10) calendar days or less from the date the initial transporter signs the manifest unless departmental approval is obtained prior to the expiration of the ten (10)-day period;

C. A hazardous waste transported through the state by motor carrier shall pass through the state in ten (10) calendar days or less unless departmental approval is obtained prior to the expiration of the ten (10)-day period;

D. A secondary containment system for storage of hazardous waste in containers at a transfer facility shall meet the following requirements:

(I) A containment system shall be designed, maintained and operated as follows:

(a) The containment system shall include a base which is free of cracks or gaps and is sufficiently impervious to contain leaks, spills and accumulated precipitation until the collected material is detected and removed. The base shall be under the container;

(b) The base shall be sloped or the containment system shall be designed and operated to drain and remove liquids resulting from leaks, spills or precipitation, unless the containers are elevated or are otherwise protected from contact with accumulated liquids;

(c) The containment system shall have a capacity equal to ten percent (10%) of the containerized waste volume or the volume of the largest container, whichever is greater (Containers that do not contain free liquids need not be considered in this calculation.);

(d) Run-on into the containment system shall be prevented unless the collection system has sufficient excess capacity in addition to that required in part (2)(A)10.D.(I) of this rule to contain any run-on which might enter the system; and

(e) Spilled or leaked waste and accumulated precipitation shall be removed from the sump or collection area as necessary to prevent overflow of the collection system; and

(II) The containment system shall be inspected as part of the weekly inspections required by 40 CFR 265.174 incorporated by reference in 10 CSR 25-7.265(1);

E. The following requirements apply to the management of ignitable, reactive, incompatible or volatile wastes at a transfer facility: A transporter shall take precautions to prevent accidental ignition or reaction of ignitable or reactive wastes. These hazardous wastes shall be separated and protected from sources of ignition or reaction including, but not limited to, open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical or mechanical), spontaneous ignition (that is, from heat-producing chemical reactions) and radiant heat. While ignitable or reactive waste is being handled, a transporter shall confine smoking and open flame to specially designated locations.

No Smoking signs shall be conspicuously placed wherever there is a hazard from ignitable or reactive waste;

F. Preparedness and prevention. A transporter shall equip the transfer station as specified in 40 CFR 265.32 incorporated by reference in 10 CSR 25-7.265(1). In addition, a transporter shall also provide safety equipment such as fire blankets, gas masks and self-contained breathing apparatus;

G. Closure. At closure of the storage area, a transporter shall remove and properly dispose of all hazardous waste and hazardous residues. For the purpose of this subparagraph, closure shall occur when the storage of hazardous wastes has not occurred, or is not expected to occur for one (1) year, or when the transporter's license lapses, whichever first occurs;

H. *[Recontainerization of hazardous waste at a transfer facility is prohibited; however, hazardous waste containers may be overpacked to contain leaking or to safeguard against potential leaking.] The contents of separate containers of hazardous waste may not be combined at a transfer facility.* When containers are overpacked, the transporter shall affix labels to the overpack container, which are identical to the labels on the original shipping container; and

I. A transfer facility shall not be the same facility as designated in item 9 of the manifest.

(D) Operations of Transporters by Modes Other Than *[Motor Vehicle] Power Unit.*

1. A person who transports hazardous waste by a mode other than *[motor vehicle] power unit* shall comply with subparagraphs (2)(A)1. and 2., parts (2)(A)3.A.(V), (2)(A)3.B.(I) and (III), subparagraphs (2)(A)3.C., paragraphs (2)(A)7., 8., 9. and 10. and subsections (2)(B) and (C) of this rule.

2. Application form. An applicant shall submit a completed, department-furnished form which shall contain the following information: name, address, type of transport vehicles to be used in hazardous waste transport and EPA identification number. If an EPA identification number has not been assigned by the EPA, the department will assign an identification number as provided to the department by the EPA.

3. An applicant shall complete and submit a Non-Motor Carrier Certification of Financial Responsibility form provided by the department to satisfy the transporter insurance requirement.

AUTHORITY: sections 260.370, [RSMo Supp. 1997 and] 260.385 and 260.395, RSMo [1994] 2000. Original rule filed Dec. 16, 1985, effective Oct. 1, 1986. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 17, 2001.

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: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 9:00 a.m. on February 19, 2002 at the Department of Natural Resources Elm Street Conference Center, 1738 E. Elm, Jefferson City, Missouri. Any person wishing to speak at the hearing shall send a written request to the Secretary of the Hazardous Waste Management Commission at PO Box 176, Jefferson City, MO, 65102-0176. To be accepted, written requests to speak must be postmarked by midnight on February 5, 2002. Faxed or e-mailed correspondence will not be accepted.

Any person may submit written comments on this rule action. Written comments shall be sent to the Director of the Hazardous Waste Program at P.O. Box 176, Jefferson City, MO, 65102-0176.

To be accepted, written comments must be postmarked by midnight on March 1, 2002. Faxed or e-mailed correspondence will not be accepted.

Please direct all inquiries to the rules coordinator of the Hazardous Waste Program at (573) 751-3176.

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 25—Hazardous Waste Management
Commission
Chapter 12—Hazardous Waste Fees and Taxes**

PROPOSED AMENDMENT

10 CSR 25-12.010 Fees and Taxes. The commission is amending (2)(C) and adding subsections (2)(D)–(2)(F).

PURPOSE: Senate Bill 577 was passed by the 2000 General Assembly. Part of the bill requires applicants for a hazardous waste transporter license to pay a fee consisting of an annual application fee, plus an annual use fee based upon tonnage, mileage, or a combination of both. Currently, license applicants pay a fee that is calculated on a flat “per vehicle” basis. This fee is reflected in 10 CSR 25-12.010 as currently written. There were two (2) reasons for changing the method by which the license fee is calculated. First, flat “per vehicle” fees have been successfully challenged in other states because they favor in-state transporters over out-of-state transporters. For example, a vehicle operating exclusively in Missouri throughout the year is assessed the same per vehicle fee as a vehicle only coming to Missouri once or twice a year. The intent of utilizing a use-based fee is to apportion the fee that a hazardous waste transporter pays based upon the actual amount of hazardous waste transported to, from, or through Missouri. Second, the change in calculation of the license fee was intended to increase the total revenues generated by hazardous waste transporter license fees, as authorized by the General Assembly in Senate Bill 577.

Portions of three (3) existing regulations, including 10 CSR 25-12.010, contain language that reflects the current system of licensing transporters on a per vehicle basis. Each of these regulations is proposed for amendment to implement the new system.

(2) Fees and Taxes Applicable to Transporters of Hazardous Waste.

(C) [A transporter who is applying for a hazardous waste transporter license or renewal or who is adding or substituting motor vehicles in accordance with 10 CSR 25-6.263 shall pay a fee, which shall be submitted with the application or with the additional or substitute motor vehicle descriptions.

1. License and license renewal fees shall be based on the number and gross weight of each transport motor vehicle to be used.

A. The following schedule shall be used to compute the fee for motor vehicles:

Gross Weight Less Than 36,000 lbs.	
Number of Vehicles	Cost per Vehicle
1st—10th vehicle	\$50
11th—50th vehicle	\$25
51st—100th vehicle	\$20
101st vehicle and more	\$10

Gross Weight 36,000 lbs. and Over	
Number of Vehicles	Cost per Vehicle
1st—10th vehicle	\$100
11th—50th vehicle	\$ 50
51st—100th vehicle	\$ 40
101st vehicle and more	\$ 20

Example: A transporter is licensing fifteen (15) motor vehicles. Twelve (12) of these have gross weights of less than thirty-six thousand pounds (36,000 lbs.). The fee for those twelve (12) would be $(10 \times \$50) + (2 \times \$25) = \$550$. The other three (3) motor vehicles have gross weights of thirty-six thousand pounds (36,000 lbs.) and over. The fee for those three (3) motor vehicles would be $3 \times \$100 = \300 . The transporter’s total fee for the license or renewal therefore would be $\$550 + \$300 = \$850$.

B. The total fee shall not exceed fifteen thousand dollars (\$15,000) per transporter per year.

2. A transporter who wishes to add or substitute motor vehicles at a time other than when applying for a license or renewal shall submit, along with the motor vehicle descriptions, a fee to be computed from the fee schedule listed in subparagraph (2)(C)1.A. of this rule.

A. The fee for motor vehicle additions shall be calculated beginning with the first price category (1st—10th vehicle) for both weight classifications, regardless of the number of motor vehicles already permitted on the transporter license. *Example:* After being licensed for a fleet of fifty-two (52) motor vehicles, a transporter wishes to add to the license a motor vehicle with a gross weight of twelve thousand pounds (12,000 lbs.). Using the fee schedule in subparagraph (2)(C)1.A., the transporter selects the “GROSS WEIGHT LESS THAN 36,000 LBS.” classification and finds that the fee in the first (top) price category of this weight classification is fifty dollars (\$50).

B. When the transporter is replacing a motor vehicle with a different motor vehicle from the same or lesser weight class, a fee of twenty-five dollars (\$25) is assessed in addition to the information required in 10 CSR 25-6.263.

C. When the transporter is replacing a motor vehicle with a different motor vehicle from a larger weight class, the fee shall be twenty-five dollars (\$25), plus a fifty dollar (\$50) fee to account for the change to the upper fee category in the fee schedule. The written information required in 10 CSR 25-6.263 shall accompany the fee.

3. The license fee for each mode of transport other than motor vehicle shall be one hundred dollars (\$100) per mode per transporter per year. Each transporter license for modes other than motor vehicle will be issued for only one (1) mode of transport (for example, rail transport). A transporter shall not originally include, nor add, vehicles of more than one (1) mode on the same license. For example, a license for rail transport at any time shall not cover motor vehicles.] A hazardous waste transporter as defined at 10 CSR 25-3.260, except those exempted in subsection (E) of this section, requesting a hazardous waste transporter license in accordance with 10 CSR 25-6.263 shall submit to the department along with their license application the following fees:

1. An annual application fee of two hundred dollars (\$200); and

2. A use-based fee, calculated by adding the total licensed vehicle weight (LVW) of power units, and multiplying by the percentage of Missouri International Registration Plan (IRP) mileage (MOIRP) by the percent hazardous waste (HW) times a use rate of .0425. The formula is: $LVW \times \%MOIRP \times \%HW \times .0425 = \text{Use Fee}$. Fee calculations shall be submitted on forms furnished by the department in its application packet. Transporters shall base all calculations on the period of twelve (12) consecutive months immediately prior to July 1 immediately preceding the date of the license application. This time frame is known as the “previous year.”

A. For those power units which utilize the International Registration Plan (IRP) or 12 CSR 20-3.010 for apportioned

registration, the transporter shall use the reported Missouri IRP mileage for the previous year.

B. For those power units not required to track IRP miles, the transporter shall calculate MOIRP mileage by dividing the Missouri mileage of their power units by total mileage for the previous year.

C. The percentage of hazardous waste will be the number of hazardous waste, used oil or infectious waste truckloads from, to or through Missouri, divided by the total truckloads from, to or through Missouri, in the form of a percentage, for the previous year.

D. New transporters who wish to obtain a hazardous waste license and have no "previous year" history of hauling hazardous waste, shall calculate license fees based on estimates of MOIRP mileage and percent hazardous waste.

(I) If an estimate is used to calculate the license fee, the transporter shall, within sixty (60) days of the expiration of the license, report the actual Missouri mileage and percent hazardous waste for the current license year. The renewal fee will include the license fee for the next year, plus any money owed the department due to an underestimation of the current year, plus ten percent (10%).

(II) The department shall not issue refunds but will issue credit for license fees in excess of ten percent (10%) (over-estimation) for the next license year.

E. A transporter who wishes to add another power unit other than when applying for the annual license shall submit, along with power unit descriptions, a fee computed from this formula: $LVW \text{ of power unit} \times MOIRP\% \times HW\% \times .0425 = \text{Use Fee}$. Divide this figure by twelve (12), then multiply by the number of months remaining in the license year to derive the fee.

F. To replace one (1) power unit for another (due to accident, sale, or extended maintenance) submit all the required information for the replacement and a license certificate will be issued for that power unit for a limited period.

G. A temporary permit can be issued for thirty (30)-days for a fee of fifty dollars (\$50) for a power unit that is, for example, a temporary lease that is added to the fleet.

3. The total fee shall not exceed twenty-five thousand dollars (\$25,000) per transporter per year.

(D) Record Keeping and Reporting.

1. Licensed transporters, except those exempted in subsection (E) of this section, shall maintain all documentation used in calculating Missouri hazardous waste transporter license fees for a period of three (3) years following the expiration of the license. Transporters who reach the maximum payment are relieved of record keeping requirements and are also free to add or replace power units as necessary during the license year.

2. All documentation used to calculate Missouri hazardous waste transporter license fees must be provided to the department, upon request, within fifteen (15) calendar days from the date of receipt.

(E) Other than power unit transporters are not subject to the requirements of subsections (C) and (D) of this section. The license fee for each mode of transport other than power units shall be three hundred fifty dollars (\$350) per transporter per year. An other than power unit transporter shall not originally include, nor add, more than one (1) mode on the same license. For example, a license for rail transport shall not include power unit hazardous waste transportation.

(F) License renewals submitted within twelve (12) months of the effective date of this rule may be considered a new license and therefore subject to the provisions of 10 CSR 25-12.010 (2)(C)2.D.(I) and (II) applicable to newly licensed transporters. The determining factor will be whether or not the transporter has been keeping accurate records of MOIRP mileage and

Missouri hazardous waste percentage for the previous year. If the transporter has accurate figures for the previous year, then the license will be an actual renewal.

AUTHORITY: sections 260.370, 260.380 260.390, 260.391, 260.395 and 260.437, 260.479 RSMo 2000. Original rule filed Dec. 16, 1985, effective Oct. 1, 1986. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 17, 2001.

PUBLIC COST: This proposed amendment is estimated to cost affected state agencies and political subdivisions twelve thousand five hundred ninety-six dollars (\$12,596) in fiscal year 2002 and every year thereafter for administration of and compliance with the new rule. A detailed fiscal note has been filed with the secretary of state.

PRIVATE COST: This proposed amendment is expected to cost private entities \$1,073,809 in fiscal year 2002 and every year thereafter for compliance with the requirements of the new rule. A detailed fiscal note has been filed with the secretary of state.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: The Missouri Hazardous Waste Management Commission will hold a public hearing on this rule action and others beginning at 9:00 a.m. on February 19, 2002 at the Department of Natural Resources Elm Street Conference Center, 1738 E. Elm, Jefferson City, Missouri. Any person wishing to speak at the hearing shall send a written request to the Secretary of the Hazardous Waste Management Commission at PO Box 176, Jefferson City, MO, 65102-0176. To be accepted, written requests to speak must be postmarked by midnight on February 5, 2002. Faxed or e-mailed correspondence will not be accepted.

Any person may submit written comments on this rule action. Written comments shall be sent to the Director of the Hazardous Waste Program at PO Box 176, Jefferson City, MO, 65102-0176. To be accepted, written comments must be postmarked by midnight on March 1, 2002. Faxed or e-mailed correspondence will not be accepted.

Please direct all inquiries to the rules coordinator of the Hazardous Waste Program at (573) 751-3176.

