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

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 If an existing rule is to be amended or rescinded, it will have a heading of proposed amendment or proposed rescission.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

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

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

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

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

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

Title 1—OFFICE OF ADMINISTRATION
Division 30—Design and Construction
Chapter 5—Minority/Women Business Enterprises

PROPOSED AMENDMENT

1 CSR 30-5.010 Minority/Women Business Enterprise Participation in State Construction Contracts. The Office of Administration is amending sections (1), (4), (5), (6), (7), (8), (9), (10), and (11), and deleting the forms which follow the rule in the *Code of State Regulations*.

PURPOSE: This amendment changes the procedures used in the Minority Business Enterprises (MBEs) and Women Business Enterprises (WBEs) program as they relate to subcontracting goals.

(1) Definitions.

(B) "Bid" means a bid proposal or bid submitted to the Division of **Facilities Management,** Design and Construction by a bidder.

(G) "Director" means the director of the Division of **Facilities Management,** Design and Construction.

(H) "Joint *[V]*venture" means an association of two (2) or more businesses to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge.

(K) "Minority Business Enterprise" means a business concern which is at least fifty-one percent (51%) owned by one (1) or more minority**(ies)** as defined in (1)(J) or in the case of any publicly-owned business at least fifty-one percent (51%) of the stock of which is owned by one (1) or more minorities as defined in (1)(J) and whose management and daily business operations are controlled by one (1) or more minorities as defined in the rule.

(4) Commissioner, Duties and Responsibilities.

(A) The commissioner shall**, through the Office of Supplier and Workforce Diversity—**

1. Compile, maintain and make available a directory of MBE/WBEs along with their capabilities relevant to general contracting requirements and to particular solicitations. The commissioner shall make the directory available upon request, to all bidders and contractors. The director shall specify the name of the MBE/WBE, the type of business it conducts, its address, phone number and contact person;

2. To the extent deemed appropriate, include all MBE/WBEs on **open** solicitation mailing lists;

3. Instruct the director **and the Office of Supplier and Workforce Diversity** to annually report in writing to the commissioner concerning the awarding of contracts to MBE/WBEs; and

4. Certify the eligibility of MBE/WBEs and joint ventures involving MBE/WBEs. The commissioner may accept certification made by other **municipalities, counties,** state and federal agencies **which meet the minimum requirements for Office of Administration certification**.

(5) Percentage Goals and Compliance.

(A) For contracts bid and awarded in an amount greater than or equal to one hundred thousand dollars ($100,000), the successful bidder shall have as a**n overall** goal subcontracting not less than ten percent (10%) of the awarded contract price for work to be performed in the St. Louis or Kansas City metropolitan areas to MBE/**WBE***[(]*s*[)]*, and shall have as a**n overall** goal subcontracting not less than five percent (5%) of the awarded contract price for work to be performed *[in other than the St. Louis or Kansas City metropolitan areas to MBE/WBE(s)]* **by WBEs**. **Individual project goals may be set higher than the overall goals in areas where participation is demonstrated to be higher such as the St. Louis and Kansas City metropolitan areas. Individual project goals may be set lower than the overall goals in areas where participation is demonstrated to be lower, such as rural communities.**

(B) If, after the contract has been awarded to the contractor, the contractor fails to meet or maintain the percentage goal, s/he must satisfactorily explain to the director why the goal cannot be achieved and why meeting the goal was beyond the contractor's control.

(C) If the director finds the contractor's explanation unsatisfactory, the director *[shall notify the commissioner. The commissioner]* may take any appropriate action, including, but not limited to:

1. Declaring the contractor ineligible to participate in any state contracts administered through the Office of Administration for a period not to exceed six (6) months; and

2. Declaring the contractor in breach of *[the]* contract.

(6) Waiver.

(A) A bidder is required to make a good faith effort to locate and contract with MBE/WBEs. If a bidder has made a good faith effort to secure the required MBE/WBEs and has failed, s/he may submit

with his/her bid proposal the information requested *[in Appendix A, Application for Waiver]* **on forms provided with the bid documents**. The *[commissioner]* **director** will review the bidder's actions as set forth in the bidder's *[Application for Waiver,]* **submittal documents** and *[any]* other factors deemed relevant by the *[commissioner]* **director**, to determine if a good faith effort has been made to meet the applicable percentage goal. If the bidder is judged not to have made a good faith effort, the bid shall be rejected.

(C) In reaching his/her determination of good faith, the *[commissioner]* **director** may evaluate, but is not limited to, the following factors:

[1. Attendance at pre-bid meetings scheduled by the director to inform bidders and MBE/WBEs of contracting and subcontracting opportunities and responsibilities associated with MBE/WBE participation;

2. Attempts by the bidder to advertise in general circulation trade association and minority focus media concerning subcontracting opportunities;

3. Attempts to provide written notice to specific MBE/WBEs that their services were being solicited, in sufficient time to allow for their effective participation;

4. Follow-up attempts by the bidder to the initial solicitation(s) to determine with certainty whether MBE/WBEs were interested;

5. The extent to which the bidder divided work into projects suitable for subcontracting to MBE/WBEs;

6. Whether the bidder provided interested MBE/WBEs with sufficiently detailed information about the plans, specific actions and requirements about the contract;

7. Efforts by the bidder to negotiate in good faith with MBE/WBEs for specific sub-bids. Documentation should include names, addresses and telephone numbers of firms contacted, a description of all information provided the MBE/WBEs and an explanation as to why agreements were not reached;

8. Reasons for rejecting MBE/WBE's proposal;

9. The bidder's efforts to locate MBE/WBEs not on the directory list and assist MBE/WBEs in becoming certified as such;

10. The bidder's initiatives to encourage and develop MBE/WBEs;

11. The efforts of the bidder to help the MBE/WBE overcome any legal or other barriers impeding the participation of MBE/WBEs in the construction contract; and

12. The availability of MBE/WBEs and the adequacy of the bidder's efforts to increase the participation of such businesses provided by the persons and organizations consulted by the bidder.]

1. The bidder's efforts to develop and sustain a working relationship with MBE/WBEs;

2. The bidder's efforts and methods to provide MBE/WBEs with full sets of plans and specification or appropriate sections thereof sufficient to prepare a proposal to the bidder;

3. The bidder's efforts and methods to inform multiple local MBE/WBEs about the proposed work in a timely manner and define for them the specific scope of work for which a proposal is requested;

4. The bidder's efforts to make initial contact with at least three (3) MBE/WBEs for each category of work to be performed, follow-up with those contacted and receive a proposal for those categories of work;

5. Reasons for rejecting MBE/WBE's proposal;

6. The extent to which the bidder divided work into projects suitable for subcontracting to MBE/WBEs;

7. The bidder's ability to provide sufficient evidence in the form of documentation that supports the information provided; and

8. Actual participation of MBE/WBEs achieved by the bidder.

(7) Bidder's Duties and Responsibilities.

(A) The bidder shall submit with his/her bid proposal the information requested *[in Appendix B]* **on the form provided** for every MBE/WBE the bidder intends to use on the contract work.

(B) If the MBE/WBE is a joint venture, and one (1) or more coventurers is not certified as a MBE/WBE, the bidder shall submit with his/her bid proposal the information requested *[in Appendix C]* **on the form provided**.

[(C) If the MBE/WBE that the bidder proposes to use on the project is not certified, the bidder shall submit with his/her bid proposal the information requested in Appendix D.]

(C) The bidder shall use MBE/WBEs certified by the Office of Administration for other municipalities, counties, state or federal agencies.

(E) Successful bidders shall provide the director *[regular]* **monthly** reports on the bidder's progress in meeting its MBE/WBE obligations.

(8) Counting MBE/WBE Participation Toward Meeting MBE/WBE Goals.

(D) A bidder may count toward his/her MBE/WBE goals only that portion of work performed at the lowest subcontract level such that the percentage of work performed by MBE/WBEs cannot exceed one hundred percent (100%).

1. A MBE/WBE is considered to perform a commercial useful function when it is responsible for executing a distinct element of the work contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether a MBE/WBE is performing a commercially useful function, the director shall evaluate the amount of work subcontracted to the MBE/WBE, industry practices and any other relevant factors.

2. A MBE/WBE may subcontract a portion of the work. If a MBE/WBE subcontracts a greater portion of the work than would be expected on the basis of normal industry practices, the MBE/WBE shall be presumed not to be performing a commercially useful function. The MBE/WBE may present evidence to rebut this presumption to the bidder. The bidder's decision on the rebuttal of this presumption is subject to review by the director.

[(D)] **(E)** A bidder may count toward its MBE/WBE goals expenditures for materials and supplies obtained from MBE/WBE suppliers and manufacturers, provided that the MBE/WBE assumes the actual and contractual responsibility for the provision of the materials and supplies.

1. The bidder may count its entire expenditure to a MBE/WBE manufacturer. For the purposes of this regulation, a manufacturer shall be defined as an individual or firm that produces goods from raw materials or substantially alters them before resale.

2. The bidder may count *[twenty percent (20%) of]* its **entire** expenditures to MBE/WBE suppliers *[that are not manufacturers]* provided that the MBE/WBE supplier performs a commercially useful function, as defined in paragraph (8)(C)1. of this rule, in the supply process.

(9) Maintenance of Records and Reports. The director shall maintain records identifying and assessing the contractor's progress in achieving and maintaining MBE/WBE percentage goals. These records shall show—

(C) *[Regular]* **Monthly** reports from the contractor on its progress in meeting MBE/WBE goals.

(10) Certification of MBE/WBEs.

(A) Bidders shall submit with their bid proposals the information requested *[in Appendix D, and as appropriate Appendix C,]* **as appropriate on forms provided for that purpose in the bid documents** to certify *[firms or individuals]* **joint venture firms** wishing to participate as MBE/WBEs under these regulations.

(B) Except as provided in subsection (10)(C) that follows, each firm or individual seeking certification to participate as a MBE/WBE

in a state contract shall complete and submit to the commissioner the information requested *[in Appendix D]* **on forms provided for that purpose**. Minority or women partners in a joint venture shall submit to the commissioner the information requested *[in both Appendices C and D]* **on forms provided in the bid documents for that purpose**. The information must be provided by an authorized representative of the firm or individual.

(C) A firm or individual seeking to participate as a MBE/WBE under these regulations need not submit the information described in (10)(A) and (B) if the potential MBE/WBE states in writing that it has submitted the same information to or has been certified by the commissioner within the last five (5) years and has filed with the commissioner an annual update to the information requested *[in Appendix D]*; or the potential MBE/WBE has been certified as a*[n]* MBE/WBE by another Missouri **municipality, county,** state agency **or federal agency** within the last five (5) years.

(11) Eligibility Standards.

(D) Once certified, a MBE/WBE shall update its submission annually by submitting to the commissioner the information requested *[in Appendix D]* **on forms provided for that purpose** or by certifying that the information requested *[in Appendix D]* **that is** on file with the commissioner is still accurate. Anytime there is a change in ownership or control of the firm, the MBE/WBE shall update the previously filed information requested *[in Appendix D]*.

*AUTHORITY: section 8.320, RSMo [1986] **2000**. Original rule filed March 9, 1984, effective Aug 11, 1984. Emergency amendment filed Dec. 10, 1985, effective Dec. 20, 1985, expired April 19, 1986. Amended: Filed Dec. 10, 1985, effective April 11, 1986. Amended: Filed Oct. 27, 2005.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Office of Administration, Michael Keathley, Commissioner, PO Box 809, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 1—OFFICE OF ADMINISTRATION
Division 35—Division of Facilities Management
Chapter 1—Facility Maintenance and Operation

PROPOSED AMENDMENT

1 CSR 35-1.050 Public Use of State Facilities. The Office of Administration is amending section (5).

PURPOSE: This amendment limits those who can access the ATMs for servicing to those with concealed carry permits from Missouri.

(5) Weapons Capable of Lethal Use Prohibited; Exceptions.

(A) Carrying a firearm or any other weapon readily capable of lethal use into the Capitol Buildings and grounds as defined in subsection (1)(B), the offices in the Capitol Building occupied by the Governor and the Governor's administration, the offices in the Capitol Building of the Lieutenant Governor, the offices in the Capitol Building of the State Auditor, the offices in the Capitol Building of the State Treasurer, and other buildings and grounds as defined in subsection (1)(D), or the Governor's Mansion and grounds, is prohibited. This prohibition shall not apply to state and federal law enforcement officers, peace officers, probation and parole officers, wardens and superintendents of prisons or penitentiaries, members of the armed forces and national guard, persons vested with judicial authority by the state or federal court, and members of the state General Assembly, acting in their official capacity. **This prohibition shall not apply to any person who has a valid concealed carry endorsement issued pursuant to sections 571.101 to 571.121, RSMo while such person is servicing an automated teller machine (ATM) in a state owned or leased building; provided, however, that employers of such persons must supply in writing to the state facilities operations manager the names, addresses and photographs of their employees authorized to service such ATMs at least five (5) business days before such persons start servicing the ATMs, and the employers must immediately advise in writing to the state facilities operations manager when any such employee is no longer working for said employer.** Possession of a firearm by a person holding a valid state concealed carry endorsement in a vehicle located in a parking area upon the premises of any area referenced in this rule shall not be prohibited so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises.

*AUTHORITY: sections 8.110, 8.320, 34.030, 37.005 and 536.025, RSMo 2000 **and** 536.023.3, **RSMo Supp. 2004**. Original rule filed April 23, 1998, effective Nov. 30, 1998. Emergency amendment filed Oct. 9, 2003, effective Oct. 19, 2003, expired April 15, 2004. Amended: Filed Oct. 9, 2003, effective April 30, 2004. Amended: Filed Oct. 27, 2005.*

PUBLIC COST: This proposed amendment will have positive fiscal impact on the Department of Public Safety, Division of Capitol Police, because they would not be required to accompany the guards servicing the ATMs in the future. 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 have a small negative impact on private entities that access the ATMs because they will have to send in the identifying information that is required by the proposed amendment, which may be offset by the fact that they will not have to call Capitol Police and wait for an available officer to accompany them when they service the ATMs. This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Office of Administration, Michael Keathley, Commissioner, PO Box 809, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*

Title 1—OFFICE OF ADMINISTRATION
Division 35—Division of Facilities Management
Chapter 2—Leasing

PROPOSED AMENDMENT

1 CSR 35-2.030 Administration of the Leasing Process. The Office of Administration is amending section (4).

PURPOSE: This amendment limits those who can access the ATMs for servicing to those with concealed carry permits from Missouri.

(4) All leases entered into by the Office of Administration shall prohibit carrying a firearm or other weapon readily capable of lethal use into the leased premises. This prohibition shall not apply to state and

federal law enforcement officers, peace officers, probation and parole officers, wardens and superintendents of prisons or penitentiaries, members of the armed forces and national guard, persons vested with judicial authority by the state or federal court, and members of the state General Assembly, acting in their official capacity. **This prohibition shall not apply to any person who has a valid concealed carry endorsement issued pursuant to sections 571.101 to 571.121, RSMo while such person is servicing an automated teller machine (ATM) in a state owned or leased building; provided, however, that employers of such persons must supply in writing to the state facilities operations manager the names, addresses and photographs of their employees authorized to service such ATMs at least five (5) business days before such persons start servicing the ATMs, and the employers must immediately advise in writing to the state facilities operations manager when any such employee is no longer working for said employer.** Possession of a firearm by a person holding a valid state concealed carry endorsement in a vehicle located in a parking area upon the premises of any area referenced in this rule shall not be prohibited so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises.

