

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 If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission.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 13—DEPARTMENT OF SOCIAL SERVICES
Division 40—Division of Family Services
Chapter 2—Income Maintenance**

PROPOSED AMENDMENT

13 CSR 40-2.310 Requirements as to Eligibility for Temporary Assistance. Subsection (1)(B) is amended to change the eligibility of aliens who have been in the United States less than five (5) years.

PURPOSE: This proposed amendment establishes the ineligibility of aliens who have been in the United States for less than five (5) years after August 22, 1996.

(1) The eligibility requirements for the Temporary Assistance Program shall include:

(B) *[Requiring a recipient of assistance and each dependent child to be a resident of the state of Missouri, and a United States citizen, a qualified alien as defined in section*

1641 of Title 8, United States Code or an alien permanently residing under color of law;] **Requiring a recipient of assistance and each dependent child to be a resident of the state of Missouri and:**

1. A United States citizen; or

2. A qualified alien as defined in Title 8, section 1641 of the *United States Code* except as otherwise provided herein. Except as provided in 8 U.S.C. section 1622(b), a qualified alien who enters the United States on or after August 22, 1996, is not eligible for Temporary Assistance benefits for a period of five (5) years beginning on the date of the alien's entry into the United States. Qualified aliens who have entered the United States on or after August 22, 1996, and who do not meet the time limit exception may be eligible for Temporary Assistance after a period of five (5) years beginning on the date of the qualified alien's entry into the United States. An alien who is not a qualified alien under Title 8, Sections 1641 or 1622(b) of the *United States Code* shall be ineligible to receive Temporary Assistance benefits. If an alien who is not eligible to receive Temporary Assistance benefits is found to be on the Temporary Assistance rolls then his or her benefits will be terminated and his or her case will be closed. If an applicant for Temporary Assistance benefits is not a qualified alien or does not otherwise fall within the exception set forth in 8 U.S.C. section 1622(b) then the applicant's application for Temporary Assistance will be denied;

AUTHORITY: sections 207.020 and 208.040.5, RSMo [1994] 2000. Emergency rule filed Feb. 18, 1998, effective March 1, 1998, terminated Aug. 10, 1998. Original rule filed Jan. 16, 1998, effective Aug. 1, 1998. Emergency amendment filed July 22, 2003, effective Aug. 1, 2003, expires Jan. 27, 2004. Amended: Filed July 22, 2003.

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 Social Services, Division of Family Services, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. If to be hand-delivered, comments must be brought to the Division of Family Services at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.*

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 40—Division of Family Services
Chapter 2—Income Maintenance**

PROPOSED RULE

13 CSR 40-2.380 Grandparents as Foster Parents

PURPOSE: This rule establishes the maximum benefit amount for the Grandparents as Foster Parents Program after July 31, 2003.

(1) The Grandparents as Foster Parents Program shall provide reimbursement up to twenty-five percent (25%) of the current foster care payment schedule to eligible grandparents for the care of a grandchild.

(2) The Grandparents as Foster Parents Program shall provide a further reduced amount for three (3) or more children.

AUTHORITY: sections 207.020, RSMo 2000 and 453.322 and 453.325, RSMo Supp. 2002. Emergency rule filed July 11, 2003, effective Aug. 1, 2003, expires Jan. 27, 2004. Original rule filed July 11, 2003.

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 Department of Social Services, Division of Family Services, 615 Howerton Court, Jefferson City, MO 65109. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. If to be hand-delivered, comments must be brought to the Division of Family Services at 615 Howerton Court, Jefferson City, Missouri. No public hearing is scheduled.*

This section will contain the final text of the rules proposed by agencies. The order of rulemaking is required to contain a citation to the legal authority upon which the order of rulemaking is based; reference to the date and page or pages where the notice of proposed rulemaking was published in the *Missouri Register*; an explanation of any change between the text of the rule as contained in the notice of proposed rulemaking and the text of the rule as finally adopted, together with the reason for any such change; and the full text of any section or subsection of the rule as adopted which has been changed from that contained in the notice of proposed rulemaking. The effective date of the rule shall be not less than thirty (30) days after the date of publication of the revision to the *Code of State Regulations*.

The agency is also required to make a brief summary of the general nature and extent of comments submitted in support of or opposition to the proposed rule and a concise summary of the testimony presented at the hearing, if any, held in connection with the rulemaking, together with a concise summary of the agency's findings with respect to the merits of any such testimony or comments which are opposed in whole or in part to the proposed rule. The ninety (90)-day period during which an agency shall file its order of rulemaking for publication in the *Missouri Register* begins either: 1) after the hearing on the proposed rulemaking is held; or 2) at the end of the time for submission of comments to the agency. During this period, the agency shall file with the secretary of state the order of rulemaking, either putting the proposed rule into effect, with or without further changes, or withdrawing the proposed rule.

Title 2—DEPARTMENT OF AGRICULTURE Division 30—Animal Health Chapter 2—Health Requirements for Movement of Livestock, Poultry and Exotic Animals

ORDER OF RULEMAKING

By the authority vested in the director of agriculture under section 267.645, RSMo 2000, the director amends a rule as follows:

2 CSR 30-2.010 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2003 (28 MoReg 707). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS AND EXPLANATION OF CHANGE: No comments were received from the public, however, administrative review by the agency resulted in changes to the proposed amendment for clarification of identification and ages of animals involved. Those sections with changes are printed in this final order of rulemaking.

2 CSR 30-2.010 Health Requirements Governing the Admission of Livestock, Poultry and Exotic Animals Entering Missouri

(7) Sheep.

(A) All breeding sheep, regardless of age, and all sheep eighteen (18) months of age and over must be accompanied by a Certificate of Veterinary Inspection showing official individual identification

(eartag, electronic implant or registration tattoo accompanied by registration paper). If electronic implants are used for identification, owner/manager must provide electronic implant reader.

(B) Farm-of-origin sheep consigned directly to a licensed Missouri market/sale or a slaughter establishment must have official individual identification identifying them to the farm-of-origin but will not be required to have a Certificate of Veterinary Inspection.

(C) Sheep from a scabies-quarantined area must be dipped or treated by an officially approved method within ten (10) days prior to exhibition.

(D) No tests are required on sheep entering Missouri.

(8) Goats.

