

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

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 If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission.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

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

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

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

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

Proposed Amendment Text Reminder:

Boldface text indicates new matter.

[Bracketed text indicates matter being deleted.]

Title 2—DEPARTMENT OF AGRICULTURE Division 90—Weights and Measures Chapter 36—Egg Quality Program

PROPOSED RESCISSION

2 CSR 90-36.010 Enforcement of Missouri Egg Laws. This rule established the regulations governing the licensing, selling, trafficking in, delivering, transporting, marketing, processing and distribution of eggs.

PURPOSE: This rule is being rescinded and readopted to reflect changes in standards, grades and weights classes utilized by the U.S. Department of Agriculture.

AUTHORITY: section 196.354, RSMo 1986. Original rule filed April 27, 1964, effective May 7, 1964. For intervening history, please consult the Code of State Regulations. Rescinded: Filed Nov. 4, 2002.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Department of Agriculture, Weights and Measures Division, Ron Hooker, Director, PO Box 630, Jefferson City, MO 65102-0630. 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 2—DEPARTMENT OF AGRICULTURE Division 90—Weights and Measures Chapter 36—Egg Quality Program

PROPOSED RULE

2 CSR 90-36.010 Enforcement of Missouri Egg Laws

PURPOSE: Under Missouri Egg Law, this rule establishes the regulations governing the licensing, selling, trafficking in, delivering, transporting, marketing, processing and distribution of eggs. This rule is intended to insure that the consumer will be able to buy eggs that meet the proper standards.

(1) The Department of Agriculture utilizes the following standards, grades and weight classes for inspection of shell eggs.

(A) General Terms.

1. Denatured Eggs—Eggs unfit for human food may be sold or delivered to any dealer as inedible eggs, provided the shells of such eggs have been completely broken or crushed and the mixture of shell and egg meats has been denatured with any denaturing agent approved by the director of the Department of Agriculture and used in sufficient quantities to be easily detected by sight or smell.

2. Loss—An egg that is inedible, cooked, frozen, contaminated, musty, or moldy, or an egg that contains a large blood spot, large meat spot, bloody white, green white, rot, sour eggs, stuck yolk, blood ring, embryo chick (at or beyond the blood ring state), free yolk in the white, or other foreign material, or an egg that is adulterated as such term is defined pursuant to the Federal Food, Drug, and Cosmetic Act.

3. Leaker—An individual egg that has a crack or break in the shell and shell membranes to the extent that the egg contents are exuding or free to exude through the shell.

4. Check—An individual egg that has a broken shell or crack in the shell but with its shell membranes intact and its contents do not leak. A "check" is considered to be lower in quality than a "dirty."

(B) Terms Descriptive of Shell.

1. Clean—A shell that is free from foreign material and from stains or discolorations that are readily visible. An egg may be considered clean if it has only very small specks, stains, or cage marks, if such specks, stains, or cage marks are not of sufficient number or intensity to detract from the generally clean appearance of the egg. Eggs that show traces of processing oil on the shell are considered clean unless otherwise soiled.

2. Dirty—A shell that is unbroken and that has dirt or foreign material adhering to its surface, which has prominent stains, or moderate stains covering more than one-thirty second (1/32) of the shell surface if localized, or one-sixteenth (1/16) of the shell surface if scattered.

3. Practically Normal (AA or A Quality)—A shell that approximates the usual shape and that is sound and is free from thin spots. Ridges and rough areas that do not materially affect the shape and strength of the shell are permitted.

4. Abnormal (B Quality)—A shell that may be somewhat unusual or decidedly misshapen or faulty in soundness or strength or that may show pronounced ridges or thin spots.

(C) Terms Descriptive of the Air Cell.

1. Depth of the air cell (air space between shell membranes, normally in the large end of the egg)—The depth of the air cell is the distance from its top to its bottom when the egg is held air cell upward.

2. Free air cell—An air cell that moves freely toward the uppermost point in the egg as the egg is rotated slowly.

3. Bubbly air cell—A ruptured air cell resulting in one (1) or more small separate air bubbles usually floating beneath the main air cell.

(D) Terms Descriptive of the White.

1. Clear—A white that is free from discolorations or from any foreign bodies floating in it. (Prominent Chalzas should not be confused with foreign bodies such as spots or blood clots.)

2. Firm (AA Quality)—A white that is sufficiently thick or viscous to prevent the yolk outline from being more than slightly defined or indistinctly indicated when the egg is twirled. With respect to a broken-out egg, a firm white has a Haugh unit value of seventy-two degrees Fahrenheit (72°F) or higher when measured at a temperature between forty-five degrees Fahrenheit (45°F) and sixty degrees Fahrenheit (60°F).

3. Reasonably firm (A Quality)—A white that is somewhat less thick or viscous than a firm white. A reasonably firm white permits the yolk to approach the shell more closely which results in a fairly well defined yolk outline when the egg is twirled. With respect to a broken-out egg, a reasonably firm white has a Haugh unit value of sixty degrees Fahrenheit (60°F) up to, but not including, seventy-two degrees Fahrenheit (72°F) when measured at a temperature between forty-five degrees Fahrenheit (45°F) and sixty degrees Fahrenheit (60°F).

4. Weak and watery (B Quality)—A white that is weak, thin, and generally lacking in viscosity. A weak and watery white permits the yolk to approach the shell closely, thus causing the yolk outline to appear plainly visible and dark when the egg is twirled. With respect to a broken-out egg, a weak and watery white has a Haugh unit value lower than sixty degrees Fahrenheit (60°F) when measured at a temperature between forty-five degrees Fahrenheit (45°F) and sixty degrees Fahrenheit (60°F).

5. Blood spots or meat spots—Small blood spots or meat spots (aggregating not more than one-eighth inch (1/8") in diameter) may be classified as B Quality. If larger, or showing diffusion of blood into the white surrounding a blood spot, the egg shall be classified as Loss. Blood spots shall not be due to germ development. They may be on the yolk or in the white. Meat spots may be blood spots which have lost their characteristic red color or tissue from the reproductive organs.

6. Bloody white—An egg which has blood diffused through the white. Eggs with bloody whites are classed as loss. Eggs with blood spots which show a slight diffusion into the white around the localized spot are not to be classed as bloody whites.

(E) Terms Descriptive of the Yolk.

1. Outline slightly defined (AA Quality)—A yolk outline that is indistinctly indicated and appears to blend into the surrounding white as the egg is twirled.

2. Outline fairly well defined (A Quality)—A yolk outline that is discernible but not clearly outlined as the egg is twirled.

3. Outline plainly visible (B Quality)—A yolk outline that is clearly visible as a dark shadow when the egg is twirled.

4. Enlarged and flattened (B Quality)—A yolk in which the yolk membranes and tissues have weakened and/or moisture has been absorbed from the white to such an extent that the yolk appears definitely enlarged and flat.

5. Practically free from defects (AA or A Quality)—A yolk that shows no germ development but may show other very slight defects on its surface.

6. Serious defects (B Quality)—A yolk that shows well developed spots or areas and other serious defects, such as olive yolks, which do not render the egg inedible.

7. Clearly visible germ development (B Quality)—A development of the germ spot on the yolk of a fertile egg that has progressed to a point where it is plainly visible as a definite circular area or spot with no blood in evidence.

8. Blood due to germ development—Blood caused by development of the germ in a fertile egg to the point where it is visible as definite lines or as a blood ring. Such an egg is classified as inedible.

(F) Classifying Eggs by Weight and Grade.

1. Eggs shall be classified by weight into the classes of Jumbo, Extra Large, Large, Medium, Small, and Peewee. Egg scales for accurately weighing individual eggs in ounces per dozen shall be a part of the equipment in the egg candling room.

2. Classes and weights for consumer grades for shell eggs are:

Size or weight class	Minimum net weight per dozen (ounces)	Minimum net weight 30 per dozen (pounds)	Minimum net weight for individual eggs at rate per dozen (ounces)
Jumbo	30	56	29
Extra Large	27	50 1/2	26
Large	24	45	23
Medium	21	39 1/2	20
Small	18	34	17
Peewee	15	28	--

3. Interior egg quality specifications for these standards are based on the apparent condition of the interior contents of the egg as it is twirled before the candling light.

4. Inspectors will determine grades of eggs (AA, A, and B) by candling with a suitable single hole candling light.

(G) Grades.

1. U.S. Grade AA.

A. U.S. Consumer Grade AA (at origin) shall consist of eggs which are at least eighty-seven percent (87%) AA Quality. The maximum tolerance of thirteen percent (13%) which may be below AA Quality may consist of A or B Quality in any combination, except that within the tolerance for B Quality not more than one percent (1%) may be B Quality due to air cells over three-eighths inch (3/8"), blood spots (aggregating not more than one-eighth inch (1/8") in diameter), or serious yolk defects. Not more than five percent (5%) (seven percent (7%) for Jumbo size) Checks are permitted and not more than one-half percent (0.50%) Leakers, Dirties, or Loss (due to meat or blood spots) in any combination, except that such Loss may not exceed three-tenths percent (0.30%). Other types of Loss are not permitted.

B. U.S. Consumer Grade AA (destination) shall consist of eggs which are at least seventy-two percent (72%) AA Quality. The remaining tolerance of twenty-eight percent (28%) shall consist of at least ten percent (10%) A Quality and the remainder shall be B Quality, except that within the tolerance for B Quality not more than one percent (1%) may be B Quality due to air cells over three-eighths inch (3/8"), blood spots (aggregating not more than one-eighth inch (1/8") in diameter), or serious yolk defects. Not more than seven percent (7%) (nine percent (9%) for Jumbo size) Checks are permitted and not more than one percent (1%) Leakers, Dirties, or Loss (due to meat or blood spots) in any combination, except that such Loss may not exceed three-tenths percent (0.30%). Other types of Loss are not permitted.

2. U.S. Grade A.

A. U.S. Consumer Grade A (at origin) shall consist of eggs which are at least eighty-seven percent (87%) A Quality or better.

Within the maximum tolerance of thirteen percent (13%) which may be below A Quality, not more than one percent (1%) may be B Quality due to air cells over three-eighths inch (3/8"), blood spots (aggregating not more than one-eighth inch (1/8") in diameter), or serious yolk defects. Not more than five percent (5%) (seven percent (7%) for Jumbo size) Checks are permitted and not more than one-half percent (0.50%) Leakers, Dirties, or Loss (due to meat or blood spots) in any combination, except that such Loss may not exceed three-tenths percent (0.30%). Other types of Loss are not permitted.

B. U.S. Consumer Grade A (destination) shall consist of eggs which are at least eighty-two percent (82%) A Quality or better. Within the maximum tolerance of eighteen percent (18%) which may be below A Quality, not more than one percent (1%) may be B Quality due to air cells over three-eighths inch (3/8"), blood spots (aggregating not more than one-eighth inch (1/8") in diameter), or serious yolk defects. Not more than seven percent (7%) (nine percent (9%) for Jumbo size) Checks are permitted and not more than one percent (1%) Leakers, Dirties, or Loss (due to meat or blood spots) in any combination, except that such Loss may not exceed three-tenths percent (0.30%). Other types of Loss are not permitted.

3. U.S. Grade B.

A. U.S. Consumer Grade B (at origin) shall consist of eggs which are at least ninety percent (90%) B Quality or better, not more than ten percent (10%) may be Checks and not more than one-half

percent (0.50%) Leakers, Dirties, or Loss (due to meat or blood spots) in any combination, except that such Loss may not exceed three-tenths percent (0.30%). Other types of Loss are not permitted.

B. U.S. Consumer Grade B (at destination) shall consist of eggs which are at least ninety percent (90%) B Quality or better, not more than ten percent (10%) may be Checks and not more than one percent (1%) Leakers, Dirties, or Loss (due to meat or blood spots) in any combination, except that such Loss may not exceed three-tenths percent (0.30%). Other types of Loss are not permitted.

4. Additional tolerances:

A. In lots of two (2) or more cases:

(I) For Grade AA—No individual case may exceed ten percent (10%) less AA Quality eggs than the minimum permitted for the lot average.

(II) For Grade A—No individual case may exceed ten percent (10%) less A Quality eggs than the minimum permitted for the lot average.

(III) For Grade B—No individual case may exceed ten percent (10%) less B Quality eggs than the minimum permitted for the lot average.

B. For Grades AA, A, and B, no lot shall be rejected or downgraded due to the quality of a single egg except for Loss other than blood or meat spots.