**FISCAL NOTE
 PUBLIC ENTITY COST**

I. RULE NUMBER

Title: Department of Natural Resources
 Division: Hazardous Waste Management Commission
 Chapter: Fees and Taxes
 Type of Rulemaking: Proposed Amendment
 Rule Number and Name: 10 CSR 25-12.010 Hazardous Waste Fees and Taxes

Affected Agency or Political Subdivision ¹	Number affected	Item	Itemized Cost
Kansas City Regional Household Hazardous Waste Center	1	Est. increase in amount of Hazardous Waste Transporter License Fee	\$649
University of Missouri – Columbia	1	Est. increase in amount of Hazardous Waste Transporter License Fee	\$649
United States Environmental Protection Agency Region VII	1	Est. increase in amount of Hazardous Waste Transporter License Fee	\$649
Missouri Department of Transportation	1	Est. increase in amount of Hazardous Waste Transporter License Fee	\$649
		Total increase in license fee for public entities	\$2,596
		Total annual administrative cost for public entities to document compliance with the rule	\$10,000
		Total estimated annual aggregate compliance cost for public entities:	\$12,596

¹The public entities listed as being affected are those currently possessing a license from the Department of Natural Resources to transport hazardous waste, used oil, or infectious waste.

III. WORKSHEET

1. Prior to August 28, 2000 the Missouri Department of Natural Resources was authorized by statute to generate as near as practicable to \$400,000 annually. However, actual revenues have been decreasing and amounted to approximately \$367,000 in the most recent license year.

2. Based on a universe of 345 licensed hazardous waste transporters, this amounts to an average license fee of \$1,065 per transporter.
3. Effective August 28, 2000 the Department is authorized by statute to generate as near as practicable to \$600,000 annually. The proposed amendment to 10 CSR 25-12.010 implements a use-based fee that is intended to generate as near as possible to the target amount.
4. The \$600,000 revenue target is an increase of sixty-one percent (61%) over the current annual revenues of \$367,000.
5. Applying the sixty-one percent increase in total revenues to the current average license fee of \$1,065 per transporter produces an estimate of \$1,714 per transporter under the proposed use-based system.
6. This is an average increase of \$649 paid annually by a hazardous waste transporter to obtain a hazardous waste transporter license.
7. The estimated annual aggregate compliance cost of \$2,596 is calculated by multiplying \$649 x the 4 public entities that are licensed hazardous waste transporters as of November 2001.
8. It is assumed that licensed transporters will incur additional costs to track and document number of loads of hazardous waste, used oil, or infectious waste transported to, from, or through Missouri and also the number of miles that these loads are transported over Missouri roads.
9. Based upon the input of representatives of the hazardous waste transportation industry, it is assumed for purposes of this fiscal note that these activities will require approximately 3 hours per week or 156 hours annually. At an hourly rate of approximately \$16 per hour this amounts to an additional annual administrative cost of approximately \$2500 to perform the record keeping necessary to document compliance with the rule.
10. The total annual aggregate compliance cost for the record keeping requirement is $\$2500 \times 4 = \$10,000$

IV. ASSUMPTIONS

1. Because the actual increase in the license fee paid by an individual transporter will vary based on mileage and load information that is currently not available to the department, it is assumed for the purposes of this fiscal note that the sixty-one percent increase in the revenue generated by the license fee will be distributed equally among all licensed hazardous waste transporters. This does not take into account the fact that some transporters will see more of an increase than others, and some may actually see a decrease, once the use-based fee is implemented. Transporters hauling a greater percentage of hazardous waste over more mileage in Missouri may see more of an increase in their license fee than a transporter doing only a small percentage of their total business transporting hazardous waste.
2. Because the duration of this rule cannot be estimated, an annualized aggregate cost is provided. The annualized aggregate cost is expected to remain constant for the duration of the rule.
3. Fiscal year 2000 dollars are used to estimate the costs, and, since inflation cannot be accurately predicted, no adjustments are made for inflation.
4. The universe of affected public entities is based on the information on hand as of November 2001, and we assume that the universe will remain constant.

**FISCAL NOTE
PRIVATE ENTITY COST**

I. RULE NUMBER

Title: Department of Natural Resources

Division: Hazardous Waste Management Commission

Chapter: Fees and Taxes

Type of Rulemaking: Proposed Amendment

Rule Number and Name: 10 CSR 25-12.010 Hazardous Waste Fees and Taxes

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: ¹
341	Licensed hazardous waste transporters	\$1,073,809

¹This is an annualized cost. Because the duration of this rule cannot be estimated, an annualized aggregate cost is provided.

III. WORKSHEET

1. Prior to August 28, 2000 the Missouri Department of Natural Resources was authorized by statute to generate as near as practicable to \$400,000 annually. However, actual revenues have been decreasing and amounted to approximately \$367,000 in the most recent license year.
2. Based on a universe of 345 licensed hazardous waste transporters, this amounts to an average license fee of \$1,065 per transporter. Of these 345 transporters, 341 are listed as private entities.
3. Effective August 28, 2000 the Department is authorized by statute to generate as near as practicable to \$600,000 annually. The proposed amendment to 10 CSR 25-12.010 implements a use-based fee that is intended to generate as near as possible to the target amount.
4. The \$600,000 revenue target is an increase of sixty-one percent (61%) over the current annual revenues of \$367,000.
5. Applying the sixty-one percent increase in target revenue to the current average license fee of \$1,065 per transporter produces an estimate of \$1,714 per transporter under the proposed use-based system.
6. This is an average increase of \$649 paid annually by a hazardous waste transporter to obtain a hazardous waste transporter license.
7. The estimated annual compliance cost of \$221,309 attributed to the increased license fee is calculated by multiplying the average increase of \$649 x 341, the number of private entities that are licensed hazardous waste transporters as of November 2001.
11. Based upon the input of representatives of the hazardous waste transportation industry, it is assumed for purposes of this fiscal note that these activities will require approximately 3 hours per week or 156 hours annually. At an hourly rate of approximately \$16 per hour this amounts to an additional annual administrative cost of approximately \$2500 for each licensed transporter to perform the record keeping necessary to document compliance with the rule.

12. The total annual aggregate compliance cost for the record keeping requirement is $\$2500 \times 341 = \$852,500$
13. The total annual aggregate compliance cost for the increased license fee and the record keeping requirement is $\$221,309 + \$852,500 = \$1,073,809$

IV. ASSUMPTIONS

1. Because the actual increase in the license fee paid by an individual transporter will vary based on mileage and load information that is currently not available to the department, it is assumed for the purposes of this fiscal note that the sixty-one percent increase in the revenue generated by the license fee will be distributed equally among all licensed transporters. This does not take into account the fact that some transporters will see more of an increase than others, and some may actually see a decrease, once the use-based fee is implemented. Transporters hauling a greater percentage of hazardous waste over more mileage in Missouri may see more of an increase in their license fee than a transporter doing only a small percentage of their total business transporting hazardous waste.
2. Because the duration of this rule cannot be estimated, an annualized aggregate cost is provided. The annualized aggregate cost is expected to remain constant for the duration of the rule.
3. Fiscal year 2000 dollars are used to estimate the costs, and, since inflation cannot be accurately predicted, no adjustments are made for inflation.
4. The universe of affected private entities is based on the information on hand as of November 2001, and we assume that the universe will remain constant.

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

PROPOSED AMENDMENT

11 CSR 45-1.090 Definitions. The commission is amending subsection (11)(B).

PURPOSE: This amendment clarifies that both individuals and business entities can be a key person.

(11) Definitions beginning with K—

(B) Key person—Includes the following **individuals or business entities**:

1. An officer, director, trustee, proprietor, managing agent, or general manager of an applicant or licensee or of a business entity key person of an applicant or licensee;

2. A holder of any direct or indirect legal or beneficial publicly traded interest whose combined direct, indirect or attributed publicly traded interest is five percent (5%) or more in an applicant or licensee or in a business entity key person of an applicant or licensee;

3. A holder of any direct or indirect legal or beneficial privately held interest whose combined direct, indirect or attributed privately held interest is one percent (1%) or more in an applicant or licensee or in a business entity key person of an applicant or licensee;

4. A holder of any direct or indirect legal or beneficial interest in an applicant or licensee or in a business entity key person of an applicant or licensee if the interest was required to be issued under agreement with or authority of a government entity;

5. An owner of an excursion gambling boat; and

6. [Anyone/Any individual or business entity so designated by the commission or director; and

AUTHORITY: sections 313.004, 313.805 and 313.817, RSMo [1994] 2000. Emergency rule filed Sept. 1, 1993, effective Sept. 20, 1993, expired Jan. 17, 1994. Emergency rule filed Jan. 5, 1994, effective Jan. 18, 1994, expired Jan. 30, 1994. Original rule filed Sept. 1, 1993, effective Jan. 31, 1994. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 7, 2001.

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: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Gaming Commission, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. A public hearing is scheduled for 10:00 a.m., February 20, 2002, in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 4—Licenses**

PROPOSED AMENDMENT

11 CSR 45-4.400 Occupational Licensure Levels. The commission is amending subsection (2)(I).

PURPOSE: This amendment provides that business entity key persons require an occupational license.

(2) Occupational License Level One (I) includes the following positions or their equivalent:

(I) Individual and Business Entity Key Persons; provider that business entity key persons do not require occupational licenses; and

AUTHORITY: sections 313.004 and 313.805, RSMo [1994] 2000. Emergency rule filed Sept. 1, 1993, effective Sept. 20, 1993, expired Jan. 17, 1994. Emergency rule filed Jan. 5, 1994, effective Jan. 18, 1994, expired Jan. 30, 1994. Original rule filed Sept. 1, 1993, effective Jan. 31, 1994. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 7, 2001.

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: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Gaming Commission, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. A public hearing is scheduled for 10:00 a.m., February 20, 2002, in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 4—Licenses**

PROPOSED AMENDMENT

11 CSR 45-4.410 Identification Badge Requirements. The commission is amending section (1) and renumbering sections (3) and (4) to (2) and (3).

PURPOSE: This amendment provides that business entity key persons are not required to display a casino identification badge.

(1) Occupational licensees other than business entity key person licensees shall at all times while performing the functions of their positions display a valid, riverboat-issued casino access badge. No casino access badge granting access to any riverboat gaming operation may be held by any person unless that person has been authorized for such access by the Class A applicant or licensee of the riverboat gaming operation for which the badge is to be issued. Each Class A applicant or licensee must notify the commission that such authorization has been granted before any identification badge may be issued to the person. Each Class A applicant or licensee must notify the commission within ten (10) days if any such authorization has been revoked.

/(3)/ (2) The casino access badge shall—

(A) Be of a color selected by the riverboat gaming operation for use on all casino access badges utilized by occupational licensees;

(B) Be a three and three-eighths by two and one-eighth-inch (3 3/8" × 2 1/8") card bearing on the front side the name and logo of the riverboat gaming operation;

(C) Provide a base for a one-inch by one and one-fourth-inch (1" × 1 1/4") photograph on the front side;

(D) Provide a space for a six (6)-digit number at least one-fourth inch (1/4") in height on the front side;

(E) Display the employee's first name or nickname and job title on the front side;

(F) Provide on the reverse side a line for the employee's full name, Social Security number and date of birth; and

(G) Provide a space for color coded backgrounds for use around the occupational field or title on the front side as follows:

1. Solid white—non-casino occupations: all level II or higher personnel whose job responsibilities do not require access inside the casino turnstiles or to other gaming areas, including but not limited to cages and count rooms;

2. Solid green—surveillance occupations: all personnel whose job responsibilities include the operation, maintenance, and installation of surveillance equipment and the supervision of those surveillance personnel;

3. Solid red—security and guest safety occupations: all personnel whose job responsibilities include the security of the casino facilities, safety of customers and employees, rendering of medical aid and supervision of security personnel;

4. Red diagonal stripes—gaming occupations: all personnel whose job responsibilities are directly related to conducting a gambling game or the repair of a gaming related device, including but not limited to cage department employees, casino operations employees, count department employees, revenue audit employees, slot department employees, and table game department employees;

5. Solid blue—non-gaming occupations: all personnel whose job responsibilities require access inside the casino turnstiles but are not directly related to gaming activities and not handling chips or tokens, including but not limited to environmental services or housekeeping employees; food and beverage employees; maintenance, marine operations or boat operations employees; retail employees, ticketing employees, marketing employees, management information systems or information technology employees, and pit clerk and pit administration employees; and

6. Red horizontal stripes—other non-gaming occupations including but not limited to non-gaming personnel responsible for clerical duties requiring limited access to the gaming pits and other non-gaming areas for the purposes of, for example, player tracking or other marketing duties; the installation, operation, or repair of information systems equipment; pit clerks; pit administrators; table games assistants; marketing; and all information systems personnel and related supervisors.

[(4)](3) Casino access badges are not transferable and upon resignation or termination of employment, an identification badge must be returned by the occupational licensee to the holder of a Class A license or to the commission. If returned to the holder of a Class A license, the holder must then return the badge to the commission.

AUTHORITY: sections 313.004, 313.800 and 313.850, RSMo [1994] 2000. Emergency rule filed Sept. 1, 1993, effective Sept. 20, 1993, expired Jan. 17, 1994. Emergency rule filed Jan. 5, 1994, effective Jan. 18, 1994, expired Jan. 30, 1994. Original rule filed Sept. 1, 1993, effective Jan. 31, 1994. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 7, 2001.

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: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Gaming Commission, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. A public hearing is scheduled for 10:00 a.m., February 20, 2002, in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 4—Licenses**

PROPOSED AMENDMENT

11 CSR 45-4.420 Occupational License. The commission is amending section (1).

PURPOSE: This amendment provides that business entity key persons are not required to display a commission license badge.

(1) Occupational licensees **other than business entity key person licensees** shall at all times while performing the functions of their positions display a valid, commission-issued occupational license badge.

AUTHORITY: sections 313.004, 313.800 and 313.850, RSMo [1994] 2000. Original rule filed May 13, 1998, effective Oct. 30, 1998. Amended: Filed Dec. 7, 2001.

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: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Gaming Commission, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. A public hearing is scheduled for 10:00 a.m., February 20, 2002, in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 5—Conduct of Gaming**

PROPOSED RULE

11 CSR 45-5.290 Bingo Games

PURPOSE: This rule prohibits casinos from conducting bingo games on excursion gambling boats.

(1) The following words and terms, when used in this rule, shall have the following meanings:

(A) "Bingo games," all games commonly known as bingo as defined in section 313.005(1), RSMo, and including but not limited to promotional bingo games;

(B) "Promotional bingo games," all bingo games offered by a Class A licensee to their patrons in order to directly or indirectly promote the licensee's gambling games, whether or not the

licensee receives consideration from the patrons playing the bingo games.

(2) Notwithstanding any other provision of this chapter to the contrary, no Class A licensee may conduct bingo games on an excursion gambling boat.

(3) No Class A licensee may lease or donate any part of its premises to another person or organization for the purpose of conducting bingo games.

AUTHORITY: sections 313.004 and 313.805, RSMo 2000. Original rule filed Dec. 7, 2001.