AUTHORITY: sections 8.110, 8.320, 34.030, 37.005 and 536.025, RSMo 2000 ***and*** *536.023.3,* ***RSMo Supp. 2004****. Original rule filed April 15, 1998, effective Nov. 30, 1998. Emergency amendment filed Oct. 9, 2003, effective Oct. 19, 2003, expired April 15, 2004. Amended: Filed Oct. 9, 2003, effective April 30, 2004. Amended: Filed Oct. 27, 2005.*

PUBLIC COST: This proposed amendment will have positive fiscal impact on the Department of Public Safety, Division of Capitol Police, because they would not be required to accompany the guards servicing the ATMs in the future. 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 have a small negative impact on private entities that access the ATMs because they will have to send in the identifying information that is required by the proposed rule change, which may be offset by the fact that they will not have to call Capitol Police and wait for an available officer to accompany them when they service the ATMs. This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Office of Administration, Michael Keathley, Commissioner, PO Box 809, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 100—Division of Credit Unions
Chapter 2—State-Chartered Credit Unions

PROPOSED RESCISSION

4 CSR 100-2.045 Member Business Loans. This rule established criteria for credit unions making member business loans.

PURPOSE: This rule is being rescinded allowing state-chartered credit unions to operate under National Credit Union Administration (NCUA) rule, Part 723 which governs state-chartered credit unions in the absence of a state rule.

AUTHORITY: sections 370.070, 370.071, 370.100 and 370.310, RSMo 2000. Original rule filed March 7, 2000, effective Sept. 30, 2000. Amended: Filed Nov. 6, 2000, effective May 30, 2001. Amended: Filed Nov. 1, 2004, effective April 30, 2005. Rescinded: Filed Oct. 26, 2005.

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 Director, Division of Credit Unions, PO Box 1607, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 240—Public Service Commission
Chapter 3—Filing and Reporting Requirements

PROPOSED RULE

4 CSR 240-3.570 Requirements for Carrier Designation as Eligible Telecommunications Carriers

PURPOSE: This rule establishes criteria for submission to the commission when a company seeks designation as an eligible telecommunications carrier and to establish criteria for carriers designated as eligible telecommunications carriers.

(1) For purposes of this rule, the following definitions apply.

(A) Alternative local exchange telecommunications company (ALEC) is as defined in section 386.020(1), RSMo.

(B) Commercial mobile radio service (CMRS) provider provides service as identified in 47 CFR Parts 20 and 24.

(C) Eligible telecommunications carrier (ETC) is a carrier designated as such by the Missouri Public Service Commission pursuant to 47 CFR 54.201 in order to receive universal service support.

(D) Incumbent local exchange telecommunications company is as defined in section 386.020(22), RSMo.

(E) Competitive carrier shall refer to both commercial mobile radio service providers and alternative local exchange telecommunications carriers.

(2) Each request for ETC designation shall include:

(A) Intended use of the high-cost support, including detailed descriptions of any construction plans with start and end dates, populations impacted by construction plans, existing tower site locations for CMRS cell towers, and estimated budget amounts;

(B) A five (5)-year plan demonstrating how high-cost universal service support will be used to improve coverage, service quality or capacity throughout the service area for which the requesting carrier seeks ETC designation including a detailed map of coverage area before and after improvements;

(C) A statement as to how the proposed plans would not otherwise occur absent the receipt of high-cost support;

(D) A demonstration that the receipt of high-cost support will only be used to improve coverage, service quality or capacity in the Missouri service area in which ETC designation is requested and that such support is in addition to any expenses the competitive carrier would normally incur; and

(E) A demonstration of the carrier's ability to remain functional in emergency situations.

(3) Each request for ETC designation shall include a commitment to advertise the availability of services and charges therefore using media of general distribution throughout the ETC service area.

(4) Each request for ETC designation shall include a commitment to provide Lifeline and Link Up discounts consistent with 47 CFR 54.401, 47 CFR 54.411 and Chapter 4 CSR 240-31 of the commission's rules and publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service consistent with 47 CFR 54.405.

(5) Each request for ETC designation shall include a commitment to offer a local usage plan comparable to those offered by the incumbent local exchange carrier in the areas for which the carrier seeks designation. Such commitment shall include a commitment to provide Lifeline and Link Up discounts at rates, terms and conditions comparable to the Lifeline and Link Up offerings of the incumbent local exchange carrier providing service in the ETC service area.

(6) Each request for ETC designation shall include a statement that the carrier will satisfy consumer privacy protection standards as provided in 47 CFR 64 subpart U and service quality standards as provided in section (12) below.

(7) Each request for ETC designation shall include a statement that the requesting carrier acknowledges it shall provide equal access if all other ETCs in that service area relinquish their designations pursuant to section 214(e) of the Telecommunications Act of 1996.

(8) Each request for ETC designation by a CMRS provider shall include a commitment to abide by the *CTIA Consumer Code for Wireless Service*.

(9) Carriers designated as ETCs shall develop a bill design that can be easily interpreted by their customers and clearly sets forth charges in compliance with state and federal billing requirements, and shall not represent that the carrier's discretionary cost recovery fees are taxes or government fees.

(10) Service Provisioning Commitment.

(A) Each competitive carrier designated as an ETC shall make available to each end-user subscribing to its supported services within its ETC designated service area the following service features:

1. A local usage plan comparable to those offered by the incumbent local exchange carrier in the area(s) for which the carrier seeks designation;

2. Dual tone multi-frequency signaling or its functional equivalent;

3. Single-party service or its functional equivalent:

4. Access to emergency services;

5. Emergency telephone number services capable of automatic number identification, automatic location identification and call routing facilities to facilitate public safety response; e.g., Enhanced 911 Service, where the local government agency serving the end-user has in place a Public Safety Answering Point;

6. Access to interexchange service;

7. Access to telecommunications relay services by dialing 711;

8. Access to Directory Assistance service;

9. Access to operator services;

10. Toll limitation and/or blocking for qualifying low-income consumers; and

11. Unlimited local calling for Lifeline subscribers within its service area.

(B) Once designated as an ETC, a carrier shall extend its network to serve new customers upon a reasonable request.

(C) All carriers designated as an ETC shall publicize the construction of all new facilities that will expand the service area or enhance services in unserved or underserved areas so that consumers are aware of the improved service in the area.

(D) All competitive carriers designated as an ETC shall take the following steps, as applicable, to respond to all reasonable requests for service within its ETC service area.

1. If a request comes from a customer within its existing service area, the competitive ETC shall immediately provide service using its standard customer equipment.

2. If a request comes from a customer residing in an area where the competitive ETC does not currently provide service, the competitive ETC shall take steps to provision service as follows:

A. Modify or replace the customer's equipment to provide acceptable service;

B. Deploy a roof-mounted antenna or other network equipment at the premises to provide requested service;

C. Make adjustments at the nearest cell site to provide service;

D. Make any other adjustments to network or customer facilities to provide service;

E. Offer resold service of carriers that have facilities available to that premises; and/or

F. Employ or construct an additional cell site, a cell-extender, or repeater to provide service.

3. Evaluate the costs and benefits of using high-cost universal service support to serve the number of customers requesting service. Where special conditions or special requirements of the customer involve unusual construction or installation costs, the customer may be required to pay a reasonable proportion of such costs as follows:

A. One (1) mile of facilities to provide the minimum class of service will be provided at no charge;

B. Additional charges will be equal to the difference between the estimated cost of the special type of construction and the estimated cost of standard construction. Charges will include materials, contract services, and loaded labor rates;

C. The customer shall bear unusual maintenance costs for the special construction; and

D. To assist in defraying construction costs beyond those of a prudent investment by the company, the customer shall be allowed to pay all or a portion of the construction and installation charges through an arrangement agreeable to the company, the customer, and the commission.

4. If there is no possibility of providing service to the requesting customer, the competitive ETC shall notify the customer and include such information in its quarterly report to the commission.

(11) Each alternative local exchange carrier designated as an ETC shall abide by Chapter 4 CSR 240-32 of the commission's rules. Except as otherwise provided in this rule, each CMRS carrier designated as an ETC shall comply with 4 CSR 240-32.040, 4 CSR 240-32.050(1)–(3) and (6), 4 CSR 240-32.060(1), (5)–(10), (12)(H), (15), 4 CSR 240-32.070, 4 CSR 240-32.080 (1)–(4), (5)(A)–(D), (5)(H), 4 CSR 240-32.100(1) and (2), and 4 CSR 240-32.200.

(12) Within thirty (30) days of receiving ETC status, the CMRS carrier shall make an informational filing with the commission consisting of a complete description of all of its service offerings. Such informational filings will be amended as service offerings are introduced or modified.

(13) Each competitive carrier designated as an ETC shall maintain a record of customer complaints that have been received by the company in a manner that includes, at a minimum: the end-user name; the account number; a description of the complaint; the date the complaint was filed; and, the amount of refund, if any.

(A) If the account number is utilized, a cross-reference with the end-user's name must also be readily available.

(B) Each complaint shall count as a separate report regardless of whether subsequent reports relate to the same physical defect, difficulty, or dissatisfaction with the provision of the CMRS services.

(14) If a competitive ETC and a customer fail to resolve a matter in dispute, the competitive ETC shall advise the customer of his/her right to file an informal or formal complaint with the commission under 4 CSR 240-2.070.

(15) A competitive ETC shall acknowledge or respond by fax transmission, e-mail or electronic filing and information system (EFIS) to all commission staff inquiries related to informal complaints as follows:

(A) The company shall acknowledge receipt of inquiries related to denial or discontinuance of service issues within twenty-four (24) hours;

(B) The company shall acknowledge receipt of inquiries related to all other informal complaints within three (3) business days; such acknowledgment shall include current account status and an estimated time frame for final response;

(C) If the company and Public Service Commission staff have not informally agreed to an extension or a resolution to the informal complaint, the company shall provide a status report on the informal complaint within fifteen (15) days of receiving such inquiry;

(D) The company shall provide, no later than thirty (30) days after receiving such inquiry, the company's plan and time frame to resolve the informal complaint; and

(E) If a formal complaint regarding the same inquiry is filed the company need not respond further to the informal complaint.

(16) If a competitive ETC and a customer fail to resolve a matter in dispute through the informal complaint process, the Public Service Commission staff shall advise the customer of his/her right to file a formal complaint with the commission under 4 CSR 240-2.070. Resolution of the complaint may result in revocation of ETC designation.

(17) Provide customer service contact information online and on billing statements if the competitive ETC uses third party billing agents.

(18) Each CMRS provider designated as an ETC shall submit to the commission's Telecommunications Department a quarterly report of its customer complaints as indicated in section (14) above and its inability to provide service as indicated in subsection (11)(D) above.

(19) Each ALEC designated as an ETC shall continue to submit quarterly quality of service reports to the commission's Telecommunications Department consistent with 4 CSR 240-3.550(5) of the commission's rules.

(20) All CMRS ETC providers shall submit an annual report to the commission on or before April 15 of each year, except as otherwise provided for in this rule.

(A) CMRS ETC providers shall submit their annual reports either on a form provided by the commission or on a computer-generated replica that is acceptable to the commission. Reports being submitted on paper are to be prepared in loose-leaf format and sent to the attention of the secretary of the commission. Computer-generated reports can be submitted through the commission's electronic filing and information system (EFIS). Attempts to substitute forms such as stockholder reports without concurrently submitting official commission forms with appropriate cross-references will be considered noncompliant. All requested information shall be included in the annual report, where applicable, even if it has been provided in a previous annual report.

(B) A CMRS ETC provider that receives a notice from the commission stating that deficiencies exist in the information provided in the annual report shall respond to that notice within twenty (20) days after the date of the notice, and shall provide the information requested in the notice in its response.

(C) If a CMRS ETC provider subject to this rule considers the information requested on the annual report form to be nonpublic information, it must submit both a fully completed version to be kept under seal and a redacted public version that clearly informs the reader that the redacted information has been submitted as nonpublic information to be kept under seal. Submittals made under this section that do not include both versions will be considered deficient. The staff on behalf of the commission will issue a deficiency letter to the company and if both versions of the annual report are not received within twenty (20) days of the notice, the submittal will be considered noncompliant.

(D) In addition to the foregoing, submittals made under this section must meet the following requirements:

1. A cover letter stating that the CMRS ETC provider is designating some or all of the information in its annual report as confidential information, and including the name, phone number and e-mail address (if available) of the person responsible for addressing questions regarding the confidential portions of the annual report, must be submitted with the reports;

2. The cover of each version of the report must clearly identify whether it is the public or nonpublic version;

3. A detailed affidavit that identifies the specific types of information to be kept under seal, provides a reason why the specific information should be kept under seal and states that none of the information to be kept under seal is available to the public in any format must be prominently attached to both versions of the report; and

4. Each page of each version of the report that contains nonpublic information shall be clearly identified as containing such information.

(E) If an entity asserts that any of the information contained in the nonpublic version of the annual report should be made available to the public, then that entity must file a pleading with the commission requesting an order to make the information available to the public, and shall serve a copy of the pleading on the CMRS ETC provider affected by the request. The pleading must explain how the public interest is better served by disclosure of the information than the reason provided by the CMRS ETC provider justifying why the information should be kept under seal. The CMRS ETC provider affected by the request may file a response to a pleading filed under these provisions within fifteen (15) days after the filing of such a pleading. Within five (5) business days after the due date for the filing of the CMRS ETC provider's response to a request filed under these provisions, the general counsel by filing of a pleading will make a recommendation to the commission advising whether the request should be granted.

(F) A CMRS ETC provider that is unable to meet the submission date established in section (1) of this rule may obtain an extension of up to thirty (30) days for submitting its annual report by:

1. Submitting a written request, which states the reason for the extension, to the attention of the secretary of the commission prior to April 15; and

2. Certifying that a copy of the written request was sent to all parties of record in pending cases before the commission where the CMRS ETC provider's activities are the primary focus of the proceedings;

(G) A CMRS ETC provider that is unable to meet the submission date established in section (1) of this rule may request an extension of greater than thirty (30) days for submitting its annual report by:

1. Filing a pleading, in compliance with the requirements of Chapter 2 of 4 CSR 240, which states the reason for and the length of the extension being requested, with the commission prior to April 15; and

2. Certifying that a copy of the pleading was sent to all parties of record in pending cases before the commission where the CMRS ETC provider's activities are the primary focus of the proceedings.

(H) Responses to deficiency notices under the provisions of subsection (20)(B) of this rule, requests for confidential treatment under the provisions of subsection (20)(C) of this rule, pleadings requesting public disclosure of information contained under seal under the

provisions of subsection (20)(E) of this rule, and requests for extensions of time under the provisions of subsection (20)(F) or (20)(G) of this rule may be submitted through the commission's electronic filing and information system (EFIS).