Table I—Summary of U.S. Consumer Grades for Shell Eggs

U.S. Consumer Grade (origin)	Quality required ¹	Tolerance permitted ²	
		Percent	Quality
Grade AA	87 percent AA	Up to 13 Not over 5	A or B ⁵ Checks ⁶
Grade A	87 percent A or better	Up to 13 Not over 5	B ⁵ Checks ⁶
Grade B	90 percent B or better	Not over 10	Checks
U.S. Consumer Grade (destination)	Quality Required ¹	Tolerance permitted ³	
		Percent	Quality
Grade AA	72 percent AA	Up to 28 ⁴ Not over 7	A or B ⁵ Checks ⁶
Grade A	82 percent A or better	Up to 18 Not over 7	B ⁵ Checks ⁶
Grade B	90 percent B or better	Not over 10	Checks

¹ In lots of two or more cases, see Table II of this section for tolerances for an individual case within a lot.

² For the U.S. Consumer grades (at origin), a tolerance of 0.50 percent Leakers, Dirties, or Loss (due to meat or blood spots) in any combination is permitted, except that such Loss may not exceed 0.30 percent. Other types of Loss are not permitted.

³ For the U.S. Consumer grades (destination), a tolerance of 1 percent Leakers, Dirties, or Loss (due to meat or blood spots) in any combination is permitted, except that such Loss may not exceed 0.30 percent. Other types of Loss are not permitted.

⁴ For U.S. Grade AA at destination, at least 10 percent must be A quality or better.

⁵ For U.S. Grade AA and A at origin and destination within the tolerances permitted for B quality, not more than 1 percent may be B quality due to air cells over 3/8 inch, blood spots (aggregating not more than 1/8 inch in diameter), or serious yolk defects.

⁶ For U.S. Grades AA and A Jumbo size eggs, the tolerance for Checks at origin and destination is 7 percent and 9 percent, respectively.

Table II—Tolerance for Individual Case Within a Lot

U.S. Consumer Grade	Case Quality	Origin (percent)	Destination (percent)
Grade AA	AA (min)	77	62
	A or B	13	28
	Check (max)	10	10
Grade A	A (min)	77	72
	B	13	18
	Check (max)	10	10
Grade B	B (min)	80	80
	Check (max)	20	20

SUMMARY OF U.S. STANDARDS FOR QUALITY OF INDIVIDUAL SHELL EGGS			
Specifications for Each Quality Factor			
Quality Factor	AA Quality	A Quality	B Quality
Shell	Clean Unbroken Practically normal	Clean Unbroken Practically normal	Clean to slightly stained* Unbroken Abnormal
Air Cell	1/8 inch or less in depth Unlimited movement and free or bubbly	3/16 inch or less in depth Unlimited movement and free or bubbly	Over 3/16 inch in depth Unlimited movement and free or bubbly
White	Clear Firm	Clear Reasonably firm	Weak and Watery Small blood and meat spots present**
Yolk	Outline slightly defined Practically free from defects	Outline fairly well defined Practically free from defects	Outline plainly visible Enlarged and flattened Clearly visible germ development but not blood Other serous defects
For eggs with dirty or broken shells, the standards of quality provide two additional qualities. They are:			
Dirty	Checks		
Unbroken. Adhering dirt or foreign material, prominent stains, moderate stained areas in excess of B Quality.	Broken or cracked shell but membranes intact, not leaking.***		
* Moderately stained areas permitted (1/32 of surface in localized, or 1/16 if scattered).			
** If they are small (aggregating not more than 1/8 inch in diameter).			
*** Leaker has broken or cracked shell membranes, and contents leaking or free to leak.			

(H) Basis of Grading Service (Sampling).

1. Any grading service in accordance with the regulations in this part shall be for class, quality, quantity, or condition or any combination thereof. Grading service with respect to the determination of the quality of products shall be on the basis of the United States Standards, Grades, and Weights Classes. However, grading service may be rendered with respect to products which are bought and sold on the basis of institutional contract specifications or specifications of the applicant and such service, when approved by the administrator, shall be rendered on the basis of such specifications. The supervision of packaging shall be in accordance with such instructions as may be approved or issued by the administrator.

2. Whenever grading service is performed on a representative sample basis, such sample shall be drawn and consist of not less than the minimum number of cases as indicated in the following table. A minimum of one hundred (100) eggs shall be examined per sample case. For lots which consist of less than one (1) case, a minimum of fifty (50) eggs shall be examined. If the lot consists of less than fifty (50) eggs, all eggs will be examined.

Minimum Number of Cases Comprising a Representative Sample	
Cases in Lot	Cases in Sample
1 case	1
2 to 10, inclusive	2
11 to 25, inclusive	3
26 to 50, inclusive	4
51 to 100, inclusive	5
101 to 200, inclusive	8
201 to 300, inclusive	11
301 to 400, inclusive	13
401 to 500, inclusive	14
501 to 600, inclusive	16

For each additional fifty (50) cases, or fraction thereof, in excess of six hundred (600) cases, one (1) additional case shall be included in the sample.

(I) Identification of Graded Eggs in Containers.

1. Eggs packaged in containers by licensed dealers for supply or sale to retailers must be identified on each container with either the name and address (city and state), or approved identification number of the dealer under whose authority the eggs were packed and the day, month and year when said eggs were graded. Either a normal dating procedure or a numerical code based on the day of the year may be used. (Example: July 1, 1966, or 182-6; July 2, 1966, or 183-6).

2. The identification shall be stamped or printed in bold legible type upon each container with letters no less than three-sixteenths inch (3/16") in height. The term container includes box, basket, carton, sack, bag, case or other receptacle.

(J) Identification of Graded Eggs in Bulk. All eggs in bulk, packed in cases, graded for retail sale, must be accompanied by grading certificates bearing the name and address (city and state), or approved identification number of the dealer under whose authority the eggs

were packed and the date when said eggs were graded. The identification may be stamped or printed in bold, legible type with letters no less than three-sixteenths inch (3/16") in height upon a grading certificate of strong paper approximately five inches (5") long and three inches (3") wide which shall be placed under the top flat above the first layer of eggs, or said information may be stamped or printed on the outside of the egg case.

(2) Advertising. All advertising including newspapers, handbills, radio and window signs shall carry the full, correct and unabbreviated designation of size and quality as provided by law. Persons selling eggs from door to door, if not entirely of their own production must have the container properly labeled as to size and quality.

(3) Records. All persons licensed under the provisions of this rule shall keep on file for a period of two (2) years a true and complete record of all eggs purchased or sold with the following exceptions:

no record need be kept of the name and address of the person from whom the eggs are bought when such person is the original producer of the eggs and the quantity purchased is less than thirty (30) dozen; no record need be kept of eggs sold at retail; records need not show size and quality of eggs bought from original producers or exchanged between wholesalers. With the previous exceptions, this record will show the name and address of the person, firm or corporation from whom eggs were purchased and to whom sold. Such record to show the size and quality of such eggs in each transaction after they have been graded and also the number of dozens or cases included in such transaction, and the dates thereof.

(4) Stop Sale Notice. The director of the Department of Agriculture, or duly authorized agents, upon determining that the provisions of this rule, or the rules promulgated for its enforcement, are being violated may place "Stop Sale Notice" on all eggs being sold or offered for sale in violation of the provisions of this rule or the regulations thereunder and shall report the circumstances to the director of the Department of Agriculture for action. Eggs which have had "Stop Sale Notice" applied shall be recandled and regraded for size and quality within forty-eight (48) hours from the time such "Stop Sale Notice" was applied. Upon failure to bring the eggs into compliance with the rule, the director of the Department of Agriculture will take necessary steps to cause the eggs to be condemned, denatured, processed, destroyed or otherwise disposed of by court action.

(5) Maximum Temperature for Eggs Held for Retail Sale. Shell eggs that are to be officially identified as U.S. Grade AA, A, or B shall be placed under refrigeration at an ambient temperature no greater than forty-five degrees Fahrenheit (45°F) seven and two-tenths degrees Centigrade (7.2°C) promptly after packaging. Shell eggs officially identified as U.S. Grade AA, A, or B, when shipped between official plants, shall be transported at an ambient temperature no greater than forty-five degrees Fahrenheit (45°F) seven and two-tenths degrees Centigrade (7.2°C).

AUTHORITY: section 196.354, RSMo 2000. Original rule filed April 27, 1964, effective May 7, 1964. For intervening history, please consult the Code of State Regulations. Rescinded and readopted: Filed Nov. 4, 2002.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of Agriculture, Weights and Measures Division, Ron Hooker, Director, PO Box 630, Jefferson City, MO 65102-0630. 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 2—DEPARTMENT OF AGRICULTURE
Division 90—Weights and Measures
Chapter 36—Egg Quality Program**

PROPOSED RESCISSION

2 CSR 90-36.020 Repackaging of Eggs at Retail Level. This rule established the guidelines for repackaging of shell eggs at the retail level.

PURPOSE: This rule is being rescinded to prevent the repackaging of eggs at the retail level. The director has determined the practice

of repackaging eggs could result in contamination of eggs sold to consumers.

AUTHORITY: section 196.354, RSMo 1986. Original rule filed April 12, 1985, effective June 27, 1985. Rescinded: Filed Oct. 11, 2002.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rescission with the Missouri Department of Agriculture, Weights and Measures Division, Ron Hooker, Director, PO Box 630, Jefferson City, MO 65102-0630. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 3—Utility and Private Line Location and
Relocation**

PROPOSED AMENDMENT

7 CSR 10-3.010 Location and Relocation of Utility Facilities on State Highways. The commission is amending section (3) by deleting subsections (3)(A) through (3)(H) and adding subsections (3)(A) through (3)(K) to provide for an alphabetical listing of all definitions, and amending (4)(B)3.B., (4)(C)6.A., (4)(D)1.D., (4)(D)2.A., (5)(A)1. through (5)(A)10., (5)(B)1. through (5)(B)4., (6)(A) through (6)(D), and sections (7) and (8), and deleting case summaries appearing at the end of the rulemaking.

PURPOSE: This amendment provides definitions for the terms "ditch line," "utility corridor" and "pull box width" and clarifies the type of utility facilities permitted in or on a grade separation structure. In addition, this amendment provides for compliance with current or latest revisions to specifications. Further, this amendment deletes references to case law summaries.

(3) Definitions and General Information.

[(A) Utility. Privately, publicly or cooperatively owned line, facility or system for producing, transmitting or distributing communications, cable television, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage or any other similar commodity, including any fire or police signal system or street lighting system which directly or indirectly serves the public and does not include privately-owned facilities devoted exclusively to private use. The term utility shall also mean the utility company inclusive or any wholly owned or controlled subsidiary. The term utility includes those facilities used solely by the utility which are a part of its operating plant. The term also includes those utility type facilities which are owned or leased by a government agency for its own use or otherwise dedicated solely to governmental use.

(B) Limits of Interchanges. For the uniform handling of utility installations only, the limits of interchanges are the outside ramp curve points.

(C) Vertical Clearance for Overhead Crossings. The vertical clearance of new or existing overhead installations shall not be less than the current minimum requirements of the

National Electric Safety Code, but in no case less than eighteen feet (18').