(A) All sexually intact goats, except low risk commercial goats as defined in the *Code of Federal Regulations*, must be accompanied by a Certificate of Veterinary Inspection showing official individual identification (eartag, electronic implant or registration tattoo accompanied by registration paper), except:

1. Farm-of-origin goats consigned directly to a licensed Missouri market/sale must have official individual identification but will not be required to have a Certificate of Veterinary Inspection; or

2. Farm-of-origin goats consigned directly to a slaughter establishment must have official individual identification but will not be required to have a Certificate of Veterinary Inspection.

(B) If electronic implants are used for identification, owner/manager must provide electronic implant reader.

(C) No tests are required on goats entering Missouri.

Title 2—DEPARTMENT OF AGRICULTURE Division 30—Animal Health Chapter 2—Health Requirements for Movement of Livestock, Poultry and Exotic Animals

ORDER OF RULEMAKING

By the authority vested in the director of agriculture under section 267.645, RSMo 2000, the director amends a rule as follows:

2 CSR 30-2.020 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2003 (28 MoReg 707-708). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS AND EXPLANATION OF CHANGE: No comments were received from the public, however, administrative review by the agency resulted in changes to the proposed amendment for clarification of identification and ages of animals involved. Those sections with changes are printed in this final order of rulemaking.

2 CSR 30-2.020 Movement of Livestock, Poultry and Exotic Animals Within Missouri

(3) Sheep and Goats.

(A) All sheep and goats exchanged, bartered or sold within Missouri must be free of symptoms of infectious or contagious diseases.

(B) All breeding sheep, regardless of age and all sheep eighteen (18) months of age and over, must have official identification (eartag, electronic implant or registration tattoo accompanied by registration papers) identifying them to the flock of origin.

(C) All sexually intact goats, except low-risk commercial goats as defined in the *Code of Federal Regulations*, must have official identification (ear tag, electronic implant or registration tattoo accompanied by registration papers) identifying them to the herd of origin.

(D) All suspected or confirmed cases of scrapie in Missouri must be reported immediately to the state veterinarian.

(E) All sheep and goats from scrapie infected or source flock/herd will be quarantined.

(F) Quarantine release will be issued according to the *Code of Federal Regulations*.

Title 2—DEPARTMENT OF AGRICULTURE
Division 30—Animal Health
Chapter 2—Health Requirements for Movement of
Livestock, Poultry and Exotic Animals

ORDER OF RULEMAKING

By the authority vested in the director of agriculture under section 267.645, RSMo 2000, the director amends a rule as follows:

2 CSR 30-2.020 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 15, 2003 (28 MoReg 708-710). Those sections with changes are reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS AND EXPLANATION OF CHANGE: No comments were received from the public, however, administrative review by the agency resulted in changes to the proposed amendment for clarification of movement of animals from status herds. Those sections with changes are printed in this final order of rulemaking.

2 CSR 30-2.020 Movement of Livestock, Poultry and Exotic Animals Within Missouri

(6) Miscellaneous and Exotic Animals. All exotic animals must be accompanied by an official Certificate of Veterinary Inspection showing an individual listing of the common and scientific name(s) of the animal(s) and appropriate descriptions of animal(s) such as sex, age, weight, coloration and the permanent tag number, brand or tattoo identification.

(D) Elk and deer may move within Missouri in compliance with the guidelines as incorporated by reference to the *Brucellosis in Cervidae; Uniform Methods and Rules, Effective September 30, 1998* and *Bovine Tuberculosis Eradication Uniform Methods and Rules, Effective January 22, 1999*.

1. All sexually intact animals six (6) months of age or older must test negative for brucellosis within thirty (30) days prior to shipment, except:

A. Brucellosis-free herd—captive cervids originating from certified brucellosis-free herds may move on the current herd number and test date; or

B. Brucellosis-monitored herd—all sexually intact animals six (6) months of age or older must test negative for brucellosis within ninety (90) days prior to movement.

2. All cervidae six (6) months of age and over must have a negative tuberculosis test using the single cervical method within ninety (90) days prior to shipment, except:

A. Accredited herd—captive cervids originating from accredited tuberculosis-free herd as defined by the *Bovine Tuberculosis Eradication Uniform Methods and Rules, Effective January 22, 1999*, may move on the current herd number and test date;

B. Qualified herd—captive cervids originating from a qualified herd as defined by the *Bovine Tuberculosis Eradication Uniform*

Methods and Rules, Effective January 22, 1999, must have one (1) negative tuberculosis test, using the single cervical method, within ninety (90) days prior to the date of movement;

C. Monitored herd—captive cervids originating from a monitored herd as defined by the *Bovine Tuberculosis Eradication Uniform Methods and Rules, Effective January 22, 1999*, must have one (1) negative tuberculosis test, using the single cervical method, within ninety (90) days prior to the date of movement;

D. Captive cervids less than twelve (12) months of age that originate from and were born in qualified or monitored herds may be moved without further tuberculosis testing, provided that they are accompanied by a certificate stating that such captive cervids originated from such herds and have not been exposed to captive cervids from a lower status herd.

3. All elk moving within Missouri must originate from a herd that is enrolled in a chronic wasting disease (CWD) surveillance program as outlined by the Missouri Department of Agriculture.

4. All suspected or confirmed cases of CWD must be reported immediately to the state veterinarian.

5. All captive cervids from infected or source herds will be quarantined.

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 7—Wildlife Code: Hunting: Seasons, Methods,
Limits

ORDER OF RULEMAKING

By the authority vested in the Conservation Commission under sections 40 and 45 of Art. IV, Mo. Const., the commission amends a rule as follows:

3 CSR 10-7.440 is amended.

This amendment establishes hunting seasons and limits and is excepted by section 536.021, RSMo from the requirement for filing as a proposed amendment.

The Department of Conservation amended 3 CSR 10-7.440 by establishing seasons and limits for hunting migratory waterfowl during the 2003-2004 seasons.

3 CSR 10-7.440 Migratory Game Birds and Waterfowl: Seasons, Limits

PURPOSE: The Conservation Commission is authorized to select waterfowl hunting season dates and bag limits within frameworks established by the U.S. Fish and Wildlife Service. The seasons and limits selected are intended to provide optimum hunting opportunity consistent with the welfare of the species.