(I) A CMRS ETC provider that does not timely file its annual report, or its response to a notice that its annual report is deficient, is subject to a penalty of one hundred dollars ($100) for each day that it is late in filing its annual report or its response to a notice of deficiency.

(21) Each ALEC designated as an ETC shall continue to submit annual reports consistent with 4 CSR 240-3.540 of the commission's rules.

(22) Each competitive carrier designated as an ETC shall notify the manager of the Telecommunications Department, in writing or by electronic mail, within thirty (30) days of a change in the company-designated contacts. The update shall include the name(s), address(es) and/or telephone number(s) of the designated individual(s). The contact name(s) provided pursuant to this section shall be the individual(s) primarily responsible for: customer service; repair and maintenance; answering complaints; authorizing and/or furnishing refunds to customers; and information filing issues.

(23) All carriers designated as ETCs shall comply with the commission's annual certification process by August 15 of each year as outlined in the Order Establishing Certification Procedure in Case No. TO-2002-347 and as subsequently amended. Questions regarding the appropriate certification process for competitive carriers designated as ETCs should be directed to the commission's Telecommunications Department.

(24) In addition to the information submitted in section (23) above, each competitive carrier designated as an ETC must submit by August 15 of each year:

(A) Progress updates on its five (5)-year improvement plan;

(B) Detailed information on outages in its network for the past year;

(C) Detailed information on how many requests for service from potential customers were unfulfilled for the past year;

(D) The number of complaints for the previous year;

(E) A demonstration that the receipt of high-cost support was only used to improve coverage, service quality or capacity in the Missouri service area in which ETC designation was granted and that such support was used in addition to any expenses the competitive carrier would normally incur; and

(F) An affidavit signed by an officer of the company certifying that the competitive ETC continues to comply with the applicable service quality standards as identified in section (12) above and consumer protection rules as identified in section (6) above, continues to be able to function in emergency situations, continues to offer a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas, and continues to provide equal access to interexchange carriers.

(25) All reports required to be submitted to the commission shall be attested to by an officer or authorized agent of the carrier designated as an ETC.

(26) Each competitive carrier designated as an ETC governed by this rule shall keep all of its books and records in accordance with good business practices, and at such place as they are normally kept in the usual course of business. The competitive carrier designated as an ETC shall make its books and records available to the commission at reasonable times for examination and inspection at a location designated by the commission.

(27) All records required by this rule shall be preserved for at least two (2) years.

(28) Each competitive carrier designated as an ETC shall promptly furnish such other information as the commission staff may reasonably request.

(29) Each CMRS carrier designated as an ETC shall file with the commission an application to reflect a change to the name and/or change, deletion or addition of a trade name under which the CMRS ETC will be doing business in the state of Missouri.

(A) The request for name change or request for change, addition, or deletion of a trade name shall be accompanied by the following, as applicable:

1. An amended Certificate of Incorporation effecting a change of name;

2. A Trade Name Report filed with the Secretary of State;

3. A Withdrawal of Trade Name Report filed with the Secretary of State; and/or

4. A Transfer of Trade Name Report filed with the Secretary of State.

(B) A modified informational filing and attestation that the modified informational filing is identical and no revisions are being made, except for the name change or change, addition or deletion of a trade name, to the existing informational filings of the CMRS ETC.

(30) Carriers designated as an ETC shall not self-certify to the Universal Service Administrative Company for receipt of federal universal service funds.

(31) Carriers designated as an ETC shall not willfully make any false entry in the accounts, books of accounts, records or memoranda kept by any corporation, person or public utility, or shall not willfully destroy, mutilate, alter or by any other means or device falsify the record of any such account, book of accounts, record or memoranda, or shall not willfully neglect or fail to make full, true and correct entries of such account, book of accounts, record or memoranda of all facts and transactions appertaining to the business of such corporations, persons or public utilities, or shall not falsely make any statement required to be made to the commission.

(32) Allegations of a failure to comply with this rule shall be filed with the commission in the form of a formal complaint pursuant to 4 CSR 240-2.070. Resolution of the complaint may result in revocation of the competitive carrier's ETC designation.

(33) The commission shall not certify, by October 1 of each year, any ETC that fails to comply with these rules.

AUTHORITY: sections 386.040, 386.250, 392.451 and 392.470, RSMo 2000. Original rule filed Oct. 31, 2005.

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 cost private entities an estimated $5,001,000 in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Public Service Commission, Cully Dale, Secretary of the Commission, PO Box 360, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register*** *and should include a reference to commission Case No. TX-2006-0169. If comments are submitted via a paper filing, an original and eight (8) copies of the comments are required. Comments*

may also be submitted via a filing using the commission's electronic filing and information system at http://www.psc.mo.gov/efis.asp. A public hearing regarding this proposed rule is scheduled for January 6, 2005, at 10:00 a.m. in Room 310 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. Interested persons may appear at this hearing to submit additional comments and/or testimony in support of or in opposition to this proposed rule, and may be asked to respond to commission questions. Any persons with special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one (1) of the following numbers: Consumer Services Hotline 1-800-392-4211 or TDD Hotline 1-800-829-7541.

FISCAL NOTE
PRIVATE ENTITY COST

I. RULE NUMBER

Title: Missouri Department of Economic Development
Division: Missouri Public Service Commission
Chapter: Chapter 3 - Filing and Reporting Requirements
Type of Rulemaking: New
Rule Number and Name: 4 CSR 240-3.570 Requirements for Carrier Designation as Eligible Telecommunications Carriers

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule:	Classification* by types of the business entities which would likely be affected:	Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:
37	Class A Local Telephone Companies	$0
3	Class B Local Telephone Companies	$0
8	Class C Local Telephone Companies	$396,000 See III. 4 and III. 5
0	Class Interexchange Companies	$0
3	CMRS Carriers – A	$4,500,000 See III 6
3	CMRS Carriers – B	$105,000 See III.7
	All entities	$5,001,000 See III. 8

*Class A Telephone Companies are incumbent local telephone companies with more than $100,000,000 annual revenues system wide; Class B Telephone Companies are incumbent local telephone companies with $100,000,000 annual revenues or less system wide; Class C Local Telephone Companies are all other companies certificated to provide basic local exchange telecommunications services, Class Interexchange Companies are long distance providers. CMRS Carriers – A are nationwide commercial mobile radio service providers. CMRS Carriers B are commercial mobile radio service providers that mainly have a presence within Missouri.

III. WORKSHEET

1. The proposed rule applies to all incumbent local exchange carriers (ILECs), competitive local exchange carriers (CLECs) and all commercial mobile radio service providers (CMRS) that request and/or receive designation as an eligible telecommunications carrier (ETC) for purposes of receiving federal universal service support.

2. The estimated number of entities affected by the proposed rule reflects ILECs and CLECs currently designated as ETCs and estimates the number of CLECs and CMRS that will request and/or receive ETC status in the next year.

3. Missouri carriers currently receive approximately $90,000,000 in federal universal service high cost support. Based on information provided by the industry, it is estimated that Missouri carriers would receive at least another $10,000,000 upon receipt of ETC designation under the terms of this proposed rulemaking.

4. All estimates are based on input from the industry.

5. The rule requires competitive carriers (CLECs and CMRS) to provide a 5-year build-out plan with annual updates. For those CLECs that have already received ETC designation, this is a new requirement. To initially create the plan these carriers estimate a one-time cost of $164,000 ($41,000 per carrier times 4 carriers), with annual updates estimated at approximately $20,000 ($5,000 per carrier times 4 carriers). Additional costs in this category are attributed to new CLEC requests for ETC designation.

6. The rule requires competitive carriers to take steps to respond to customer requests for service in areas not currently served by that competitive carrier. It was estimated that CLECs will need to respond to 3 requests per year per CLEC with ETC designation at an average cost of $8,000 per request.

7. Nationwide CMRS providers estimate compliance with certain provisions of the rule will cost seven figures initially and six figures annually.

8. CMRS providers that operate mainly within Missouri estimate a cost of approximately $105,000 ($35,000 per carrier times 3 carriers) per year. According to industry feedback, this amount is reasonable.

IV. ASSUMPTIONS

1. Fiscal year 2005 dollars were used to estimate costs. No adjustment for inflation is applied.

2. Affected entities are assumed to be in compliance with all other Missouri Public Service Commission rules and regulations, as applicable.

Title 8—DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
Division 50—Division of Workers' Compensation
Chapter 5—Determination of Disability

PROPOSED AMENDMENT

8 CSR 50-5.060 Evaluation of Hearing *[Impairment]* ***Disability***. The division proposes to delete sections (1), (23) and (24), to amend sections (2), (3), (5) through (7), (9) through (16), and (18) through (22) and to renumber sections accordingly.

PURPOSE: *This amendment clarifies the decibel standards based upon the most current American National Standards Institute (ANSI) occupational hearing loss standards. Senate Bill 1 and 130 authorizes the division, by rule, to adopt any superseding ANSI occupational hearing loss standards with respect to frequencies and decibel standards for measuring hearing loss. This amendment adds the requirements for measuring work related hearing disability.*

PURPOSE: The purpose of this rule is to establish the procedures to evaluate hearing [impairment] ***disability****, setting forth methods for its measurement and calculation.*

[(1) The Division of Workers' Compensation makes grateful acknowledgment for scientific advisory assistance in the preparation of this rule to the Central Institute for the Deaf, 818 South Euclid, St. Louis, Missouri, in particular to Dr. Hallowell Davis, its director of research, for his/her counsel and guidance, and to Dr. S. Richard Silverman, its director, who made available his/her own time and help and that of his highly qualified staff.]

[(2)] **(1)** The following are definitions relating to this matter and rule:

(A) Hearing loss—the general condition of reduced auditory sensitivity;

(B) Loss of hearing or threshold shift—a change for the worse in auditory sensitivity;

(C) Threshold—the weakest sound that can be heard;

(D) Decibel **(dB)**—a unit conventionally used to measure the magnitude of sound. In the testing of hearing, it is used to measure the threshold of a listener relative to the standard threshold (U.S. audiometers);

(E) Audiometer—a device for the measurement of the threshold of hearing in decibels relative to a standard;

(F) Hearing level or hearing threshold level—the reading on an audiometer in decibels corresponding to the threshold of hearing of the individual being tested;

(G) Frequency—the number of regular fluctuations made by a sound wave in one (1) second;

(H) Cycle—one (1) of a repeated series of regular fluctuations made by a sound wave;

(I) Audiogram—a chart showing hearing levels at different frequencies;

(J) Hearing *[impairment]* **disability** or *[impairment]* **disability** of hearing—a malfunction or abnormality of hearing of sufficient severity to constitute a practical handicap such as would justify compensation; particularly a reduction of efficiency in everyday communication by speech;

(K) Deafness—term reserved to designate very severe or total *[impairment]* **disability** of hearing; *[and]*

(L) Presbycusis—a loss of hearing occasioned by the aging process*[.]***; and**

(M) "Hearing level" is a technical term that refers to the point (or threshold) in decibels when a testing sound is first detected by the listener. The "lowest hearing level," therefore, represents best hearing not worst hearing. The "lowest measured loss," therefore, is reflected by the lowest decibel rating at which the listener heard the test tone.

[(3)] **(2)** Weeks of compensation for hearing loss due to a traumatic incident (that is, a single accident such as an explosion, a blast or a blow on the head) shall be those provided in items 27 and 28 of subsection 1 of section 287.190, RSMo. **(Complete deafness of both ears—one-hundred eighty (180) weeks; complete deafness of one (1) ear, the other being normal—forty-nine (49) weeks.)**

[(4)] **(3)** Weeks of compensation for hearing loss due to prolonged exposure to harmful noise in employment (that is, an occupational disease) shall be those provided in subsection 3 of section 287.197, RSMo.

[(5)] **(4)** *[Either t]***T**raumatic **occupational** hearing loss(es) *[due to occupational disease]* shall be measured as prescribed in section 287.197, RSMo and this rule.

[(6)] **(5)** When both ears show hearing *[impairment]* **disability**, the computation of *[impairment]* **disability** shall be on the basis of binaural loss as provided in subsection 5 of section 287.197, RSMo.

[(7)] **(6)** Liability for occupational hearing loss occurs only when an employee has been exposed to the hazard of such loss for a period of ninety (90) days or longer and **the loss** becomes exclusively that of the employer in whose employment such exposure took place *[(section 287.063-5)]*.

[(8)] **(7)** Each employer is liable for all of the occupational hearing loss to which his/her employment contributed, subject to the limitations of the measurement of hearing loss provisions, but no employer is liable for hearing loss sustained prior to employment with him/her nor for any hearing loss for which compensation previously was awarded or paid (section 287.197*[-]***.**8).

[(9)] **(8)** The date of disability of occupational hearing loss is the last day of a *[six (6)]* **one (1)**-month period following separation from the employment in which the employee was exposed to harmful noise (section 287.197*[-]***.**7).

[(10)] **(9)** Claim for compensation for occupational hearing loss, if maintained, must be made within *[one (1)]* **two (2)** years of the date of disability, as defined in section *[(9)]* **(8)** of this rule. The provision of medical attention and/or the payment of compensation will toll the statute, as in other workers' compensation cases (section 287.197*[-]***.**7).

[(11)] **(10)** Only pure-tone *[air-condition]* **air-conduction** audiometric instruments that meet the standards *[set by recognized authorities shall be used to measure hearing levels. The reference zero levels of the audiometer used for measuring hearing levels must be explicitly identified either as ASA-1951 (as given in USASI Standard for General Diagnostic Purposes, Z24.5-1951, United States of America Standards Institute, New York 1951) or as ISO (as given in International Organization of Standardization Recommendation R 389, Standard Reference Zero for the calibration of pure-tone audiometers). The corresponding identification must be attached to every decibel value of a hearing level employed in the evaluation of hearing impairment.]* **calibrated to the American National Standards Institute (ANSI) occupational hearing loss reference level standards, including ANSI S 3.6, as referred to in section 287.197.2 shall be used for measuring hearing levels.**

[(12)] **(11)** In the evaluation of hearing *[impairment]* **disability**, only the hearing levels at the frequencies of five hundred (500), one

thousand (1,000) and two thousand (2,000) cycles per second shall be considered; provided, however, that if a subject does not hear the test tone at the ninety-five (95) decibel hearing level in any or all of the three (3) frequencies, the value of one hundred (100) decibels shall be used for such frequency(ies) in calculating the average hearing level.

[(13)] **(12)** Three (3) separate audiograms, each on different days, shall be made including at least the frequencies of five hundred (500), one thousand (1,000) and two thousand (2,000) cycles per second and the lowest hearing level measured at each of the three (3) frequencies shall be used for the computation of hearing *[impairment]* **disability**. The lowest hearing level at each of the three (3) frequencies shall be added together and the sum divided by three (3) to determine the average hearing level in decibels. If the audiograms show a lowest hearing level at any of these three (3) frequencies that is greater than one hundred (100) decibels, or else no response at all, the value of one hundred (100) dB shall be used for the level at such frequencies in calculating the average hearing level.