(D) *Minimum cover for new underground utilities shall be: forty-two inches (42") for all water lines (parallel and crossings); forty-two inches (42") for fiber optic cable (crossings, encased in rigid conduit); seventy-two inches (72") for fiber optic cable (crossings encased in polyethylene (PE) pipe); thirty inches (30") for direct burial and in-trench fiber optic cable (parallel); twenty-four inches (24") for all other direct burial cable (parallel); seventy-two inches (72") for uncased polyethylene (PE) gas pipe crossings under ditches and roadways but thirty inches (30") elsewhere and thirty inches (30") for all other (such as, but not limited to, gravity sewers, force sewers and electric) underground utilities (parallel and crossings).*

(E) *Scenic Enhancement Areas. Scenic enhancement areas shall include area acquired or so designated as scenic strips, overlooks, rest areas, recreation areas and all rights-of-way of highways adjacent thereto and the rights-of-way of highways which pass through public parks and historic sites as described under 23 U.S.C. 138.*

(F) *Encasement. Encasement as used in this policy means the placing of an installation around and outside of an underground facility consisting of a larger conduit which will permit the removal and replacement of the facility. An alternate to the conduit type encasement would be reinforced concrete poured around the facility. Acceptable materials are described in subsection (5)(C).*

(G) *Duct. An enclosed tubular casing, or raceway, for protecting wires, lines, or cables which is often flexible or semirigid (one to three percent (1-3%) diametric deflection). The casing, or raceway, is separate from the cable or conductor which passes through it.*

(H) *Normal Right-of-Way Line. An imaginary line that connects sudden breaks in the major right-of-way points for roadways. Sight distance right-of-way points (triangles) at roadway intersections are not to be considered as sudden breaks for determining normal right-of-way.*

(A) *Ditch line. A break line where the roadway ditch meets the back slope. It is located at the lowest point of a V-bottom ditch or furthest point from the roadway of a flat bottom ditch where the roadway slopes back to the existing ground line.*

(B) *Duct. An enclosed tubular casing, or raceway, for protecting wires, lines, or cables which is often flexible or semirigid (one to three percent (1-3%) diametric deflection). The casing, or raceway, is separate from the cable or conductor which passes through it.*

(C) *Encasement. Encasement as used in this policy means the placing of an installation around and outside of an underground facility consisting of a larger conduit which will permit the removal and replacement of the facility. An alternate to the conduit type encasement would be reinforced concrete poured around the facility. Acceptable materials are described in subsection (5)(C).*

(D) *Limits of interchanges. For the uniform handling of utility installations only, the limits of interchanges are the outside ramp curve points.*

(E) *Minimum cover for new underground utilities shall be: forty-two inches (42") for all water lines (parallel and crossings); forty-two inches (42") for fiber optic cable (crossings, encased in rigid conduit); seventy-two inches (72") for fiber optic cable (crossings encased in polyethylene (PE) pipe); thirty inches (30") for direct burial and in-trench fiber optic cable (parallel); twenty-four inches (24") for all other direct burial cable (parallel); seventy-two inches (72") for uncased polyethylene (PE) gas pipe crossings under ditches and roadways but thirty inches (30") elsewhere and thirty inches (30") for all other (such as, but not limited to, gravity sewers, force sewers and electric) underground utilities (parallel and crossings).*

ited to, gravity sewers, force sewers and electric) underground utilities (parallel and crossings).

(F) *Normal right-of-way line. An imaginary line that connects sudden breaks in the major right-of-way points for roadways. Sight distance right-of-way points (triangles) at roadway intersections are not to be considered as sudden breaks for determining normal right-of-way.*

(G) *Pull box width. Maximum pull box width, perpendicular to the right-of-way line within the utility corridor, is thirty inches (30").*

(H) *Scenic enhancement areas. Scenic enhancement areas shall include area acquired or so designated as scenic strips, overlooks, rest areas, recreation areas and all rights-of-way of highways adjacent thereto and the rights-of-way of highways which pass through public parks and historic sites as described under 23 U.S.C. 138.*

(I) *Utility. Privately, publicly or cooperatively owned line, facility or system for producing, transmitting or distributing communications, cable television, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage or any other similar commodity, including any fire or police signal system or street lighting system which directly or indirectly serves the public and does not include privately-owned facilities devoted exclusively to private use. The term utility shall also mean the utility company inclusive or any wholly owned or controlled subsidiary. The term utility includes those facilities used solely by the utility which are a part of its operating plant. The term also includes those utility type facilities which are owned or leased by a government agency for its own use or otherwise dedicated solely to governmental use.*

(J) *Utility corridor. An area established for the placement of utility facilities parallel to and within six feet (6') of the normal right-of-way.*

(K) *Vertical clearance for overhead crossings. The vertical clearance of new or existing overhead installations shall not be less than the current minimum requirements of the National Electric Safety Code, but in no case less than eighteen feet (18').*

(4) *Location and Relocation of Utility Lines.*

(B) *High Type Roads (Limited but not Fully Controlled Access Right-of-Way).*

1. *General policy. All utility facilities shall be installed, serviced and maintained without entering or leaving the highway except at approved access points, and without parking equipment and materials on the median, pavement, ramps or shoulders, and without cutting or damaging the roadway surface or paved shoulders. New service connections to parallel facilities and service crossings shall be permitted only at access points granted by the commission.*

2. *Roadway crossings of utilities.*

A. *Overhead mainline crossings are permitted provided the supports are located near the right-of-way line. New overhead service crossings may be permitted in isolated cases for residential or commercial establishments where the denial of such crossings would require the construction of more than twelve hundred feet (1,200') of utility line to provide the same service. Supports for service crossings shall be located as near the right-of-way line as possible.*

B. *Underground utility crossings shall be continuously encased under the through roadways, median, ramps and shoulder areas with the casing extending to the toe of the fill slopes or to the ditch line. In curb sections, the encasement shall extend outside the outer curb of the roadways a distance equal to the depth of the encasement at the curb line. Encasement for fiber optic cable shall extend from within six feet (6') of one right-of-way line to within six feet (6') of the other right-of-way line. A detector tape shall be placed approximately one foot (1') above the encasement where installed by open trench through unpaved areas. Manholes or vent pipes shall be located at the right-of-way line or adjacent to an outer*

roadway. Encasement shall be required under high type outer roadways. Exceptions may be made for encasement as follows: non-fiber communications and electric cables installed in ducts; welded steel pipelines carrying gaseous or liquid petroleum products, provided they are cathodically protected against corrosion, triple coated in accordance with accepted pipeline construction standards and meet the applicable material requirements; natural gas distribution pipe (nominal six inches (6") diameter maximum) of polyethylene (PE) plastic, traceable, installed by a horizontal bore method at a minimum depth of seventy-two inches (72") under ditches and roadways, constructed in accordance with and meeting applicable material requirements; gas service connections of steel or copper, protected and constructed in accordance with and meeting applicable materials requirements; and water service connections and crossings of copper two inches (2") inside diameter or less and meeting applicable material requirements.

3. Parallel facilities. Parallel installations on the right-of-way will be permitted provided that poles are within two feet (2') of the normal right-of-way line and underground facilities are within six feet (6') of the normal right-of-way line except—

A. Existing poles being relocated shall be within five feet (5') of the normal right-of-way line;

B. Existing overhead facilities that parallel an existing roadway which will be incorporated into the completed roadway may remain in place if all maintenance and service can be performed in accordance with provisions of *sub*paragraph (4)(B)1.*A.* and their existing location does not interfere with construction, maintenance or operation of the completed highway;

C. Existing underground facilities (other than sanitary sewers) that parallel an existing roadway which will be incorporated into the completed roadway may be left in place where it is impractical to relocate the facility provided that maintenance and service be performed without cutting or damaging the pavement or interfering with the construction, maintenance and operation of the highway;

D. Multiple facilities at intersections, existing steel pipe transmission and distribution facilities for gaseous petroleum products that parallel an existing roadway which will be incorporated into the completed roadway may be left in place subject to an agreement by the utility company that maintenance or service, and facility expansion will be performed without cutting or damaging the pavement or interfering with the construction, maintenance or operation of the highway and provided that the facility is cathodically protected against corrosion and meets the applicable material requirements;

E. Careful consideration shall be given to the location of guys, anchors, braces and other supports. Generally, good design procedure will provide that these appurtenances be located at right-of-way jogs, along intersecting road right-of-way or at other similar acceptable locations, so that encroachment is held to an absolute minimum;

F. Existing telephone conduit systems with multiple ducts may be filled with any type of communications cable until full; and

G. Underground facilities are expected to be buried within six feet (6') of sight distance right-of-way lines at roadway intersections unless granted a variance to this policy. Overhead facilities may be allowed to span intersecting roadways with SDTs provided the poles, or supports, are located outside the SDT.

4. Existing gravity sanitary sewer mains will be considered individually and removed or left in place contingent upon age, condition, feasibility or moving and whether service and maintenance can be performed without damaging the roadway surfacing. If an existing parallel gravity main is left in place within the limits of the paved surface, paved shoulder lines or curb lines, stub mains as required shall be laid between the sewer main and curb or shoulder lines for future service connections in each block. Manholes shall be relocated outside the traveled roadway. Encasement for existing gravity trunk sanitary sewer crossings may be required for questionable con-

dition, protection during construction, heavy fills or installations under pressure.

5. Encasement is not required for new trunk sanitary sewer crossings of vitrified clay, reinforced concrete or cast iron pipe except when installation procedures would produce voids in the roadbed, heavy fills or installations under pressure. Manholes are to be located as near the right-of-way line as practical.

6. Interchanges and separations.

A. No facilities will be permitted within the limit of interchanges of cloverleaf or directional design where planned or existing.

B. Utility installations within the limits of a diamond type interchange or separation will be permitted only along the minor road provided that all construction, service and maintenance can be performed from the minor road. Manholes and poles shall be relocated beyond the ramp termini.

7. Structures.

A. No utility facilities will be permitted in or on a structure carrying a limited access high type road.

B. No utility facilities will be permitted in or on a structure carrying a minor road over a high type road except wires and then only where no other practical means exist for crossing. All such crossings shall be by agreement and a charge will be made for the increased maintenance costs involved.

(C) High Type Roads (Without Access Control).

1. General policy.

A. All new facilities shall be installed and maintained without cutting or damaging the roadway surface or paved shoulders except that in the event that underlying rock formations or other obstructions are encountered that prevent boring or pushing operations, special permission may be granted for pavement cuts when the need is established.

B. Pavement cuts may be made by permit only. Permits will be issued only when it is impractical to otherwise service and maintain the facility.

2. Roadway crossings of utilities.

A. Overhead main line and service crossings are permitted provided the supports are located near the right-of-way lines.

B. Underground facilities generally shall be continuously encased under the through roadways, median, ramps and shoulder areas with the casing extending to the toe of the fill slopes or to the ditch line. In curb sections, the encasement shall extend outside the outer curb of the roadway(s) a distance equal to the depth of the encasement at the curb line. Encasement for fiber optic cable shall extend from within six feet (6') of one right-of-way line to within six feet (6') of the other right-of-way line. A detector tape shall be placed approximately one foot (1') above the encasement where installed by open trench through unpaved areas. Manholes or vent pipes shall be located at the right-of-way line or adjacent to an outer road. Encasement shall also be required under high type outer roadways. Exceptions for encasement may be made as follows: non-fiber communication and electric cables installed in ducts; welded steel pipelines carrying gaseous or liquid petroleum products, provided they are cathodically protected against corrosion, triple coated in accordance with accepted pipeline construction standards and meet the applicable material requirements; natural gas distribution pipe (nominal six inches (6") diameter maximum) of polyethylene (PE) plastic, traceable, installed by a horizontal bore method at a minimum depth of seventy-two inches (72") under ditches and roadways, constructed in accordance with and meeting applicable material requirements; gas service connections of steel or copper, constructed and protected in accordance with and meeting the applicable material requirements; and water service connections and crossings of copper two inches (2") inside diameter or less and meeting the applicable material requirements.

3. Parallel installations on the right-of-way will be permitted provided that poles are within two feet (2') of the normal right-of-

way line and underground facilities are within six feet (6') of the normal right-of-way line except—

A. Existing poles, being relocated, shall be within five feet (5') of the normal right-of-way line;

B. Existing overhead facilities that parallel an existing roadway which will be incorporated into the completed roadway may remain in place if their existing location does not interfere with construction, maintenance or operation of the completed highway;

C. Existing underground facilities (other than sanitary sewers) that parallel an existing roadway which will be incorporated into the completed roadway may be left in place where it is impractical to relocate the facility provided that maintenance and service can be performed without cutting or damaging the pavement or interfering with the construction, maintenance and operation of the highway;

D. Multiple facilities at intersections, existing steel pipe transmission and distribution facilities for gaseous petroleum products that parallel an existing roadway which will be incorporated into the completed roadway may be left in place subject to an agreement by the utility company that maintenance, service and facility expansion will be performed without cutting or damaging the pavement or interfering with the construction, maintenance or operation of the highway and provided that the facility is cathodically protected against corrosion and meets the applicable material requirements;

E. Careful consideration shall be given to the location of guys, anchors, braces and other supports. Generally, good design procedure will provide that these appurtenances be located at right-of-way jogs, along intersecting road right-of-way or at other similar acceptable locations, so that encroachment is held to an absolute minimum;

F. Existing telephone conduit systems with multiple ducts may be filled with any type of communication cable until full; and

G. Underground facilities are expected to be buried within six feet (6') of sight distance right-of-way lines at roadway intersections unless granted a variance to this policy. Overhead facilities may be allowed to span intersecting roadways with SDTs provided the poles, or supports, are located outside the SDT.

4. Existing sanitary sewer mains shall be considered individually and removed or left in place contingent upon age, condition, feasibility of moving and whether service and maintenance can be performed without damaging the roadway surfacing. If an existing parallel main is left in place within the limits of the paved surface, paved shoulder or curb lines, stub mains as required shall be laid between the sewer main and curb or shoulder lines for future service connections in each block. Manholes where necessary shall be relocated outside the traveled roadway wherever practical. Encasement for existing trunk sanitary sewer crossings may be required for questionable condition, protection during construction, heavy fills or installations under pressure.