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: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Gaming Commission, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. A public hearing is scheduled for 10:00 a.m., February 20, 2002, in the Gaming Commission Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 6—Operation of the Riverboat**

PROPOSED AMENDMENT

11 CSR 45-6.020 Safety Standards. The commission is adding a new subsection (1)(D), amending section (2), subsections (3)(A) and (E) and (4)(A), (B) and (C).

PURPOSE: This amendment allows for approved third party examiners to provide safety inspection services to licensees.

(1) For the purposes of this 11 CSR 45-6.020, the following definitions shall apply:

(B) Permanently moored vessel—a vessel out of navigation that has become substantially a land structure mounted on a floating platform and subject to land based building codes rather than marine inspection laws; *and*

(C) Continuously moored vessel—a vessel formerly self-propelled which previously cruised navigable waters but has now been determined by the United States Coast Guard to be continuously docked and removed from navigation.; *and*

(D) **Third party examiner—an individual or entity specifically approved by the commission to conduct safety inspections as required by Missouri laws and rules. At a minimum the third party examiner must provide evidence of experience with similar inspection services on similar vessels, financial responsibility in a minimum amount of one (1) million dollars each in general liability insurance, Worker's Compensation and longshoreman's insurance (if required by law), and meet at least the following criteria:**

1. Inspectors for superstructure and life safety systems must have at least five (5) years experience in work directly relating to the design and/or fabrication and/or inspection of similar vessels, and knowledge of the fire safety standards of the Missouri laws and rules, as well as the building and fire

codes adopted within the jurisdiction where the structure will be placed into service, or a recognized building and fire code approved by the commission, and be one of the following:

A. An architect licensed in the state of Missouri with at least five (5) years of experience in work directly relating to the design and/or inspection of similarly sized vessels; or

B. A professional engineer licensed in the state of Missouri with at least five (5) years of experience in work directly relating to the design and/or inspection of similarly sized vessels; or

C. An architect or qualified engineer with a regulatory and review agency, such as the American Bureau of Shipping (or affiliate);

2. Marine surveyors for hull inspections must have at least ten (10) years of experience in marine surveying work associated with the inspection of similar vessels and be one of the following criteria:

A. An architect licensed in the state of Missouri; or

B. A professional engineer licensed in the state of Missouri; or

C. A marine surveyor with a regulatory and review agency, such as the American Bureau of Shipping (or affiliate).

(2) Fire Safety Standards. Any establishment to be constructed for dockside gaming that will be permanently moored or continuously moored will be required to meet—1) the fire safety standards of the Missouri laws and rules, **and 2) [the fire safety standards contained in the National Fire Protection Association, NFPA Standard 307, Standard for the Construction and Fire Protection of Marine Terminals, Piers and Wharfs, and 3) the NFPA Life Safety Code] the building and fire codes adopted within the jurisdiction where the structure will be placed into service, or if there is no locally adopted code then a nationally recognized building and fire code approved by the commission.**

(3) Certification of Passenger-Carrying Capacity.

(A) A stability test shall be conducted by the licensee in accordance with 46 CFR, subchapter S, part 170, subpart F. This test shall be witnessed by *[the American Bureau of Shipping, or another regulatory and review agency or private contractor designated] a third party examiner approved* by the commission. In lieu of a stability test, the licensee may elect to perform a Deadweight Survey to determine the Lightweight Displacement and Longitudinal Center of Gravity. The Vertical Center of Gravity shall be determined by a conservative estimate, subject to approval by *[the American Bureau of Shipping or another regulatory and review agency designated] a third party examiner approved* by the commission.

(E) All stability calculations required by subsection (2)(D) shall be furnished by the licensee to *[the American Bureau of Shipping (ABS) or another regulatory and review agency designated] a third party examiner approved* by the commission, for review and approval by that *[agency] examiner*. All vessels must have a letter from the *[designated agency] approved third party examiner* stating compliance with *[this] these* criteria.

(4) Certification of Certain Barges, Floating Platforms and Vessels Other than Excursion Gambling Boats.

(A) All barges, floating platforms and vessels that will be used in conjunction with a riverboat gaming operation shall be certified as suitable for their intended use prior to being placed into service, and annually thereafter. The certification shall be performed by a *[regulatory and review agency] third party examiner approved* by the commission.

(B) Any structure constructed on any barge, floating platform, or vessel that will be normally occupied by persons, and used in

conjunction with a riverboat gaming operation shall conform to the building and fire codes adopted within the jurisdiction where the structure will be placed into service, except those vessels originally designed, and constructed as a vessel subject to inspection by the United States Coast Guard authority, and inspection, and issued a certificate of inspection by the United States Coast Guard and the vessel has not been changed since the issuance of the certificate. **Facilities not required to hold a certificate of inspection issued by the United States Coast Guard and which are located in an area where there is no locally adopted building or fire code shall be in compliance with Missouri laws and rules and a nationally recognized building and fire code approved by the commission.**

(C) Any structure constructed on a barge, floating platform, or vessel that will be normally occupied by persons and used in conjunction with a riverboat gaming operation shall be inspected for compliance with the building, fire codes of the local jurisdiction where the structure will be placed into service by an authority approved by the commission prior to being placed into service and, annually thereafter. **Facilities not required to hold a certificate of inspection issued by the United States Coast Guard and which are located in an area where there is no locally adopted building or fire code shall be in compliance with Missouri laws and rules and a nationally recognized building and fire code approved by the commission.**

AUTHORITY: sections 313.004 and 313.824, RSMo [1994] 2000. Emergency rule filed Sept. 1, 1993, effective Sept. 20, 1993, expired Jan. 17, 1994. Emergency rule filed Jan. 5, 1994, effective Jan. 18, 1994, expired Jan. 30, 1994. Original rule filed Sept. 1, 1993, effective Jan. 31, 1994. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 7, 2001.

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate. Please see attached fiscal note.

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: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Gaming Commission, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. A public hearing is scheduled for 10:00 a.m., February 20, 2002, in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.

FISCAL NOTE

PUBLIC COST

I. RULE NUMBER

Rule Number and Name:	11 CSR 45-6.020
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision:	Estimated Cost of Compliance in the Aggregate:
Missouri Gaming Commission	\$6,000

III. WORKSHEET

Professional Services of Marine Safety Expert – 40 hours at \$150.00 per hour = \$6,000

IV. ASSUMPTIONS

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 6—Operation of the Riverboat**

PROPOSED AMENDMENT

11 CSR 45-6.025 Safety Inspections. The commission is amending subsections (1)(A) and (B) and section (2), and adding a new section (3).

PURPOSE: This amendment allows for approved third party examiners to provide safety inspection services to licensees and provides specifications for hull inspections.

(1) Each excursion gambling boat shall comply with all applicable federal, state and local law related to safety and with one (1) of the following:

(A) Undergo an inspection prior to licensure and annually thereafter by the United States Coast Guard [or regulatory and review agency] resulting in the issuance of a "Certificate of Inspection"; or

(B) Undergo an inspection prior to licensure and annually thereafter by a [regulatory and review agency] **third party examiner approved by the commission** resulting in a finding of safety and suitability for its intended purpose; provided that such excursion gambling boat must also meet the following:

1. If within the jurisdiction of the United States Coast Guard, obtain **approval from the United States Coast Guard, or regulatory and review agency, approval** or its designee for its permanent mooring or continuous mooring system and maintain such approval in good standing; and

2. If previously the holder of a "Certificate of Inspection" issued by the United States Coast Guard or regulatory and review agency, obtain approval by a **third party examiner** prior to licensure and annually thereafter of a plan for fire fighting and the protection and evacuation of personnel and maintain staff sufficiently trained as required to execute the plan.

(2) Each excursion gambling boat for which the commission has granted continuous docking status, shall comply with the standards for safety, design, construction, inspection, survey, and moorings of permanently moored or continuously moored excursion gambling boats submitted by a [regulatory and review agency] **third party examiner** and approved by the commission; except that this requirement shall not apply to vessels designed and constructed as a motor vessel under the rules and regulations of the United States Coast Guard and which have or have had a "Certificate of Inspection" issued by the United States Coast Guard or regulatory and review agency.

(3) **Hull inspections by third party examiners approved by the commission shall comply with the standards set forth in 11 CSR 45-6.020 and shall meet the following requirements:**

(A) An annual survey shall be conducted of permanently moored vessels by a **third party examiner** as defined in 11 CSR 45-6.020 to determine if structural changes exist which may affect the stability of the vessel. The survey shall consist of the following:

1. General inspection of the superstructure and layout of outfitting to ensure there are no changes to the approved arrangement that may affect the stability of the vessel;

2. Inspection of the underdock spaces to ensure watertight integrity of the vessel is maintained;

3. Inspection and report on the condition of the hull and watertight bulkheads;

4. Inspection and report on the condition of watertight doors and watertight bulkhead penetration;

5. Inspection and report on the condition of ventilator, hatch covers, and manhole covers. This annual survey does not apply to United States Coast Guard certified vessels that are subject to United States Coast Guard regulatory inspections;

6. Permanently moored vessels shall undergo dry-dock and internal structural examinations at intervals in accordance with 46 CFR 71.50-3 or present evidence of compliance with alternative methods of hull examination as may be deemed acceptable at the time, by the United States Coast Guard, for vessels that operate in fresh water;

7. Inspection of permanently moored vessels having steel or aluminum hulls may be performed in dry-dock or in-the-water. In-the-water inspections shall consist of an internal structural examination and a detailed nondestructive examination of the vessel's hull. The nondestructive hull examination may be performed by underwater inspection methods or from inside the vessel if all compartments are safely accessible. "Safely accessible" shall be dependent upon the issuance of a "gas free certificate" by a certified marine chemist or an individual otherwise qualified to issue such certificate;

8. All hull structural and in-the-water examinations and inspections of permanently moored vessels shall be under the direction of a third party examiner approved by the commission as provided in 11 CSR 45-6.020. Expertise of the approved third party examiner shall include knowledge of nondestructive testing methods and procedures for the materials being tested and the nature of testing being accomplished;

9. The inspection techniques must be under the general direction of an American Society for Nondestructive Testing (ASNT) Level III nondestructive certified technician. Inspections and measurements must be performed by an ASNT Level II (or higher) nondestructive certified technician;

10. The inspection results must be maintained in a format approved by the commission that will allow for examination by the commission's representatives, including comparison of results from the previous inspections;

11. Repairs using underwater welding shall be subject to periodic reevaluation at subsequent inspections. Such repairs shall be completed in accordance with the standards found in the American Welding Society's "Specifications for Underwater Welding";

12. The commission may require immediate dry-docking of the vessel if structural examinations and underwater inspections or repair work are not conducted in accordance with these rules; and

13. All work shall be governed by and construed according to Missouri law effective on the execution date.

(B) Written documentation of compliance with the requirements of subsection (A) of this section shall be furnished to the commission by the licensee. A third party examiner approved by the commission shall certify such documentation.

AUTHORITY: sections 313.004 and 313.805, RSMo [1994] 2000. Emergency rule filed June 25, 1996, effective July 5, 1996, expired Dec. 31, 1996. Original rule filed June 25, 1996, effective Feb. 28, 1997. Amended: Filed Feb. 19, 1998, effective Aug. 30, 1998. Amended: Filed Dec. 7, 2001.

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate. Please see attached fiscal note.

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: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Gaming Commission, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. A public hearing is scheduled for 10:00 a.m., February 20, 2002 in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.

FISCAL NOTE

PUBLIC COST

I. RULE NUMBER

Rule Number and Name:	11 CSR 45-6.025
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision:	Estimated Cost of Compliance in the Aggregate:
Missouri Gaming Commission	\$6,000

III. WORKSHEET

Professional Services of Marine Safety Expert - 40 hours at \$150.00 per hour = \$6,000

IV. ASSUMPTIONS

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 8—Accounting Records and Procedures;
Audits**

PROPOSED AMENDMENT

11 CSR 45-8.050 Standard Financial and Statistical Reports.

The commission is amending sections (1), (2), (3) and (6).

PURPOSE: This amendment provides for a quarterly financial report in order to improve, consolidate and simplify financial reporting requirements.

(1) Each licensee shall file monthly, **quarterly** and annual reports of financial and statistical data with the commission using electronic transmission and software formats as prescribed.

(2) The commission shall periodically prescribe and send licensees a set of standard reporting forms and instructions to be used in filing monthly, **quarterly** and annual reports. All *[monthly and annual]* reports required under this rule shall be prepared in accordance with generally accepted accounting principles.

(3) Annual reports shall be based on the licensee's fiscal year. **Quarterly reports shall be based on the licensee's fiscal quarter.** Monthly reports shall be based on calendar months. *[Monthly reports shall contain a cumulative year-to-date column so as to facilitate analysis.]*

(6) Letters shall be addressed to the commission and postmarked or faxed no later than the required filing date and reports shall be transmitted no later than the required filing date. The required filing dates are as follows:

(B) Quarterly reports shall be due twenty (20) calendar days following the end of the licensee's fiscal quarter;

[(B)](C) Annual reports shall be due ninety (90) calendar days following the end of the licensee's fiscal year or ten (10) days after Form 10-K is filed with the Securities and Exchange Commission, whichever come first;

[(C)](D) The licensee shall submit supporting schedules and documentation for the *[monthly and annual]* reports as prescribed by the commission; and

[(D)](E) Any adjustments to the *[monthly and annual]* reports resulting from review and/or audit by the commission shall be made by the licensee within five (5) business days after written notification.

AUTHORITY: sections 313.004, 313.805 and 313.825, RSMo [1994] 2000. Emergency rule filed Sept. 1, 1993, effective Sept. 20, 1993, expired Jan. 17, 1994. Emergency rule filed Jan. 5, 1994, effective Jan. 18, 1994, expired Jan. 30, 1994. Original rule filed Sept. 1, 1993, effective Jan. 31, 1994. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 7, 2001.

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: *Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Gaming Commission, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. A public hearing is scheduled for 10:00 a.m., February 20, 2002 in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.*

ing is scheduled for 10:00 a.m., February 20, 2002 in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 12—Liquor Control**

PROPOSED AMENDMENT

11 CSR 45-12.090 Rules of Liquor Control. The commission is amending subsection (5)(B).

PURPOSE: This amendment permits a licensee's food and beverage director to consume alcoholic beverages in nongaming areas and prohibits beverage servers from taste-testing alcoholic beverages on an excursion gambling boat or adjacent facility.

(5) Employees.

(B) An excursion liquor licensee may submit to the director a written request for authorization for level I licensees or applicants, **the licensee's food and beverage director or [other]** corporate officers to consume alcoholic beverages in the nongaming areas of the premises for business purposes. The director's authorization or denial shall be in writing. **Beverage servers are prohibited from taste-testing alcoholic beverages on an excursion gambling boat or facility immediately adjacent to an excursion gambling boat; however, the licensee may train beverage servers at an off-site location by using taste-testing in order to inform the beverage server about the characteristics of beverages offered by the licensee.**

AUTHORITY: sections 313.004, 313.805 and 313.840, RSMo 2000. Emergency rule filed Sept. 1, 1993, effective Sept. 20, 1993, expired Jan. 17, 1994. Emergency rule filed Jan. 5, 1994, effective Jan. 18, 1994, expired Jan. 30, 1994. Original rule filed Sept. 1, 1993, effective Jan. 31, 1994. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 7, 2001.