[(14)] **(13)** In order to allow for the average amount of hearing loss due to nonoccupational causes found in the population at any given age (including presbycusis), there shall be deducted from the average hearing level one-half (1/2) decibel for each year of the employee's age over forty (40) at the time of his/her *[last exposure to industrial noise]* **audiogram**. The result shall be termed the corrected average hearing level.

[(15)] **(14)** For every decibel that the corrected average hearing level exceeds *[fifteen (15) decibels based on the ASA-1951 reference levels or]* twenty-six (26) decibels based on the *[ISO]* **ANSI** reference levels an allowance of one and one-half percent (1 1/2%) shall be made up to the maximum of one hundred percent (100%) which is reached at *[eighty-two (82) decibels based on the ASA-1951 reference levels and at]* ninety-three (93) decibels based on the *[ISO]* **ANSI** reference levels. The allowance thus calculated is the monaural percentage *[impairment]* **disability** of hearing in that ear.

[(16)] **(15)** Binaural *[impairment]* **disability** of hearing shall be determined by multiplying the percentage of *[impairment]* **disability** in the better ear by five (5), to which result is added the percentage of *[impairment]* **disability** in the poorer ear and dividing the sum of the two (2) by six (6). The result is the evaluation in percentage of binaural hearing *[impairment]* **disability**.

[(17)] **(16)** No consideration shall be given to the question of whether or not the ability of an employee to understand speech is improved by the use of a hearing aid.

[(18)] **(17)** An employee may work in successive employments where s/he is exposed to harmful noise and sustain an accumulated hearing loss, only a part of which may be the liability of the last employer. Section 287.197*[-]*.8, RSMo provides that an employer is liable only for the hearing loss to which his/her employment contributed**.** *[which provision requires a rule for the calculation of such proportional liability. The rule applies only to the first employer in whose employ the employee develops a compensable hearing impairment.]* Each subsequent employer who hires an individual who already has some hearing *[impairment]* **disability** is liable only for the additional *[impairment]* **disability** that develops in *[his/her employ]* **its employment**, subject to the correction according to age.

[(19)] **(18)** The best level of hearing at each of the three (3) frequencies of five hundred (500), one thousand (1,000) and two thousand (2,000) cycles per second is determined by selection from all available audiogram(s) made within six (6) months prior to or three (3) months after the date of employment*[, but in any case prior to work in a noisy environment]*. Earlier audiogram(s) may be used for this purpose only if none is available that were made during that nine (9)-month period.

[(20)] **(19)** The pre-employment average hearing level for the three (3) frequencies is calculated for each ear (section *[(13)]* **(12)** of this rule). *[If the decibel values are based on the ISO reference, zero (0) levels eleven (11) decibels shall be subtracted from the average hearing level to convert it to its ASA-1951 equivalent. The remainder of this section remains as originally written in terms of the ASA-1951 reference levels.]*

[(21)] **(20)** The correction for nonoccupational hearing loss (section *[(14)]* **(13)** of this rule) is applied by subtracting from the average hearing level for each ear one-half (1/2) decibel for each year of the employee's age over forty (40) at the time of his/her *[employment]* **audiogram**.

[(22)] **(21)** *[Now if]* **If** the corrected average hearing level of the pre-employment audiogram(s) in either ear exceeds *[fifteen (15)]* **twenty-six (26)** decibels, the percentage of *[binaural impairment]* **disability** is calculated as in sections **(14) and** (15) *[and (16)]* of this rule. The employer is liable for the difference in percentage of *[impairment]* **disability** between this value and the percentage of *[binaural]* hearing *[impairment]* **disability** calculated from post-employment hearing tests.

[(23) But if the corrected average hearing level of the pre-employment audiogram(s) does not exceed fifteen (15) decibels in either ear, the corrected pre-employment averages are subtracted from the corresponding corrected post-employment averages for each ear. The difference (that is, the threshold shift during employment corrected for the age factor) is divided by the corrected post-employment average hearing level for each ear. This fraction represents the employer's share of liability for the impairment of hearing in that ear at the date of disability.]

[(24) The percentage of impairment of hearing in each ear is multiplied by the fraction calculated for that ear to give the percentages of impairment in each ear for which the employer is liable. The binaural percentage of impairment for which the employer is liable is then calculated according to section (16) of this rule.]

*AUTHORITY: section 287.650, RSMo [1986] **2000**. Original rule filed Sept. 11, 1959, effective Sept. 22, 1959. Amended: Filed Aug. 18, 1967, effective Aug. 29, 1967. Emergency amendment filed Oct. 20, 2005, effective Oct. 30, 2005, expires April 27, 2006. Amended: Filed Oct. 20, 2005.*

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 Division of Workers' Compensation, Attn: Patricia "Pat" Secrest, Division Director, PO Box 58, Jefferson City, MO 65102-0058. 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 11—DEPARTMENT OF PUBLIC SAFETY
Division 45—Missouri Gaming Commission
Chapter 5—Conduct of Gaming

PROPOSED AMENDMENT

11 CSR 45-5.237 Shipping of Electronic Gaming Devices, *Gaming Equipment or Supplies*. The commission is amending sections (1) and (2).

PURPOSE: This amendment proposes to require licensees to notify the Missouri Gaming Commission prior to shipping any gaming equipment or supplies into, out of, or within the state.

(1) Licensees shipping electronic gaming devices **or gaming equipment/supplies as defined in 11 CSR 45-1.090** into, out of, or within Missouri, must file on a form specified by the commission notice at least five (5) days prior to such shipment.

(2) The *[erasable, programmable read-only memory (EPROM), compact disk functioning as a read-only memory (CD-ROM), or other storage medium which contains the main-game program,]* **critical program storage media** shall be shipped separately from the electronic gaming devices.

AUTHORITY: sections 313.004, 313.805 and 313.807.4, RSMo 2000. Original rule filed Sept. 2, 1997, effective March 30, 1998. Amended: Filed April 3, 2001, effective Oct. 30, 2001. Amended: Filed Oct. 31, 2005.

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

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

*NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Gaming Commission, PO Box 1847, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. A public hearing is scheduled for 10:00 a.m. on Tuesday, January 10, 2006, in the Missouri Gaming Commission's Hearing Room, 3417 Knipp Drive, Jefferson City, Missouri.*

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 1—Organization of Department of Revenue

PROPOSED AMENDMENT

12 CSR 10-1.020 Letter Rulings. The director proposes to amend the purpose, sections (1) through (3), (10) and (12), and the authority, delete section (5) and renumber as needed.

PURPOSE: This amendment corrects statutory references in the purpose, various sections of this rule and the Authority section, clarifies the department's options pursuant to subsection (1)(B), removes the requirement for duplicate requests, and changes the time period in section (10) to conform to statute.

*PURPOSE: This rule establishes procedures for issuing letter rulings pursuant to [House Bill 143, (85th General Assembly, First Regular Session),] section 536.021.[9.]**10**, RSMo Supp. [1989] **2004**.*

(1) Letter Rulings.

(A) The director or his/her duly authorized agent as authorized under section 536.021.*[9.]***10**, RSMo**,** shall issue letter rulings subject to the terms and conditions set forth in this rule.

(B) When an issue on which a letter ruling is requested is clearly covered by a duly enacted statute, regulation, administrative rule or a well-established principle of interpretation of the law, the director may **decline to issue a letter ruling or** issue an information letter instead of a letter ruling. An information letter is not a letter ruling and is not binding on the department. An information letter calls attention to a well-established principle or interpretation of the law and is merely a response for informational purposes.

(2) A letter ruling request must be made in writing *[and sent in duplicate]* to: the Director of Revenue, 301 West High Street, Truman State Office Building, Room *[660]* **670**, P*[.]*O*[.]* Box 311, Jefferson City, MO 65105.

(3) A letter ruling request must specifically state—

(A) That a "letter ruling is requested pursuant to section 536.021.*[9.]***10**, RSMo";

(B) The applicant's—

1. Name (the name of the person, partnership, corporation or entity to whom the facts presented in the request apply);
2. Address and phone number;
3. Social Security or federal identification number; and
4. Appropriate Department of Revenue license, registration or identification number, where applicable;*[.]*

[(5) The applicant may provide a duplicate cover letter coding all identifying information in the event that the department publishes the letter ruling.]

[(6)] **(5)** A request for a letter ruling must be signed by the applicant or an authorized agent of the applicant.

[(7)] **(6)** The director or his/her duly authorized representative may request additional information from the applicant as deemed necessary to issue a letter ruling. Failure to provide the requested information shall relieve the director of the obligation to issue the letter ruling.

[(8)] **(7)** A letter ruling shall have the following effect:

(A) The letter ruling shall apply only to the particular fact situation stated in the letter ruling request;

(B) The letter ruling shall apply only to the applicant;

(C) The letter ruling shall bind the director, his/her duly authorized agents and their successors only prospectively;

(D) The letter ruling shall bind the director, his/her duly authorized agents and their successors as to transactions of the applicant that occur within three (3) years after the date of the issuance of the letter ruling; and

(E) An unfavorable letter ruling shall not bind the applicant and shall not be appealable to any forum.

[(9)] **(8)** The letter ruling shall cease to be binding if—

(A) A pertinent change is made in the applicable law by the General Assembly;

(B) A pertinent change is made in the department's regulations;

(C) A pertinent change in the interpretation of the law is made by a court of law or by an administrative tribunal; or

(D) The actual facts are determined to be materially different from the facts set out in the applicant's letter ruling request.

[(10)] **(9)** The director will *[make a good faith effort to issue letter rulings]* **respond to letter ruling requests** within *[ninety (90)]* **sixty (60)** days of the date of receipt of a complete request *[unless, in the director's discretion, the issue is of such complexity or novelty that additional time is required]*.

[(11)] **(10)** The director may refuse to issue a letter ruling for good cause. The director, in a letter, must indicate the specific reasons for refusing to issue the letter ruling. Good cause includes, but is not limited to, the following:

(A) The request does not substantially comply with the information required by this regulation;

(B) The request involves hypothetical situations or alternative plans;

(C) The applicant requests the director to determine whether a statute is constitutional under the *Missouri Constitution* or the *United States Constitution*;

(D) The facts or issue(s) presented in the request are unclear, overbroad, insufficient or otherwise inappropriate as a basis upon which to issue the letter ruling;

(E) The issue about which the letter ruling is requested is primarily one of fact;

(F) The issue is presently being considered in a rulemaking procedure, contested case or other agency or judicial proceeding that may definitively resolve the issue;

(G) The issue cannot be reasonably resolved prior to the issuance of regulations;

(H) The applicant is under investigation or audit relating to that issue, or the issue is the subject of investigation, audit, administrative proceeding or litigation;

(I) The issue relates to the application of the law to members of a business, trade, professional or industrial association or to other similar group(s); and

(J) The applicant is not identified or is anonymous.

[(12)] **(11)** A letter ruling shall include:

(A) A statement that: "This is a letter ruling issued by the director pursuant to section 536.021.*[9.]***10**, RSMo"; and

(B) The signature of the director or any person duly authorized to issue letter rulings on his/her behalf.

[(13)] **(12)** The applicant may withdraw the request for a letter ruling, in writing, prior to the issuance of the letter ruling.

AUTHORITY: sections ***144.190.7 and*** *536.021.[9]**10,** RSMo Supp. [1989]* ***2004****. Original rule filed Sept. 1, 1989, effective Dec. 11, 1989. Amended: Filed Oct. 20, 2005.*

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 Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, Jefferson City, MO 65105-0475. 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 2—Income Tax

PROPOSED RESCISSION

12 CSR 10-2.195 Special Needs Adoption Tax Credit. This rule established the requirements and procedures for claiming the tax credit for a special needs adoption as provided in sections 135.325–135.339, RSMo.

PURPOSE: This rule is being rescinded because it is superseded by 12 CSR 10-400.200 Special Needs Adoption Tax Credit.

AUTHORITY: section 135.339, RSMo 1994. Original rule filed Aug. 2, 1988, effective Dec. 11, 1988. Rescinded: Filed Nov. 1, 2005.

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 or in opposition to the proposed rescission with the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, Jefferson City, MO 65105-0475. 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 3—State Sales Tax

PROPOSED RESCISSION

12 CSR 10-3.470 Consumer Cooperatives. This rule interpreted the sales tax law as it applied to consumer cooperatives.

PURPOSE: This rule is being rescinded because it is no longer necessary.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 083-3 was last filed Dec. 31, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Sept. 7, 1984, effective Jan. 12, 1985. Rescinded: Filed Nov. 1, 2005.

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 or in opposition to the proposed rescission with the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, Jefferson City, MO 65105-0475. 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 3—State Sales Tax

PROPOSED RESCISSION

12 CSR 10-3.566 Itinerant or Transitory Sellers. This rule interpreted the sales tax law as it applied to the itinerant or transitory sellers.

PURPOSE: This rule is being rescinded because it is no longer necessary.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rules nos. 32 and 33 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 290-2 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Rescinded: Filed Nov. 1, 2005.

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 or in opposition to the proposed rescission with the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, Jefferson City, MO 65105-0475. 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 3—State Sales Tax

PROPOSED RESCISSION

12 CSR 10-3.568 Sampling. This rule authorized the use of sampling in conducting a sales tax audit.

PURPOSE: This rule is being rescinded because it is no longer necessary.

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 320-2 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Dec. 12, 1989, effective May 11, 1990. Rescinded: Filed Nov. 1, 2005.

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 or in opposition to the proposed rescission with the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, Jefferson City, MO 65105-0475. 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 3—State Sales Tax

PROPOSED RESCISSION

12 CSR 10-3.892 Light Aircraft—Light Aircraft Kits. This rule interpreted the sales tax law as it applied to the purchase of new light aircraft, light aircraft kits, and such parts and components.

PURPOSE: This rule is being rescinded because it is no longer necessary.

AUTHORITY: section 144.270, RSMo 1994. Emergency rule filed Aug. 18, 1994, effective Aug. 28, 1994, expired Dec. 25, 1994. Emergency amendment filed Dec. 9, 1994, effective Dec. 26, 1994, expired April 24, 1995. Original rule filed Aug. 18, 1994, effective Feb. 26, 1995. Rescinded: Filed Nov. 1, 2005.

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 or in opposition to the proposed rescission with the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, Jefferson City, MO 65105-0475. 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 6—Motor Vehicle Fuel Tax

PROPOSED RULE

12 CSR 10-6.030 Motor Fuel Bond Trust Fund

PURPOSE: Section 142.896, RSMo, creates the Motor Fuel Bond Trust Fund as an alternative to posting a surety bond, cash bond, certificate of deposit, or letter of credit for qualifying distributors. This rule sets the rate for contributions made to the fund and the minimum/maximum amount the fund may contain.

(1) In general, all distributors must post a bond with the department. In lieu of posting a surety bond, cash bond, certificate of deposit or letter of credit, a qualifying distributor may contribute to the Motor Fuel Bond Trust Fund, at the rate prescribed by this rule.

(2) Definition of Terms.

(A) Distributor—any person required by section 142.893, RSMo, to obtain a distributor's license.

(B) Qualifying distributor—a distributor that met all the requirements for participating in the Motor Fuel Bond Trust Fund prior to the effective date of this rule, or that completes three (3) consecutive years of satisfactory tax compliance.