5. Encasement is not required for new trunk sanitary sewer crossings of vitrified clay, reinforced concrete or cast iron except when installation procedures would produce voids in the roadbed, heavy fills or installations under pressure. Manholes are to be located as near the right-of-way line as practical.

6. Structures.

A. No utility facilities will be permitted in or on a grade separation structure except wires (**communication, electric power, fiber or metal**) and then only where no other practical means exist for crossings.

B. No utility facilities shall be placed on any structure except by agreement and a charge will be made for the increased maintenance cost involved.

(D) Low Type Roads (Without Access Control).

1. Roadway.

A. Existing parallel surface installations interfering with construction, maintenance or operation shall be relocated to within five feet (5') of the normal right-of-way line. Poles for new parallel surface installations shall be located within two feet (2') of the normal

right-of-way line. Careful consideration shall be given to the location of guys, anchors, braces and other supports. Generally, good design procedure will provide that these appurtenances be located at right-of-way jogs, along intersecting road right-of-way or at other similar acceptable locations, so that encroachment is held to an absolute minimum.

B. Existing parallel underground installations interfering with construction, maintenance or operation shall be relocated to as near the right-of-way line as practical. New parallel underground installations shall be located within six feet (6') of the normal right-of-way line. Existing telephone conduit systems with multiple ducts may be filled with any type of communication cable until full.

C. Existing overhead crossings that interfere with construction, maintenance or operation shall be relocated with their supports as near the right-of-way line as is practical. New overhead crossing installations shall be located with their supports as near the right-of-way line as is practical.

D. Installation of underground utility crossings may be made by trenching half the roadway at a time. Encasement, as provided in subsection (5)(C), shall be required for fiber optic cable, except as allowed in subparagraph (5)(C)1.C., pressure lines except welded steel pipelines carrying gaseous or liquid petroleum products provided they are cathodically protected against corrosion and natural gas distribution polyethylene (PE) plastic pipe of nominal six inches (6") diameter maximum bored a minimum of seventy-two inches (72") below the ditches meeting the applicable material requirements, sewers and drains when crossing under the roadway using polyethylene, polyvinyl chloride (PVC), thermoplastic, asbestos cement or acrylonitrile butadiene styrene (ABS) pipe material. The encasement for fiber optic cable shall extend from within six feet (6') of one right-of-way line to within six feet (6') of the other right-of-way line. A detector tape shall be placed approximately one foot (1') above the encasement.

E. Underground facilities are expected to be buried within six feet (6') of sight distance right-of-way lines at roadway intersections unless granted a variance to this policy. Overhead facilities may be allowed to span intersecting roadway with SDTs provided the poles, or supports, are located outside the SDT.

2. Structures.

A. No utility facilities will be permitted in or on a grade separation except wires (**communication, electric power, fiber or metal**) and then only where no other practical means exist for crossings.

B. No utility facilities shall be placed on any structure except by agreement and a charge will be made for the increased maintenance costs involved.

(5) Approved Materials for Underground Utility Facilities (Other Than Cable).

(A) Water and Sewer Lines.

1. Copper meeting the requirements of ASTM Specification B 88-83/99, Type K.

2. Cast iron meeting Specification ANSI 21.6-1980/1975 (AWWA C106-80/75) or [ASA] ANSI 21.8-1975 (AWWA C108-75). Joints shall be mechanical or push on meeting Specification ANSI A 21.11-1982/2000 (AWWA C111-80/00).

3. Ductile iron meeting Specification ANSI 21.51-1976/1996 (AWWA C151-76/96). Joints shall be mechanical or push on meeting Specification ANSI A 21.11-1980/2000 (AWWA C111-80/00).

4. Prestressed concrete cylinder pipe meeting [AWWA Specification C301-79] ANSI/AWWA C301-99 for sizes sixteen inches (16") in diameter or larger.

5. PVC pipe for water transmission shall be of Type PVC 1120 material and shall meet the requirements of ASTM D-2241-82/00 or the latest revision thereof. For sizes one inch (1") and larger, dimensions shall not be less than specified for SDR 26 pipe. For

three-fourths inch (3/4") size, dimensions shall not be less than specified for SDR 21 pipe. Pipe, fittings and couplings may have integral bell and ring-type joint or solvent-weld type joint. The owner shall furnish to the district engineer a certification by the manufacturer that the pipe supplied will conform to the specified requirements. This certification shall include substantiating test results representative of the pipe to be furnished.

6. Asbestos cement pipe shall meet the requirements of *[AWWA C400-80]* **ANSI/AWWA C400-93** for Class 150 or Class 200 pipe, or the latest revision thereof, or *ASTM C296-76/00*, Type II, for Class 150 or Class 200 pipe **or the latest revision thereof**. Uncombined calcium hydroxide shall not exceed 1.0 percent. Couplings shall consist of an asbestos cement sleeve of the same composition as the pipe and two (2) rubber rings suitable in size and design for the pipe with which it is used. The rubber rings shall conform to the requirements of *ASTM D-1869-78/95* **(Reapproved 2000) or the latest revision thereof**. The owner shall furnish to the district engineer a certification by the manufacturer that pipe and rubber rings supplied will conform to the specified requirements. This certification shall include substantiating test results, including crushing strength, representative of the pipe to be furnished.

7. Polyethylene (PE) plastic tubing for water transmission shall be PE 3406, SDR 9 with a minimum working pressure of one hundred sixty pounds per square inch (160 psi) and meeting the requirements of *ASTM D 2737-81/99* **or the latest revision thereof**. Polyethylene plastic pipe for water transmission shall be PE 3406, SDR 7 with a minimum working pressure of one hundred sixty pounds per square inch (160 psi) and meeting the requirements of *ASTM D 2239-81/99* **or the latest revision thereof**. The owner shall furnish the district engineer a certification by the manufacturer that the pipe will conform to the specified requirements. This certification shall include substantiating test results representative of the pipe to be furnished.

8. Polybutylene plastic tubing for water transmission shall be PB 2110, SDR 13.5, PR 160 psi; and shall meet the requirements of *ASTM D 2666-82/96a* **or the latest revision thereof**. Polybutylene plastic pipe shall be PB 2110, SDR 9, PR 250 psi; PB 2110, SDR 11, PR 200 psi *l*; or PB 2110, SDR 13.5, PR 160 psi; and shall meet the requirements of *ASTM D 3000-73(1981)/95a* of PB 2110, SDR 7, PR 250 psi; PB 2110, SDR 9, PR 200 psi; or PB 2110, SDR 11.5, PR 160 psi; and shall meet the requirements of *ASTM D 2662-83/96a* **or the latest revision thereof**. The owner shall furnish the district engineer a certification by the manufacturer that the pipe will conform to the specified requirements. This certification shall include substantiating test results representative of the pipe to be furnished.

9. ABS composite sewer piping for gravity sewer installations shall meet the requirements of *AASHTO M 264-82/92(2000)* **(ASTM D 2680-80/95a) or the latest revision thereof**. The owner shall furnish to the district engineer a certification by the manufacturer that the pipe supplied will conform to the specified requirements. This certification shall include substantiating test results representative of the pipe to be furnished.

10. PVC pipe and fittings for gravity water and sewer transmission shall meet the requirements of *ASTM D 3034-81/00* SDR 35, *ASTM F 789-82/95a*, *ASTM F 679-80/00* *and* or *[ATMS]* *ASTM D 2680-86/95a* **or the latest revision thereof**. The owner shall furnish to the district engineer a certification by the manufacturer that the pipe and fittings will conform to the specified requirements. This certification shall include substantiating test results representative of the pipe and fittings to be furnished.

(B) Gas Lines.

1. Copper for gas shall meet with requirements of *ASTM Specification B88-83/99* Type K or *[ANSI B31.8-1975]* **ASME B31.8-1999** or latest revision thereof.

2. Thermoplastic pipe for gas transmission shall conform to all of the requirements of the *USA Standard Code for Pressure Piping, Gas Transmission and Distribution Piping Systems, [ANSI B31.8-*

1975] **ASME B31.8-1999**. Thermoplastic pipe shall be polyvinyl chloride (PVC) Type II, Grade 1 (PVC 2110) or polyethylene Type II, Grade 3, (PE 2306), and shall conform to the requirements of *ASTM D 2513-82/00*. Dimensions shall not be less than that specified in *ASTM D 2513-82/00*. The owner shall furnish to the district engineer a certification by the manufacturer that the pipe supplied will conform to the specified requirements. This certification shall include substantiating test results representative of the pipe to be furnished.

3. For bored installations polyethylene (PE) pipe grade PE 2406 or better may be used without encasement for gas distribution six inches (6") or less in diameter. This pipe and its components shall conform to requirements outlined in currently approved *ASTM D 2512-95* specification *Thermoplastic Gas Pressure Pipe, Tubing and Fittings*, *ASTM D 2683-98* specification *Socket Type Polyethylene (PE) Fittings for Outside Diameter-Controlled Polyethylene Pipe* and *ASTM D 3261-97* specification *Butt Heat Fusion Polyethylene (PE) Plastic Fittings for Polyethylene (PE) Plastic Pipe and Tubing*. All pipe and components shall also conform to the materials qualification found in Department of Transportation Gas Division 49 CFR 192.59 and in 4 CSR 240-40.030(2)(D).

4. Welded steel pipe lines shall meet the requirements of *[ANSI B31.1-1977]* **ASME B31.1-2001** and *[ANSI B31.8-1975]* **ASME B31.8-1999** or *[ANSI B31.4-1974]* **ASME B31.4-1998** or latest revision thereof.

(6) Installation Requirements of Water and Sewer Mains and Service Line.

(A) All cast iron and ductile iron water mains shall be installed in accordance with Specification *[AWWA C-600-64]* **ANSI/AWWA C600-99 or the latest revision thereof**.

(B) All asbestos cement water mains shall be installed in accordance with Specification *[AWWA C-603-78]* **ANSI/AWWA C603-96 or the latest revision thereof**.

(C) All thermoplastic water mains shall be installed in accordance with Specification *ASTM D 2774-72 (1978)/94* **or the latest revision thereof**.

(D) All thermoplastic gravity sewer piping shall be installed in accordance with Specification *ASTM D 2321-74 (1980)/00* **or the latest revision thereof**.

(7) Protective equipment. */c/Cables, wires, small diameter pipes and other such utility appurtenances extending from the surface of the ground shall be equipped with covers or guards to improve their visibility.*

(8) Cutting Pavement. In the event that permission is granted to cut an existing P.C.C. or A.C. pavement, all cuts, if possible, shall be made with a saw to a minimum depth of two and one-half inches (2 1/2"). The width of cut shall be determined by the width of required trench plus twelve inches (12") on each side of the trench. In the event that the distance to any adjacent longitudinal or transverse joint or crack is less than four feet (4') the pavement shall be removed to that joint or crack. **All pavement repair shall be made to Missouri Standard Specifications for Highway Construction.**

AUTHORITY: sections 226.020 and 227.240, RSMo [1994] 2000. Original rule filed Jan. 21, 1965, effective Jan. 31, 1965. For intervening history, please consult the Code of State Regulations. Amended: Filed Oct. 7, 2002.

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

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

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

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 3—Utility and Private Line Location and
Relocation**

PROPOSED RULE

7 CSR 10-3.040 Division of Relocation Costs

PURPOSE: This rule provides a uniform system for the designation of cost responsibility for a utility relocation.

(1) Utility Companies Other Than Those Owned by a Political Subdivision.

(A) When the facilities are located on private easement within the new right-of-way to be acquired for a future project, the necessary relocations to permit construction will be effected at the cost of the Missouri Highways and Transportation Commission (commission).

(B) When the utility facilities are on the right-of-way of a public road or street or on state highway right-of-way, the relocation must be effected at the expense of the utility.

(C) When the facility is partly on and partly outside the right-of-way of a public highway and the exact cost for each party cannot be determined, the parties will arrive at a percentage reimbursement on an equitable basis.

(2) Utilities Owned and Operated by a City.

(A) When such facilities are located on private easement, the commission will reimburse the city for the necessary cost of relocation to permit construction.

(B) When such facilities are located within the city limits and on an existing city street which is being or had previously been taken over by the commission as part of its highway right-of-way, the commission will reimburse the city for the costs of the initial relocation of such facilities. These facilities will thereafter occupy commission's right-of-way by permit and all subsequent adjustments to such facilities made necessary by improvements to the highway facilities shall be at the cost of the city.