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: *Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Gaming Commission, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. A public hearing is scheduled for 10:00 a.m., February 20, 2002, in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.*

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 13—Hearings**

PROPOSED AMENDMENT

11 CSR 45-13.070 Transmittal of Record and Recommendation to the Commission. The commission is adding a new subsection (4)(B) and relettering the remaining subsection.

PURPOSE: This amendment provides that the commission may assess hearing costs, not to exceed fifty dollars (\$50), against parties that fail to appear at hearings.

(4) Final Commission Order.

(B) As part of the final Commission Order, the commission may assess hearing costs, not to exceed fifty dollars (\$50), against any party who without good cause fails to appear at a hearing conducted pursuant to this chapter.

[(B)] (C) Copies of the final Commission Order shall be served on a petitioner by certified or overnight express mail, postage prepaid, or by personal delivery.

AUTHORITY: sections 313.004, 313.052, 313.560, 313.800 and 313.805, RSMo [1994] 2000. Emergency rule filed Sept. 1, 1993, effective Sept. 20, 1993, expired Jan. 17, 1994. Emergency rule filed Jan. 5, 1994, effective Jan. 18, 1994, expired Jan. 30, 1994. Original rule filed Sept. 1, 1993, effective Jan. 31, 1994. Emergency amendment filed Dec. 12, 1997, effective Dec. 22, 1997, expired June 19, 1998. Amended: Filed Dec. 12, 1997, effective July 30, 1998. Amended: Filed Dec. 7, 2001.

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: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Gaming Commission, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. A public hearing is scheduled for 10:00 a.m., February 20, 2002, in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.

**Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 50—General**

PROPOSED AMENDMENT

15 CSR 30-50.010 Definitions. The commissioner of securities is proposing to amend the purpose and section (1).

PURPOSE: This amendment defines additional terms and revises the definitions of some terms used in the administration of the Act and in the corresponding rules, forms and orders made.

PURPOSE: [The commissioner of securities, under the direction of the secretary of state, administers the Missouri Uniform Securities Act. The commissioner may make rules, forms and orders as are necessary to carry out the provisions of the Act and may define terms, whether or not used in the Act, as far as the definitions are not inconsistent with the Act.] This rule defines certain terms used in the administration of the Missouri Uniform Securities Act and in the corresponding rules, forms and orders made.

(1) When the terms listed in this rule are used in the Missouri Uniform Securities Act (the Act), these rules, the forms and the orders of the commissioner, the following meanings shall apply (unless the context otherwise requires), together with those which may later appear to the extent that they are not inconsistent with definitions provided in Chapter 409, RSMo:

(G) CRD System means the NASAA/NASD Central Registration Depository;

[(G)] (H) Control and controlling person mean possession of the power, authority or means to engage in the management or policy-making functions of a person, directly or indirectly, through ownership of securities, by contract or otherwise. An officer, director, partner or trustee or individual occupying similar status or performing similar functions or a person owning ten percent (10%) or more of the outstanding shares of any class or classes of securities of another shall be presumed a controlling person;

[(H)] (I) Division or Securities Division means the staff of the Division of Securities, Office of Secretary of State of Missouri/, or the Office of the Commissioner of Securities of Missouri/;

(J) IARD System means the NASAA/SEC Investment Adviser Registration Depository;

[(J)] (K) Investment company, for the purpose of section 409.305(j) of the Act, means an issuer defined in Section 3, Investment Company Act of 1940;

[(J)] (L) Isolated, for the purpose of section [409.401] 409.402(b)(1) of the Act, means standing alone, disconnected from any other transactions [(Gales v. Weldon, 282 SW2d 522, 526 (Mo. 1955))];

[(K)] (M) NASD means the National Association of Securities Dealers, Inc.;

[(L) For offer or offer to sell, see Kreis v. Mates Investment Fund, Inc., 473 F2d 1308 (1973) (see also sale or sell subsection (1)(Q));]

(N) NASAA means the National Association of Securities Administrators Association, Inc.;

[(M)] (O) Parent means an affiliate controlling another person;

[(N)] (P) Predecessor means a person, a major portion of whose business, assets or control has been acquired by another;

[(O)] (Q) Promoter means a person who—

1. Acting alone or in conjunction with one (1) or more other persons, directly or indirectly, takes the initiative in founding and organizing or reorganizing the business or enterprise of an issuer; and

2. In connection with the founding and organizing or reorganizing of the business or enterprise of an issuer, directly or indirectly, receives in consideration of services or property, or both services and property, a substantial amount of any class of securities of the issuer or a substantial amount of the proceeds from the sale of any class of securities;

[(P)] (R) Registrant means an applicant for whom, or an issuer with respect to whose securities, a registration has become effective;

[(Q)] (S) Sale or sell—

1. For the purpose of section [409.401(j)(6)(C)] 409.401(m)(6)(C) of the Act, the phrase “any act incident to a class vote by stockholders” shall include the issuance of securities by a corporation and the distribution of securities to its security holders or to another corporation or to the security holders of such other corporation, by the issuing corporation or by such other corporation in connection with any merger, consolidation, reclassification of securities or sale of corporate assets referred to in section [409.401(j)(6)(C)] 409.401(m)(6)(C); and

2. For the purpose of section [409.401(j)(6)(D)] 409.401(m)(6)(D) of the Act, the phrase “any act incident to a judicially approved reorganization,” shall include the issuance of securities of the types defined in Section 3/.(a)(7) (receivers’ and trustees’ certificates) and in Section 3/.(a)(10) (securities issued in reorganizations) of the Securities Act of 1933; [and]

[3. See also offer and offer to sell subsection (1)(L);]

[(R)] (T) SEC means the United States Securities and Exchange Commission;

[(S)] (U) Subsidiary means an affiliate controlled by another person;

[(T)] (V) Underwriter means a person who has purchased from an issuer or an affiliate of an issuer with a view to, or offers or sells for an issuer or an affiliate of an issuer in connection with, the distribution of any security, or participates or has a participation in the direct or indirect underwriting of any such undertaking. Not included is a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission; and

[(U)] (W) For the purpose of section 409.402(a)(6) of the Act, the words industrial loan association, or similar association organized and supervised under the laws of this state do not include in their meaning any loan and investment company formed under the provisions of Chapter 368, RSMo.

AUTHORITY: sections 409.406(a) and 409.413(a), RSMo [1994] 2000. Original rule filed June 25, 1968, effective Aug. 1, 1968. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 17, 2001.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. 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 15—ELECTED OFFICIALS Division 30—Secretary of State Chapter 50—General

PROPOSED RESCISSION

15 CSR 30-50.020 General Instructions. This rule prescribed and clarified general matters within the commissioner's jurisdiction.

PURPOSE: The commissioner of securities is proposing to rescind this rule and readopt a new rule that revises and prescribes more concisely general matters within the commissioner's jurisdiction.

AUTHORITY: sections 409.406(a) and 409.407(a), RSMo Supp. 1995 and 409.414, RSMo 1994. Original rule filed June 25, 1968, effective Aug. 1, 1968. For intervening history, please consult the Code of State Regulations. Rescinded: Filed Dec. 17, 2001.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. 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 15—ELECTED OFFICIALS Division 30—Secretary of State Chapter 50—General

PROPOSED RULE

15 CSR 30-50.020 General Instructions

PURPOSE: This rule prescribes general matters within the commissioner's jurisdiction.

(1) Office Hours. The Securities Division shall be open for transaction of business between the hours of 7:30 a.m. and 5:00 p.m. on Monday through Friday, public holidays excepted.

(2) Filing Documents with the Securities Division.

(A) A document is filed when it is received in the office of the commissioner, or filed through the Central Registration Depository (CRD) System, the Investment Advisor Registration Depository (IARD) System, or other electronic system approved by the commissioner. All applications for registration and filings shall be dated and bear a signature.

(B) All written communications, including applications and inquiries not submitted through the CRD System or the IARD System, shall be delivered by mail, carrier, or facsimile to: Secretary of State, Securities Division, 600 W. Main Street, PO Box 1276, Jefferson City, MO 65102 (section 409.414(a), RSMo).

(C) Only the original executed copy of each form is required. If a document pertains to more than one (1) subject or application, a separate form, including cover or transmittal letter, or two (2) or more copies of the letter commensurate with the number of items submitted, should be filed.

(D) All forms and documents shall be printed, photocopied, typewritten, in electronic format, or prepared by a similar process which, in the opinion of the commissioner, produces copies suitable for a permanent record. All forms and documents shall be clear, easily readable and suitable for repeated photocopying. Exhibits may be attached and shall be properly marked and identified.

(E) All applications and other documents received and filed in the division become a part of its permanent records (section 409.414(a), RSMo) and may not be returned to the applicant or correspondent.

(3) Practice of Law. The unauthorized practice of law or the appearance of unauthorized practice shall be avoided in connection with any filing under the Act.

(4) Delegation of Authority. The commissioner may delegate to the staff of the Securities Division the authority to act for the commissioner, or to perform necessary functions and duties to carry out the purposes of the Act, rules promulgated thereunder and the orders and policies of the commissioner (section 1.060, RSMo).

(5) Interpretive Opinions. Interpretive opinions (section 409.414(e), RSMo) including no action letters are rendered only in writing. Informal discussions with the commissioner or members of the staff of the Securities Division shall not be taken to signify any determination or approval concerning the matters discussed.

(6) Exceptions. When authorized by statute, the commissioner may authorize or make exceptions to these rules as are necessary to carry out the provisions of the Act. Nothing in these rules shall inhibit the exercise by the commissioner of authority prescribed in or under the Act.

(7) Open Records Policy. The commissioner shall issue an open records policy in compliance with Chapter 610, RSMo.

(8) Commissioner's Seal. The Seal of the Office of Secretary of State shall constitute the seal of the commissioner and of his/her office (section 409.414(d) and (f), RSMo).

AUTHORITY: sections 409.406(a), 409.407(a), and 409.414, RSMo 2000. Original rule filed June 25, 1968, effective Aug. 1, 1968. For intervening history, please consult the *Code of State Regulations*. Rescinded and readopted: Filed Dec. 17, 2001.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. 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 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 50—General**

PROPOSED RESCISSION

15 CSR 30-50.030 Fees. This rule prescribed policies and procedures for charging registration and other fees.

PURPOSE: The commissioner of securities is proposing to rescind this rule and readopt a new rule that revises and prescribes more concisely the policies and procedures for charging registration and other fees.

AUTHORITY: sections 409.202(b) RSMo Supp. 1995, 409.305(b) and (j), 409.413 and 409.414(d) and (e), RSMo 1994. Original rule filed June 25, 1968, effective Aug. 1, 1968. For intervening history, please consult the *Code of State Regulations*. Rescinded: Filed Dec. 17, 2001.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. 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 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 50—General**

PROPOSED RULE

15 CSR 30-50.030 Fees

PURPOSE: This rule prescribes policies and procedures for charging registration and other fees.

(1) General Provisions.

(A) All fees shall accompany the application or other filing to which they pertain.

(B) Fees shall be remitted by check, draft or money order (cash is not acceptable) payable to the Director of Revenue, State of Missouri, or if the application is submitted through the Central Registration Depository (CRD) System or Investment Adviser Registration Depository (IARD) System, fees shall be remitted by check or wire transfer to the financial institution designated by the National Association of Securities Dealers (NASD).

(C) Fees paid with applications filed through the CRD System, the IARD System, or other electronic system approved by the commissioner may be sent by wire transfer or mail to NASD Regulation, Inc.

(2) Registration of Securities (section 409.305(b) and (j), RSMo). The fees for registration of securities are as follows:

(A) The minimum filing fee is one hundred dollars (\$100). This permits registration of up to one hundred thousand dollars (\$100,000) of securities in Missouri.

(B) To register more than one hundred thousand dollars (\$100,000) of securities in Missouri, the registration fee is one-twentieth of one percent (1/20 of 1%) of the amount above one hundred thousand dollars (\$100,000). The maximum total fee (filing plus registration) is one thousand dollars (\$1,000).

(C) The registration fee in the case of warrants or rights shall be based on the aggregate amount of the security called for by the warrants or rights, and the amount of the warrants or rights if they are not distributed without consideration.

(D) The registration fee relating to convertible securities in which no consideration is given for the second security, except the surrender of the first, shall be based solely on the amount of the convertible security.

(E) When separate securities are sold as a unit, the unit and the securities that comprise the unit are considered one (1) registration. The registration fee is based on the aggregate amount of securities that comprise the unit. When separate securities are sold separately, a separate application, filing fee and registration fee is required for each security.

(F) Renewal Filings. The annual renewal fee for the registration of securities is one hundred dollars (\$100).

(3) Federal Covered Securities. The filing fees for federal covered securities are as follows:

(A) Face-amount certificate companies or open-end management companies. The fees for securities issued by these companies, as classified under the Investment Company Act of 1940 and that are offered or sold in this state, shall consist of the following:

1. Initial filing fee. The initial filing fee is one hundred dollars (\$100). The initial filing fee must be paid prior to the initial offer of the securities in this state. A separate initial filing fee is required for each portfolio of securities.

2. Filing fee. A filing fee of one-twentieth of one percent (1/20 of 1%) of the amount of securities sold in this state during the issuer's previous fiscal year must be paid within sixty (60) days of the issuer's fiscal year end. The maximum filing fee for the securities sold in this state is three thousand dollars (\$3,000) and the minimum filing fee is one hundred dollars (\$100). A separate filing fee is required for each portfolio of securities.

(B) Closed End Management Companies. The fees for securities issued by these companies, as classified under the Investment Company Act of 1940 and that are offered or sold in this state, shall consist of the following:

1. Initial filing fee. The initial filing fee is one hundred dollars (\$100). The initial filing fee of one hundred dollars (\$100)

includes the filing fee for the first one hundred thousand dollars (\$100,000) of securities to be sold in this state.

2. Filing fee. The filing fee to sell an additional amount of securities above the first one hundred thousand dollars (\$100,000) is one-twentieth of one percent (1/20 of 1%) of the amount of the additional securities to be sold in this state. The maximum filing fee is one thousand dollars (\$1,000) and includes the initial filing fee.

(C) Unit Investment Trusts. The fees for securities issued by unit investment trusts, as classified under the Investment Company Act of 1940 and that are offered or sold in this state, shall consist of the following:

1. Initial filing fee. The initial filing fee is one hundred dollars (\$100). The initial filing fee must be paid prior to the initial offer of the securities in this state. The initial filing fee of one hundred dollars (\$100) includes the fee for the first one hundred thousand dollars (\$100,000) of securities sold in this state.

2. Filing fee. After the initial offering is complete, the issuer must pay a filing fee of one-twentieth of one percent (1/20 of 1%) of the amount of securities sold in this state above the first one hundred thousand dollars (\$100,000). The maximum filing fee is one thousand dollars (\$1,000) and includes the initial filing fee.

(D) Regulation D, Rule 506. The filing fee for each offering under Regulation D, Rule 506, is one hundred dollars (\$100).