(C) Satisfactory tax compliance—the act of filing all reports and making all payments in the time and manner prescribed by Chapter 142, RSMo.

(3) Basic Application of Tax.

(A) Effective July 1, 2006, the contribution rate to the Motor Fuel Bond Trust Fund is $.0024 per gallon for motor fuel and $.0013 per gallon for aviation gasoline.

(B) The rate per gallon applies to all gallons purchased from Missouri licensed suppliers and all gallons imported during the month subject to taxes and/or fees.

(C) Qualifying distributors that choose to participate in the fund must make contributions until the fund reaches a maximum of one (1) million dollars, except as noted in subsection (3)(E) below.

(D) When the fund reaches the maximum, participating distributors are not required to make additional contributions to the fund until the fund is reduced to five hundred thousand dollars ($500,000), at which time the contributions will be reinstated.

(E) A qualifying distributor must pay into the fund for a minimum of one (1) year after it elects to participate even if the fund has reached the one (1)-million dollar cap.

(4) Examples.

(A) A qualifying distributor imports 500,000 gallons of gasoline into Missouri on a monthly basis. Instead of purchasing a surety bond for three times the monthly liability, the distributor chooses to contribute to the Motor Fuel Bond Trust Fund. The monthly contribution required is $1,200 (500,000 × $.0024).

(B) A qualifying distributor purchases 100,000 gallons of aviation gasoline for sale in Missouri on a monthly basis. Instead of providing a letter of credit for three times the monthly liability, the distributor chose to contribute to the Motor Fuel Bond Trust Fund. The monthly contribution required is $130 (100,000 × $.0013).

(C) A qualifying distributor that has previously posted a cash bond chooses to participate in the Motor Fuel Bond Trust Fund. At the time the distributor makes the election to participate in the fund, the fund contains one million dollars and participating distributors are not making contributions. As a newly participating distributor, the distributor must make contributions for at least one year even though the fund has reached the maximum.

AUTHORITY: sections 142.896.3 and 142.953, RSMo 2000. Original rule filed Oct. 31, 2005.

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 is estimated to cost private entities an additional seventy-four thousand four hundred dollars ($74,400) in the aggregate per year.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to the proposed rule with the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, Jefferson City, MO 65105-0475. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing scheduled.*

FISCAL NOTE
PRIVATE COST

I. RULE NUMBER

Rule Number and Name:	12 CSR 10-6.030 Motor Fuel Bond Trust Fund
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by adoption of the proposed rule	**Classification by types of the business entities which would likely be affected:**	**Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:**
Currently there are 27 members.	Missouri licensed motor fuel distributors, participating in the pool bond	$74,400

III. WORKSHEET

The Department of Revenue receives monthly payments from pool bond participants totaling approximately $1,700. This is based upon $.000425 per gallon. The rule increases the rate to $.0024 per gallon. If pool bond members continue to remit monthly payments based on approximately 4 million gallons, the total paid to the pool bond would increase to $9,600 per month or $94,800 per year.

The estimated cost for a business to continue participating in the pool bond following the implementation of this rule is $2,755.55.

Yearly totals based on $.0024 per gallon	$94,800
Yearly totals based on $.000425 per gallon	$20,400
Estimated Cost	$74,400

Cost split between 27 participants $ 2,756 (will vary based on number of taxable gallons)

IV. ASSUMPTIONS

The department assumes that for purposes of this fiscal note, the number of pool bond participants and their gallons reported will not substantially change following the implementation of this rule.

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 23—Motor Vehicle

PROPOSED RESCISSION

12 CSR 10-23.440 Replacement License Tabs. This rule clarified the process to be used for issuance of replacement license tabs at no cost to an individual whose tabs had been stolen.

PURPOSE: This rule is being rescinded as a result of Senate Bill 378, enacted by the 93rd General Assembly, 2005, effective August 28, 2005, that allows the department to issue up to two (2) sets of replacement license plate tabs per year at no fee when the tabs were stolen and a police report accompanies the application.

AUTHORITY: section 301.301, RSMo Supp. 1995. Original rule filed Sept. 1, 1995, effective Feb. 25, 1996. Rescinded: Filed Nov. 1, 2005.

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 Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, Jefferson City, MO 65105-0475. 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 24—Driver/s/ License Bureau Rule

PROPOSED AMENDMENT

12 CSR 10-24.030 Hearings. The director proposes to amend sections (1) and (8), delete section (2) and renumber the remaining sections.

PURPOSE: This proposed amendment is necessary to comply with the changes in section 302.530, RSMo as amended by House Bill 487, enacted by the 93rd General Assembly, 2005, that removed the requirement that a license be surrendered before a hearing can be granted. Simplifies existing language in statute and renumbers sections appropriately.

(1) Individuals shall make a written request for a review of the director's determination. At the time of such request the individual must indicate whether the request is for an in-person hearing. If an in-person hearing is not requested the individual will be scheduled for a telephone hearing and will waive any further opportunity for in-person hearing. The request must actually be filed with the department on or before the effective date of the suspension or revocation. The effective date shall be fifteen (15) days after the date of issuance of the notice of suspension if the notice is hand delivered or eighteen (18) days from the date of mailing if the notice of suspension is mailed from the department. If any request for a hearing is delivered by United States mail postage prepaid after the effective date of suspension or revocation, the date of the United States postmark stamped on the envelope shall be deemed to be the date of filing. The request shall be sent to: Missouri Department of Revenue, *[Drivers and Vehicle Services]* **Driver License** Bureau, PO Box 3700, Jefferson City, MO 65105-3700. If the effective date falls on a Saturday, Sunday or legal holiday in this state, the request for hearing shall be considered timely if it is filed on the next succeeding day which is not a Saturday, Sunday or a legal holiday as specified in 12 CSR 10-24.340.

[(2) If the person is a holder of a valid drivers license issued by this state, and if the person's drivers license has not been previously surrendered, it must be surrendered at the time the request for hearing is made. Failure to surrender the license shall be deemed a waiver of the right to an administrative hearing absent good cause shown in writing at the time a request for hearing is made.

(A) If the person's license has been lost, destroyed or stolen, and s/he is not currently suspended or revoked for any reason, s/he must apply for a duplicate license and surrender the sixty (60)-day driving receipt with the hearing request.

(B) If the person's license has been lost, destroyed or stolen, and s/he is currently suspended or revoked, s/he must submit a notarized affidavit of lost, destroyed or stolen license with the hearing request.]

[(3)] **(2)** Failure to properly request a hearing shall be considered a waiver of the right to an administrative hearing and shall make the director's determination final.

[(4)] **(3)** Individuals requesting hearings may request one (1) continuance for good cause shown. The decision to grant a continuance shall be at the discretion of the department. All requests for continuances should be in writing, state the factual basis for continuance and be signed by the individual making the request or his/her attorney. All requests for continuance must be filed not later than six (6) days prior to the date of the scheduled hearing. The following events or conditions shall constitute good cause to continue a hearing:

(A) Death of a party, representative or attorney of a party, or witness to an essential fact;

(B) Incapacitating illness of a party or representative, or attorney of a party, or witness to an essential fact. The request must contain a written statement by an attending physician reciting the nature and probable duration of the illness; and

(C) Unavailability of a party, representative or attorney, or material witness due to an unavoidable emergency.

[(5)] **(4)** Any delay in a hearing which is caused or requested which is not for good cause shall not result in a stay of the suspension or revocation during the period of delay.

[(6)] **(5)** Based upon the type of hearing requested by the individual in the written request for review the director will schedule a hearing. The party arrested/stopped may be represented by an attorney during any telephonic or in-person hearing. Notice of the hearing, place, date and time shall be sent to the party arrested/stopped and to the attorney of record, if known, at the time of notice. Suspension or revocation shall be stayed until a final order is issued following the hearing. The hearing will be conducted by department examiners who are licensed to practice law in Missouri.

[(7)] **(6)** The sole issue at the hearing shall be whether, by the preponderance of the evidence, the person was arrested/stopped upon probable cause to believe the alcohol concentration in the person's blood exceeded the limits provided in section 302.505, RSMo. The provisions of Chapter 536, RSMo shall apply when not inconsistent with Chapter 302, RSMo.

[(8)] **(7)** Subsequent to the hearing, the director shall render a final decision separately stating findings of fact and conclusions of law. *[The party shall be mailed a copy of the findings of fact and conclusions of law by certified mail. The attorney of record shall be mailed a copy of the findings of fact and conclusions of law by regular mail.]* **The party and the attorney of record shall be mailed copies of the findings of fact and conclusions of law by regular mail.**

[(9)] **(8)** At the hearing the party may present any facts which show the party was not driving a motor vehicle while the alcohol concentration in the person's blood exceeded the limits provided in section 302.505, RSMo. A party may subpoena witnesses in accordance with the procedures of section 536.077, RSMo. A party may subpoena witnesses, including the law enforcement officer or blood alcohol concentration analyzer to attend the hearing or participate in a telephonic hearing, by requesting a subpoena from the Department of Revenue at least five (5) working days prior to the hearing. If a witness fails to appear or participate in the hearing, after proper service of the subpoena, the Department of Revenue will continue the hearing to enforce the subpoena including enforcement action as provided in section 536.077, RSMo. In the case of death or total incapacitation of the witness, where enforcement action is not feasible, the department may consider written testimony of the witness prepared at or near the time of the incident in lieu of the actual appearance of such witness and the party may make any objection or argument to such written testimony of the witness.

[(10)] **(9)** The party may examine all available evidence before the hearing. Any witness may be cross-examined during the hearing.

[(11)] **(10)** The party aggrieved by the decision of the director may appeal to the circuit court of the county in which the arrest occurred. This appeal must be filed within fifteen (15) days after the date of the final decision of the director.

*AUTHORITY: section 302.530, RSMo [2000] **as amended by Senate Substitute for Senate Committee Substitute for House Bill 487, enacted by the 93rd General Assembly, 2005**. Original rule filed Feb. 3, 1984, effective May 11, 1984. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Oct. 20, 2005.*

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 Revenue, Legal Services, Governmental Affairs Bureau, PO Box 475, Jefferson City, MO 65105-0475. 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 41—General Tax Provisions

PROPOSED AMENDMENT

12 CSR 10-41.010 Annual Adjusted Rate of Interest. The department proposes to amend section (1).

PURPOSE: Under the Annual Adjusted Rate of Interest (section 32.065, RSMo), this amendment establishes the 2006 annual adjusted rate of interest to be implemented and applied on taxes remaining unpaid during calendar year 2006.

(1) Pursuant to section 32.065, RSMo, the director of revenue upon official notice of the average predominant prime rate quoted by commercial banks to large businesses, as determined and reported by the Board of Governors of the Federal Reserve System in the Federal Reserve Statistical Release H.15(519) for the month of September of each year has set by administrative order the annual adjusted rate of interest to be paid on unpaid amounts of taxes during the succeeding calendar year as follows:

Calendar Year	Rate of Interest on Unpaid Amounts of Taxes
1995	12%
1996	9%
1997	8%
1998	9%
1999	8%
2000	8%
2001	10%
2002	6%
2003	5%
2004	4%
2005	5%
2006	**4%**

*AUTHORITY: section 32.065, RSMo 2000. Emergency rule filed Oct. 13, 1982, effective Oct. 23, 1982, expired Feb. 19, 1983. Original rule filed Nov. 5, 1982, effective Feb. 11, 1983. For intervening history, please consult the **Code of State Regulations**. Emergency amendment filed Nov. 1, 2005, effective Jan. 1, 2006, expires June 29, 2006. Amended: Filed Nov. 1, 2005.*

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate. This proposed amendment will result in a reduction in the interest rate charged on delinquent taxes and a reduction in the amount of interest paid on refunds of certain taxes. See detailed fiscal note for further explanation.

PRIVATE COST: This proposed amendment will cost private entities more than five hundred dollars ($500) in the aggregate. This proposed amendment will result in a reduction in the interest rate charged on delinquent taxes and a reduction in the amount of interest paid on refunds of certain taxes. The actual number of affected taxpayers is unknown. See detailed fiscal note for further explanation.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, Jefferson City, MO 65105-0475. 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:	12 CSR 10-41.010 Annual Adjusted Rate of Interest
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Cost of Compliance in the Aggregate
Counties	There are no expenditures required by this regulation. Because the amount of interest collected on past due amounts of taxes will be at a decreased rate, the aggregate impact on public entities will be more than $500. The future amount of past due taxes is unknown, however, the gross amount of delinquent taxes as of June 30, 2005, was $1,211,690,044. The decreased interest on that amount as a result of the proposed amendment would be $12,116,900.44. The precise dollar impact on public entities is also unknown, however, for interest accrued on tax amounts owed as of or after the effective date of this rule, the cost to the public entities will be $1 per year for every $100 of tax owed.
Cities	
Special Taxing Districts	

III. WORKSHEET

The proposed amendment adjusts the rate of interest for 2006 to 4%, down from 5% in 2005.

IV. ASSUMPTIONS

Pursuant to Section 32.065, RSMo, the director of revenue is mandated to establish an annual adjusted rate of interest based upon the adjusted prime rate charged by banks during September of that year as set by the Board of Governors of the Federal Reserve rounded to the nearest full percent.

FISCAL NOTE
PRIVATE COST

I. RULE NUMBER

Rule Number and Name:	12 CSR 10-41.010 Annual Adjusted Rate of Interest
Type of Rulemaking:	Proposed Amendment

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by adoption of the proposed rule	**Classification by types of the business entities which would likely be affected:**	**Estimate in the aggregate as to the cost of compliance with the rule by the affected entities:**
Any taxpayer with past due tax amounts.	Any taxpayer with past due tax amounts.	Because the amount of interest collected on past due amounts of taxes will be at a decreased rate, the aggregate impact on private entities will be less than $500. The future amount of past due taxes is unknown, however, the gross amount of delinquent taxes as of June 30, 2005, was $1,211,690,044. The decreased interest on that amount as a result of the proposed amendment would be $12,116,900.44. The precise dollar impact on private entities is also unknown, however, for interest accrued on tax amounts owed as of or after the effective date of this rule, the savings to the private entity will be $1 per year for every $100 of tax owed.

III. WORKSHEET

The future amount of past due taxes is unknown. The gross amount of delinquent taxes as of June 30, 2005, was $1,211,690,044. The 1% interest increase on that amount as a result of the proposed amendment would be $12,116,900.44. The precise dollar impact on private entities is also unknown, however, for interest accrued on tax amounts owed as of or after the effective date of this rule, the savings to the private entity will be $1 per year for every $100 of tax owed. Following is a comparison for the cost to a taxpayer with a past due amount of $100:

	Current Rule – 5%	Proposed Amendment – 4%
Past due tax amount	$100.00	$100.00
Interest amount	5.00	4.00
Total Amount Due	$105.00	$104.00

IV. ASSUMPTIONS

Pursuant to Section 32.065, RSMo, the director of revenue is mandated to establish an annual adjusted rate of interest based upon the adjusted prime rate charged by banks during September of that year as set by the Board of Governors of the Federal Reserve rounded to the nearest full percent. Because the future amount of past due taxes is unknown, the precise dollar impact on private entities is also unknown, however, for interest accrued on tax amounts owed as of or after the effective date of this rule, the savings to the private entity will be $1 per year for every $100 of tax owed.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 70—Division of Medical Services
Chapter 3—Conditions of Provider Participation, Reimbursement and Procedure of General Applicability

PROPOSED AMENDMENT

13 CSR 70-3.020 Title XIX Provider Enrollment. The division is amending sections (3) and (4).

PURPOSE: This amendment clarifies that the Missouri Medicaid program will not enroll as a provider any individual who has been convicted or plead guilty to endangering the welfare of a child; abusing or neglecting a resident, patient, or client; misappropriating funds or property belonging to a resident, patient, or client; or falsifying documentation verifying delivery of services to an in-home services client.