(C) When the facilities of the city are outside the city limits on public right-of-way, outside the city limits on state highway right-of-way or within the city limits on state highway right-of-way by permit, the relocation costs shall be borne by the city. The city limits involved shall be as set forth in the agreement between the city and the commission for the construction of the project, and subsequent annexation shall not affect the rights of the parties or extend the commission's obligation.

(D) When the cost of a portion of the relocation is the obligation, under the above policy, of the commission and part that of the city and the exact cost of each relocation cannot be determined, a percentage of reimbursement will be agreed upon which is equitable to the parties.

(E) When a city must bear part or all of the cost of adjustments to their utility facilities and the cost creates a financial hardship, the commission, by its authorized representative, the chief engineer, may temporarily assume these costs. A payback agreement with the city will include an applicable interest rate for a comparable maturity from a widely-published index of tax-exempt municipal rates,

obtained from the Missouri Department of Transportation's Resource Management Unit. Payback time shall not exceed five (5) years.

(3) Facilities Operated by a Political Subdivision Other Than a City.

(A) When such facilities are on private right-of-way, which lies within the contemplated project right-of-way, the commission shall effect the necessary relocation or reimburse the political subdivision for so doing.

(B) When such utility facilities are on state highway right-of-way, then relocation shall be effected at the cost of the utility involved.

(C) When such utility facilities are located on public right-of-way other than state highway right-of-way, the cost of relocation of adjustment shall be borne by the owner. In the case of storm sewers, where such sewers are used to dispose of the drainage from the highway, the commission may assume the cost of adjustment or relocation.

(D) In those locations in which, by state law, the disposition of sewage and storm waters in one or more municipalities has been delegated to a particular statutory agency, the commission will assume the cost of adjustment or relocation of such sewage and storm water disposal facilities located within city limits and not now located on state highway right-of-way but where jurisdiction over such streets on which such facilities are located is to be assumed by the commission as a part of the project.

(E) When a political subdivision must bear part or all the cost of adjustments to their utility facilities, and the cost creates a financial hardship, the commission, by its authorized representative, the chief engineer, may temporarily assume these costs. A payback agreement with the political subdivision will include an applicable interest rate for a comparable maturity from a widely-published index of tax-exempt municipal rates, obtained from Resource Management. Payback time will not exceed five (5) years.

(4) Future Moves.

(A) When utility facilities are located on private right-of-way and the commission pays nothing except the actual relocation costs of the utilities involved, the commission may agree that any future moves of the same utility by commission order may be effected at commission's cost. If a substitute private easement is provided by the commission, then the latter shall have no further obligation expressed in the agreement for future relocations.

AUTHORITY: sections 226.020 and 227.240 RSMo 2000. Original rule filed Oct. 7, 2002.

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

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

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

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

PROPOSED RESCISSION

12 CSR 10-3.124 Coins and Bullion. This rule interpreted the sales tax law as it applied to coins and bullion, and interpreted and applied sections 144.010, 144.020 and 144.021, RSMo.

PURPOSE: This rule is being rescinded because it is superseded by other rules.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 010-55 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed Oct. 15, 2002.

PUBLIC COST: The 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 Department of Revenue, Office of Legislation and Regulations, PO Box 629, Jefferson City, MO 65105. 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 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 110—Sales/Use Tax—Exemptions**

PROPOSED AMENDMENT

12 CSR 10-110.600 Electrical Energy. The director proposes to amend sections (2)–(4).

PURPOSE: This amendment is to clarify application of this exemption in certain circumstances.

(2) Definition of Terms.

(K) Recovered materials—*[Materials]* Items that have been diverted or removed from the solid waste stream for sale, use, reuse or recycling by another party, whether or not *[they]* the items require subsequent separation and processing.

(M) Solid waste—garbage, refuse or other discarded items.

(N) Total cost—All allocated costs incurred in producing the product, including all elements of production cost in accordance with generally accepted accounting principles.

(3) Basic Application of Exemption.

(A) A taxpayer may claim this exemption at the time of purchase of the electrical energy by presenting the seller with a direct pay certificate issued by the department. In order to obtain a direct pay certificate, the taxpayer must submit *[annually]* an electrical energy direct pay authorization application. The application must demonstrate, by the use of the previous calendar year's data, a probable entitlement to the electrical energy exemption for the coming year. The taxpayer must file and remit the appropriate tax on energy purchases that do not qualify for this exemption on its sales tax return.

(4) Examples.

(B) A manufacturer produces glass bottles to be used as packaging. The manufacturer combines raw materials, including recycled glass obtained from recyclers, which is then melted under extreme heat. The molten glass is then formed into bottles, which are the manufacturer's only product. The electrical energy costs exceed 10% of the total cost of production; therefore the manufacturer qualifies for the exemption. If the manufacturer's raw materials include at least 25% *[recycled]* recovered material, the manufacturer may avoid the time and cost involved in the calculations necessary to support the exemption under the 10% threshold and claim the exemption based on its use of *[recycled]* recovered materials.

(C) A business contracts with manufacturers of frozen food products to receive fresh or partially frozen food products, reduce the temperature to zero degrees or below, and release the fully frozen food product back to the manufacturer for distribution. The frozen food products that the business produces have a new and different identity from the fresh or partially frozen products that it receives. Frozen foods have a longer shelf life and a broader distribution system than refrigerated foods. The business qualifies for the exemption if the electricity used in the freezing process exceeds 10% of the cost of producing the fully frozen food products from the fresh or partially frozen food products. **The freezing process does not include maintaining the product in a frozen state.** The business does not have to include the cost of its customer's production of the fresh or partially frozen products because the fresh or partially frozen food is a separate marketable product from the frozen food.

(E) A paper manufacturer uses recycled paper *[to produce]* in its primary processing of producing rolls of newsprint. The newsprint includes *[more than 25%]* 50% recovered paper, *[and qualifies]* qualifying the manufacturer for the electrical energy exemption. The newsprint is subsequently cut into sheets during secondary processing for sale to a book printer. The cost of electricity *[to cut the sheets]* used during the secondary processing does not exceed 10% of the total cost of producing the cut sheets. However, *[the]* electrical energy used to produce the final product is also exempt because the *[manufacturer]* secondary process uses at least 25% recovered materials.

(F) Same facts as (4)(E). The newsprint sheets purchased by the book printer for all its books are 40% of the raw materials used by the book printer. Because the raw materials only contain 20% recovered materials (40% times 50%), the book printer does not qualify for the electrical energy exemption.

(G) A taxpayer makes pipe. The manufacturing process creates scrap, which the taxpayer collects and reuses in its manufacturing process. The taxpayer is not using recovered materials. The scrap did not enter the solid waste stream because ownership was not transferred to another party for disposal or recovery. The scrap is not included as recovered materials in the calculation used to determine whether the taxpayer qualifies for the electric energy exemption.

AUTHORITY: section 144.270, RSMo 2000. Original rule filed July 25, 2001, effective Feb. 28, 2002. Amended: Filed Oct. 15, 2002.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Revenue, Office of Legislation and Regulations, PO Box 629, Jefferson City, MO 65105. 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 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 110—Sales/Use Tax—Exemptions**

PROPOSED AMENDMENT

12 CSR 10-110.950 Letters of Exemption Issued by the Department of Revenue. The director proposes to amend section (1) and subsection (2)(B).

PURPOSE: This amendment makes letters of exemption permanent except in limited circumstances.

(1) In general, the department issues letters of exemption to qualifying exempt entities. *[These letters are valid for a period of five (5) years.]* Documentation verifying the exempt status of the organization must be filed with the department to obtain a letter of exemption.

(2) Application of the Rule.

(B) An organization seeking a letter of exemption certificate must complete a Missouri Sales/Use Tax—Exemption Application—Form 1746. If the documentation establishes that the entity qualifies as an exempt entity, the department issues a letter of exemption. *[This letter of exemption is effective for five (5) years from the date of issuance of the letter.]* **Once a letter of exemption is issued by the department, it will continue in effect unless there are changes in the structure or operation of the organization causing the exemption to be invalid.**

AUTHORITY: section 144.270, RSMo [1994] 2000. Original rule filed Aug. 1, 2000, effective Jan. 30, 2001. Amended: Filed Oct. 15, 2002.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Revenue, Office of Legislation and Regulations, PO Box 629, Jefferson City, MO 65105. 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 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 111—Sales/Use Tax—Machinery and Equipment Exemptions**

PROPOSED AMENDMENT

12 CSR 10-111.010 Manufacturing Machinery and Equipment Exemptions. The director proposes to amend sections (2), (3) and (4).

PURPOSE: The director amends this regulation to reflect recent court cases and to provide for more consistent application of department policies.

(2) Definition of Terms.

(A) Equipment—Devices that have a degree of permanence to the business, contribute to multiple processing cycles over time and generally constitute fixed assets, other than land and buildings, that are capitalized and depreciated for purposes of business and accounting practices.

[(A)] (B) Establish a new manufacturing plant—The complete and final construction of a facility and all of its component parts. Construction shall be deemed completed within a reasonable period of time after production begins.

[(B)] (C) Expand existing manufacturing plant—The purchase of additional machinery, equipment and parts as a result of the physical enlargement of an existing manufacturing, fabricating or mining facility; or the addition of machinery, equipment and parts constituting improvements that result in an actual or potential: i) increase in

production volume at the plant, ii) increase in employment at the plant, or iii) increase in the number of types or models of products produced at the plant. This actual or potential increase is measured in relation to the actual or potential production volume, employment or types or models of products produced at the plant before the machinery, equipment and parts were originally put into use at the plant. Documentation which may be provided to establish the requisite intent for potential increase in production include, but are not limited to, the following: capital expenditure authorization requests, production records, production plans, purchase invoices, work authorizations, plant equipment cost savings analysis or reports and asset justification reports.

[(C)] (D) Fabrication—The process of transforming an item into a higher stage of development. It does not imply or signify manufacturing, but the meaning of the term is limited to cutting, carving, dressing, shaping; advancing an elementary shape to a higher stage of development; reworking and cutting shapes to required length.

[(D)] (E) Machinery [and equipment—Devices that have a degree of permanence to the business, contribute to multiple processing cycles over time and generally constitute fixed assets other than land and buildings for purposes of business and accounting practices.]—Combinations of parts that work together as a functioning unit, even if they are subordinate elements of more complex machinery. Machinery may be simple or complex, but does not include the replacement of an individual part, even if that part becomes an element of a functioning machine.

[(E)] (F) Manufacturing—i) the alteration or physical change of an object or material to produce an article with a use, identity and value different from the use, identity and value of the original; or ii) a process which changes and adapts something practically unsuitable for any common use into something suitable for common use; or iii) the production of new and different articles, by the use of machinery, labor and skill, in forms suitable for new applications; or iv) a process that makes more than a superficial transformation in quality and adaptability and creates an end product quite different from the original; or v) requires the manipulation of an item in such a way as to create a new and distinct item, with a value and identity completely different from the original. Manufacturing does not include processes that restore articles to their original condition (e.g., cleaning, repairing); processes that maintain a product (e.g., refrigeration); or processes that do not result in a change in the articles being processed (e.g., inspecting, sorting).

(G) Materials—Tangible personal property that becomes a component of machinery and equipment during installation, construction or operation of the machinery and equipment, or that becomes an ingredient or component part of the final product that is ultimately sold for final use and consumption.

[(F)] (H) Mining—The process of extracting from the earth precious or valuable metals, minerals or ores. This process includes quarrying, but does not include equipment used for water-well drilling or reclamation performed to restore previously mined land to its original state.

[(G)] (I) Parts—Articles of tangible personal property that are components of machinery or equipment, which can be separated from the machinery or equipment and replaced. Like machinery and equipment, parts must have a degree of permanence and durability. Items that are consumed in a single processing and benefit only one (1) production cycle are materials and supplies, not parts. Items such as: nuts, bolts, hoses, hose clamps, chains, belts, gears, drill bits, grinding heads, blades, and bearings, would ordinarily be considered [as] parts. Substances such as fuels and coolants that are added to machinery and equipment for operation are not parts. Substances such as lubricants, paint and adhesives that adhere to the surface of machinery and equipment but are not distinct articles of tangible personal property, are not parts[.]; /T/these items would be considered [as] materials and supplies within the meaning of the exemptions.

[(H)] (J) Producing—Includes the meanings of “manufacturing” and “fabricating,” and is used in connection with the creation of intangibles that are taxable but which are not manufactured or fabricated in the sense those terms are commonly understood, e.g., information organized by computer and then sold on tangible media.