(1) Migratory game birds and waterfowl may be taken, possessed, transported and stored as provided in federal regulations. The head or one (1) fully feathered wing must remain attached to all waterfowl while being transported from the field to one's home or a commercial preservation facility. Seasons and limits are as follows:

(E) Blue-winged, green-winged and cinnamon teal may be taken from sunrise to sunset from September 6 through September 21. Limits: four (4) teal in the aggregate of species daily; eight (8) in possession.

SUMMARY OF COMMENTS: Seasons and limits are excepted from the requirement of filing as a proposed amendment under section 536.021, RSMo.

This amendment filed July 8, 2003, effective **July 23, 2003**.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT**

**Division 145—Missouri Board of Geologist Registration
Chapter 1—General Rules**

ORDER OF RULEMAKING

By the authority vested in the Missouri Board of Geologist Registration under section 256.462.3, RSMo 2000, the board amends a rule as follows:

4 CSR 145-1.030 Application for Licensure is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2003 (28 MoReg 857). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT**

**Division 145—Missouri Board of Geologist Registration
Chapter 2—Licensure Requirements**

ORDER OF RULEMAKING

By the authority vested in the Missouri Board of Geologist Registration under section 256.462.3, RSMo 2000, the board amends a rule as follows:

**4 CSR 145-2.030 Post-Baccalaureate Experience in Geology
is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2003 (28 MoReg 857). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT**

**Division 145—Missouri Board of Geologist Registration
Chapter 2—Licensure Requirements**

ORDER OF RULEMAKING

By the authority vested in the Missouri Board of Geologist Registration under sections 256.456 and 256.462.3, RSMo 2000, the board amends a rule as follows:

4 CSR 145-2.100 Registered Geologist's Seal is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2003 (28 MoReg 857). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT**

**Division 165—Board of Examiners for Hearing
Instrument Specialists
Chapter 2—Licensure Requirements**

ORDER OF RULEMAKING

By the authority vested in the Board of Examiners for Hearing Instrument Specialists under sections 346.070, 346.075, 346.080 and 346.115.7(11), RSMo 2000, the board amends a rule as follows:

**4 CSR 165-2.010 Hearing Instrument Specialist in Training
(Temporary Permits) is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2003 (28 MoReg 857-858). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT**

**Division 165—Board of Examiners for Hearing
Instrument Specialists
Chapter 2—Licensure Requirements**

ORDER OF RULEMAKING

By the authority vested in the Board of Examiners for Hearing Instrument Specialists under sections 346.070, 346.085 and 346.115.7(11), RSMo 2000, the board amends a rule as follows:

4 CSR 165-2.030 Licensure by Examination is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2003 (28 MoReg 858). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT**

**Division 165—Board of Examiners for Hearing
Instrument Specialists
Chapter 2—Licensure Requirements**

ORDER OF RULEMAKING

By the authority vested in the Board of Examiners for Hearing Instrument Specialists under sections 346.095 and 346.115.7(11), RSMo 2000, the board amends a rule as follows:

4 CSR 165-2.060 License Renewal is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2003 (28 MoReg 858-859). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 220—State Board of Pharmacy
Chapter 2—General Rules**

ORDER OF RULEMAKING

By the authority vested in the State Board of Pharmacy under sections 338.010, 338.140, 338.240 and 338.280, RSMo 2000 and 338.210, RSMo Supp. 2002, the board amends a rule as follows:

4 CSR 220-2.010 Pharmacy Standards of Operation is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on March 17, 2003 (28 MoReg 543). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 220—State Board of Pharmacy
Chapter 2—General Rules**

ORDER OF RULEMAKING

By the authority vested in the State Board of Pharmacy under sections 338.210 and 338.220, RSMo Supp. 2002 and 338.280, RSMo 2000, the board amends a rule as follows:

**4 CSR 220-2.900 Automated Dispensing and Storage Systems
is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on March 17, 2003 (28 MoReg 543–545). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 240—Public Service Commission
Chapter 120—New Manufactured Homes**

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under section 700.040, RSMo 2000, the commission withdraws a rule as follows:

4 CSR 240-120.085 Inspection Fee is withdrawn.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on June 2, 2003 (28 MoReg 1032–1034). This proposed rule is withdrawn.

SUMMARY OF COMMENTS: Comments were received from manufactured housing dealers and manufacturers, trade associations, and members of the Missouri General Assembly. The comments included claims that the inspection fee is in fact a tax that is imposed on the manufactured housing industry during hard economic times,

that this will be a burden on small business resulting in loss of employment, and that the cost will ultimately have to be passed on to consumers, making manufactured housing less affordable. The comments also included concerns that the fee would be imposed arbitrarily without regard to the fault of the manufacturer or dealer. Several commenters said the cost of the inspections should be borne, at least in part, by the consumer. Others said the commission has increased its fees several times in recent years, even though the number of inspections has declined and the need for revenues should be decreasing. One commenter said the fee violates federal law. Several commenters said that better solutions to the funding needs can be found.

RESPONSE: As a result, the commission is withdrawing this rulemaking.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 240—Public Service Commission
Chapter 121—Pre-Owned Manufactured Homes**

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under section 700.040, RSMo 2000, the commission withdraws a rule as follows:

4 CSR 240-121.065 Inspection Fee is withdrawn.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on June 2, 2003 (28 MoReg 1035–1036). This proposed rule is withdrawn.

SUMMARY OF COMMENTS: Comments were received from manufactured housing dealers and manufacturers, trade associations, and members of the Missouri General Assembly. The comments included claims that the inspection fee is in fact a tax that is imposed on the manufactured housing industry during hard economic times, that this will be a burden on small business resulting in loss of employment, and that the cost will ultimately have to be passed on to consumers, making manufactured housing less affordable. The comments also included concerns that the fee would be imposed arbitrarily without regard to the fault of the manufacturer or dealer. Several commenters said the cost of the inspections should be borne, at least in part, by the consumer. Others said the commission has increased its fees several times in recent years, even though the number of inspections has declined and the need for revenues should be decreasing. One commenter said the fee violates federal law. Several commenters said that better solutions to the funding needs can be found.

RESPONSE: As a result, the commission is withdrawing this rulemaking.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 240—Public Service Commission
Chapter 123—Modular Units**

ORDER OF RULEMAKING

By the authority vested in the Public Service Commission under section 700.040, RSMo 2000, the commission withdraws a rule as follows:

4 CSR 240-123.095 Inspection Fee is withdrawn.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on June 2, 2003 (28 MoReg 1037-1038). This proposed rule is withdrawn.