(3) The single state agency, at its discretion, may deny or limit an applying provider's enrollment and participation in the Missouri Title XIX Medicaid Program for any one (1) of the following reasons:

(D) Previous or current involuntary surrender, removal, termination, suspension, ineligibility or otherwise involuntary disqualification from participation in another governmental or private medical insurance program. This includes, but is not limited to, **programs such as** Workers' Compensation*[, Crippled Children's Services and Rehabilitation Services]* **and Special Health Needs**. For the purposes of subsections (3)(B)–(D), involuntary surrender, removal, termination, suspension, ineligibility or other involuntary disqualification shall include withdrawal from medical assistance or medical insurance program participation arising from or as a result of any adverse action by a government agency, licensing authority or criminal prosecution authority of Missouri or any other state or the federal government including Medicare;

(H) Any termination, removal, suspension, revocation, denial or consented surrender or other involuntary disqualification of any license, permit, certificate or registration related to the applying provider's business or profession **that is or might be harmful or dangerous to the mental or physical health of a patient** in Missouri or any other state of the United States. Any such license, permit, certificate or registration which has been denied or lost by the provider for reasons not related to matters of professional competence in the practice of the applying provider's profession, upon proof of current reinstatement, shall not be considered by the agency in its decision to enroll the applying providers;

(L) Failure to supply further information to the single state agency after receiving a written request for further information pursuant to an enrollment application; *[or]*

(M) Failure to affix a proper signature to an enrollment application. Submission of an application bearing a signature that conceals the involvement in the provider's operation of a person who would otherwise be ineligible for Medicaid participation shall be grounds for denial of enrollment by the single state agency. Otherwise, the single state agency shall give the applying provider an opportunity to provide a proper signature and, after that, consider the application as if the proper signature was originally affixed*[.]***;**

(N) A previous or current conviction or a plea of guilty to a misdemeanor or felony charge, including any suspended imposition of sentence, any suspended execution of sentence or any period of probation or parole relating to:

1. Endangering the welfare of a child;

2. Abusing or neglecting a resident, patient, or client;

3. Misappropriating funds or property belonging to a resident, patient, or client; or

4. Falsifying documentation verifying delivery of services to a personal care assistance services consumer;

(O) Placement on the employee disqualification list maintained by the Department of Health and Senior Services; or

(P) Placement on the sexual offender list.

(4) After investigation and review of an applying provider's application for enrollment and consideration of all the information, facts and circumstances relevant to the application, including, but not limited to, a review of the applying provider's affiliates, the single state agency, at its discretion, in the best interest of the Medicaid program, will make one (1) of the following determinations:

(C) Deny or limit the applying provider's enrollment for one (1) or more of the reasons in subsections (3)(A)–*[(M)]***(P)**.

AUTHORITY: sections 208.153, 208.159 and 208.201, RSMo 2000. This rule was previously filed as 13 CSR 40-81.165. Original rule filed June 14, 1982, effective Sept. 11, 1982. Amended: Filed July 30, 2002, effective Feb. 28, 2003. Amended: Filed April 29, 2005, effective Oct. 30, 2005. Amended: Filed Nov. 1, 2005.

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 Medical Services, 615 Howerton Court, Jefferson City, MO 65109. 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.*

Title 16—RETIREMENT SYSTEMS
Division 10—The Public School Retirement System of Missouri
Chapter 5—Retirement, Options and Benefits

PROPOSED AMENDMENT

16 CSR 10-5.030 Beneficiary. The Public School Retirement System of Missouri is adding two new sections (15) and (16) to this rule to specify the manner in which section 169.076, RSMo, is implemented.

PURPOSE: This amendment sets forth the procedure for naming beneficiaries and their eligibility as provided by sections 169.070, 169.075 and 169.076, RSMo.

(15) Pursuant to section 169.076.2, RSMo, the member's marriage, divorce, withdrawal of accumulated contributions, or the birth of the member's child, or the member's adoption of a child, shall result in an automatic revocation of the member's previous designation in its entirety only if such event occurred on or after August 28, 2005 and before the member's effective retirement date.

(16) If a member's child eligible to receive a benefit pursuant to section 169.075, RSMo, due to the application of section 169.076.1, RSMo, elects to receive the member's accumulated contributions in lieu of benefits under section 169.075, the accumulated contributions shall be distributed to all surviving children, regardless of their eligibility for benefits pursuant to section 169.075, RSMo, in equal shares pursuant to section 169.070.5, RSMo. However, if the application of section 169.076, RSMo, is not required due to the member having a valid nomination of beneficiary form filed with the system, then the member's accumulated contributions, if chosen by the named beneficiary or beneficiaries, shall be distributed according to such nomination of beneficiary form.

AUTHORITY: section 169.020, RSMo 2000. Original rule filed Dec. 19, 1975, effective Jan. 1, 1976. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed Nov. 1, 2005.*

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 Public School and Public Education Employee Retirement Systems of Missouri, Steve Yoakum, Executive Director, PO Box 268, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 16—RETIREMENT SYSTEMS
Division 10—The Public School Retirement System of Missouri
Chapter 6—The *[Non-Teacher School]* *Public Education* Employee Retirement System of Missouri

PROPOSED AMENDMENT

16 CSR 10-6.090 Beneficiary. The Public Education Employee Retirement System of Missouri is adding new section (8) to this rule to specify the manner in which section 169.676, RSMo, is implemented.

PURPOSE: This amendment sets forth the procedure for establishing beneficiaries and their eligibility for benefits as authorized in sections 169.663, 169.670 and 169.676, RSMo.

(8) Pursuant to section 169.676.2, RSMo, the member's marriage, divorce, withdrawal of accumulated contributions, or the birth of the member's child, or the member's adoption of a child, shall result in an automatic revocation of the member's previous designation in its entirety only if such event occurred on or after August 28, 2005 and before the member's effective retirement date.

AUTHORITY: section 169.610, RSMo 2000. Original rule filed Dec. 19, 1975, effective Jan. 1, 1976. For intervening history, please consult the ***Code of State Regulations****. Amended: Filed Nov. 1, 2005.*

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 Public School and Public Education Employee Retirement Systems of Missouri, Steve Yoakum, Executive Director, PO Box 268, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the ***Missouri Register****. No public hearing is scheduled.*

Title 19—DEPARTMENT OF HEALTH AND SENIOR SERVICES
Division 30—*[Division of Health Standards and Licensure]* *Division of Regulation and Licensure*
Chapter 81—Certification

PROPOSED AMENDMENT

19 CSR 30-81.010 General Certification Requirements. The department is amending sections (1)–(7), and (9)–(14).

PURPOSE: This amendment changes the name of the agency throughout due to the transfer of the Division of Aging from the Department of Social Services to the Department of Health and Senior Services, changes the name of the federal agency due to the Health Care Financing Administration being renamed the Centers for Medicare and Medicaid Services, defines Section for Long Term Care, and describes application procedures for certification.

(1) Definitions.

(A) Certification **shall** mean*[s]* the determination by the *[Division of Aging]* **Missouri Department of Health and Senior Services**, or the *[Health Care Financing Administration]* **Centers for Medicare and Medicaid Services,** that a licensed skilled nursing or intermediate care facility (SNF/ICF) **licensed under Chapter 198, RSMo, or an ICF for persons with mental retardation (ICF/MR),** is in substantial compliance with all federal requirements and is approved to participate in the Medicaid or Medicare programs.

(B) CMS shall mean the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services.

[(B)] **(C)** Cost reporting year **shall** mean*[s]* the facility's twelve (12)-month fiscal reporting period covering the same twelve (12)-month period that the facility uses for its federal income tax reporting.

[(C)] **(D)** Distinct part **shall** mean*[s]* a portion of an institution or institutional complex that is certified to provide SNF or NF services. A distinct part must be physically distinguishable from the larger institution and must consist of all beds within the designated area. The distinct part may be a separate building, floor, wing, ward, hallway or several rooms at one end of a hall or one side of a corridor.

[(D)] **(E)** *[Division]* **Department shall** mean*[s]* the *[Division of Aging (DA),]* Missouri Department of *[Social]* **Health and Senior** Services.

[(E) HCFA means the Health Care Financing Administration section of the United States Department of Health and Human Services (HHS).]

(F) ICF/MR **shall** mean*[s]* intermediate care facility for **persons with** mental*[ly]* retard*[ed]***ation**.

(G) Medicaid **shall** mean*[s]* Title XIX of the federal Social Security Act.

(H) Medicare **shall** mean*[s]* Title XVIII of the federal Social Security Act.

(I) Nursing facility (NF) **shall** mean*[s]* an SNF or ICF licensed under Chapter 198, RSMo which has signed an agreement with the Department of Social Services to participate in the Medicaid program and which is certified by the *[Division of Aging]* **department**. As used within the contents of this rule, licensed SNFs, SNF/ICF and ICFs participating in the Medicaid program are subject to state and federal laws and regulations for participation as an NF.

(J) Section for Long Term Care (SLTC) shall mean that section of the department responsible for licensing and regulating long-term care facilities licensed under Chapter 198, RSMo.

*[(J)]***(K)** Skilled nursing facility (SNF) **shall** mean*[s]* an SNF licensed under Chapter 198, RSMo which has a signed agreement with the *[HCFA]* **CMS** to participate in the Medicare program and which has been recommended for certification by the *[Division of Aging]* **department**.

*[(K)]***(L)** Title XVIII **shall** mean*[s]* the Medicare program as provided for in the federal Social Security Act.

*[(L)]***(M)** Title XIX **shall** mean*[s]* the Medicaid program as provided for in the federal Social Security Act.

(2) An operator of an SNF or ICF licensed by the *[division]* **department** electing to be certified as a provider of skilled nursing services under the Title XVIII (Medicare) or NF services under the Title XIX (Medicaid) program of the Social Security Act; or an operator of a facility electing to be certified as an ICF/MR facility under Title XIX shall submit application materials to the *[division]* **department** as required by federal law**, on forms approved by the department,** and shall comply with standards set forth in the *Code of Federal Regulations* (CFR) of the United States Department of Health and Human Services in 42 CFR chapter IV, part 483, subpart B for nursing homes and 42 CFR chapter IV, part 483, subpart I for ICF/MR facilities, as appropriate.

[(A) For Medicaid, the application shall include:

1. Form HCFA CMS 671, Long Term Care Facility Application for Medicare and Medicaid;

2. Form HCFA 1513, Disclosure of Ownership and Control Interest Statement; and

3. Form DA-113, Bed Classification for Licensure and Certification by Category.

(B) For Medicare, the application shall include:

1. Form HCFA 671, Long Term Care Facility Application for Medicare and Medicaid;

2. Form HCFA 855, Health Care Provider/Supplier Application;

3 Expression of Intermediary Preference Form;

4. Form DA-113, Bed Classification for Licensure and Certification by Category;

5. Three (3) copies of form HCFA 1561, Health Insurance Benefit Agreement;

6. Two (2) copies of form HCFA 2572, Statement of Financial Solvency; and

7. Three (3) copies of form HHS 690, Assurance of Compliance.]

*[(C)]***(A)** SNFs or NFs which are newly certified or which are undergoing a change of ownership shall submit an initial certification fee in the amount up to one thousand dollars ($1,000) as stipulated by the *[division]* **department** in writing to the operator following receipt of the properly completed application material referenced in *[sub]*section (2)*[(A) or (2)(B)]*. The amount for the initial certification fee shall be the prorated portion of one thousand dollars ($1,000) with prorating based on the month of receipt of the application in relation to the beginning of the next federal fiscal year. This initial certification fee shall be nonrefundable and a facility **shall** not be certified until the fee has been paid. *[The facility shall complete all requirements for certification prior to the end of the federal fiscal year in which application was made. If not, an additional certification fee of one thousand dollars ($1,000) shall be submitted to the division by October 1 or the application shall be considered withdrawn.]*

*[(D)]***(B)** All SNFs or NFs certified to participate in the Medicaid or Medicare program(s) shall submit to the *[division]* **department** an annual certification fee of one thousand dollars ($1,000) prior to October 1 of each year. If the fee is not received by that date each year**,** a late fee of fifty dollars ($50) per month shall be payable to the *[division]* **department**. If payment of any fees due is not received by the *[division]* **department** by the time the facility license expires or by December 31 of that year, whichever is earlier, the *[division]* **department** shall notify the Division of Medical Services and the *[Health Care Financing Administration]* **CMS** recommending termination of the Medicaid or Medicare agreement as denial of license will occur as provided in *[13 CSR 15-10.010]* **19 CSR 30-82.010** and section 198.022, RSMo.

(3) Application material shall be signed and dated and submitted to the *[division's central office]* **department's SLTC licensure unit** at least fourteen (14) working days prior to the date the facility is ready to be surveyed for compliance with federal regulations **(Initial Certification Survey)**. The operator or authorized representative shall notify the appropriate *[division]* **department** regional office by letter or by phone as to the date the facility will be ready to be surveyed. There shall be at least two (2) residents in the facility before a survey can be conducted. The facility shall already be licensed or with licensure in process shall be in compliance with all state rules.

(4) Any facility certified for participation as an NF in the Title XIX Medicaid program electing to participate in the Title XVIII Medicare program shall submit an application signed and dated **by the operator or his or her authorized representative** to the *[division's central office]* **department's SLTC central office licensure unit**. The *[division]* **department** will recommend Medicare certification to the *[HCFA]* **CMS** effective the date the application material is received by the *[division]* **department** or a subsequent date if requested by the provider, provided the facility was in compliance with all federal and state regulations for SNFs at the last survey conducted by the *[division]* **department** and provided the facility's application is complete and has been approved by the Medicare fiscal intermediary.

(5) Any facility certified for participation in the Medicare program wishing to participate in the Medicaid program shall submit a signed and dated application to the *[division's]* **department's** central office. The *[division]* **department** will certify the facility for Medicaid participation effective the date the application is received by the *[division]* **department** or a subsequent date requested by the provider, provided the facility was in compliance with all federal regulations at the last survey conducted by the *[division]* **department** and the application is complete.

(6) For newly certified facilities, the facility will be certified for either Medicare or Medicaid participation effective the date the facility receives a license at the proper level or the date the facility achieves substantial compliance with the federal participation requirements, whichever is the later date. The application shall be completed. For certification in the Title XVIII (Medicare) program, the Medicare fiscal intermediary must approve the application and the *[HCFA]* **CMS** must concur with the *[division's]* **department's** recommendation.