[(I)] (K) Product which is intended to be sold ultimately for final use or consumption—Tangible personal property, or any service that is subject to state or local sales or use taxes, or any tax that is substantially equivalent thereto, in this state or any other state, which is intended at the time of manufacturing, mining or fabrication to be sold at retail. Property or services cannot be considered to be “subject to” the tax of a state unless the property or services are actually to be sold at retail in that state or delivered to a retail customer in that state.

(L) Supplies—Tangible personal property consumed in the installation or construction of machinery and equipment, or in maintaining machinery and equipment during operation. The term supplies does not include fuel because sections 144.030.2(4) and (5) do not expressly exempt fuel.

(M) Used directly in manufacturing, mining, fabricating or producing a product—substantially used in, essential to, and comprising an integral part of the manufacturing, mining, fabricating or producing process. Under the integrated plant theory, adopted by Missouri, it is not sufficient to meet only one (1) of these requirements. For example, items used in material storage or handling before the manufacturing process begins may be essential to the process, but generally are not an integral part of the manufacturing process and are therefore not used directly in manufacturing. Similarly, items used for storing the finished product are generally not an integral part of the manufacturing process. The factors that determine whether an article is directly used are: whether the item is essential or necessary to the process; how close, causally, is the item to the production process; and whether the item operates harmoniously with other machinery to make an integrated and synchronized system. The direct use requirement is not limited to those items of machinery, equipment and parts that produce a direct physical change in the composition of the raw materials or work in process. As long as there is a continuous progression from raw materials to finished product and there are no extended interruptions in the manufacturing process, the integrated and synchronized system begins when raw materials enter the production process and ends when the product is finished.

(3) Basic Application of Exemption.

[(A) Direct use—In determining whether machinery, equipment and parts are used directly in producing a product, Missouri has adopted the integrated plant theory that permits a broad construction of the machinery, equipment and parts exemptions. The language “used directly in” exempts purchases of articles that are both essential and comprise an integral part of the manufacturing process. It is not sufficient to meet only one of these requirements. For example, items used in material storage or handling before the manufacturing process begins may be essential to the process, but are not an integral part of the manufacturing process and are therefore not used “directly” in manufacturing. The factors which determine whether an article is directly used are: whether the item is essential or necessary to the process; how close, causally, is the item to the production process; and whether the item operates harmoniously with other machinery to make an integrated and synchronized system. The direct use requirement is not limited to those items of machinery, equipment and parts that produce a direct physical change in the composition of the raw materials or work in process.]

[(B)] (A) [New or expanded plant exemption—]Pursuant to section 144.030.2(5), RSMo, purchases of machinery, equipment

and parts to establish a new or to expand an existing manufacturing, mining or fabricating plant in Missouri which are used directly in manufacturing, mining or fabricating a product that is intended to be sold ultimately for final use or consumption are not subject to tax. Purchases of the materials and supplies solely required for the installation or construction of such machinery and equipment are not subject to tax.

[(C)] (B) [Purchase by other than end user—]The exemptions for machinery, equipment and parts in section 144.030.2(4) and (5), RSMo, do not require that the owner of the facility be the purchaser to qualify for the exemption or that the purchaser be the one who uses the machinery, equipment and parts in an exempt fashion. All that is required is that the machinery, equipment and parts are used in a tax-exempt manner. These exemptions “flow through” to the owner. For example, a real property improvement contractor may purchase exempt from tax the machinery, equipment, parts, materials and supplies solely required for installation or construction of such replacement items, if such items are to be used in a tax-exempt manner by the owner.

[(D)] (C) [Replacement—]To be exempt under section 144.030.2(4), RSMo, the machinery, equipment and parts must replace an existing piece of machinery, equipment or parts. This can include machinery, equipment, or repair and maintenance parts that are identical to the items they replace, as well as items that are different from the ones they replace, such as replacement machinery, equipment or parts added for the purpose of improving or modifying the existing devices. The replacement machinery, equipment and parts must be used in a process that produces a product intended to be sold ultimately for final use or consumption.

[(E) Replacement machinery, equipment and parts—Pursuant to section 144.030.2(4), RSMo, purchases of replacement machinery, equipment and parts which are used directly in manufacturing, mining, fabricating or producing a product that is intended to be sold ultimately for final use or consumption are not subject to tax. Purchases of the materials and supplies solely required for the installation or construction of such replacement machinery, equipment and parts are not subject to tax.]

[(F)] (E) [Use for nonexempt purposes—]In order for the machinery and equipment to be exempt from tax it must be used substantially for an exempt purpose, but need not be used exclusively or primarily for [an exempt] that purpose. However, the purchaser may only claim an exemption for a percentage of the purchase price equal to the percentage of use for an exempt purpose. If several like items are purchased, some for exempt purposes and some for nonexempt purposes, only the number of items essential for the exempt use qualify for the exemption. The purchaser must intend at the time of purchase to use and actually make material use of the machinery and equipment in an exempt capacity to qualify. The fact that it may also be used for nonexempt purposes will not prevent the purchase of the item from qualifying for the exemption. [If several like items are purchased, some for exempt purposes and some for nonexempt purposes, only the number of items essential for the exempt use qualify for the exemption.] If a purchaser buys machinery, equipment or parts under a claim of exemption, the purchaser must self-accrue and remit tax to the department for that portion of the purchase price attributable to use for a nonexempt purpose. The percentage of exempt use may be based on the time used for an exempt purpose or on another formula or method that reasonably reflects the actual exempt use.

(F) When two (2) or more entities are involved in a process, they must be under common ownership and work together to manufacture, mine, fabricate or produce a single product for both to qualify for the exemption under the integrated plant theory. Otherwise, they must each independently satisfy the requirements of this exemption.

(4) Examples.

(G) Same facts as (F). Some of the testing equipment is used for both exempt and nonexempt purposes. The company should purchase the equipment pursuant to a claim of exemption and accrue and remit tax for the percentage of the purchase price equal to the percentage of the time the equipment is used for nonexempt purposes.

[(G)] **(H)** A ceramic greenware manufacturer purchases six (6) *[initial]* greenware mug molds, which it is going to use to manufacture greenware mugs to be resold. All six (6) greenware mug molds would be exempt.

[(H)] **(I)** A rock quarry purchases equipment to remove earth and overburden to expose the rock and to remove rock from the ground. It purchased separate equipment to crush the rock into gravel as a marketable product to be sold at retail. The equipment used to remove the overburden and rock from the ground would qualify as exempt mining equipment and the equipment used to crush the rock into gravel would qualify as exempt manufacturing equipment.

[(I)] **(J)** A taxpayer operates a concrete manufacturing plant. *[It]* **The** taxpayer purchases three (3) replacement concrete mixing trucks and also adds four (4) additional concrete mixing trucks to expand its fleet. **The** *[T]*taxpayer also purchased dump trucks to haul concrete slabs that had been manufactured in its plant. The replacement and new additional concrete mixing trucks are directly used in manufacturing and would qualify for the replacement machinery and equipment exemption in section 144.030.2(4), RSMo, and the expanded plant exemption in section 144.030.2(5), RSMo, respectively. The dump trucks would not qualify for exemption because they are not directly used in the manufacturing process. However, if the dump trucks were used in the plant to transport the slabs during the manufacturing process from one processing area to another within the manufacturing plant, these exemptions would apply.

[(J)] **(K)** A taxpayer creates and sells a nontaxable information service product. To develop its product, **the** taxpayer purchases computer hardware and software. Because **the** taxpayer produces a nontaxable service product, it is not manufacturing a product intended to be sold ultimately for final use or consumption and, therefore its purchases of computer equipment are not exempt from tax.

[(K)] **(L)** A taxpayer has exempt machinery and equipment used directly in manufacturing a taxable product. Taxpayer purchases: i) *[fuels, lubricants, and coolants for operation of the machinery and equipment;* ii) paint and adhesives which will adhere to the surface of the machinery and equipment; and iii) replacement hoses and belts for the machinery and equipment. *The [fuels, lubricants, coolants, paint and adhesives added to the machinery and equipment for operation are not parts within the meaning of the exemptions. [These items are materials and supplies.]* They are exempt only if used for installation or construction of exempt machinery, equipment and parts. The hoses and belts may be purchased exempt from tax because they qualify as replacement parts.

[(L)] **(M)** A manufacturing company has two (2) sets of storage *[devices] bins*. The first set stores work in process between two (2) separate production areas. The second set stores the finished goods after the manufacturing process has been completed. The first set of storage *[devices] bins* is used directly in manufacturing and thus falls within the exemption. The second set of *[devices] bins* is not directly used in manufacturing and is subject to tax.

[(M)] **(N)** A manufacturing company uses pneumatic powered tools directly on its assembly line. It also has hand tools used to repair or adjust the machines throughout the plant. The pneumatic powered tools are exempt as machinery and equipment directly used in manufacturing. The hand tools do not qualify as machinery and equipment directly used in manufacturing and are taxable.

[(N)] **(O)** A commercial photo developer uses "crop cards" to hold individual negatives in the film developing process which are discarded after a single use. The developer also uses tape to connect negative strips so that the negatives may be fed through its automatic film developing machinery and equipment. The crop cards and

tape are *[consumable supplies,]* not parts or equipment, and therefore are subject to tax.

[(O)] **(P)** A steel company manufactures steel products. It purchases train carloads of steel beams that are used in the plant to produce the products. **The steel beams are unloaded from the train and placed in the production line.** The crane used to unload the steel beams *[at the plant] from the train to the production line* is part of the integrated and synchronized system and is used directly in the manufacturing process. *[As long as there is a continuous progression from raw materials to finished product and there are no extended interruptions in the manufacturing process, the integrated and synchronized system begins when raw materials enter the plant site and ends when the finished product leaves the plant site.]*

[(P)] **(Q)** A taxpayer *[sells and installs computer hardware and software and]* provides information technology services to its customers in Missouri and Texas. *[The hardware and software are tangible personal property subject to sales tax.]* The technology services are not subject to tax in Missouri but are subject to tax in Texas. *[and t]***The taxpayer remits [sales] tax to Texas on its sales in Texas. [The taxpayer's purchase of machinery and equipment to develop its products and services is intended to manufacture a taxable product or a taxable]** **The computer hardware and software used to provide services to customers in Missouri are subject to tax. Because the services are subject to tax in Texas, the computer hardware and software used by the taxpayer to provide its services in Texas are used to provide a service intended to be sold ultimately for final use or consumption. [The purchase of machinery and equipment is exempt from tax.] The purchase of the computer hardware and software used to provide services in Texas, therefore, is exempt from tax because the technology services are taxable.**

(R) Same facts as (Q), except the same equipment is used to provide services to customers both in Texas and in Missouri. The taxpayer should purchase the hardware and software under a claim of exemption and accrue and remit tax on the percentage of the purchase price equal to the percentage of time the hardware and software is used to provide services in Missouri.

[(Q)] **(S)** A manufacturer purchases four (4) forklifts for use in its plant. The manufacturer intends to use two (2) forklifts to move work in process between two (2) manufacturing steps and the other two (2) for loading the finished product from its warehouse onto trucks. Even though all four (4) forklifts may be rotated between the functions, only the two (2) forklifts essential to the manufacturing process are exempt. **If the manufacturer uses all four (4) forklifts on a rotating basis in both moving work in process and in loading finished product, the manufacturer may purchase all forklifts under the exemption but must remit tax on the amount of the purchase price representing the nonexempt use of the forklifts. Replacement parts used on the forklifts are also subject to tax on the same prorated basis.**

(T) A manufacturer purchases a computer system to provide all accounting functions, for use in designing new products, and to control its production line. The manufacturer may purchase the computer system exempt from tax but must remit to the department tax on that portion of the purchase price equivalent to the percentage of the computer capacity that is not used to control the production line.

(U) A manufacturer purchases machinery and equipment to unload raw materials from delivery vehicles and transport them to the warehouse for storage. This machinery and equipment is not directly used in manufacturing and is not eligible for this exemption.

(V) A manufacturer purchases machinery and equipment to unload raw materials from delivery vehicles and transport them on conveyors directly from the loading dock to the production line. The raw materials remain on the conveyor until used in the production process. This machinery and equipment is integrated

and used directly in manufacturing and qualifies for this exemption.

(W) A manufacturer purchases machinery and equipment to take the finished product from the production line to the warehouse for storage. This machinery and equipment is integrated and directly used in manufacturing and is eligible for this exemption. The manufacturer also purchases machinery and equipment to use in handling the finished product in the warehouse and deliver it to vehicles for shipping. This machinery and equipment is not directly used in manufacturing and is not eligible for this exemption.