(4) Registration of Broker-Dealers and Investment Advisers (section 409.202(b), RSMo). The filing fees for registration of broker-dealers and investment advisers are as follows:

- (A) Initial Registration—two hundred dollars (\$200); and
- (B) Renewal Registration—one hundred dollars (\$100).

(5) Registration of Agents and Investment Adviser Representatives. The filing fees for registration of broker-dealer agents and investment adviser representatives are as follows:

- (A) Initial Registration—fifty dollars (\$50); and
- (B) Renewal Registration—fifty dollars (\$50).

(6) Federal Covered Adviser. The notice filing fees of federal covered advisers are as follows:

- (A) Initial Notice Filing—two hundred dollars (\$200); and
- (B) Renewal Notice Filing—one hundred dollars (\$100).

(7) Document Requests. The fees for copies of documents and records in the division, or reports relating to these documents or records, are as follows: ten cents (\$.10) per page, plus five dollars (\$5) for certification and two dollars (\$2) per page for telephone and electronic transmittals (sections 28.160 and 409.414(d), RSMo).

(8) Interpretive Opinions. Interpretive opinions, including no action letters and opinions that involve a claim of exception from a definition under section 409.401 of the Act or otherwise from the scope of the Act, may be provided to interested persons for a filing fee of one hundred dollars (\$100) (section 409.414(e), RSMo).

(9) Notice Filing for Exemptions. The filing fee for notice filings for exemption under section 409.402 of the Act is one hundred dollars (\$100).

(10) Refunds.

(A) No refund of filing fees shall be permitted in the instances of applications for registration of securities and for registration of broker-dealers, agents, investment advisers and representatives of investment advisers, even though the applications are denied or withdrawn (sections 409.202(b) and 409.305(b), RSMo);

(B) Registration fees, but not filing fees, will be refunded upon withdrawal of an application. Registration fees will not be refunded if an application is denied registration pursuant to section 409.305 of the Act; and

(C) No refund of registration fees shall be permitted, if registration of securities is effected.

AUTHORITY: sections 409.202(b), 409.305(b) and (j), 409.413 and 409.414(d) and (e), RSMo 2000. Original rule filed June 25, 1968, effective Aug. 1, 1968. For intervening history, please consult the Code of State Regulations. Rescinded and readopted: Filed Dec. 17, 2001.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. 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 15—ELECTED OFFICIALS Division 30—Secretary of State Chapter 50—General

PROPOSED RESCISSION

15 CSR 30-50.040 Forms. This rule prescribed the forms adopted and approved for filing with the commissioner.

PURPOSE: The commissioner of securities is proposing to rescind this rule and adopt a new rule that replaces outdated forms with uniform federal and NASAA-adopted forms.

AUTHORITY: section 409.413(a), RSMo 1994. Original rule filed June 25, 1968, effective Aug. 1, 1968. For intervening history, please consult the Code of State Regulations. Rescinded: Filed Dec. 17, 2001.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. 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 15—ELECTED OFFICIALS Division 30—Secretary of State Chapter 50—General

PROPOSED RULE

15 CSR 30-50.040 Forms

PURPOSE: This rule prescribes the forms adopted and approved for filing with the commissioner.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. Therefore, the material which is so incorporated is on file with the agency who filed this rule, and with the Office of the Secretary of State. Any interested person may view this material at either agency's headquarters or the same will be made available at the Office of the Secretary of State at a cost not to exceed actual cost of copy reproduction. The entire text of the rule is printed here. This note refers only to the incorporated by reference material.

(1) The following forms have been adopted and approved for filing with the division:

(A) Broker-Dealers, Agents, Investment Advisers, and Investment Adviser Representatives—

1. Form BD—Uniform Application for Broker-Dealer Registration approved July 1999, OMB Approval Number 3235-0012, or any form which substantially comports with the specified form;

2. Form BDW—Uniform Request for Broker-Dealer Withdrawal approved August 1999, OMB Approval Number 3235-0018, or any form which substantially comports with the specified form;

3. Form SBD-1—Missouri Broker-Dealer Affidavit revised October 2001, or any form which substantially comports with the specified form;

4. Form X-17A-5—Financial and Operational Combined Uniform Single Report approved October 1999, OMB Approval Number 3235-0123, or any form which substantially comports with the specified form;

5. Form U-4—Uniform Application for Securities Industry Registration or Transfer adopted by the North American Securities Administration Association (NASAA) on April 29, 2001, or any form which substantially comports with the specified form;

6. Form U-5—Uniform Termination Notice for Securities Industry Registration adopted by the NASAA on April 29, 2001, or any form which substantially comports with the specified form;

7. Form SA-1—Missouri Application for Renewal Registration as Agent revised October 2001, or any form which substantially comports with the specified form;

8. Form ADV—Uniform Application for Investment Adviser Registration approved January 1999, OMB Approval Number 3235-0049, or any form which substantially comports with the specified form;

9. Form ADV-W—Uniform Notice of Withdrawal from Registration as Investment Adviser approved January 1999, OMB Approval Number 3235-0313, or any form which substantially comports with the specified form;

10. Form SADV-1—State Covered Investment Adviser Affidavit revised October 2001, or any form which substantially comports with the specified form;

11. Form SADV-SH—State Application for Hardship Exemption from IARD revised October 2001, or any form which substantially comports with the specified form;

12. Form U-2—Uniform Consent to Service of Process adopted by NASAA and revised November 1997, or any form which substantially comports with the specified form.

(B) Registration of Securities—

1. Form U-1—Uniform Application to Register Securities adopted by NASAA and revised February 1997, or any form which substantially comports with the specified form;

2. Form SR-1—Missouri Application to Register Securities by Notification revised December 2001;

3. Form U-2—Uniform Consent to Service of Process adopted by NASAA and revised November 1997, or any form which substantially comports with the specified form;

4. Form U-2A—Uniform Form of Corporate Resolution adopted by NASAA and revised April 1998, or any form which substantially comports with the specified form;

5. Form SR-2—Missouri Annual Report for Renewal of Registration of Securities revised December 2001;

6. Form SR-3—Midwest Regional Review Application revised December 2001, or any form which substantially comports with the specified form;

7. Form U-7—Small Company Offering Registration (SCOR) Form adopted by NASAA and revised September 1999, or any form which substantially comports with the specified form.

(C) Exemptions from Registration, Exceptions from Definition, Federal Covered Securities—

1. Form SE-1—Missouri Statement of Claim for the Exemption of Securities of an Agricultural Cooperative Association revised December 2001;

2. Form SE-2—Missouri Application for Exception from Definition as Agent for Sellers of Agricultural Cooperative Securities revised December 2001;

3. Form NF—Uniform Investment Company Notice Filing adopted by NASAA April 1997, or any form which substantially comports with the specified form; and

4. Form D—Notice of Sale of Securities Pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption approved in June 1999, OMB Approval Number 3235-0076, or any form which substantially comports with the specified form.

(2) The division on request will supply the forms listed in this rule in printed format. Accurate reproduction of the forms may be utilized for filing in lieu of the printed forms. All uniform forms are electronically available.

AUTHORITY: section 409.413(a), RSMo 2000. Original rule filed June 25, 1968, effective Aug. 1, 1968. For intervening history, please consult the Code of State Regulations. Rescinded and readopted: Filed Dec. 17, 2001.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. 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 15—ELECTED OFFICIALS Division 30—Secretary of State Chapter 50—General

PROPOSED RESCISSION

15 CSR 30-50.120 Application for Renewal Registration as Agent. This form was adopted and approved for filing as an application for renewal registration as agent.

PURPOSE: The commissioner of securities is proposing to rescind this rule and adopt a new rule that identifies all forms approved for filing with the division.

AUTHORITY: section 409.413(a), RSMo 1994. Original rule filed Dec. 5, 1975, effective Dec. 15, 1975. For intervening history,

please consult the *Code of State Regulations*. Rescinded: Filed Dec. 17, 2001.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. 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 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 50—General

PROPOSED RESCISSION

15 CSR 30-50.130 Registration of Securities by Notification. This form was adopted and approved for applying for the registration of securities by notification.

PURPOSE: The commissioner of securities is proposing to rescind this rule and adopt a new rule that identifies all forms approved for filing with the division.

AUTHORITY: section 409.413(a), RSMo 1994. Original rule filed Dec. 5, 1975, effective Dec. 15, 1975. For intervening history, please consult the *Code of State Regulations*. Rescinded: Filed Dec. 13, 2001.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. 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 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 50—General

PROPOSED RESCISSION

15 CSR 30-50.150 Application for Registration of Securities by Qualification. This form was adopted and approved for applying for the registration of securities by qualification.

PURPOSE: The commissioner of securities is proposing to rescind this rule and adopt a new rule that identifies all forms approved for filing with the division.

AUTHORITY: section 409.413(a), RSMo 1994. Original rule filed Dec. 5, 1975, effective Dec. 15, 1975. For intervening history,

please consult the *Code of State Regulations*. Rescinded: Filed Dec. 17, 2001.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. 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 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 50—General

PROPOSED RESCISSION

15 CSR 30-50.160 Investment Company Report of Sales. This form was adopted and approved for applying for the registration of additional securities.

PURPOSE: The commissioner of securities is proposing to rescind this rule and adopt a new rule that identifies all forms approved for filing with the division.

AUTHORITY: section 409.413(a), RSMo 1994. Original rule filed Dec. 5, 1975, effective Dec. 15, 1975. For intervening history, please consult the *Code of State Regulations*. Rescinded: Filed Dec. 17, 2001.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. 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 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 50—General

PROPOSED RESCISSION

15 CSR 30-50.170 In the Matter of the Condition of. This form was adopted and approved for filing by the registrant of securities. The form was designed as a report of financial condition.

PURPOSE: The commissioner of securities is proposing to rescind this rule and adopt a new rule that identifies all forms approved for filing with the division.

AUTHORITY: section 409.413(a), RSMo 1994. Original rule filed Dec. 5, 1975, effective Dec. 15, 1975. For intervening history,

please consult the *Code of State Regulations*. Rescinded: Filed Dec. 17, 2001.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. 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 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 50—General
PROPOSED RESCISSION**

15 CSR 30-50.180 Individual Affidavit. This form was adopted and approved for filing by applicants for the registration of securities by qualification and for the registration as broker-dealer or as investment adviser.

PURPOSE: The commissioner of securities is proposing to rescind this rule and adopt a new rule that identifies all forms approved for filing with the division.

AUTHORITY: section 409.413(a), RSMo 1994. Original rule filed Dec. 5, 1975, effective Dec. 15, 1975. For intervening history, please consult the *Code of State Regulations*. Rescinded: Filed Dec. 17, 2001.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. 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 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 50—General
PROPOSED RESCISSION**

15 CSR 30-50.210 Statement of Claim for the Exemption of Securities of a Cooperative Association. This rule set out the form by which cooperative associations made disclosure justifying that their securities could be exempted from registration.

PURPOSE: The commissioner of securities is proposing to rescind this rule and adopt a new rule that identifies all forms approved for filing with the division.

AUTHORITY: section 409.413, RSMo 1986. Emergency rule filed Aug. 11, 1978, effective Aug. 23, 1978, expired Dec. 21, 1978.

Original rule filed Aug. 11, 1978, effective Feb. 11, 1979. For intervening history, please consult the *Code of State Regulations*. Rescinded: Filed Dec. 17, 2001.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. 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 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 50—General
PROPOSED RESCISSION**

15 CSR 30-50.220 Application for Exception from Definition of Agent for Sellers of Agricultural Cooperative Securities. This rule set out the form by which salesmen of cooperative association securities were to be exempted from the definition of agent.

PURPOSE: The commissioner of securities is proposing to rescind this rule and adopt a new rule that identifies all forms approved for filing with the division.

AUTHORITY: section 409.413, RSMo 1986. Emergency rule filed Aug. 11, 1978, effective Aug. 23, 1978, expired Dec. 21, 1978. Original rule filed Aug. 11, 1978, effective Feb. 11, 1979. For intervening history, please consult the *Code of State Regulations*. Rescinded: Filed Dec. 17, 2001.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. 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 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 51—Broker-Dealers, Agents, Investment
Advisers, and Investment Adviser Representatives
PROPOSED AMENDMENT**

15 CSR 30-51.010 General Instructions. The commissioner of securities is amending the Purpose and section (1), deleting sections (2), (3) and (4) and renumbering and amending the remaining sections.

PURPOSE: This amendment rescinds some instructions and clarifies other instructions.

PURPOSE: This rule covers general instructions applicable to persons applying for registration as broker-dealer, agent, [or] investment adviser, or investment adviser representative.

(1) **Qualifications for Registration.** A broker-dealer, agent, investment adviser, [or representative of an] investment adviser representative, or issuer agent may be registered or renewed [as such] under the Act if the commissioner finds that the applicant:

(A) [is] Is qualified[,];

(B) [h]Has sufficient training, knowledge and experience in the securities business[,];

(C) [is] Is of good repute and has otherwise satisfied the requirements of the Act and these rules[. In determining which activities require registration under the Act, see section 409.401(c) with respect to the broker-dealer, section 409.401(b) with respect to the agent, sections 409.201(c), 409.401(f) and 409.415(f) with respect to the investment adviser and 409.401(g) with respect to the representative of an investment adviser.]; and

(D) Has attained the age of eighteen (18) years, if the applicant is an individual.

[(2) The applicant, if an individual, shall have attained the age of eighteen (18) years.

[(3) A foreign corporation shall furnish a copy of the certificate of authority to transact business in Missouri, or an opinion of counsel stating no such authority is required (section 351.570, RSMo).

[(4) Any applicant who will engage in or transact business in Missouri under a name other than its true name shall furnish evidence of registration of fictitious name (section 417.200, RSMo).]

[(5)] (2) **Registered Person Requirement.** A broker-dealer shall have [and maintain] at least one (1) agent registered in this state. An investment adviser shall have at least one (1) investment adviser representative registered in this state.

[(6)](3) **Dual Registration of Agents and/or Investment Adviser Representatives.** Any applicant for registration as agent or investment adviser representative shall not be registered as representing more than one (1) broker-dealer [or], issuer or investment adviser at any one (1) time, except as follows:

(A) Where control and management of the broker-dealers [or], issuers or investment advisers are essentially identical; or

(B) Where [there is not conflict of interest, and where] both broker-dealer(s), [and/or] issuer(s) and/or investment adviser(s) have filed [, prior to the dual registration, written statements] a statement signed by a principal of each firm:

1. Acknowledging the proposed dual agency[and];

2. Affirming that there will be no conflict[. These statements must display an original signature of the appropriate signatory of the principal.] of interest; and

3. Assuring the commissioner that the dual agency will be disclosed to all prospective customers.

[(7)] (4) **Broker-Dealer with Investment Adviser or Federal Covered Adviser Capacity.** No broker-dealer shall function as an investment adviser or federal covered adviser [(sections 409.201(c)(2) and 409.401(f)(3))] unless [it has been registered as a broker-dealer with investment advisory capacity under] the broker-dealer has also registered as an investment adviser, filed as a federal covered adviser, or included in its application a written statement as required in 15 CSR 30-51.020(1)(C) (section 409.204(b)(6)).