SUMMARY OF COMMENTS: Comments were received from manufactured housing dealers and manufacturers, trade associations, and members of the Missouri General Assembly. The comments included claims that the inspection fee is in fact a tax that is imposed on the manufactured housing industry during hard economic times, that this will be a burden on small business resulting in loss of employment, and that the cost will ultimately have to be passed on to consumers, making manufactured housing less affordable. The comments also included concerns that the fee would be imposed arbitrarily without regard to the fault of the manufacturer or dealer. Several commenters said the cost of the inspections should be borne, at least in part, by the consumer. Others said the commission has increased its fees several times in recent years, even though the number of inspections has declined and the need for revenues should be decreasing. One commenter said the fee violates federal law. Several commenters said that better solutions to the funding needs can be found.

RESPONSE: As a result, the commission is withdrawing this rulemaking.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 270—Missouri Veterinary Medical Board
Chapter 1—General Rules**

ORDER OF RULEMAKING

By the authority vested in the Missouri Veterinary Medical Board under sections 340.210 and 340.232, RSMo 2000, the board amends a rule as follows:

4 CSR 270-1.021 Fees is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2003 (28 MoReg 859-860). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 270—Missouri Veterinary Medical Board
Chapter 1—General Rules**

ORDER OF RULEMAKING

By the authority vested in the Missouri Veterinary Medical Board under sections 340.210, 340.228 and 340.300, RSMo 2000, the board amends a rule as follows:

4 CSR 270-1.031 Application Procedures is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2003 (28 MoReg 861). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 270—Missouri Veterinary Medical Board
Chapter 2—Licensure Requirements for Veterinarians**

ORDER OF RULEMAKING

By the authority vested in the Missouri Veterinary Medical Board under sections 340.210, 340.216 and 340.230, RSMo 2000, the board amends a rule as follows:

4 CSR 270-2.051 Licensure (Exception) is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2003 (28 MoReg 861). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 270—Missouri Veterinary Medical Board
Chapter 4—Minimum Standards**

ORDER OF RULEMAKING

By the authority vested in the Missouri Veterinary Medical Board under sections 340.200 and 340.210, RSMo 2000, the board amends a rule as follows:

**4 CSR 270-4.031 Minimum Standards for Practice Techniques
is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2003 (28 MoReg 861). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT
Division 270—Missouri Veterinary Medical Board
Chapter 4—Minimum Standards**

ORDER OF RULEMAKING

By the authority vested in the Missouri Veterinary Medical Board under sections 340.210, 340.258 and 340.268, RSMo 2000, the board amends a rule as follows:

**4 CSR 270-4.042 Minimum Standards for Continuing Education
for Veterinarians is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2003 (28 MoReg 861-862). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT**

**Division 270—Missouri Veterinary Medical Board
Chapter 4—Minimum Standards**

ORDER OF RULEMAKING

By the authority vested in the Missouri Veterinary Medical Board under sections 340.210, 340.222 and 340.326, RSMo 2000, the board amends a rule as follows:

4 CSR 270-4.060 Minimum Standards for Supervision is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2003 (28 MoReg 862-864). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 4—DEPARTMENT OF ECONOMIC
DEVELOPMENT**

**Division 270—Missouri Veterinary Medical Board
Chapter 7—Disciplinary Proceedings**

ORDER OF RULEMAKING

By the authority vested in the Missouri Veterinary Medical Board under sections 340.210 and 340.282, RSMo 2000 and 620.010.15, RSMo Supp. 2002, the board amends a rule as follows:

4 CSR 270-7.010 Public Complaint Handling and Disposition Procedure is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2003 (28 MoReg 864). No changes have been made to the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

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

ORDER OF RULEMAKING

By the authority vested in the director of the Department of Mental Health under sections 630.050 and 630.655, RSMo 2000, the director amends a rule as follows:

9 CSR 10-7.130 Procedures to Obtain Certification is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 1, 2003 (28 MoReg 645). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The department received one (1) comment on the proposed amendment.

COMMENT: One commenter expressed concern that the amendment provided too little oversight and that a more frequent compliance visit should be required.

RESPONSE: The department disagrees and no changes have been made to the amendment as a result of this comment.

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 10—Air Conservation Commission
Chapter 2—Air Quality Standards and Air Pollution
Control Rules Specific to the Kansas City
Metropolitan Area**

ORDER OF RULEMAKING

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo 2000, the commission amends a rule as follows:

10 CSR 10-2.070 Restriction of Emission of Odors is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on March 17, 2003 (28 MoReg 551-552). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: Fourteen (14) comments were received on this rule action. Two (2) comments opposed the rule action and provided alternate language, ten (10) comments provided general comments on the industry and or odor conditions around these industries, and two (2) comments were from the director of the Department of Natural Resources' Air Pollution Control Program and the legal counsel for the commission on the rule action. The majority of comments received, either at public hearing or in writing, did not directly address the proposed amendment so only a summary is presented below. Similar comments on this proposed amendment are grouped together and responded to with one response.

Due to similar opposition addressed in the following two (2) comments, one (1) response follows this group of two (2) comments:

COMMENT: The Assistant General Counsel for Environmental Affairs for Premium Standard Farms (PSF) provided an overview of the company and its history to the commission. He also gave an overview of the presentations to be given by the company and provided a summary at the end. It was stated that he believed the standard should be set at 170 based upon the testimony provided by the Project Coordinator/Environmental Chemist with SES, Inc. Written comments provided further information to support testimony provided at the public hearing.

COMMENT: The Project Coordinator/Environmental Chemist with SES, Inc. presented information on olfactometry and the proposed detection threshold. He described the use of olfactometry and research on odors in Tedlar bags used to collect samples. After analyzing the department's Air Pollution Control Program data, he proposed a value of 170 for the detection threshold value. This value of 170 is based upon taking two (2) standard deviations from the transformed mean of the control samples and then rounding up to the next increment of ten (10). His proposed value is expected to reduce the chance of recording a false positive violation when responding to complaints. In addition, information on addressing the problems with using olfactometry was presented. These include adding quality assurance/quality control provisions, increasing the regulatory standard, taking duplicate samples, and collecting blanks during every sampling event.