(7) The *[division]* **department** shall conduct federal surveys in SNFs, NFs and ICF/MR facilities, utilizing regulations and procedures contained in—

(B) The Survey and Certification Regional letters received by the *[division]* **department** from the *[HCFA regional office in Kansas City]* **CMS**;

(8) A facility, in its application, shall designate the number of beds to be certified and the**ir** location in the*[ir]* facility. A facility can be wholly or partially certified. If partially certified, the beds shall be in a distinct part of the facility and all beds shall be contiguous.

(9) If a facility certified to participate in the Title XIX (Medicaid) or Title XVIII (Medicare) program elects to change the size of its distinct part, it must submit a written request to the Licensure/Certification Unit or the ICF/MR Unit of the *[division]* **department**, as applicable. The request shall specify the room numbers involved, the number of beds in each room and the facility cost reporting year end date. The request must include a floor diagram of the facility and a signed DA-113 form, Bed Classification for Licensure and Certification by Category. A facility is allowed two (2) changes in the size of its distinct part during the facility cost reporting year. This may be two (2) increases or one (1) increase and one (1) decrease. It may not be two (2) decreases. The first change can

be done only at the beginning of the facility cost reporting year and the second change can be done effective at the beginning of a facility cost reporting quarter within that facility cost reporting year. All requests must be submitted to the Licensure/Certification Unit or the ICF/MR Unit of the *[division]* **department** at least forty-five (45) days in advance. Any facility wishing to eliminate its distinct part to go to full certification may do so effective at the beginning of the next facility cost reporting *[year]* **quarter** with forty-five (45) days notice. The distinct part may be reestablished only at the beginning of the next facility cost reporting year. A facility may change the location of the distinct part with thirty (30) days notice to the Licensure/Certification Unit or the ICF/MR Unit of the *[division]* **department**.

(10) If a facility certified to participate in the Title XIX (Medicaid) or Title XVIII (Medicare) program undergoes a change of operator, the new operator shall submit an application as specified in section (2) of this rule. The application shall be submitted within five (5) working days of the change of operator. For applications made for the Title XIX (Medicaid) program, the *[division]* **department** shall provide the application to the Division of Medical Services of the Department of Social Services so that a provider agreement can be negotiated and signed. For applications made for the Title XVIII (Medicare) program, the *[division]* **department** shall provide the application to the *[HCFA]* **CMS**. Certification status will be retained unless or until formally denied.

(11) If it is determined by the *[division]* **department** that a facility certified to participate in Medicaid or Medicare does not comply with federal regulations at the time of a federal survey, complaint investigation or state licensure inspection, the *[division]* **department** shall take enforcement action using the regulations and procedures contained in the following sources:

(C) *[Sections 1819(h) and 1919(h) of the Social Security Act]* **42 U.S.C. Section 1395i—3**;

(D) 42 U.S.C. **Section** 1396(r);

(12) If a facility certified to participate in the Medicaid Title XIX program has been decertified as a result of noncompliance with the federal requirements, the facility can be readmitted to the Medicaid program by submitting an application for initial participation in the Medicaid program. After having received the application, the *[division]* **department** shall conduct a survey at the earliest possible date to determine if the facility is in substantial compliance with all federal participation requirements. The effective date of participation will be the date the facility is found to substantially comply with all federal requirements.

(13) If a change in the administrator or the director of nursing of a facility occurs, the facility shall provide written notice to the *[division's]* **department's SLTC** central office *[at the time]* **licensure unit within ten (10) calendar days** of the change. The notice shall *[indicate]* **show** the effective date of the change, the identity of the new director of nursing or administrator and a copy of *[his/her]* **his or her** license or the license number. *[A change of administrator is also part of the licensure application process; therefore, the]* **Change of administrator** information shall be submitted as a notarized statement by the operator in accordance with section 198.018, RSMo.

(14) An NF may request a waiver of nurse staffing requirements to the extent the facility is unable to meet the requirements including the areas of twenty-four (24)-hour licensed nurse coverage, the use of a registered nurse for eight (8) consecutive hours seven (7) days per week and the use of a registered nurse as director of nursing.

(A) Requests for waivers shall be made in writing to the *[deputy]* director*[, Division of Aging]* **of the Section for Long Term Care**.

(C) The *[division]* **department** shall consider each request for a waiver and shall approve or disapprove the request in writing **postmarked** within thirty (30) working days of receipt or, if additional information is needed, shall request from the facility the additional information or documentation within ten (10) working days **of receipt of the request**.

(D) Approval of a nurse waiver request shall be based on an evaluation of whether the facility has been unable, despite diligent efforts—including offering wages at the community prevailing rate for nursing facilities—to recruit the necessary personnel. Diligent effort shall mean prominently advertising for the necessary nursing personnel in a variety of local and out-of-the-area publications, including newspapers and journals within a fifty (50)-mile radius, and which are within state boundaries; contacts with nursing schools in the area; and participation in job fairs. The operator shall submit evidence of the diligent effort including:

1. Copies of newspapers and journal advertisements, correspondence with nursing schools and vocational programs, and any other relevant material;

2. If there is a nursing pool agency within fifty (50) miles which is within state boundaries and the agency cannot consistently supply the necessary personnel on a per*[-]*diem basis to the facility, the operator shall submit a letter from the agency so stating;

3. Copies of current staffing patterns including the number and type of nursing staff on each shift and the qualifications of licensed nurses;

4. A current *[form HCFA 672, Resident Census and Conditions of Residents]* **resident census form approved by the department**;

5. Evidence that the facility has a registered nurse consultant required under *[13 CSR 15-14.042(36)(B)]* **19 CSR 30-85.042** and evidence that the facility has made arrangements to assure registered nurse involvement in the coordination of the assessment process as required under 42 CFR **483.**20*[(c)(1)(ii)]***(3)**;

6. Location of the nurses' stations and any other pertinent physical feature information the facility chooses to provide;

7. Any other information deemed important by the facility including personnel procedures, promotions, staff orientation and evaluation, scheduling practices, benefit programs, utilization of supplemental agency personnel, physician-nurse collaboration, support services to nursing personnel and the like; and

8. For renewal requests, the information supplied shall show diligent efforts to recruit appropriate personnel throughout the prior waiver period. Updates of prior submitted information in other areas are acceptable.

(E) In order to meet the conditions specified in federal regulation 42 CFR 483.30, the following shall be considered in granting approval:

1. There is assurance that a registered nurse or physician is available to respond immediately to telephone calls from the facility for periods of time in which licensed nursing services are not available;

2. There is assurance that if a facility requesting a waiver has or admits after receiving a waiver any acutely ill or unstable residents requiring skilled nursing care, the skilled care shall be provided in accordance with state licensure rule *[13 CSR 15-14.042(6)]* **19 CSR 30-85.042**; and

3. The facility has not received a Class I notice of noncompliance in resident care within one hundred twenty (120) days of the waiver request or the *[division]* **department** has not conducted an extended survey in the facility within one (1) year of the waiver request. Any facility which receives a Class I notice of noncompliance in resident care or an extended survey while under waiver status will not have the waiver renewed unless the problem has been corrected and steps have been taken to prevent recurrence. If a facility received more than one (1) Class I notice of noncompliance in resident care during a waiver period, the *[Division of Aging]* **department** will consider revocation of the waiver.

(F) The facility shall cooperate with the *[Division of Aging]* **department** in providing the proper documentation. For renewal requests, the request and proper documentation shall be submitted to the *[Division of Aging]* **department** at least forty-five (45) days prior to the ending date of the current waiver period. If any changes occur during a waiver period that affect the status of the waiver, a letter shall be submitted to the deputy director of institutional services within ten (10) days of the changes. The request for a waiver or renewal of a waiver shall be denied if the facility fails to abide by these previously mentioned time frames.

(G) If a waiver request is denied, the *[division]* **department** shall notify the facility in writing and within twenty (20) days, the facility shall submit to the *[division]* **department** a written plan for how the facility will recruit the required personnel. If appropriate personnel are not hired within two (2) months, the *[division]* **department** shall initiate enforcement proceedings.

*AUTHORITY: section[s 208.151 and 536.021], **660.050**, RSMo Supp. [2000] **2004**. This rule originally filed as 13 CSR 15-9.010. Emergency rule filed Sept. 18, 1990, effective Oct. 1, 1990, expired Jan. 25, 1991. Original rule filed Nov. 2, 1990, effective June 10, 1991. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Nov. 1, 2005.*

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 David S. Durbin, Director, Division of Regulation and Licensure, PO Box 570, Jefferson City, MO 65102-0570. 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 20—DEPARTMENT OF INSURANCE
Division 200—Financial Examination
Chapter 6—Surplus Lines

PROPOSED AMENDMENT

20 CSR 200-6.100 Surplus Lines Insurance Forms. The department is amending sections (1) and (2), adding subsections (A) and (B) to section (2) and deleting the forms which follow the rule in the *Code of State Regulations*.

PURPOSE: This amendment changes the method of filing Appendix 1 and Appendix 3 reports and adds a provision for proof of filing said reports via electronic means.

(1) Forms.

(A) Appendix 1 *[of this rule, included herein,]* is the *[form]* **method** prescribed by the director **of the Missouri Department of Insurance** for **filing** the confidential written report required by section 384.031, RSMo. **The Appendix 1 data may be filed manually by U.S. mail, express courier delivery, or personal delivery or electronically using systems, software and/or methods prescribed by the director.**

(B) Appendix 3 *[of this rule, included herein,]* is the *[form]* **method** prescribed by the director **of the Missouri Department of Insurance** for **filing** the annual report required by section 384.057, RSMo. **The Appendix 3 data may be filed manually by U.S. mail, express courier delivery, or personal delivery or electronically using systems, software and/or submission methods prescribed by the director.**

(2) Proof of Filing**.**

(A) Proof of filing will be provided to the surplus lines licensee making the filings if the surplus lines licensee encloses a duplicate copy of filings and a self-addressed, stamped envelope.

(B) Proof of filing will be provided to the surplus lines licensee making electronic filings by means or methods prescribed by the director of the Missouri Department of Insurance.

*AUTHORITY: sections 374.045, 384.017, 384.031 and 384.057, RSMo 2000. This rule was previously filed as 4 CSR 190-10.103. Original rule filed May 4, 1987, effective Aug. 1, 1987. For intervening history, please consult the **Code of State Regulations**. Amended: Filed Nov. 1, 2005.*

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

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

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed amendment at 10 a.m. on January 5, 2006. The public hearing will be held at the Harry S Truman State Office Building, 301 West High Street, Room 530, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to the proposed amendment, until 5:00 p.m. on January 5, 2006. Written statements shall be sent to Kevin Hall, Department of Insurance, PO Box 690, Jefferson City, Missouri 65102.

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

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 10—DEPARTMENT OF NATURAL RESOURCES
Division 10—Air Conservation Commission
Chapter 1—Organization

ORDER OF RULEMAKING

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

10 CSR 10-1.030 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on June 15, 2005 (30 MoReg 1332–1336). Those sections with changes are reprinted here. This proposed rule 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 comments from the Attorney General of Missouri, Regulatory Environmental Group for Missouri, Washington University in St. Louis, and the Missouri Ag Industries Council, Inc. The comments were generally supportive of the proposed rule, however the recently signed House Bill 824 that transfers the responsibilities for conducting hearings to the Administrative Hearing Commission required revisions to the text and elimination of many sections of the proposed rule.

COMMENT: The Attorney General of Missouri comments that the proposed rule be modified to be consistent with House Bill 824. The new statute, effective this August 28, transfers responsibilities for conducting hearings to the Administrative Hearing Commission (AHC), while preserving the Air Conservation Commission's authority to make final decisions, with certain limitations. As proposed, some provisions of this rule will conflict with House Bill 824 and most provisions are no longer needed. But this commission should still adopt provisions covering how it will handle an appeal after the AHC has performed its duties. This is found in subsection (4)(D). That is the portion of the rule that discusses what happens after a recommendation is returned to the commission. In a phone call with the general counsel of the Missouri Department of Natural Resources it was suggested that the commission withdraw or hold this rule in abeyance until the Commissioners Core Workgroup can reconvene and discuss the matter further. Sections (1)–(4) would need to be modified as explained in written testimony provided to the commission. Sections (5)–(21) should be deleted.
RESPONSE AND EXPLANATION OF CHANGE: The department's Air Pollution Control Program recognizes the significant impact that House Bill 824 has on the proposed rule. While the purpose of the proposed rule will be reduced due to the authority of the AHC, the department's Air Pollution Control Program believes that the need for this rule still exists. The suggested changes to the proposed rule presented by the Attorney General's Office have been made to make the rule consistent with House Bill 824.

COMMENT: Regulatory Environmental Group for Missouri (REGFORM) comments that they are pleased to see this proposal come before the commission. The proposal contains many of the provisions asked for by our group with the Commissioners Core Workgroup. Our group sees the use of the AHC as a positive. It addresses our previous concerns about the frustration of the commissioners in handling formal hearings due to lack of legal training and a timeliness issue of scheduling and hearing appeals. The use of the AHC will also result in a more reliable record of decisions made and prevent any potential conflict of interest.
RESPONSE: The department's Air Pollution Control Program agrees that the proposed rule is consistent with the intent of the Commissioners Core Workgroup and addresses REGFORM's concerns. Therefore, no changes were made to the rule as a result of this comment.

COMMENT: Washington University School of Law provided general comments that the rule makes no provision for publication of final decisions of the commissions. Publishing the decisions would assist others in predicting the commission's decision on other appeals. The rule does not generally incorporate the Missouri Rules of Civil Procedure/Evidence where otherwise silent. The rule does not provide a specific procedure for appeals of commission decisions. Specific comments are as follows: section (3) should not allow a commissioner to hear an appeal due to potential bias or select a hearing officer; section (6) should make proceedings accessible to persons or entities that cannot afford a lawyer; section (8) should clarify that discovery filings need not be filed, except as provided in the separate discovery rule; section (11) the rule should incorporate the service rule and standard for pleadings and motions from the Missouri Rules of Civil Procedure; section (14) concerning discovery should mirror the Missouri Rules of Civil Procedure; section (19) on hearings should require at least sixty (60) days notice of a hearing on merits and not automatically require the petitioner to present evidence first; and section (21) should mirror the Missouri Rules of Civil Procedure and allow fees and expenses to be sought through motion.
RESPONSE AND EXPLANATION OF CHANGE: The suggested changes to sections (6), (8), (11), (14), (19) and (21) are no longer necessary because the new statute resulting from House Bill 824 transfers responsibilities for conducting hearings to the AHC. As a result, this proposed rule will not be able to impose requirements

beyond what the AHC currently practices. However, the revised language in section (3) considered the suggested changes made in this comment as well as other comments received on this rulemaking.