AUTHORITY: sections 409.202 and 409.413(a), RSMo [1994] 2000. Original rule filed June 25, 1968, effective Aug. 1, 1968. For intervening history, please consult the Code of State Regulations. Amended: Filed Dec. 17, 2001.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. 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 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 51—Broker-Dealers, Agents, Investment
Advisers and Representatives of Investment Advisers

PROPOSED RESCISSION

15 CSR 30-51.020 Application for Registration. This rule prescribed the information to be contained in, and the documents to accompany, applications for registration as broker-dealer, agent or investment adviser.

PURPOSE: The commissioner of securities is proposing to rescind this rule and adopt a new rule that more clearly prescribes the information to be contained in, and the documents to accompany, applications for registration as broker-dealer, broker-dealer agent, issuer agent, investment adviser, and investment adviser representative, and the notice filing requirement for federal covered investment advisers.

AUTHORITY: sections 409.202, RSMo Supp. 1995 and 409.413(a), RSMo 1994. Original rule filed June 25, 1968, effective Aug. 1, 1968. For intervening history, please consult the Code of State Regulations. Rescinded: Filed Dec. 17, 2001.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. 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 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 51—Broker-Dealers, Agents, Investment
Advisers, and Investment Adviser Representatives

PROPOSED RULE

15 CSR 30-51.020 Applications for Registration or Notice Filings

PURPOSE: This rule prescribes the information to be contained in, and the documents to accompany applications for registration as broker-dealer, broker-dealer agent, issuer agent, investment adviser, and investment adviser representative, and the notice filing requirement for federal covered investment advisers.

(1) Broker-Dealer Application. The application for registration as broker-dealer shall contain the information outlined in section 409.202(a) of the Act and in this rule. National Association of Securities Dealers (NASD) members must file applications in accordance with the guidelines of the Central Registration Depository (CRD) System.

(A) Initial Registration. The following shall be included in an initial application for registration:

1. Form BD;
2. Form SBD-1, the Broker-Dealer Affidavit;
3. If an NASD member, the most recent audited financial statements or Form X-17A-5 FOCUS Report;
4. If not an NASD member, the most recent certified financial statements;
5. Designation of at least one (1) broker-dealer agent to be registered in Missouri; and
6. Payment of the filing fee.

(B) Renewal Registration. The following shall be submitted in a renewal application:

1. If an NASD member, broker-dealer must submit payment of the filing fee.
2. If not an NASD member, broker-dealer must submit:
 - A. The execution page of the Form BD;
 - B. Any amendments to the Form BD not previously filed;
 - C. A balance sheet prepared within ninety (90) days of filing;
 - D. A listing of agents representing the broker-dealer; and
 - E. Payment of the filing fee.

(C) Broker-Dealers Acting as Investment Adviser or Federal Covered Adviser. Broker-dealers who will function as investment advisers or federal covered investment advisers shall file with its initial registration application and in addition to the above requirements, the Form ADV and a listing of all investment adviser representatives who will be rendering investment advice for the firm in this state. Broker-dealers have a continuing duty to amend this information under 15 CSR 30-51.160.

(2) Broker-Dealer Agent and Issuer Agent Application. The application for registration as a broker-dealer agent or issuer agent shall contain the information outlined in section 409.202(a) of the Act and in this rule. NASD members must file applications in accordance with the guidelines of the CRD System.

(A) Initial Registration. The following shall be included in an initial application for registration:

1. Form U-4;
2. Payment of the filing fee; and
3. Documentation of qualification under examination requirements.

(B) Renewal registration of broker-dealer agents and issuer agents. The following shall be submitted in a renewal registration:

1. Payment of the filing fee; and
2. If not an agent of an NASD member, Form SA-1, the Missouri Application for Renewal Registration as Agent.

(3) Investment Adviser Application. The application for registration as an investment adviser shall contain the information outlined in section 409.202(a) of the Act and in this rule. All applicants must file applications in accordance with the guidelines of the Investment Advisor Registration Depository (IARD) System, unless the commissioner has granted a hardship exemption under section (6).

(A) Initial Registration. The following shall be included in an initial application for registration:

1. Form ADV;
2. Form SADV-1, the State Covered Investment Adviser Affidavit and requested information;
3. Applicant's current balance sheet prepared within thirty (30) days of filing;
4. A listing of all investment adviser representatives who will be rendering investment advice for the firm in this state; and
5. Payment of the filing fee.

(B) Renewal Registration. The following shall be submitted in a renewal registration:

1. Payment of the filing fee.

(4) Federal Covered Adviser Notice Filing. The notice filing of a federal covered adviser transacting business in this state shall be filed in accordance with the guidelines of the IARD System and include the following:

(A) Initial Notice Filing. The following shall be submitted in an initial notice filing:

1. Form ADV; and
2. Payment of filing fee.

(B) Renewal Notice Filing. The following shall be submitted in a renewal notice filing:

1. Payment of filing fee.

(5) Investment Adviser Representative Application. The application for registration as an investment adviser representative shall contain the information outlined in section 409.202(a), RSMo and in this rule. All applicants must file applications with the commissioner or in accordance with the guidelines of the CRD System, unless the commissioner has granted a hardship exemption under section (6).

(A) Initial Registration. The following shall be included in an initial application for registration:

1. Form U-4;
2. Documentation of qualification under examination requirements; and
3. Payment of filing fee.

(B) Renewal Registration. The following shall be submitted in a renewal registration:

1. Payment of filing fee.

(6) Hardship Exemption for Investment Advisers and Investment Adviser Representatives from IARD System and CRD System.

(A) An investment adviser or investment adviser representative may request a hardship exemption from applying for registration in electronic format through the IARD System or CRD System by filing with the commissioner:

1. Form SADV-SH;
2. Payment of one hundred dollars (\$100) filing fee.

(B) The commissioner may grant a hardship exemption if filing an application in electronic format would subject the applicant to unreasonable burden or expense.

(7) Amendments to Application. Any amendment of an application pursuant to section 409.203(d), RSMo and 15 CSR 30-51.160(3) shall be filed with the appropriate form marked AMENDED.

(8) Agricultural Cooperative Issuer Agents. An individual who represents an issuer for the purpose of effecting transactions in a security exempted by clause (5) of section 409.402(a), RSMo, and seeks an exception from the definition of agent shall submit the following:

(A) Form SE-2, Application for Exception from Definition as Agent for Sellers of Agricultural Cooperative Securities;

(B) Filing of copies of all sales and solicitation material to be used by the applicant; and

(C) Filing of copies of any agreements between the issuer and the applicant regarding commissions or other remuneration to be

received for effecting transactions in the previously mentioned securities.

AUTHORITY: sections 409.202 and 409.413(a), RSMo 2000. Original rule filed June 25, 1968, effective Aug. 1, 1968. For intervening history, please consult the *Code of State Regulations*. Rescinded and readopted: Filed Dec. 17, 2001.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. 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 15—ELECTED OFFICIALS

Division 30—Secretary of State

Chapter 51—Broker-Dealers, Agents, Investment Advisers and Representatives of Investment Advisers

PROPOSED RESCISSION

15 CSR 30-51.030 Examination. This rule prescribed the policies and procedures for administering examinations of applicants for registration as broker-dealer, agent and investment adviser, and of persons who will represent an investment adviser.

PURPOSE: The commissioner of securities is proposing to rescind this rule and adopt a new rule that more clearly prescribes the examination requirements of applicants for registration as broker-dealer, agent and investment adviser, and investment adviser representatives.

AUTHORITY: sections 409.202, 409.204(b)(6) and 409.413(a), RSMo 1994. Original rule filed June 25, 1968, effective Aug. 1, 1968. For intervening history, please consult the *Code of State Regulations*. Rescinded: Filed Dec. 17, 2001.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. 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 15—ELECTED OFFICIALS

Division 30—Secretary of State

Chapter 51—Broker-Dealers, Agents, Investment Advisers, and Investment Adviser Representatives

PROPOSED RULE

15 CSR 30-51.030 Examination Requirement

PURPOSE: This rule prescribes the examination requirements of applicants for registration as broker-dealer, agent and investment adviser, and investment adviser representatives.

(1) Every applicant for registration as a broker-dealer, agent, investment adviser or investment adviser representative shall pass the written examinations required by the National Association of Securities Dealers (NASD), and this rule.

(2) The following examinations are required for the following applicants:

(A) Broker-Dealer Agent Application. Agents of general securities broker-dealers are required to take and pass:

1. The Series 7 examination; and
2. Either Series 63 or the Series 66 examination.

(B) Specialized Broker-Dealer Agent or Issuer Agent Application. Agents of specialized broker-dealers or issuers are required to take and pass:

1. The applicable NASD examination; and
2. Either the Series 63 or the Series 66 examination.

(C) Investment Adviser Representatives Application. Investment adviser representatives are required to take and pass:

1. The Series 65 examination; or
2. Both the Series 66 and the Series 7 examinations.

(D) Investment Adviser Qualifying Officers Application. Qualifying officers of investment advisers are required to take and pass:

1. The Series 7 examination; and
2. Either the Series 65 or Series 66 examination with a score of at least eighty percent (80%).

(3) Waiver of Examination Requirement for Broker-Dealer Agents. The commissioner may by order grant an agent registration to an applicant that has not complied with the examination requirements set forth in 15 CSR 30-51.030(2) if granting the registration is in the public interest and the applicant is able to demonstrate exceptional experience in and knowledge of the securities markets and applicable regulations, or the broker-dealer agent has taken and passed the previous equivalent of the required examination and has been previously registered as a broker-dealer agent with the NASD. For agents of NASD members, unless a proceeding under section 409.204(c), RSMo has been instituted, a waiver of the examination requirement by the NASD shall be deemed a waiver by the commissioner.

(4) Waiver of Examination Requirement for Investment Adviser Representatives. The examination requirement for applicants may be waived if the examination is not necessary for the protection of advisory clients. Persons with the following qualifications may qualify for a waiver of the examination requirement:

(A) Investment Adviser Representatives. Applicants for investment adviser representative may qualify for a waiver of the examination requirement in 15 CSR 30-51.030(2)(C)2., if the applicant currently holds one (1) of the following designations:

1. Certified Financial Planner (CFP) awarded by the International Board of Standards and Practices for Certified Financial Planners, Inc.;
2. Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania;
3. Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants;
4. Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts;
5. Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.;
6. Certified Investment Management Consultant (CIMC) awarded by the Institute for Certified Investment Management Consultants;

7. Certified Investment Management Analyst (CIMA) awarded by the Investment Management Consultants Association; or

8. Such other professional designation as the commissioner may by order recognize.

(B) Investment Adviser Qualifying Officers. Applicants for Investment adviser qualifying officer may qualify for a waiver of the examination requirement in 15 CSR 30-51.030(2)(D)2. if the applicant:

1. Had a passing score of at least seventy percent (70%) on either the Series 65 or Series 66 examination, and provided written assurance to the commissioner that the investment adviser firm will be operating as a sole proprietorship and the applicant will not be supervising any other representatives for at least three (3) years;

2. Had a passing score of at least seventy percent (70%) on the previous versions of either the Series 65 or Series 66 examination, and has maintained an investment adviser representative or broker-dealer agent registration in Missouri or any other jurisdiction for at least ten (10) years;

3. Had a passing score of at least eighty percent (80%) on the Series 24, Series 9/10 or its previous equivalent, Series 27, or Series 63 examination, and has maintained an investment adviser representative or broker-dealer agent registration in Missouri or any other jurisdiction for at least fifteen (15) years; or

4. Has:

A. Held and maintained one of the following designations for at least the last ten (10) years:

(I) Certified Financial Planner (CFP) awarded by the International Board of Standards and Practices for Certified Financial Planners, Inc.;

(II) Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania;

(III) Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants;

(IV) Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts;

(V) Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.;

(VI) Certified Investment Management Consultant (CIMC) awarded by the Institute for Certified Investment Management Consultants; or

(VII) Certified Investment Management Analyst (CIMA) awarded by the Investment Management Consultants Association; and

B. Either:

(I) Had a passing score of at least eighty percent (80%) on the Series 24, Series 9/10 or its previous equivalent, Series 27, Series 53, or Series 63 examination; or

(II) Has provided written assurance to the commissioner that the investment adviser firm will be operating as a sole proprietorship and the applicant will not be supervising any other representatives for at least three (3) years.

AUTHORITY: sections 409.202, 409.204(b)(6) and 409.413(a), RSMo 2000. Original rule filed June 25, 1968, effective Aug. 1, 1968. For intervening history, please consult the *Code of State Regulations*. Rescinded and readopted: Filed Dec. 17, 2001.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. 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 15—ELECTED OFFICIALS

Division 30—Secretary of State

Chapter 51—Broker-Dealers, Agents, Investment Advisers and Representatives of Investment Advisers

PROPOSED RESCISSION

15 CSR 30-51.160 Effectiveness and Post-Effective Requirements. This rule specified when the registration of broker-dealers, agents and investment advisers becomes effective, reports required during effectiveness, and procedures for terminating the effectiveness and effecting withdrawal of registrations.

PURPOSE: The commissioner of securities is proposing to rescind this rule and adopt a new rule that more specifies when the registration of broker-dealers, agents and investment advisers becomes effective, reports required during effectiveness, and procedures for terminating the effectiveness and effecting withdrawal of registrations.

AUTHORITY: sections 409.201(b) and (d), 409.202, 409.204 and 409.413(a), RSMo 1994. Original rule filed June 25, 1968, effective Aug. 1, 1968. For intervening history, please consult the *Code of State Regulations*. Rescinded: Filed Dec. 17, 2001.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. 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 15—ELECTED OFFICIALS

Division 30—Secretary of State

Chapter 51—Broker-Dealers, Agents, Investment Advisers, and Investment Adviser Representatives

PROPOSED RULE

15 CSR 30-51.160 Effectiveness and Post-Effective Requirements

PURPOSE: This rule specifies when the registration of broker-dealers, agents and investment advisers becomes effective, reports required during effectiveness, and procedures for terminating the effectiveness and effecting withdrawal of registrations.

(1) Pending Applications for Registration.

(A) Effective Date of Registration. If no denial order is in effect, and no proceeding under section 409.204, RSMo is pending, registration shall become effective no later than noon of the thirtieth day after the application is filed. The running of this thirty (30)-day period is suspended during the time a denial order is in effect or a proceeding under section 409.204, RSMo is pend-

ing. The running of the thirty (30)-day period shall resume when the denial order is vacated or the proceeding under section 409.402, RSMo is no longer pending.

(B) Completeness of the Application. An application shall be considered complete when an application containing comprehensive responses to all applicable questions and all attachments and exhibits, as required by the Act or these rules, has been filed with the division. The commissioner may summarily postpone or suspend an application for the purpose of determining the completeness of an application or on other grounds as provided for in section 409.204(c).

(C) Orders of Cancellation for Incomplete Applications. Any application, the filing of which is not complete within a period of one (1) year following the application's original filing, shall be presumed subject to the entry of an order of cancellation pursuant to section 409.204(d), RSMo of the Act.

(2) Duration of Registration.

(A) Expiration of Registration. Every registration of a broker-dealer, agent, investment adviser, or investment adviser representative expires on December 31 of each year, unless renewed or unless sooner revoked, canceled, or withdrawn (sections 409.201(d) and 409.204, RSMo).