RESPONSE: The original purpose of doing the scentometer/detection threshold research was to correlate a 7:1 scentometer reading with a detection threshold value. The detection threshold value of 110 presented for the amendment correlates to the 7:1 scentometer reading. This detection threshold mean was chosen since it is a single value that is representative of the entire data population. Statistically it was shown that the 7:1 scentometer population is different from the control or non-odorous sample. PSF suggests that the number should be based upon the control rather than the 7:1 population to reduce the probability of getting a false positive reading. They presented evidence that the bag itself is odorous. It cannot be said that the bag itself has no odor but the detection threshold value of 110 includes the bag odor. In addition, the rule establishes that an odor be present in the field before taking an olfactometry sample. Inspectors determine that an odor is present in the field by using the 5.4:1 scentometer screening before taking a sample. PSF suggests that taking multiple samples is necessary. That could be done for an additional cost. However, the scentometer is analogous to an instantaneous evaluation whereas the gathering of an olfactometry sample is an average since it takes ten to fifteen (10–15) minutes to capture a sample. Maximum concentrated animal feeding operation (CAFO) odor levels are not being detected since odor plumes can shift or diminish in a rather short period of time. Taking multiple samples so that an average of the two (2) samples can be calculated increases the likelihood of the odor plume shifting or diminishing. Additional quality assurance/quality control provisions are not needed because the inspectors have a protocol for taking samples and sending them off to the lab. No wording changes have been made to the proposed amendment as a result of these comments.

Due to similar information addressed in the following three (3) comments, one (1) response follows this group of three (3) comments:

COMMENT: An employee for PSF described his experience with lagoon covers and odor which indicates that odor has diminished quite a bit with lagoon covers. Pictures of the lagoon cover were shown and questions from the commission were answered on the number of lagoon covers used by PSF.

COMMENT: A superintendent for PSF's Land Resource Management Department described the company's use of a new system to land-apply wastewater instead of using a traveling gun. This new system is called a toolbar system and started being used about two-and-one-half (2 1/2) years ago. Last year the new system was used on over sixty percent (60%) of the land application.

COMMENT: The Vice President of Environmental Affairs for PSF talked about the progress the company has made in implementing next generation technology over the last five (5) years. He also described in greater detail some of the testimony provided by company employees.

RESPONSE: The department's Air Pollution Control Program acknowledges the technology being implemented by PSF to reduce odor from its operations and its progress over the years. PSF is encouraged to continue its efforts to reduce odors coming from its operations. No wording changes have been made to the proposed amendment as a result of these comments.

Due to similar information addressed in the following seven (7) comments, one (1) response follows this group of seven (7) comments:

COMMENT: One citizen addressed the commission as a scientist and posed two (2) questions about this issue: What assumptions lead us to court species suicide and extinction? What alternate assumptions could be adopted to generate viable sustainable life affirming ways for humans to live? A list of some of the ways concentrated animal feeding operations help our culture to destroy ourselves and the entire biosphere was handed out to the commission.

COMMENT: A farmer addressed the commission as someone who lives between two (2) CAFOs. He is concerned that debating numbers such as 110 and 170 are numbers that no one really knows

about. The debate on this issue has been going on for ten (10) years and it still stinks.

COMMENT: A citizen commented that during the public hearing the commission allowed PSF to make four (4) presentations and that the citizens were discouraged from speaking before the commission in the essence of time. He questioned the best estimate threshold of 110 if it is achieved by the olfactory panel evaluation. As long as an odor panel is being used to analyze or detect the threshold, enforcement proceedings, if any, will always be challengeable in a court of law by the defendant. He concluded that time was of the essence for an enforceable odor standard to be placed on industry to bring long awaited relief to citizens of the state.

COMMENT: A citizen addressed the commission and spoke about how sensitive he personally is to ammonia. He shared experiences living near these operations.

COMMENT: Three (3) citizens commented together that the CAFO smell makes them sick and it enters into the house when people come from outside. They believe the factory farm is affecting their health in a significant manner. Numerous health studies done on these CAFOs show that they affect not only the workers health but also the people who live near these factory farms. New technology may have helped with odors on-site, but it hasn't helped with the odors coming off-site. PSF has not been a boom to the counties that they are located in. Assessed valuation for property is lower now than before due to proximity to the CAFOs. Two (2) attachments show the Northeast Missouri Per Capita Income from 1987 to 1997 and a press release from the University of Missouri on property devaluation studies near CAFOs.

COMMENT: Two (2) citizens commented together that the state of Missouri seems to be giving us three (3) choices: die, breathe hog waste, or move from the area. It was clear the commission did not want to hear us at the public hearing. The commission said they just did not have time to listen. The commission meeting lasted just two (2) hours and forty-five (45) minutes.

COMMENT: A citizen commented that he listened with skepticism to PSF at the meeting. The new technology used by PSF is not reducing the odors from their facilities. His nose tells him that there has been no reduction in either the potency, the volume or the frequency of foul odors. Technology does exist to eliminate the odor but it requires a complete reconstruction of their system and PSF doesn't want to go to that expense. By reducing nitrogen content of the effluent, far fewer acres would be required to spread on. This assumes that no phosphate standard will ever be imposed. He believes a phosphate standard will be imposed and it will require far more, not fewer acres to spread on.

RESPONSE: The intent of this rule action is to amend the detection threshold value. The present detection threshold value is set too low and was not fair to industry. The proposed detection threshold value is based upon research conducted in year 2002 and is set at a value that is fair to industry and protective of the general welfare of the people around these operations. This amendment will not eliminate odor but will be a tool used to record odor violations if they occur. In response to regulations, consent agreements, etc., the CAFO industry is changing and companies such as PSF are experimenting with and implementing technologies dismissed years earlier for being too radical or too expensive. This is encouraging, but it takes time. In the meantime, this proposed amendment sets a standard that is fair to both sides. No wording changes have been made to the proposed amendment as a result of these comments.

Due to similar information addressed in the following two (2) comments, one (1) response follows this group of two (2) comments:

COMMENT: The director of the department's Air Pollution Control Program addressed the commission and the audience about the challenge of balancing the two (2) interests represented. He assured everyone that what they have said has been heard and that we will do the utmost to address the issues to the extent that we can.