AUTHORITY: section 144.270, RSMo [1994] 2000. Original rule filed Aug. 31, 1999, effective March 30, 2000. Amended: Filed Oct. 15, 2002.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Revenue, Office of Legislation and Regulations, PO Box 629, Jefferson City, MO 65105. 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 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 111—Sales/Use Tax—Machinery and
Equipment Exemptions**

PROPOSED AMENDMENT

12 CSR 10-111.060 Material Recovery Processing Plant Exemption. The director proposes to amend sections (2), (3) and (4).

PURPOSE: This amendment is to clarify application of this exemption in certain circumstances.

(2) Definition of Terms.

(A) Material recovery processing plant—A facility *[which]* that converts recovered materials into a new product $[,]$ or into a different form *[which]* that is used in producing a new product $[, and]$. It includes facilities or equipment used exclusively for the collection of recovered materials for delivery to a material recovery processing plant but does not include motor vehicles used on highways. **This applies only to the original conversion of recovered materials. A facility that uses materials that have previously been recovered is not a material recovery processing plant.**

(B) Materials—Tangible personal property that becomes a component of machinery and equipment during installation, construction or operation of the machinery and equipment, or that becomes an ingredient or component part of the final product that is ultimately sold for final use and consumption.

[(B)] (C) Recovered materials—*[Those materials]* Items that have been diverted or removed from the solid waste stream for sale, use, reuse or recycling by another party, whether or not *[they]* the items require subsequent separation and processing.

(D) Solid waste—garbage, refuse or other discarded items.

(E) Supplies—Tangible personal property consumed in the installation or construction of machinery and equipment, or in maintaining machinery and equipment during operation. The

term supplies does not include fuel because sections 144.030.2(4) and (5), RSMo do not expressly exempt fuel.

(3) Basic Application of Exemption.

(A) An item is diverted from the solid waste stream when ownership transfers to another party for recovery. An item is removed from the solid waste stream when ownership transfers to another party for disposal and is then removed for recovery.

[[A]] (B) Machinery and equipment for new, or to replace or expand existing, material recovery processing plant—Purchases of machinery and equipment used to establish new, or to expand existing, material recovery processing plants in this state are not subject to tax. Purchases of the materials and supplies required solely for the operation, installation or construction of such machinery and equipment are not subject to tax.

[(B)] New, replacement or expanded plant—Machinery and equipment are exempt if used to establish a new, or replace or expand an existing, material recovery processing plant. Materials and supplies required solely for the operation, installation or construction of machinery and equipment used in establishing a new plant, or in replacing or expanding an existing plant are exempt.]

(4) Examples.

(B) A taxpayer *[recycles fuel. It]* acquires and processes *[both]* solid *[and liquid]* waste *[materials]* for use as a fuel in its cement manufacturing operation. The taxpayer uses shredders and pulverizers to grind the solid waste *[materials]* into sizes appropriate for further processing. The taxpayer's mobile and conveyor systems are used to transport the solid *[and liquid]* wastes to different processes performed on the *[materials]* waste in taxpayer's facility. The *[fuel]* recycling facility *[would qualify]* qualifies as a material recovery processing plant because it converts recovered materials $[,]$ (solid *[and liquid]* waste) *[materials,]* into a new product $[, fuels]$ (fuel) $[, that are then used to manufacture a new product, cement]$.

(C) Assuming the same facts as in example (4)(B), the taxpayer purchases lubricants to operate its *[machinery and equipment]* shredders and pulverizers. Because the lubricants are required solely for the operation of the *[machinery and equipment]* shredders and pulverizers in a material recovery processing plant, they are not subject to tax.

(D) A *[T]*taxpayer *[does not]* operates a *[material recovery processing plant but operates a]* facility used exclusively for the collection of recovered materials for delivery to a material recovery processing plant. The *[T]*taxpayer purchases storage bins, conveyors and a special truck for hauling waste material to and from its facility. The storage bins and conveyors *[would be]* are exempt from tax. The special truck *[would be considered]* is a motor vehicle pursuant to section 301.010, RSMo, and *[would be]* is subject to tax.

(E) A taxpayer operates a recycling business that purchases aluminum, paper and other products to be bundled and then sold to facilities *[which]* that use them as raw materials to produce new and different products. *[A]* The taxpayer purchases loaders, baling machines and crushing equipment to prepare the materials for sale and shipping. The loaders push the materials into the balers, which compress the recovered materials for shipping. Because the taxpayer is collecting *[recyclable]* recovered materials *[and converts them into a different form]*, which *[is]* are then used to produce new products, the taxpayer's operation would qualify as a material recovery processing plant. The loaders, baling machines and crushing equipment would qualify for the material recovery processing plant exemption if they were purchased and used to establish a new, or to replace or expand an existing plant.

(F) A taxpayer operates a facility used exclusively for the collection of used motor oil for delivery to a material recovery processing plant. The taxpayer purchases storage tanks, pumps and a special truck for hauling the oil to and from its facility. The

storage tanks and pumps are exempt from tax. The special truck is a motor vehicle pursuant to section 301.010, RSMo, and is subject to tax.

(G) A taxpayer makes pipe. The manufacturing process creates scrap, which the taxpayer collects and reuses in its manufacturing process. The taxpayer is not a material recovery processing plant because the scrap did not enter the solid waste stream.

(H) A taxpayer makes pipe. The manufacturing process creates scrap, which the taxpayer collects and sells to another party for recycling. The taxpayer is not a material recovery processing plant, but the other party is because the scrap has been diverted from the solid waste stream. Any machinery and equipment used by the taxpayer exclusively to collect the scrap would be exempt.

(I) Same facts as (H). The taxpayer uses equipment to collect the scrap to keep its plant clean and to deliver it to the recycler. After the material is collected in the plant, it is crushed and bundled to meet the recycler's specifications. The collection equipment is subject to tax because it is not used exclusively for collecting the scrap. The equipment used to crush and bundle the scrap is not subject to tax because it is used exclusively to collect the scrap for delivery to the recycler.

(J) A furniture manufacturer purchases pressboard made from recovered materials to use in its manufacturing process. The furniture manufacturer is not a material recovery processing plant because it is not converting recovered materials; it is converting a raw material that contains recovered materials.

AUTHORITY: sections 144.270 and 144.705, RSMo [1994] 2000. Original rule filed Nov. 18, 1999, effective June 30, 2000. Amended: Filed Oct. 15, 2002.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Revenue, Office of Legislation and Regulations, PO Box 629, Jefferson City, MO 65105. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

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

PROPOSED AMENDMENT

13 CSR 70-10.150 Enhancement Pools. The division is amending section (1).

PURPOSE: This amendment changes the dates in order for the Division of Medical Services to implement the enhancement pool for State Fiscal Year 2003.

(1) Medicaid Enhancement Pools. Subject to federal approval, the Division of Medical Services shall administer two (2) enhancement payment pools to pay for services covered by the Missouri Medicaid program. The total payment from the pools shall not exceed the difference between the Medicare *u*pper *l*imit and the per diem reimbursement for all Medicaid nursing facilities for services covered by the Missouri Medicaid program. The Medicaid enhancement pools shall be calculated and distributed in the manner described below.

(A) Government-owned nursing facilities may elect to participate in the funding and distribution of the first enhancement payment pool in accordance with an intergovernmental funds transfer agreement executed with the Department of Social Services.

1. The distribution from the first pool shall be calculated as a percentage, to be determined by the Department of Social Services, of the aggregate difference between the Medicare Upper Limit and per diem reimbursement for all Medicaid nursing facilities **through September 30, 2002, and for non state government-owned nursing facilities only after September 30, 2002**, as follows:

A. For State Fiscal Year 2001 the aggregate difference shall be calculated for the period August 1, 2000–June 30, 2001.

B. For State Fiscal Year 2002 the aggregate difference shall be calculated for the period July 1, 2001–June 30, 2002.

C. **For the period July 1, 2002–September 30, 2002** the aggregate difference between the Medicare Upper Limit and per diem reimbursement shall be calculated using data for all Medicaid nursing facilities.

D. **For the period October 1, 2002–June 30, 2003** the aggregate difference between the Medicare Upper Limit and per diem reimbursement shall be calculated using data for nonstate governmental owned nursing facilities only.

2. The pool shall be distributed to participating government-owned nursing facilities based on a quarterly amount, based on their pro rata share of Medicaid patient/*.* days.

(B) All Medicaid enrolled nursing facilities may participate in distributions from the second enhancement payment pool, for State Fiscal Year *[2002] 2003* **after September 30, 2002, if there are state funds available.**

1. The distributions from the second pool *[shall] may* be calculated as a percentage, to be determined by the Department of Social Services, of the aggregate difference between the Medicare Upper Limit and per diem reimbursement for all Medicaid enrolled nursing facilities, for the period July 1, *[2001] 2002–June 30, [2002] 2003.*

2. The second pool *[shall] may* be distributed based on a **monthly or** quarterly amount, made in addition to per diem payments, to all Medicaid enrolled nursing facilities, applicable to services provided in State Fiscal Year *[2002] 2003*, based on their pro rata share of Medicaid days. **A distribution will not be made based on more than a quarterly amount. A distribution will be prorated if enrollment in the Medicaid program is not maintained by the nursing facility for the full quarter.**

3. For State Fiscal Year 2003, an add-on payment, if state funds are available, may be distributed based on a monthly or quarterly amount to all Medicaid enrolled nursing facilities applicable to services provided in State Fiscal Year 2003, based on their pro rata share of Medicaid days as defined in subsection (1)(C). **If a nursing facility is eligible to receive an add-on payment and does not have any paid Medicaid patient days in State Fiscal Year 2002, that facility's Medicaid days will be determined from the previous quarter of the quarter in which the add-on payment is made.**

(C) The aggregate difference between the Medicare Upper Limit and the per diem reimbursement for Medicaid nursing facilities will be calculated on an annual basis. The per diem Medicaid rates used in the calculation will be those being paid at the time of the calculation and the Medicare Upper Limit will be based on the current **Research Utilization Groups (RUGS)** system of Medicare nursing facility reimbursement with appropriate adjustments to assure comparability with the Medicaid rate. The difference will be calculated on a facility basis and multiplied by the reported Medicaid days at the particular nursing facility for the most recent cost report year. The product of all calculations will be added together to obtain the aggregate difference. Medicaid days will be determined from the paid day report from Missouri's fiscal agent for pay cycles during the State's Fiscal Year *[2001] 2002.*

*AUTHORITY: sections 208.153, 208.159, and 208.201, RSMo 2000. Emergency rule filed Nov. 3, 2000, effective Nov. 13, 2000, expired May 11, 2001. Original rule filed Nov. 13, 2000, effective May 30, 2001. For intervening history, please consult the **Code of State Regulations**. Emergency amendment filed Oct. 29, 2002, effective Nov. 8, 2002, expires May 6, 2003. Amended: Filed Oct. 29, 2002.*

PUBLIC COST: This proposed amendment is estimated to cost state agencies or political subdivisions \$144,000,000 in SFY 2003.

PRIVATE COST: This proposed amendment is estimated not to 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 the proposed amendment with the Office of the Director, Division of Medical Services, PO Box 6500, Jefferson City, MO 65102-6500. To be considered, comments must be received within thirty (30) days after publication in the **Missouri Register**. If to be hand-delivered, comments must be brought to the Division of Medical Services at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.*

**FISCAL NOTE
PUBLIC COST**

I. RULE NUMBER

Rule Number and Name:	13 CSR 70-10.150 Enhancement Pools
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Department of Social Services, Division of Medical Services	State Fiscal Year 2003: \$144,000,000

III. WORKSHEET

IV. ASSUMPTIONS

This program of intergovernmental transfers utilizing all facilities will only be available through September 2002. The State is taking advantage of the \$144,000,000 difference between the maximum allowable federal participation in the nursing facility program and what the State of Missouri is paying.

**Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 3—Voter Identification**

PROPOSED RULE

15 CSR 30-3.010 Voter Identification Affidavit

PURPOSE: This rule sets out the identification requirements a potential voter must reach before being allowed to vote.

(1) In addition to the list of acceptable forms of personal identification accepted as proof of identity in order to vote, found in section 115.427.1(6), RSMo, personal knowledge of the voter by two (2) supervisory judges, one (1) from each major political party, shall be acceptable voter identification upon the completion of an approved affidavit in substantially the following form as included herein:

VOTER'S IDENTIFICATION AFFIDAVIT	
Warning: It is against the law for anyone to vote, or attempt to vote, without having a lawful right to vote.	
_____ Print name of voter	_____ Signature of voter
STATEMENT OF SUPERVISORY JUDGES	
<i>Now comes before us _____ who does not have a proper form of identification as required under section 115.427.1, RSMo. We the undersigned hereby certify that we have personal knowledge of the voter.</i>	
_____ Supervisory Judge Signature (Republican)	_____ Date
_____ Supervisory Judge Signature (Democrat)	_____ Date

AUTHORITY: section 115.427, RSMo Supp. 2002. Emergency rule filed Oct. 11, 2002, effective Oct. 21, 2002, expires April 18, 2003. Original rule filed Oct. 18, 2002.