(B) Late Renewal Filings. Upon expiration of a registration any subsequent application for registration shall be considered and treated as an application for initial registration.

(C) Applications for renewal of registration filed directly with the commissioner shall be filed on the appropriate form marked renewal (see 15 CSR 30-51.020) with required information and exhibits, no earlier than sixty (60) days and no later than thirty (30) days before the expiration date of the registration concerned. Applications filed with the Central Registration Depository (CRD) System or Investment Advisor Registration Depository (IARD) System shall be timely filed in accordance with the requirements of the CRD or IARD.

(D) An applicant for renewal registration may incorporate by reference in the application documents previously filed to the extent the documents are currently accurate.

(3) Continuing Duty of Applicants and Registrants to Disclose Material Information.

(A) Amendments to Applications for Material Change. During the pendency of any application, or effectiveness of any registration, every broker-dealer, agent, investment adviser, or investment adviser representative shall immediately report to the commissioner in writing any material change in any information, answers, responses, exhibits, or schedules submitted or circumstances disclosed in its last prior application. A correcting amendment shall be filed with the division at the time of occurrence or discovery of these changes, and not later than thirty (30) days following the specified event or occurrence. If the application was submitted through the CRD System or IARD System, any amendment shall be submitted in accordance with the guidelines of the CRD or IARD System.

(B) Termination of an Agent or Investment Adviser Representative.

1. Duty of broker-dealer, issuer or investment adviser. When an agent's or representative's association with the broker-dealer, issuer or investment adviser is discontinued or terminated by either party, the broker-dealer, issuer or investment adviser must file within thirty (30) days of the discontinuance or termination, a notice of that fact, stating the date of and reasons for the discontinuance or termination (Form U-5 or by letter).

2. Duty of agent or investment adviser representative. When an agent's or representative's association with a broker-dealer or investment adviser registered in Missouri is discontinued or terminated by either party, the agent or investment adviser representative must file, within thirty (30) days of the discontinuance or

termination, amended documents reflecting association with another broker-dealer or investment adviser.

3. Temporary registration for transferring agents. A transferring agent may not transact business through the new broker-dealer until the agent has been granted a registration with the new firm, except a thirty (30)-day temporary registration may be granted to those agents on whose behalf a registered broker-dealer has requested a temporary registration. This request must be made on the Form U-4 prior to any securities transactions by the agent through the new broker-dealer and within thirty (30) days following the termination from the previous firm. No such temporary registration will be granted upon termination from an issuer.

(C) Acquisition of Broker-Dealer or Investment Adviser.

1. When a person or a group of persons, directly or indirectly or acting by or through one (1) or more persons, proposes to acquire a controlling interest in a broker-dealer or investment adviser registrant and when the acquirer, within the preceding ten (10) years, has committed any act that would result in a yes answer to any disciplinary question on the Form BD or ADV or would require disclosure under 15 CSR 30-51.160(3), the resulting entity, prior to the acquisition, shall file with the division:

A. A new application for registration on the forms prescribed by rule, together with all required exhibits and fees; and

B. At the time the new application is filed, a notice of withdrawal, termination or cancellation of registration of the acquired entity on the forms prescribed by rule, effective upon disposition of the new application by the division.

2. For purposes of this section, controlling interest means possession of the power to direct or cause the direction of the management or policies of a company, whether through ownership of securities, by contract or otherwise. Any individual or firm that directly or indirectly has the right to vote twenty-five percent (25%) or more of the voting securities of a company or is entitled to twenty-five percent (25%) or more of its profits is presumed to control that company.

(4) Withdrawal of Registration. Every broker-dealer and investment adviser who desires to withdraw their registration shall file the appropriate Form BDW or ADV-W. Every federal covered adviser who desires to withdraw their notice filing shall file the appropriate ADV-W.

(5) Merger, Consolidation or Reorganization of Broker-Dealers. In the event of a merger, consolidation, or reorganization of an existing registered broker-dealer, and the change can be effected through the CRD System, then such documentation and information shall be filed in accordance with the guidelines of the CRD System. If the change cannot be processed through the CRD System, the following documents must be filed with the commissioner by the participating broker-dealers within ten (10) days following a merger, consolidation or reorganization:

(A) The broker-dealer dissolving at the consummation of the merger or who will become a part of an existing broker-dealer upon reorganization or consolidation must file:

1. A termination of its broker-dealer registration on Form BDW;

2. A termination of all agent registrations; and

3. A complete explanation of the proposed merger, consolidation or reorganization accompanied by the agreement effecting the merger, consolidation or reorganization.

(B) The broker-dealer who will be the surviving corporation upon consummation of the merger or who will be the named broker-dealer after the reorganization or consolidation must file:

1. A complete explanation of the proposed merger;

2. Form U-4 applications plus supporting documents of all registered agents of the dissolving broker-dealer to be transferred to the surviving, consolidated or reorganized broker-dealer in

accordance with 15 CSR 30-51.160(3) and 15 CSR 30-51.020; and

3. If the name of the surviving, consolidated or reorganized broker-dealer will change, an amended Form BD, as appropriate and all other properly amended documents required by 15 CSR 30-51.020 and 15 CSR 30-51.160.

AUTHORITY: sections 409.201(b) and (d), 409.202, 409.204 and 409.413(a), RSMo 2000. Original rule filed June 25, 1968, effective Aug. 1, 1968. For intervening history, please consult the Code of State Regulations. Rescinded and readopted: Filed Dec. 17, 2001.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Secretary of State's Office, Doug Ommen, Commissioner of Securities, 600 West Main Street, Jefferson City, MO 65101. 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 19—DEPARTMENT OF HEALTH
Division 60—Missouri Health Facilities Review
Committee
Chapter 50—Certificate of Need Program**

PROPOSED RESCISSION

19 CSR 60-50.200 Purpose and Structure. This rule described the purpose of the Certificate of Need (CON) statute and the structure of the Missouri Health Facilities Review Committee.

PURPOSE: This rule is rescinded because the Missouri CON Rulebook has been rewritten to implement the sunset provision of section 197.366 of the CON statute.

AUTHORITY: section 197.320, RSMo Supp. 1997. Original rule filed June 2, 1994, effective Nov. 30, 1994. Emergency rescission and rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Rescinded and readopted: Filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. Rescinded: Filed Dec. 14, 2001.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with Thomas R. Piper, Director, Certificate of Need Program, 915G Leslie Boulevard, Jefferson City, MO 65101. To be considered, comments must be received by 5:00 p.m. on February 18, 2002. A public hearing has been scheduled for Friday, February 15, 2002, at 10:00 a.m. at the Certificate of Need Program office located at 915G Leslie Boulevard, Jefferson City, Missouri.

**Title 19—DEPARTMENT OF HEALTH AND SENIOR
SERVICES**

**Division 60—Missouri Health Facilities Review
Committee
Chapter 50—Certificate of Need Program**

PROPOSED RULE

19 CSR 60-50.200 Purpose and Structure

PURPOSE: This rule describes the purpose of the Certificate of Need (CON) statute and the structure of the Missouri Health Facilities Review Committee.

(1) The Certificate of Need (CON) statute, sections 197.300–197.366, RSMo became effective September 28, 1979, except those sections which were not effective until October 1, 1980 or later. CON had its origin in the federal Public Law 93-641, 1974, and was initially intended to address issues of need, cost, and distribution of health services, as well as other factors which impact the health of the population.

(2) The purpose of the CON statute is to achieve the highest level of health for Missourians through cost containment, reasonable access, and public accountability. The goals are to:

- (A) Review proposed health care services;
- (B) Contain health costs;
- (C) Promote economic value;
- (D) Negotiate competing interests;
- (E) Prevent unnecessary duplication; and
- (F) Disseminate health-related information to interested and affected parties.

(3) The CON statute is administered by the nine (9)-member Missouri Health Facilities Review Committee (committee). Five (5) members are appointed by the governor, two (2) by the president pro tem of the senate, and two (2) by the speaker of the house, each serving two (2)-year terms or until replaced.

(4) On behalf of the committee, the CON Program provides technical and administrative services as shown in rule 19 CSR 60-50.900.

AUTHORITY: section 197.320, RSMo 2000. Original rule filed June 2, 1994, effective Nov. 30, 1994. Emergency rescission and rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Rescinded and readopted: Filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. Rescinded and readopted: Filed Dec. 14, 2001.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with Thomas R. Piper, Director, Certificate of Need Program, 915G Leslie Boulevard, Jefferson City, MO 65101. To be considered, comments must be received by 5:00 p.m. on February 18, 2002. A public hearing has been scheduled for Friday, February 15, 2002, at 10:00 a.m. at the Certificate of Need Program office located at 915G Leslie Boulevard, Jefferson City, Missouri.

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

PROPOSED RESCISSION

19 CSR 60-50.300 Definitions for the Certificate of Need Process. This rule defined the terms used in the Certificate of Need (CON) review process.

PURPOSE: This rule is rescinded because the Missouri CON Rulebook has been rewritten to implement the sunset provision of section 197.366 of the CON statute.

AUTHORITY: section 197.320, RSMo Supp. 1999. Original rule filed June 2, 1994, effective Nov. 30, 1994. Emergency rescission and rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Rescinded and readopted: Filed Aug. 29, 1997, effective March 30, 1998. Emergency amendment filed Oct. 20, 1998, effective Oct. 30, 1998, expired April 27, 1999. Amended: Filed Oct. 20, 1998, effective April 30, 1999. Amended: Filed Jan. 4, 2000, effective July 30, 2000. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. Rescinded: Filed Dec. 14, 2001.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with Thomas R. Piper, Director, Certificate of Need Program, 915G Leslie Boulevard, Jefferson City, MO 65101. To be considered, comments must be received by 5:00 p.m. on February 18, 2002. A public hearing has been scheduled for Friday, February 15, 2002, at 10:00 a.m. at the Certificate of Need Program office located at 915G Leslie Boulevard, Jefferson City, Missouri.

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

PROPOSED RULE

19 CSR 60-50.300 Definitions for the Certificate of Need Process

PURPOSE: This rule defines the terms used in the Certificate of Need (CON) review process.

(1) Applicant means all owner(s) and operator(s) of any new institutional health service.

(2) By or on behalf of a health care facility includes any expenditures made by the facility itself as well as capital expenditures made by other persons that assist the facility in offering services to its patients/residents.

(3) Cost means—

(A) Price paid or to be paid by the applicant for a new institutional health service to acquire, purchase or develop a health care facility or major medical equipment; or

(B) Fair market value of the health care facility or major medical equipment as determined by the current selling price at the date of the application as quoted by builders or architects for similar facilities or normal suppliers of the requested equipment.

(4) Construction of a new hospital means the establishment of a newly-licensed facility at a specific location under the Hospital Licensing Law, section 197.020.2, RSMo, as the result of building, renovation, modernization, and/or conversion of any structure not licensed as a hospital.

(5) Expedited application means a shorter than full application and review period as defined in 19 CSR 60-50.420 and 19 CSR 60-50.430 for any long-term care expansion or replacement as defined in section 197.318.8-10, long-term care renovation and modernization, or the replacement of any major medical equipment as defined in section (11) of this rule which holds a Certificate of Need (CON) previously granted by the Missouri Health Facilities Review Committee (committee). Applications for replacement of major medical equipment not previously approved by the committee should apply for a full review.

(6) Generally accepted accounting principles pertaining to capital expenditures include, but are not limited to—

(A) Expenditures related to acquisition or construction of capital assets;

(B) Capital assets are investments in property, plant and equipment used for the production of other goods and services approved by the committee; and

(C) Land is not considered a capital asset until actually converted for that purpose with commencement of aboveground construction approved by the committee.

(7) Health care facility means those described in section 197.366, RSMo.

(8) Health care facility expenditure includes the capital value of new construction or renovation costs, architectural/engineering fees, equipment not in the construction contract, land acquisition costs, consultants' legal fees, interest during construction, predevelopment costs as defined in section 197.305(13), RSMo, in excess of one hundred fifty thousand dollars (\$150,000), any existing land and building converted to medical use for the first time, and any other capitalizable costs as listed on the "Proposed Project Budget" Form MO 580-1863.

(9) Health maintenance organizations means entities as defined in section 354.400(10), RSMo, except for activities directly related to the provision of insurance only.

(10) Interested party means any licensed health care provider or other affected person who has expressed an interest in the Certificate of Need (CON) process or a CON application.

(11) Major medical equipment means any piece of equipment and collection of functionally related devices acquired to operate the equipment and additional related costs such as software, shielding, and installation, with an aggregate cost of one (1) million dollars or more, when the equipment is intended to provide the following services:

(A) Cardiac Catheterization;

(B) CT (Computed Tomography);

(C) Gamma Knife;

(D) Hemodialysis;

(E) Lithotripsy;

(F) MRI (Magnetic Resonance Imaging);

- (G) PET (Positron Emission Tomography);
- (H) Linear Accelerator;
- (I) Open Heart Surgery;
- (J) EBCT (Electron Beam Computed Tomography);
- (K) PET/CT (Positron Emission Tomography/Computed Tomography); or
- (L) Evolving Technology.

(12) Nonsubstantive project includes, but is not limited to, at least one (1) of the following situations:

(A) An expenditure which is required solely to meet federal or state requirements or involves predevelopment costs or the development of a health maintenance organization;

(B) The construction or modification of nonpatient care services, including parking facilities, sprinkler systems, heating or air-conditioning equipment, fire doors, food service equipment, building maintenance, administrative equipment, telephone systems, energy conservation measures, land acquisition, medical office buildings, and other projects or functions of a similar nature; or

(C) Expenditures for construction, equipment, or both, due to an act of God or a normal consequence of maintenance, but not replacement, of health care facilities, beds, or equipment.

(13) Offer, when used in connection with health services, means that the applicant asserts having the capability and the means to provide and operate the specified health services.

(14) Predevelopment costs mean expenditures as defined in section 197.305(13), RSMo, including consulting, legal, architectural, engineering, financial and other activities directly related to the proposed project, but excluding the application fee for submission of the application for the proposed project.

(15) Related organization means an organization that is associated or affiliated with, has control over or is controlled by, or has any direct financial interest in, the organization applying for a project including, without limitation, an underwriter, guarantor, parent organization, joint venturer, partner or general partner.

(16) Service area means a geographic region appropriate to the proposed service, documented by the applicant and approved by the committee.

(17) The most current version of Form MO 580-1863 may be obtained by mailing a written request to the Certificate of Need Program (CONP), 915G Leslie Boulevard, Jefferson City, MO 65101, or in person at the CONP office, or, if technically feasible, by downloading a copy of the form from the CONP web site at www.dhss.state.mo.us/con.

AUTHORITY: section 197.320, RSMo 2000. Original rule filed June 2, 1994, effective Nov. 30, 1994. Emergency rescission and rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Rescinded and readopted: Filed Aug. 29, 1997, effective March 30, 1998. Emergency amendment filed Oct. 20, 1998, effective Oct. 30, 1998, expired April 27, 1999. Amended: Filed Oct. 20, 1998, effective April 30, 1999. Amended: Filed Jan. 4, 2000, effective July 30, 2000. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. Rescinded and readopted: Filed Dec. 14, 2001.