COMMENT: The legal counsel for the commission restated the statutory power of the commission to address the issue being discussed today. He stated that the whole purpose of this rule action is to get the detection threshold number in the rule as close to correct as we can for the purpose of controlling odors. The number chosen must also be defensible in court when a violation is issued.

RESPONSE: The department's Air Pollution Control Program recommends that this proposed amendment be adopted to implement an enforceable odor detection threshold. No wording changes have been made to the proposed amendment as a result of these comments.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 10—Air Conservation Commission
Chapter 2—Air Quality Standards and Air Pollution
Control Rules Specific to the Kansas City
Metropolitan Area

ORDER OF RULEMAKING

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo 2000, the commission amends a rule as follows:

10 CSR 10-2.390 Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws **is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on March 17, 2003 (28 MoReg 552-553). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Department of Natural Resources' Air Pollution Control Program received one (1) comment from the U.S. Environmental Protection Agency (EPA).

COMMENT: EPA recommended that paragraph (4)(E)2. be revised to add the word—affirmative—so that the sentence reads— The effective date of EPA's affirmative finding that motor vehicle emissions budgets. . . .

RESPONSE: After consultation between EPA and the department's Air Pollution Control Program, it was mutually agreed that the proposed amendment language should be retained for consistency with the federal rule language. Therefore, no wording changes have been made as a result of this comment.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 10—Air Conservation Commission
Chapter 3—Air Pollution Control Rules Specific
to the Outstate Missouri Area

ORDER OF RULEMAKING

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo 2000, the commission amends a rule as follows:

10 CSR 10-3.090 Restriction of Emission of Odors **is amended.**

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on March 17, 2003 (28 MoReg 553). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed

amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: Fourteen (14) comments were received on this rule action. Two (2) comments opposed the rule action and provided alternate language, ten (10) comments provided general comments on the industry and or odor conditions around these industries, and two (2) comments were from the director of the Department of Natural Resources' Air Pollution Control Program and the legal counsel for the commission on the rule action. The majority of comments received, either at public hearing or in writing, did not directly address the proposed amendment so only a summary is presented below. Similar comments on this proposed amendment are grouped together and responded to with one response.

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COMMENT: The Project Coordinator/Environmental Chemist with SES, Inc. presented information on olfactometry and the proposed detection threshold. He described the use of olfactometry and research on odors in Tedlar bags used to collect samples. After analyzing the department's Air Pollution Control Program data, he proposed a value of 170 for the detection threshold value. This value of 170 is based upon taking two (2) standard deviations from the transformed mean of the control samples and then rounding up to the next increment of ten (10). His proposed value is expected to reduce the chance of recording a false positive violation when responding to complaints. In addition, information on addressing the problems with using olfactometry was presented. These include adding quality assurance/quality control provisions, increasing the regulatory standard, taking duplicate samples, and collecting blanks during every sampling event.

RESPONSE: The original purpose of doing the scentometer/detection threshold research was to correlate a 7:1 scentometer reading with a detection threshold value. The detection threshold value of 110 presented for the amendment correlates to the 7:1 scentometer reading. This detection threshold mean was chosen since it is a single value that is representative of the entire data population. Statistically it was shown that the 7:1 scentometer population is different from the control or non-odorous sample. PSF suggests that the number should be based upon the control rather than the 7:1 population to reduce the probability of getting a false positive reading. They presented evidence that the bag itself is odorous. It cannot be said that the bag itself has no odor but the detection threshold value of 110 includes the bag odor. In addition, the rule establishes that an odor be present in the field before taking an olfactometry sample. Inspectors determine that an odor is present in the field by using the 5.4:1 scentometer screening before taking a sample. PSF suggests that taking multiple samples is necessary. That could be done for an additional cost. However, the scentometer is analogous to an instantaneous evaluation whereas the gathering of an olfactometry sample is an average since it takes ten to fifteen (10-15) minutes to capture a sample. Maximum concentrated animal feeding operation (CAFO) odor levels are not being detected since odor plumes can shift or diminish in a rather short period of time. Taking multiple samples so that an average of the two (2) samples can be calculated increases the likelihood of the odor plume shifting or diminishing. Additional quality assurance/quality control provisions are not needed because the inspectors have a protocol for taking samples and sending them

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RESPONSE: The department's Air Pollution Control Program acknowledges the technology being implemented by PSF to reduce odor from its operations and its progress over the years. PSF is encouraged to continue its efforts to reduce odors coming from its operations. No wording changes have been made to the proposed amendment as a result of these comments.

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COMMENT: Three (3) citizens commented together that the CAFO smell makes them sick and it enters into the house when people come from outside. They believe the factory farm is affecting their health in a significant manner. Numerous health studies done on these CAFOs show that they affect not only the worker's health but also the people who live near these factory farms. New technology may have helped with odors on-site, but it hasn't helped with the odors coming off-site. PSF has not been a boom to the counties that they are located in. Assessed valuation for property is lower now than before due to proximity to the CAFOs. Two (2) attachments show the Northeast Missouri Per Capita Income from 1987 to 1997 and a press release from the University of Missouri on property devaluation studies near CAFOs.

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RESPONSE: The intent of this rule action is to amend the detection threshold value. The present detection threshold value is set too low and was not fair to industry. The proposed detection threshold value is based upon research conducted in year 2002 and is set at a value that is fair to industry and protective of the general welfare of the people around these operations. This amendment will not eliminate odor but will be a tool used to record odor violations if they occur. In response to regulations, consent agreements, etc., the CAFO industry is changing and companies such as PSF are experimenting with and implementing technologies dismissed years earlier for being too radical or too expensive. This is encouraging, but it takes time. In the meantime, this proposed amendment sets a standard that is fair to both sides. No wording changes have been made to the proposed amendment as a result of these comments.

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RESPONSE: The department's Air Pollution Control Program recommends that this proposed amendment be adopted to implement an enforceable odor detection threshold. No wording changes have been made to the proposed amendment as a result of these comments.

**Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 10—Air Conservation Commission
Chapter 4—Air Quality Standards and Air Pollution
Control Regulations for the Springfield-Greene
County Area**

ORDER OF RULEMAKING

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo 2000, the commission amends a rule as follows:

10 CSR 10-4.070 Restriction of Emission of Odors is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on March 17, 2003 (28 MoReg 553-554). No changes have been made in the text

of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: Fourteen (14) comments were received on this rule action. Two (2) comments opposed the rule action and provided alternate language, ten (10) comments provided general comments on the industry and odor conditions around these industries, and two (2) comments were from the director of the Department of Natural Resources' Air Pollution Control Program and the legal counsel for the commission on the rule action. The majority of comments received, either at public hearing or in writing, did not directly address the proposed amendment so only a summary is presented below. Similar comments on this proposed amendment are grouped together and responded to with one response.