PUBLIC COST: The combined costs, to each election authority, for the implementation of this proposed rule, will not exceed approximately three thousand dollars (\$3,000) every two (2) years.

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 Office of the Secretary of State, Elections Division, Betsy Byers and Gayla Vandelicht, Co-Directors, PO Box 1767, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

**FISCAL NOTE
PUBLIC COST**

I. RULE NUMBER

Rule Number and Name:	15 CSR 30-3.010 Voter ID Affidavit
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Local Election Authorities	\$3000 every two years

III. WORKSHEET

We are estimating that the combined cost to each local election authority for the printing of the Voter ID Affidavits will not exceed \$3000 every two years.

IV. ASSUMPTIONS

The costs of printing Voter ID Affidavits will remain similar to its current rate of approximately \$25 / 100 affidavits.

The state-wide average usage of the Voter ID Affidavits will be approximately 100 affidavits per election authority, every two years.

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 8—Provisional Voting Procedures

PROPOSED RULE

15 CSR 30-8.010 Provisional Ballots and Envelopes

PURPOSE: This rule ensures the uniform application of section 115.430, RSMo.

(1) The following steps will be taken to determine whether a person may vote a provisional ballot:

(A) The election judge shall examine the precinct register. If the voter's eligibility cannot be immediately established, then—

(B) The election judge shall contact the election authority. If the election authority cannot immediately establish the voter's eligibility upon examination of its records on file, or if the election judge is unable to make contact with the election authority immediately, then the voter will be entitled to a provisional ballot.

(C) In the case of a voter requesting an absentee ballot, such voter shall be entitled to a provisional ballot when the voter's qualifications cannot be immediately established upon examination of the records on file with the election authority.

(2) No person shall be entitled to receive a provisional ballot until they have completed a provisional ballot affidavit on the provisional ballot envelope. The secretary of state shall produce two (2) sizes of provisional ballot envelopes and distribute them to each election authority according to their tabulating system. One size, three and five-eighths inches by seven and three-fourths inches (3 5/8" × 7 3/4") shall be distributed to jurisdictions using punch card and manual tabulating systems and a second size, fourteen and one-half inches by nine and one-fourth inches (14 1/2" × 9 1/4") shall be distributed to jurisdictions using optical scan. All provisional envelopes shall be printed on a distinguishable color of paper.

(A) On each side of the outside of the provisional envelopes, produced by the secretary of state, there shall appear information in substantially the format available at the secretary of state's website. A copy of the form may be requested in writing from the Elections Division, PO Box 1767, Jefferson City, MO 65102 or in person at the Elections Division, 600 W. Main, State Information Center, Jefferson City, Missouri.

(3) After the provisional ballot is voted, it shall be placed in the provisional ballot envelope and sealed. The sealed envelope shall be placed in the ballot box.

(4) The certificate of ballot cards shall:

(A) Reflect the number of provisional envelopes delivered; and

(B) Reflect the number of sealed provisional envelopes with voted ballots deposited in the ballot box.

(5) Upon the election authority's determination of the eligibility of the voter, each rejected provisional envelope shall be marked "rejected" with reason for rejection noted. If rejected, a photocopy of the envelope shall be made and used by the election authority as a mail-in voter registration. The actual provisional ballot envelope shall be kept as ballot material and the copy of the envelope shall be used by the election authority for registration record keeping.

(6) Provisional ballots shall not be counted until all provisional ballots are determined either eligible or ineligible. All provisional ballots cast by voters, whose eligibility has been verified, shall be counted in accordance with the rules governing ballot tabulation.

(7) If a provisional ballot is cast in the wrong congressional district, the incorrect congressional vote shall not be counted but all other votes cast on that ballot shall be counted.

AUTHORITY: section 115.430, RSMo Supp. 2002. Emergency rule filed Oct. 11, 2002, effective Oct. 21, 2002, terminated Oct. 25, 2002. Emergency rule filed Oct. 25, 2002, effective Nov. 4, 2002, expires April 18, 2003. Original rule filed Oct. 25, 2002.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions between thirteen thousand dollars (\$13,000) and twenty thousand dollars (\$20,000), per federal election year, depending on election cycle. No additional costs will be incurred in non-federal election years.

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 Office of the Secretary of State, Elections Division, Betsy Byers and Gayla Vandelicht, Co-Directors, PO Box 1767, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**FISCAL NOTE
 PUBLIC COST**

I. RULE NUMBER

Rule Number and Name:	15 CSR 30-8.010
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Secretary of State	2002 -\$13,210; 2004 - \$20,000
	2006 - \$16,000; non elections -no cost

III. WORKSHEET

Initial printing of provisional voting envelopes - \$13,210.08
 (100,000 punch card style, 50,000 optical scan style)
 250,000 envelopes in 2004 (presidential primary, primary, presidential year
 general election - \$20,000
 Future non - election years - none
 Future non - presidential election years - \$16,000

IV. ASSUMPTIONS

Costs are determined by the number of elections with federal or statewide candidates. 2004 will have a minimum of three federal elections, 2006 will have a minimum of two federal elections. After 2006 costs are expected to reoccur similarly per corresponding election cycle. With the exception of a special election, odd-numbered years will not have a federal or statewide election.

Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 8—Provisional Voting Procedures

PROPOSED RULE

15 CSR 30-8.020 Procedures to Determine Eligibility for Provisional Ballots to Be Counted

PURPOSE: This rule sets out the procedures for provisional voting in addition to those found in Chapter 115, RSMo.

(1) Prior to accepting any provisional ballot at the polling place, the election judges shall determine that the information provided on the provisional ballot envelope by the provisional voter is consistent with the identification provided by such person pursuant to section 115.427, RSMo.

(2) When the ballot boxes are delivered to the election authority from the polling places, the receiving teams shall separate the provisional ballots from the rest of the ballots and place the sealed provisional ballot envelopes in a separate container. Teams of election authority employees or teams of election judges with each team consisting of one member of each major political party shall photocopy each provisional ballot envelope, such photocopy to be used by the election authority to determine provisional voter eligibility. The sealed provisional ballot envelopes shall be placed, by the team, in a sealed container and shall remain therein until tabulation.

(3) Prior to any provisional ballots being counted, the election authority shall determine the eligibility of the provisional voter. The eligibility of provisional voters shall be determined according to the requirements for a voter to cast a ballot in the election as set out in sections 115.133 and 115.135, RSMo.

(4) To determine whether a provisional ballot is valid and entitled to be counted, the election authority shall examine its records and verify that the provisional voter is duly registered and qualified to vote in the election. If the provisional voter has provided information regarding the registration agency where the provisional voter registered to vote, the election authority shall make an inquiry of the registration agency to determine whether the provisional voter is duly registered and qualified to vote in the election.

(5) If the election authority determines that the provisional voter is registered and qualified to vote in the election, the election authority shall provide documentation verifying the voter's eligibility. This documentation shall be noted on the copy of the provisional ballot envelope and shall contain substantially the following information:

- (A) Name of provisional voter;
- (B) Name of reviewer;
- (C) Date and time; and
- (D) Description of evidence found that supports the voter's eligibility.

(6) If the election authority determines that the provisional voter is not registered and/or qualified to vote in the election, the election authority shall provide documentation verifying the voter's ineligibility. This documentation shall be noted on the copy of the provisional ballot envelope and shall contain substantially the following information:

- (A) Name of the provisional voter;
- (B) Name of reviewer;
- (C) Date and time; and
- (D) Description of why voter is ineligible.

(7) After the election authority completes its review of the provisional voter's eligibility pursuant to sections (4), (5), and (6), of this rule, the election authority shall deliver the provisional ballots, and copies of the provisional ballot envelopes which include the eligibil-

ity information, to bi-partisan counting teams, which may be the board of verification, for review and tabulation. The election authority shall maintain a record of the delivery. The record shall include the number of ballots delivered to each team and shall include a signed receipt from two (2) judges, one (1) from each major political party. The election authority shall provide each team with a ballot box, and material necessary for tabulation.

(8) Challengers and watchers, as provided by sections 115.105 and 115.107, may be present during all times that the bi-partisan counting teams are reviewing and/or counting the provisional ballots, the provisional ballot envelopes, and/or the copies of the provisional ballot envelopes which include the eligibility information provided by the election authority. The election authority shall notify the county chair of each major political party of the time and location when the bi-partisan counting teams will be reviewing and/or counting the provisional ballots, the provisional ballot envelopes, and/or the copies of the provisional ballot envelopes which include the eligibility information provided by the election authority.

(9) If the person named on the provisional ballot affidavit is found to have been duly qualified and registered to cast a ballot in the election, the envelope shall be opened, and the ballot shall be placed in a ballot box to be counted.

(10) If the person named on the provisional ballot affidavit is found to have not been duly qualified and registered to cast a ballot in the election, or if the election authority is unable to determine such person's right to vote, the envelope containing the provisional ballot shall not be opened and the person's vote shall not be counted. The members of the team shall then follow the procedures set out in 15 CSR 30-8.010(5) for rejected provisional ballots.

(11) The vote shall then be tallied and the returns made as provided in sections 115.447 to 115.525, RSMo for paper ballots. After the vote on all ballots assigned to a team have been counted, the ballots, ballot envelopes, and copies of ballot envelopes with the eligibility information provided by the election authority shall be enclosed in sealed containers marked "voted provisional ballots and ballot envelopes from the election held _____, 20_____" All rejected provisional ballots, ballot envelopes and copies of ballot envelopes with the eligibility information provided by the election authority shall be enclosed in sealed containers marked "rejected provisional ballots and ballot envelopes from the election held _____, 20_____" On the outside of each voted ballot and rejected ballot container, each member of the team shall write their name, and all such containers shall be returned to the election authority. Upon receipt of the returns and ballots, the election authority shall tabulate the provisional vote.

AUTHORITY: section 115.430, RSMo Supp. 2002. Emergency rule filed Oct. 21, 2002, effective Oct. 31, 2002, expires April 28, 2003. Original rule filed Oct. 22, 2002.

PUBLIC COST: In anticipation of the November 5, 2002 General Election and subsequent statewide or federal elections held in 2003, two hundred fifty thousand (250,000) provisional envelopes were printed at a public cost of twenty-two thousand dollars (\$22,000).

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 Office of the Secretary of State, Elections Division, Betsy Byers or Gayla Vandelicht, Co-Directors of Elections, PO Box 1767, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**FISCAL NOTE
PUBLIC COST**

I. RULE NUMBER

Rule Number and Name:	15 CSR 30-8.020 Procedures to Determine
Type of Rulemaking:	Proposed

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Local Election Authorities	Unknown
Secretary of State	\$22,000 for 2002 general -2003 elections

III. WORKSHEET

We are estimating the cost to local election authorities to include making copies of provisional ballot envelopes at approximately \$0.25 per copy, front and back. We estimate local election authorities, depending on the jurisdiction, to have from zero to 5,000 copies pre election. In anticipation of the 2002 and 2003 statewide and federal elections, 250,000 provisional ballot envelopes were printed at a cost of approximately \$22,000.

IV. ASSUMPTIONS

Because we cannot precisely predict the number of provisional voters in forthcoming elections, an exact cost for this rule cannot be determined. We can, however, reasonably assume that costs in future election cycles will not exceed this above mentioned amount.

**Title 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 9—Uniform Counting Standards**

PROPOSED RULE

15 CSR 30-9.040 Write-In Stickers

PURPOSE: This rule sets out the procedures for the process of using stickers to vote for write-in candidates.

(1) The sticker shall contain the name of a candidate, office sought, and a distinguishing mark in the square immediately preceding the name of the candidate and shall be approximately one inch by three inches (1" × 3") in size with black print on a white background.

(2) The sticker shall be placed by the voter on the write-in line designating the office sought or the sticker shall be placed by the voter on the write-in line on the secrecy envelope.

AUTHORITY: section 115.439.5, RSMo Supp. 2002. Emergency rule filed Oct. 11, 2002, effective Oct. 21, 2002, expires April 18, 2003. Original rule filed Oct. 18, 2002.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Office of the Secretary of State, Elections Division, Betsy Byers and Gayla Vandelicht, Co-Directors, PO Box 1767, 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.