COMMENT: Missouri Ag Industries Council, Inc. (Mo-Ag) comments that the Missouri General Assembly has enacted and the governor has signed House Bill 824. This new law refers all environmental appeals to the AHC for fact finding and recommended decisions. In many respects, this new law has obviated the need for many of these proposed regulations. Consequently, Mo-Ag recommends that the Core Commissioner's Workgroup reconvene and make a new recommendation on proposed procedural rules for appeals in the post-HB 824 era. Mo-Ag would further recommend that the commission withdraw this proposed rule pending receipt of recommendation from the workgroup. Sections (3) and (4) would need to be revised to reflect the AHC appointment as hearing officer. Mo-Ag objects to section (6) that allows any individual to file an initial pleading. A lawyer should be required. Section (7) needs to be revised to further define examples that require a notice of institution of the case. It should also have a notification feature on third-party appeals. Section (7) should also provide direction on how to caption an appeal and when an answer to the writing is required. Section (9) needs to be revised to eliminate the term presiding officer and replace with AHC and clarify whether duplicate filings must be made with the Air Commission and the AHC. Section (14) needs to place limitations on the discovery process to prohibit burdensome and inappropriate discovery requests. Section (15) should add an additional sanction of dismissal of the appeal. Section (16) should have a provision that would provide an incentive for parties to stipulate to the facts allowing motions for summary judgement. Subsection (19)(C) should be changed so that hearings not be conducted in less than thirty (30) days notice instead of ten (10). It should also freely grant continuances if both parties' request a continuance or one party cannot show prejudice if the matter is continued. The rule should also require the AHC to provide a copy of its proposed decision to all parties of record in addition to the Air Commission.
RESPONSE AND EXPLANATION OF CHANGE: The suggested changes to sections (6), (7), (9), (14), (15), (16) and (19) are no longer necessary because the new statute resulting from House Bill 824 transfers responsibilities for conducting hearings to the AHC. As a result, this proposed rule will not be able to impose requirements beyond what the AHC currently practices. However, the revised language in sections (3) and (4) considered the suggested changes made in this comment as well as other comments received on this rulemaking.

10 CSR 10-1.030 Air Conservation Commission Appeals and Requests for Hearings

PURPOSE: This rule contains procedural regulations for all contested cases before the commission.

(1) Subject. This rule contains procedural regulations for all contested cases before the commission.

(2) Definitions. As used in this rule, the following terms mean:

(A) Commission—The Missouri Air Conservation Commission;

(B) Department—The Department of Natural Resources, which includes the director thereof, or the person or division or program within the department delegated the authority to render the decision, order, determination, finding, or other action that is subject to review by the commission;

(C) Hearing—Any presentation to, or consideration by the hearing officer of evidence or argument on a petition seeking the commission's review of an action by the department;

(D) Hearing officer—Administrative Hearing Commission; and

(E) Person—An individual, partnership, copartnership, firm, company, public or private corporation, association, joint stock company, trust, estate, political subdivision or any agency, board, department or bureau of the state or federal government or any other legal entity whatever, which is recognized by law as the subject of rights and duties.

(3) Filing an Appeal or Requesting a Hearing.

(A) Any person adversely affected by a decision of the department or otherwise entitled to ask for a hearing may appeal to have the matter heard by filing a petition with the Administrative Hearing Commission within thirty (30) days after the date the decision was mailed or the date it was delivered, whichever date was earlier.

(B) A petition sent by registered mail or certified mail will be deemed filed on the date it is mailed. If it is sent by any method other than registered mail or certified mail, it will be deemed filed on the date it is received by the Administrative Hearing Commission.

(4) Procedures.

(A) The hearing shall be conducted in accordance with the provisions of Chapter 536, RSMo, and the regulations of the Administrative Hearing Commission promulgated thereunder.

(B) Upon receipt of the hearing officer's recommendation and the record in the case, the commission shall—

1. Distribute the hearing officer's recommendation to the parties or their counsel;

2. Allow the parties or their counsel an opportunity to submit written arguments regarding the recommendation;

3. Allow the parties or their counsel an opportunity to present oral arguments before the commission makes the final determination;

4. Complete its review of the record and deliberations as soon as practicable;

5. Deliberate and vote upon a final, written determination during an open meeting, except that the commission may confer with its counsel in closed session with respect to legal questions;

6. Issue its final, written determination as soon as practicable, including findings of fact and conclusions of law. The decision of the commission shall be based only on the facts and evidence in the record; and

7. The commission may adopt the recommended decision of the hearing officer as its final decision. The commission may change a finding of fact or conclusion of law made by the hearing officer, or may vacate or modify the recommended decision, only if the commission states in writing the specific reason for a change.

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

ORDER OF RULEMAKING

By the authority vested in the Missouri Gaming Commission under sections 313.004, 313.805, 313.807 and 313.817, RSMo 2000, the commission amends a rule as follows:

11 CSR 45-5.180 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 1, 2005 (30 MoReg 1644). The section with changes is reprinted here. This proposed amendment becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: The Missouri Gaming Commission received four (4) comments on the proposed amendment.

COMMENT: Harrah's Maryland Heights, LLC and Harrah's North Kansas City, LLC requested that subsection (3)(D) be removed, which subsection prohibits licensees or its employees from making

false or misleading statements relating to tournaments or conducting tournaments in a manner that reflects negatively on the licensee, the commission, or the integrity of gaming in Missouri. Harrah's states that the subsection is very broad and open to interpretation concerning the meaning of false and misleading.
RESPONSE: The prohibitions contained in subsection (3)(D) are similar to other requirements in 11 CSR 45-1, et seq., and are well-defined in Missouri law.

COMMENT: Harrah's Maryland Heights, LLC and Harrah's North Kansas City, LLC commented that subsection (3)(H), which makes a designated compliance officer responsible for the conduct of tournaments, should be modified because under Harrah's operational structure the compliance officer has no direct or routine involvement with the development or implementation of tournaments.
RESPONSE AND EXPLANATION OF CHANGE: Subsection (3)(H) will be changed to shift the responsibility for the conduct of tournaments from a designated compliance officer to an employee position acceptable to the commission that is designated by the licensee in its internal control system.

11 CSR 45-5.180 Tournament Chips and Tournaments

(3) As used in this rule, a tournament is a contest offered and sponsored by a Class A licensee in which patrons may be assessed an entry fee or be required to meet some other criteria to compete against one another in a gambling game or series of gambling games in which winning patrons received a portion or all of the entry fees, if any, which may be increased with cash or non-cash prizes from the Class A licensee. Class A licensees may conduct tournaments provided:

(H) The Class A licensee shall designate in its internal control system an employee position acceptable to the commission that shall be responsible for ensuring adherence to the rules set forth in this section.

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

ORDER OF RULEMAKING

By the authority vested in the Missouri Gaming Commission under sections 313.004 and 313.805, RSMo 2000, the commission amends a rule as follows:

11 CSR 45-5.181 is amended.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 1, 2005 (30 MoReg 1644–1645). 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: The Missouri Gaming Commission received two (2) comments on the proposed amendment.

COMMENT: Harrah's Maryland Heights, LLC and Harrah's North Kansas City, LLC commented that subsection (2)(F), which makes a designated compliance officer responsible for the conduct of promotional activities, should be modified because under Harrah's operational structure the compliance officer has no direct or routine involvement with the development or implementation of promotional activities.
RESPONSE AND EXPLANATION OF CHANGE: Subsection (2)(F) will be changed to shift the responsibility for the conduct of promotional activities from a designated compliance officer to an employee position acceptable to the commission that is designated by the licensee in its internal control system.

COMMENT: The commission staff commented that a typographical error appears in section (5), in that the information required for promotional coupons is contained in section (3) and not section (4).
RESPONSE AND EXPLANATION OF CHANGE: Section (5) has been modified to correct the typographical error.

11 CSR 45-5.181 Promotional Activities

(2) Class A licensees may provide promotional giveaways, issue promotional coupons or conduct promotional games or similar activities (collectively, "promotional activities") for patrons or their employees without the prior approval of the commission, provided the promotional activity is not structured or conducted in a manner that reflects negatively on the licensee, the commission, or the integrity of gaming in Missouri and complies with the following:

(F) The Class A licensee shall designate in its internal control system an employee position acceptable to the commission that shall be responsible for ensuring adherence to the rules set forth in this section.

(5) Class A licensees may use mass media to provide promotional coupon offers to prospective patrons; however, such offers may only be redeemed for a preprinted coupon that contains all of the information required for a promotional coupon in section (3) of this rule.

Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 24—Drivers License Bureau Rules

ORDER OF RULEMAKING

By the authority vested in the director of revenue under section 302.721, RSMo Supp. 2004, the director adopts a rule as follows:

12 CSR 10-24.335 Commercial Drivers Licensing Third Party Examination Audit Retest Process **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 15, 2005 (30 MoReg 1741–1742). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: No comments were received.

Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 40—Family Support Division
Chapter 2—Income Maintenance

ORDER OF RULEMAKING

By the authority vested in the Department of Social Services, Family Support Division under section 207.020, RSMo 2000, the division amends a rule as follows:

13 CSR 40-2.200 Determining Eligibility for Medical Assistance **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 1, 2005 (30 MoReg 1647–1648). 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 15—ELECTED OFFICIALS
Division 30—Secretary of State
Chapter 50—General

ORDER OF RULEMAKING

By the authority vested in the commissioner of securities under section 409.6-605, RSMo Supp. 2004, the commissioner amends a rule as follows:

15 CSR 30-50.030 Fees **is amended**.

A notice of proposed rulemaking containing the text of the proposed amendment was published in the *Missouri Register* on August 15, 2005 (30 MoReg 1742). 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 20—DEPARTMENT OF INSURANCE
Division 700—Licensing
Chapter 1—Insurance Producers

ORDER OF RULEMAKING

By the authority vested in the director of the Department of Insurance under section 374.045, RSMo 2000, the director adopts a rule as follows:

20 CSR 700-1.146 is adopted.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 15, 2005 (30 MoReg 1743). Those sections with changes are reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed rule was held September 20, 2005, and the public comment period ended September 20, 2005. Five (5) comments were made.

COMMENT: Bryan Cox with the American Council of Life Insurers, Randy Scherr with the Life Insurance Association of Missouri, and Dallas Polen with the Kansas City Life Insurance Company requested the Department of Insurance adopt the NAIC Senior Protection in Annuity Transactions model regulation, the NAIC Annuity Disclosure model regulation, the 1998 version of the Annuities Replacement model regulation, that compliance with NASD rules act as a safe harbor, and that this proposed rule should only apply to individual products and not include group products.
RESPONSE AND EXPLANATION OF CHANGE: The department is considering the adoption of the NAIC Senior Protection in Annuity Transactions, NAIC Annuity Disclosure and the 1998 version of the Annuities Replacement model regulations. This rule reflects the professional standard found in NASD Conduct Rule 2110. It also recognizes that persuasive authority of prior NASD and SEC decisions, but does not create a "safe harbor" defense as suggested because the creation of such an affirmative defense would create confusion in what actually may be a question of law. The department believes that the proposed rule should apply to both individual and group products, but be limited to sales to individuals. Therefore, subsections (1)(A) and (B) have been changed.

COMMENT: Gary Sanders with the National Association of Insurance and Financial Advisors requested that the Department of Insurance adopt the NAIC Senior Protection model regulation, the compliance with NASD rules act as a safe harbor, and that the proposed rule be limited to individual products and not apply to group products.
RESPONSE AND EXPLANATION OF CHANGE: See response to prior comment.

COMMENT: D.R. Haneklau indicated the need for regulation of variable annuity products.
RESPONSE: The department concurs.

20 CSR 700-1.146 Recommendations to Customers (Suitability)

(1) Grounds for the discipline or disqualification of producers shall include, in addition to other grounds specified in section 375.141, RSMo, failure to comply with or violation of the following professional standards of conduct:

(A) In recommending to an individual customer the purchase, sale or exchange of any variable life or variable annuity product, a producer shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his or her other investment holdings and as to his or her financial situation and needs.

(B) Prior to the execution of a variable life or variable annuity transaction recommended to an individual customer a producer shall make reasonable efforts to obtain information concerning—

1. The customer's financial status;
2. The customer's tax status;
3. The customer's insurance and investment objectives;
4. The customer's current and reasonably anticipated needs for liquidity; and
5. Such other information used or considered to be reasonable by such producer in making recommendations to the customer.

Title 20—DEPARTMENT OF INSURANCE
Division 700—Licensing
Chapter 1—Insurance Producers

ORDER OF RULEMAKING

By the authority vested in the director of the Department of Insurance under section 374.045, RSMo 2000, the director adopts a rule as follows:

20 CSR 700-1.147 Reasonable Supervision in Variable Life and Variable Annuity Sales **is adopted**.

A notice of proposed rulemaking containing the text of the proposed rule was published in the *Missouri Register* on August 15, 2005 (30 MoReg 1743–1746). No changes have been made in the text of the proposed rule, so it is not reprinted here. This proposed rule becomes effective thirty (30) days after publication in the *Code of State Regulations*.

SUMMARY OF COMMENTS: A public hearing on this proposed rule was held September 20, 2005, and the public comment period ended September 20, 2005. Five (5) comments were made.

COMMENT: Bryan Cox with the American Council of Life Insurers, Randy Scherr with the Life Insurance Association of Missouri, and Dallas Polen with the Kansas City Life Insurance

Company requested the Department of Insurance adopt the NAIC Senior Protection in Annuity Transactions model regulation, the NAIC Annuity Disclosure model regulation, the 1998 version of the Annuities Replacement model regulation, and that section (1), subsection (B), paragraph 1., subparagraph A. of the proposed rule should copy NASD guidelines verbatim.
RESPONSE: The department is considering the adoption of the NAIC Senior Protection in Annuity Transactions, NAIC Annuity Disclosure and the 1998 version of the Annuities Replacement model regulations. The department believes that the current language of section (1), subsection (B), paragraph 1., subparagraph A. of this rule is preferred because it provides more protection for consumers than current NASD guidelines.

COMMENT: Gary Sanders with the National Association of Insurance and Financial Advisors requested that the Department of Insurance adopt the NAIC Senior Protection model regulation and that the proposed rule be limited to individual products and not apply to group products.
RESPONSE: See response to prior comment.

COMMENT: D.R. Haneklau indicated the need for regulation of variable annuity products.
RESPONSE: The department concurs.

This section may contain notice of hearings, correction notices, public information notices, rule action notices, statements of actual costs and other items required to be published in the *Missouri Register* by law.

Title 4—DEPARTMENT OF ECONOMIC DEVELOPMENT
Division 100—Division of Credit Unions

APPLICATIONS FOR NEW GROUPS OR GEOGRAPHIC AREAS

Pursuant to section 370.081(4), RSMo 2000, the director of the Missouri Division of Credit Unions is required to cause notice to be published that the following credit unions have submitted applications to add new groups or geographic areas to their membership.

Credit Union	Proposed New Group or Geographic Area
St. Louis Community Credit Union 3651 Forest Park Ave St. Louis, MO 63108	Those who live or work in the following zip codes: 63125 and 63126

NOTICE TO SUBMIT COMMENTS: Anyone may file a written statement in support of or in opposition to any of these applications. Comments shall be filed with: Director, Division of Credit Unions, PO Box 1607, Jefferson City, MO 65102. To be considered, written comments must be submitted no later than ten (10) business days after publication of this notice in the ***Missouri Register****.*