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COMMENT: The director of the department's Air Pollution Control Program addressed the commission and the audience about the challenge of balancing the two (2) interests represented. He assured everyone that what they have said has been heard and that we will do the utmost to address the issues to the extent that we can.

COMMENT: The legal counsel for the commission restated the statutory power of the commission to address the issue being discussed today. He stated that the whole purpose of this rule action is to get the detection threshold number in the rule as close to correct as we can for the purpose of controlling odors. The number chosen must also be defensible in court when a violation is issued.

RESPONSE: The department's Air Pollution Control Program recommends that this proposed amendment be adopted to implement an enforceable odor detection threshold. No wording changes have been made to the proposed amendment as a result of these comments.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 10—Air Conservation Commission
Chapter 5—Air Quality Standards and Air Pollution
Control Rules Specific to the St. Louis Metropolitan Area

ORDER OF RULEMAKING

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo 2000, the commission amends a rule as follows:

10 CSR 10-5.160 Control of Odors in the Ambient Air is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on March 17, 2003 (28 MoReg 554-555). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: Fourteen (14) comments were received on this rule action. Two (2) comments opposed the rule action and provided alternate language, ten (10) comments provided general comments on the industry and or odor conditions around these industries, and two (2) comments were from the director of the Department of Natural Resources' Air Pollution Control Program and the legal counsel for the commission on the rule action. The majority of comments received, either at public hearing or in writing, did not directly address the proposed amendment so only a summary is presented below. Similar comments on this proposed amendment are grouped together and responded to with one response.

Due to similar opposition addressed in the following two (2) comments, one (1) response follows this group of two (2) comments:

COMMENT: The Assistant General Counsel for Environmental Affairs for Premium Standard Farms (PSF) provided an overview of the company and its history to the commission. He also gave an overview of the presentations to be given by the company and provided a summary at the end. It was stated that he believed the standard should be set at 170 based upon the testimony provided by the Project Coordinator/Environmental Chemist with SES, Inc. Written comments provided further information to support testimony provided at the public hearing.

COMMENT: The Project Coordinator/Environmental Chemist with SES, Inc. presented information on olfactometry and the proposed detection threshold. He described the use of olfactometry and research on odors in Tedlar bags used to collect samples. After analyzing the department's Air Pollution Control Program data, he proposed a value of 170 for the detection threshold value. This value of 170 is based upon taking two (2) standard deviations from the transformed mean of the control samples and then rounding up to the next increment of ten (10). His proposed value is expected to reduce the chance of recording a false positive violation when responding to complaints. In addition, information on addressing the problems with using olfactometry was presented. These include adding quality assurance/quality control provisions, increasing the regulatory standard, taking duplicate samples, and collecting blanks during every sampling event.

RESPONSE: The original purpose of doing the scentometer/detection threshold research was to correlate a 7:1 scentometer reading with a detection threshold value. The detection threshold value of 110 presented for the amendment correlates to the 7:1 scentometer reading. This detection threshold mean was chosen since it is a single value that is representative of the entire data population. Statistically it was shown that the 7:1 scentometer population is different from the control or non-odorous sample. PSF suggests that the number should be based upon the control rather than the 7:1 population to reduce the probability of getting a false positive reading. They presented evidence that the bag itself is odorous. It cannot be said that the bag itself has no odor but the detection threshold value of 110 includes the bag odor. In addition, the rule establishes that an odor be present in the field before taking an olfactometry sample. Inspectors determine that an odor is present in the field by using the 5.4:1 scentometer screening before taking a sample. PSF suggests that taking multiple samples is necessary. That could be done for an additional cost. However, the scentometer is analogous to an instantaneous evaluation whereas the gathering of an olfactometry sample is an average since it takes ten to fifteen (10-15) minutes to capture a sample. Maximum concentrated animal feeding operation (CAFO) odor levels are not being detected since odor plumes can shift or diminish in a rather short period of time. Taking multiple samples

so that an average of the two (2) samples can be calculated increases the likelihood of the odor plume shifting or diminishing. Additional quality assurance/quality control provisions are not needed because the inspectors have a protocol for taking samples and sending them off to the lab. No wording changes have been made to the proposed amendment as a result of these comments.

Due to similar information addressed in the following three (3) comments, one (1) response follows this group of three (3) comments:

COMMENT: An employee for PSF described his experience with lagoon covers and odor which indicates that odor has diminished quite a bit with lagoon covers. Pictures of the lagoon cover were shown and questions from the commission were answered on the number of lagoon covers used by PSF.

COMMENT: A superintendent for PSF's Land Resource Management Department described the company's use of a new system to land-apply wastewater instead of using a traveling gun. This new system is called a toolbar system and started being used about two-and-one-half (2 1/2) years ago. Last year the new system was used on over sixty percent (60%) of the land application.

COMMENT: The Vice President of Environmental Affairs for PSF talked about the progress the company has made in implementing next generation technology over the last five (5) years. He also described in greater detail some of the testimony provided by company employees.

RESPONSE: The department's Air Pollution Control Program acknowledges the technology being implemented by PSF to reduce odor from its operations and its progress over the years. PSF is encouraged to continue its efforts to reduce odors coming from its operations. No wording changes have been made to the proposed amendment as a result of these comments.

Due to similar information addressed in the following seven (7) comments, one (1) response follows this group of seven (7) comments:

COMMENT: One citizen addressed the commission as a scientist and posed two (2) questions about this issue: What assumptions lead us to court species suicide and extinction? What alternate assumptions could be adopted to generate viable sustainable life affirming ways for humans to live? A list of some of the ways concentrated animal feeding operations help our culture to destroy ourselves and the entire biosphere was handed out to the commission.

COMMENT: A farmer addressed the commission as someone who lives between two (2) CAFOs. He is concerned that debating numbers such as 110 and 170 are numbers that no one really knows about. The debate on this issue has been going on for ten (10) years and it still stinks.