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: Anyone may file a statement in support of or in opposition to this proposed rule with Thomas R. Piper, Director, Certificate of Need Program, 915G Leslie Boulevard, Jefferson City, MO 65101. To be considered, comments must be received by 5:00 p.m. on February 18, 2002. A public hearing has been scheduled for Friday, February 15, 2002, at 10:00 a.m. at the Certificate of Need Program office located at 915G Leslie Boulevard, Jefferson City, Missouri.

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

PROPOSED RESCISSION

19 CSR 60-50.310 Guidelines for Specific Health Services. This rule defined specific health services subject to the Certificate of Need (CON) review process.

PURPOSE: This rule is rescinded because the Missouri CON Rulebook has been rewritten to implement the sunset provision of section 197.366 of the CON statute.

AUTHORITY: section 197.320, RSMo Supp. 1999. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. Amended: Filed Oct. 19, 1999, effective May 30, 2000. Emergency rescission filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. Rescinded: Filed Dec. 14, 2001.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with Thomas R. Piper, Director, Certificate of Need Program, 915G Leslie Boulevard, Jefferson City, MO 65101. To be considered, comments must be received by 5:00 p.m. on February 18, 2002. A public hearing has been scheduled for Friday, February 15, 2002, at 10:00 a.m. at the Certificate of Need Program office located at 915G Leslie Boulevard, Jefferson City, Missouri.

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

PROPOSED RESCISSION

19 CSR 60-50.400 Letter of Intent Process. This rule delineated the process for submitting a Letter of Intent to begin the Certificate of Need (CON) review process and outlined the projects subject to CON review.

PURPOSE: This rule is rescinded because the Missouri CON Rulebook has been rewritten to implement the sunset provision of section 197.366 of the CON statute.

AUTHORITY: section 197.320, RSMo Supp. 1998. Original rule filed June 2, 1994, effective Nov. 30, 1994. Emergency amendment

filed Nov. 16, 1995, effective Nov. 26, 1995, expired May 23, 1996. Amended: Filed Nov. 15, 1995, effective April 30, 1996. Emergency rescission filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, terminated Sept. 21, 1997. Emergency rule filed Sept. 11, 1997, effective Sept. 21, 1997, expired March 19, 1998. Rescinded and readopted: Filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed June 29, 1999, effective July 9, 1999, expired Jan. 5, 2000. Rescinded and readopted: Filed June 29, 1999, effective Jan. 30, 2000. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. Rescinded: Filed Dec. 14, 2001.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with Thomas R. Piper, Director, Certificate of Need Program, 915G Leslie Boulevard, Jefferson City, MO 65101. To be considered, comments must be received by 5:00 p.m. on February 18, 2002. A public hearing has been scheduled for Friday, February 15, 2002, at 10:00 a.m. at the Certificate of Need Program office located at 915G Leslie Boulevard, Jefferson City, Missouri.

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES

Division 60—Missouri Health Facilities Review Committee

Chapter 50—Certificate of Need Program

PROPOSED RULE

19 CSR 60-50.400 Letter of Intent Process

PURPOSE: This rule delineates the process for submitting a Letter of Intent to begin the Certificate of Need (CON) review process and outlines the projects subject to CON review.

(1) Applicants shall submit a Letter of Intent (LOI) package to begin the Certificate of Need (CON) review process at least thirty (30) days prior to the submission of the CON application and will remain valid in accordance with the following time frames:

(A) For full reviews, expedited equipment replacements, expedited long-term care (LTC) renovation or modernization reviews and expedited LTC facility replacement reviews, an LOI is valid for six (6) months;

(B) For expedited LTC bed expansion reviews in accordance with section 197.318.8, RSMo, an LOI is valid for twenty-four (24) months; and

(C) For non-applicability reviews, an LOI is valid for six (6) months.

(2) Once filed, an LOI may be amended, except for project address, not later than ten (10) days in advance of the CON application filing, or it may be withdrawn at any time without prejudice.

(3) A LTC bed expansion or replacement as defined in these rules includes all of the provisions pursuant to section 197.318.8 through 197.318.10, RSMo, requiring a CON application, but allowing shortened information requirements and review time frames. When an LOI for an LTC bed expansion, except replacement(s), is filed, the CONP staff shall immediately request certi-

fication for that facility of average licensed bed occupancy and final Class 1 patient care deficiencies for the most recent six (6) consecutive calendar quarters by the Division of Health Standards and Licensure (DHSL), Department of Health and Senior Services, through an LTC Facility Expansion Certification (Form MO 580-2351) to verify compliance with occupancy and deficiency requirements pursuant to section 197.318.8, RSMo. Occupancy data shall be taken from the DHSL's most recently published Quarterly Survey of Hospital and Nursing Home (or Residential Care Facility) Bed Utilization reports. For LTC bed expansions or replacements, the sellers and purchasers shall be defined as the owner(s) and operator(s) of the respective facilities, which includes building, land, and license. On the Purchase Agreement (Form MO 580-2352), both the owner(s) and operator(s) of the purchasing and selling facilities should sign.

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

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

(B) The CONP staff shall test the LOI for applicability in accordance with statutory provisions for expenditure minimums, exemptions, and exceptions;

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

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

(E) A Non-Applicability CON letter will be valid subject to the following conditions:

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

2. Final audited project costs must be provided on a Periodic Progress Report (Form MO 580-1871);

(F) A CON application must be made if:

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

2. The project involves the acquisition or replacement of major medical equipment in any setting not licensed under Chapter 198, RSMo, costing in excess of one (1) million dollars;

3. The project involves the acquisition or replacement of major medical equipment for a health care facility licensed under Chapter 198, RSMo, costing in excess of four hundred thousand dollars (\$400,000);

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

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

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

(5) For an LTC bed expansion proposal pursuant to section 197.318.8(1)(e), RSMo, the CONP staff shall request occupancy

verification by the DHSLS who shall also provide a copy to the applicant.

(6) Nonsubstantive projects are waived from review by the authority of section 197.330.1(8), RSMo, and any projects seeking such a determination shall submit information through the LOI process; those meeting the nonsubstantive definition shall be posted for review on the CON web site at least twenty (20) days in advance of the committee meeting when they are scheduled to be confirmed by the committee.

(7) The most current version of Forms MO 580-2351, MO 580-2352, and MO 580-1871 may be obtained by mailing a written request to the CONP, 915G Leslie Boulevard, Jefferson City, MO 65101, or in person at the CONP office, or, if technically feasible, by downloading a copy of the forms from the CONP web site at www.dhss.state.mo.us/con.

AUTHORITY: section 197.320, RSMo 2000. Original rule filed June 2, 1994, effective Nov. 30, 1994. For intervening history, please consult the *Code of State Regulations*. Emergency rescission and rule filed Dec. 14, 2000, effective Jan. 1, 2002, expires June 29, 2002. Rescinded and readopted: Filed Dec. 14, 2001.

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: Anyone may file a statement in support of or in opposition to this proposed rule with Thomas R. Piper, Director, Certificate of Need Program, 915G Leslie Boulevard, Jefferson City, MO 65101. To be considered, comments must be received by 5:00 p.m. on February 18, 2002. A public hearing has been scheduled for Friday, February 15, 2002, at 10:00 a.m. at the Certificate of Need Program office located at 915G Leslie Boulevard, Jefferson City, Missouri.

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

PROPOSED RESCISSION

19 CSR 60-50.410 Letter of Intent Package. This rule provided the information requirements and the details of how to complete the Letter of Intent package to begin the Certificate of Need (CON) review process.

PURPOSE: This rule is rescinded because the Missouri CON Rulebook has been rewritten to implement the sunset provision of section 197.366 of the CON statute.

AUTHORITY: section 197.320, RSMo Supp. 1998. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed June 29, 1999, effective July 9, 1999, expired Jan. 5, 2000. Rescinded and readopted: Filed June 29, 1999, effective Jan. 30, 2000. Emergency rescission and rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. Rescinded: Filed Dec. 14, 2001.

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with Thomas R. Piper, Director, Certificate of Need Program, 915G Leslie Boulevard, Jefferson City, MO 65101. To be considered, comments must be received by 5:00 p.m. on February 18, 2002. A public hearing has been scheduled for Friday, February 15, 2002, at 10:00 a.m. at the Certificate of Need Program office located at 915G Leslie Boulevard, Jefferson City, Missouri.

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

PROPOSED RULE

19 CSR 60-50.410 Letter of Intent Package

PURPOSE: This rule provides the information requirements and the details of how to complete the Letter of Intent package to begin the Certificate of Need (CON) review process.

(1) The Letter of Intent (LOI) (Form MO 580-1860) shall be completed as follows:

(A) Project Information: sufficient information to identify the intended service, such as construction, renovation, new or replacement equipment, and address or plat map identifying a specific site rather than a general area (county designation alone is not sufficient);

(B) Applicant Identification: the full legal name of all owner(s) and operator(s) which compose the applicant(s) who, singly or jointly, propose to develop, offer, lease or operate a new institutional health service within Missouri; provide the corporate entity, not individual names, of the corporate board of directors or the facility administrator;

(C) Type of Review: the applicant shall indicate if the review is for a full review, expedited review or a non-applicability review;

(D) Project Description: information which provides details of the number of beds to be added, deleted, or replaced, square footage of new construction and/or renovation, services affected and equipment to be acquired. If a replacement project, information which provides details of the facilities or equipment to be replaced, including name, location, distance from the current site, and its final disposition;

(E) Estimated Project Cost: total proposed expenditures necessary to achieve application's objectives—not required for long-term care (LTC) bed expansions pursuant to section 197.318.8(1), RSMo;

(F) Authorized Contact Person Identification: the full name, title, address (including association), telephone number, e-mail, and fax number; and

(G) Applicability: Page 2 of the LOI must be filled out by applicants requesting a non-applicability review to provide the reason and rationale for the exemption or exception being sought.

(2) If a non-applicability review is sought, applicants shall submit the following additional information:

(A) Proposed Expenditures (Form MO 580-2375) including information which details all methods and assumptions used to estimate project costs;

(B) Schematic drawings; and

(C) In addition to the above information, for exceptions or exemptions, documentation of other provisions in compliance with the Certificate of Need (CON) statute, as described in sections (3) through (6) below of this rule.

(3) If an exemption is sought for a residential care facility (RCF) I or II of one hundred (100) beds or less operated by a religious organization pursuant to section 197.305(7), RSMo, applicants shall submit the following additional information:

(A) A letter from the Internal Revenue Service documenting the religious organization's 501(c)(3) tax-exempt status;

(B) Copies of the religious organization's By-Laws and Articles of Incorporation stating the organization's religious mission;

(C) A letter from the religious organization stipulating that it will be the licensed operator and public funds would not be used for the purchase or operation of the proposed facility; and

(D) Any other documents necessary to establish compliance with section 197.305(7), RSMo.

(4) If an exemption is sought for an RCF I or II pursuant to section 197.312, RSMo, applicants shall submit documentation that this facility had previously been owned or operated for or, on behalf of St. Louis City.

(5) If an exemption is sought pursuant to section 197.314(1), RSMo, for a sixty (60)-bed stand-alone facility designed and operated exclusively for the care of residents with Alzheimer's disease or dementia and located in a tax increment financing district established prior to 1990 within any county of the first classification with a charter form of government containing a city with a population of over three hundred fifty thousand (350,000) and which district also has within its boundaries a skilled nursing facility (SNF), applicants shall submit documentation that the health care facility would meet all of these provisions.

(6) If an exemption is sought pursuant to section 197.314(2), RSMo, for either of two (2) SNFs of up to twenty (20) beds each, by a Chapter 198 facility that is owned or operated by a not-for-profit corporation which was created by a special act of the Missouri general assembly, is exempt from federal income tax as an organization described in section 501(c)(3) of the *Internal Revenue Code* of 1986, is owned by a religious organization and is to be operated as part of a continuing care retirement community offering independent living, residential care and skilled care which had no skilled nursing beds as of January 1, 1999, documentation that the health care facility would meet all of these provisions.

(7) The LOI must have an original signature for the contact person until the Certificate of Need Program (CONP), when technically ready, shall allow for submission of electronic signatures.

(8) The most current version of Forms 580-1860 and MO 580-2375 may be obtained by mailing a written request to the CONP, 915G Leslie Boulevard, Jefferson City, MO 65101, or in person at the CONP office, or, if technically feasible, by downloading a copy of the forms from the CONP web site at www.dhss.state.mo.us/con.

AUTHORITY: section 197.320, RSMo 2000. Emergency rule filed Aug. 29, 1997, effective Sept. 8, 1997, expired March 6, 1998. Original rule filed Aug. 29, 1997, effective March 30, 1998. Emergency rescission and rule filed June 29, 1999, effective July 9, 1999, expired Jan. 5, 2000. Rescinded and readopted: Filed June 29, 1999, effective Jan. 30, 2000. Emergency rescission and

rule filed Dec. 14, 2001, effective Jan. 1, 2002, expires June 29, 2002. Rescinded and readopted: Filed Dec. 14, 2001.

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 ten thousand dollars (\$10,000) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with Thomas R. Piper, Director, Certificate of Need Program, 915G Leslie Boulevard, Jefferson City, MO 65101. To be considered, comments must be received by 5:00 p.m. on February 18, 2002. A public hearing has been scheduled for Friday, February 15, 2002, at 10:00 a.m. at the Certificate of Need Program office located at 915G Leslie Boulevard, Jefferson City, Missouri.

**FISCAL NOTE
PRIVATE COST**

I. 19 CSR 60-50.410

Title: 19 - DEPARTMENT OF HEALTH AND SENIOR SERVICES

Division: 60 - Missouri Health Facilities Review Committee

Chapter: 50 - Certificate of Need Program

Type of Rulemaking: Proposed Rule

Rule Number and Name: 19 CSR 60-50.410 Letter of Intent Package

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely to 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:
50	Acute and long term care facilities	\$5,000
25	Long term care facilities	\$5,000

III. WORKSHEET

Based on the following assumptions and estimates, the Private Entity Cost associated with the Proposed Rule would be calculated as follows:

Letter of Intent Cost	\$100
Letter of Intent Cost for LTC Expansion Projects	\$200
Letter of Intent Cost for Non-Applicability Review	\$100
Annual Letter of Intent Cost = (50 x \$100) + (25 x \$200) =	\$10,000
TOTAL	\$10,000

IV. ASSUMPTIONS

Based on past experience, it is estimated that the proposed CON Rules will generate approximately 75 Letters of Intent annually.

(a) It is assumed that applicants will file a Letter of Intent for Full Reviews, Expedited Reviews and Non-Applicability Reviews for projects not involving acute care facilities. The Letter of Intent form is normally two pages in length. Allowing \$50 per page for preparation, the cost would be approximately \$100. It is estimated that 50 such projects would be submitted annually.

(b) For applicants applying for a statutory exception for a long term care (LTC) bed expansion through purchase of LTC beds, a LTC Facility Expansion form and a LTC Facility Purchase Agreement form must also be submitted. Allowing \$50 for preparation of the LTC Facility Expansion form and \$50 LTC Facility Purchase Agreement form, would add \$100 for these types of projects. It is estimated that 25 such projects would be submitted annually.