COMMENT: A citizen commented that during the public hearing the commission allowed PSF to make four (4) presentations and that citizens were discouraged from speaking before the commission in the essence of time. He questioned the best estimate threshold of 110 if it is achieved by the olfactory panel evaluation. As long as an odor panel is being used to analyze or detect the threshold, enforcement proceedings, if any, will always be challengeable in a court of law by the defendant. He concluded that time was of the essence for an enforceable odor standard to be placed on industry to bring long awaited relief to citizens of the state.

COMMENT: A citizen addressed the commission and spoke about how sensitive he personally is to ammonia. He shared experiences living near these operations.

COMMENT: Three (3) citizens commented together that the CAFO smell makes them sick and it enters into the house when people come from outside. They believe the factory farm is affecting their health in a significant manner. Numerous health studies done on these CAFOs show that they affect not only the workers health but also the people who live near these factory farms. New technology may have helped with odors on-site, but it hasn't helped with the odors coming off-site. PSF has not been a boom to the counties that they are located in. Assessed valuation for property is lower now than before

due to proximity to the CAFOs. Two (2) attachments show the Northeast Missouri Per Capita Income from 1987 to 1997 and a press release from the University of Missouri on property devaluation studies near CAFOs.

COMMENT: Two (2) citizens commented together that the state of Missouri seems to be giving us three (3) choices: die, breathe hog waste, or move from the area. It was clear the commission did not want to hear us at the public hearing. The commission said they just did not have time to listen. The commission meeting lasted just two (2) hours and forty-five (45) minutes.

COMMENT: A citizen commented that he listened with skepticism to PSF at the meeting. The new technology used by PSF is not reducing the odors from their facilities. His nose tells him that there has been no reduction in either the potency, the volume or the frequency of foul odors. Technology does exist to eliminate the odor but it requires a complete reconstruction of their system and PSF doesn't want to go to that expense. By reducing nitrogen content of the effluent, far fewer acres would be required to spread on. This assumes that no phosphate standard will ever be imposed. He believes a phosphate standard will be imposed and it will require far more, not fewer acres to spread on.

RESPONSE: The intent of this rule action is to amend the detection threshold value. The present detection threshold value is set too low and was not fair to industry. The proposed detection threshold value is based upon research conducted in year 2002 and is set at a value that is fair to industry and protective of the general welfare of the people around these operations. This amendment will not eliminate odor but will be a tool used to record odor violations if they occur. In response to regulations, consent agreements, etc., the CAFO industry is changing and companies such as PSF are experimenting with and implementing technologies dismissed years earlier for being too radical or too expensive. This is encouraging, but it takes time. In the meantime, this proposed amendment sets a standard that is fair to both sides. No wording changes have been made to the proposed amendment as a result of these comments.

Due to similar information addressed in the following two (2) comments, one (1) response follows this group of two (2) comments:

COMMENT: The director of the department's Air Pollution Control Program addressed the commission and the audience about the challenge of balancing the two (2) interests represented. He assured everyone that what they have said has been heard and that we will do the utmost to address the issues to the extent that we can.

COMMENT: The legal counsel for the commission restated the statutory power of the commission to address the issue being discussed today. He stated that the whole purpose of this rule action is to get the detection threshold number in the rule as close to correct as we can for the purpose of controlling odors. The number chosen must also be defensible in court when a violation is issued.

RESPONSE: The department's Air Pollution Control Program recommends that this proposed amendment be adopted to implement an enforceable odor detection threshold. No wording changes have been made to the proposed amendment as a result of these comments.

Title 10—DEPARTMENT OF NATURAL RESOURCES
Division 10—Air Conservation Commission
Chapter 5—Air Quality Standards and Air Pollution
Control Rules Specific to the St. Louis Metropolitan Area

ORDER OF RULEMAKING

By the authority vested in the Missouri Air Conservation Commission under section 643.050, RSMo 2000, the commission amends a rule as follows:

10 CSR 10-5.480 Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws is **amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on March 17, 2003 (28 MoReg 555). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Department of Natural Resources' Air Pollution Control Program received one (1) comment from the U.S. Environmental Protection Agency (EPA).

COMMENT: EPA recommended that paragraph (4)(E)2. be revised to add the word—affirmative—so that the sentence reads — The effective date of EPA's affirmative finding that motor vehicle emissions budget. . . .

RESPONSE: After consultation between EPA and the department's Air Pollution Control Program, it was mutually agreed that the proposed amendment language should be retained for consistency with the federal rule language. Therefore, no wording changes have been made as a result of this comment.

**Title 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 10—Licensee's Responsibilities**

ORDER OF RULEMAKING

By the authority vested in the Missouri Gaming Commission under sections 313.004, 313.800, 313.805, 313.807 and 313.812, RSMo, 2000, the commission withdraws an amendment as follows:

11 CSR 45-10.030 Licensee's Duty to Report and Prevent Misconduct is **withdrawn**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on April 1, 2003 (28 MoReg 649). This proposed amendment is withdrawn.

SUMMARY OF COMMENTS: The Missouri Gaming Commission received numerous comments on this proposed amendment. Most of the comments were against the amendment.

RESPONSE: As a result, the Missouri Gaming Commission is withdrawing this rulemaking.

**Title 19—DEPARTMENT OF HEALTH
AND SENIOR SERVICES
Division 15—Division of Senior Services
Chapter 4—Older Americans Act**

ORDER OF RULEMAKING

By the authority vested in the director of the Department of Health and Senior Services under section 660.050, RSMo Supp. 2002, the director hereby amends a rule as follows:

19 CSR 15-4.050 Funding Formula and Fiscal Management is **amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2003 (28 MoReg 890–895). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed

amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

**Title 19—DEPARTMENT OF HEALTH
AND SENIOR SERVICES
Division 30—Division of Health Standards and Licensure
Chapter 40—Comprehensive Emergency Medical Services
Systems Regulations**

ORDER OF RULEMAKING

By the authority vested in the director of the Department of Health and Senior Services under sections 190.109 and 190.185, RSMo Supp. 2002, the director amends a rule as follows:

19 CSR 30-40.309 Application and Licensure Requirements Standards for the Licensure and Relicensure of Ground Ambulance Services is **amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on May 1, 2003 (28 MoReg 896). No changes have been made in the text of the proposed amendment, so it is not reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.