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Part I

SALUS POPULI SUPREMA LEX ESTO

"The welfare of the people shall be the supreme law."



ROBIN CARNAHAN
SECRETARY OF STATE

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REGISTER

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RULES—Cite material in the *Missouri Register* by volume and page number, for example, Vol. 28, *Missouri Register*, page 27. The approved short form of citation is 28 MoReg 27.

The rules are codified in the *Code of State Regulations* in this system—

Title	Code of State Regulations	Division	Chapter	Rule
1	CSR	10-	1.	010
Department		Agency, Division	General area regulated	Specific area regulated

They are properly cited by using the full citation, i.e., 1 CSR 10-1.010.

Each department of state government is assigned a title. Each agency or division within the department is assigned a division number. The agency then groups its rules into general subject matter areas called chapters and specific areas called rules. Within a rule, the first breakdown is called a section and is designated as (1). Subsection is (A) with further breakdown into paragraph 1., subparagraph A., part (I), subpart (a), item I. and subitem a.

RSMo—The most recent version of the statute containing the section number and the date.

Rules appearing under this heading are filed under the authority granted by section 536.025, RSMo 2000. An emergency rule may be adopted by an agency if the agency finds that an immediate danger to the public health, safety or welfare, or a compelling governmental interest requires emergency action; follows procedures best calculated to assure fairness to all interested persons and parties under the circumstances; follows procedures which comply with the protections extended by the *Missouri* and the *United States Constitutions*; limits the scope of such rule to the circumstances creating an emergency and requiring emergency procedure, and at the time of or prior to the adoption of such rule files with the secretary of state the text of the rule together with the specific facts, reasons and findings which support its conclusion that there is an immediate danger to the public health, safety or welfare which can be met only through the adoption of such rule and its reasons for concluding that the procedure employed is fair to all interested persons and parties under the circumstances.

Rules filed as emergency rules may be effective not less than ten (10) days after filing or at such later date as may be specified in the rule and may be terminated at any time by the state agency by filing an order with the secretary of state fixing the date of such termination, which order shall be published by the secretary of state in the *Missouri Register* as soon as practicable.

All emergency rules must state the period during which they are in effect, and in no case can they be in effect more than one hundred eighty (180) calendar days or thirty (30) legislative days, whichever period is longer. Emergency rules are not renewable, although an agency may at any time adopt an identical rule under the normal rulemaking procedures.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 6—Motor Vehicle Fuel Tax**

EMERGENCY RULE

12 CSR 10-6.100 Motor Fuel Tax Exemption for Operators of Public Mass Transportation Service

PURPOSE: Section 142.817, RSMo exempts operators of public mass transportation service from motor fuel tax. This rule explains how the exemption is to be claimed.

EMERGENCY STATEMENT: The director finds that there is an immediate danger to the public welfare, which can only be addressed through this emergency rule. This emergency rule is necessary to ensure public awareness and to preserve a compelling governmental interest requiring an early effective date in that the emergency rule informs the public of new sales tax exemptions that are available to various sellers and their customers as a result of enactment of TAFP CCS HCS SB 30 by the 94th Missouri General Assembly. These exemptions are effective August 28, 2007, and taxpayers need guidance regarding how these statutory changes impact them. A proposed rule, which covers the same material, is published in this issue of the Missouri Register. The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The

director believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule filed August 14, 2007, effective August 28, 2007, expires February 23, 2008.

(1) In general, fuel used to operate public mass transportation services is not subject to Missouri motor fuel tax. Fuel that is not subject to Missouri motor fuel tax is subject to Missouri state and local sales tax, unless otherwise exempted under Chapter 144, RSMo.

(2) Basic Application.

(A) Operators of public mass transportation services who purchase fuel on or after August 28, 2007, and paid the Missouri motor fuel tax may obtain a refund of the tax. The operator of the public mass transportation service must certify to the department, on a form prescribed by the director, that the motor fuel will be used exclusively in the operation of the mass transportation service.

1. The operator must submit the claim on a form prescribed by the department within one (1) year of the date of purchase or April 15 of the year following the purchase, whichever is later.

2. The refund will equal the motor fuel tax, less all applicable state and local sales taxes unless the entity is otherwise exempt from Missouri sales tax.

(B) Ultimate vendors may make bulk sales of motor fuel to the exempt public mass transportation service on or after August 28, 2007, without collecting the state motor fuel tax. The ultimate vendor that purchased motor fuel and paid the Missouri motor fuel tax may obtain a refund if the ultimate vendor sold the motor fuel without charging the Missouri motor fuel tax.

1. Operators must furnish the ultimate vendor a Public Mass Transportation Operator Exemption Certificate in order to purchase the motor fuel without being charged the Missouri motor fuel tax. This form is available at the department's central office, or may be downloaded at <http://www.dor.mo.gov/tax/business/fuel/forms/index.htm>.

2. Any ultimate vendor who is a retailer, and not licensed as a supplier or distributor, must submit the claim on a form prescribed by the director within two (2) years of the date of purchase.

3. If the ultimate vendor is licensed as a Missouri supplier or distributor, the claim for refund must be submitted on a form prescribed by the director and must be filed within three (3) years of the date of purchase.

4. The ultimate vendor must collect and remit to the department any applicable state and local sales taxes at the rate in effect at the vendor's place of business.

(3) Examples.

(A) A public mass transportation service operator has vehicles that operate on gasoline or gasohol. The operator goes to the pump to fuel its vehicles. The operator will purchase the gasoline or gasohol subject to all taxes and may apply for a refund of the state motor fuel tax.

(B) A public mass transportation service operator has vehicles that operate on diesel fuel. The operator may purchase clear diesel fuel subject to the state motor fuel tax and apply for a refund or if allowed under federal law, it may purchase dyed diesel fuel, which is exempt from state and federal fuel tax. It is required to complete and provide the ultimate vendor with an exemption certificate prior to filling any vehicles or ordering any dyed diesel fuel.

(C) A public mass transportation service operator has bulk storage facilities for the motor fuel used to fuel its vehicles. The ultimate vendor who delivers the motor fuel may sell the product without charging the motor fuel tax. The ultimate vendor would charge any applicable sales tax unless the operator is exempt from sales tax under state law. The ultimate vendor would then apply for a refund

of the motor fuel tax it paid on the motor fuel but did not collect from the operator.

(D) A public mass transportation service operator has vehicles that operate on diesel fuel and meet the exemption requirements under federal law. Its routes include states other than Missouri, and the other state does not allow the use of dyed diesel fuel on public roadways. Even though Missouri and the federal government would allow the use of dyed diesel fuel, the operator must purchase and use clear fuel in the vehicles that cross into the neighboring state.

AUTHORITY: sections 142.818 and 142.824, RSMo 2000, 136.035, RSMo Supp. 2006, and TAFP CCS HCS SB 30, enacted by the 94th General Assembly, 2007. Emergency rule filed Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. A proposed rule, which covers the same material, is published in this issue of the *Missouri Register*.

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

EMERGENCY RESCISSION

12 CSR 10-23.365 Issuance of Nonresident Salvage-Buyer's Identification Card. This rule set forth the procedures for issuance of nonresident salvage-buyer's identification card.

PURPOSE: This rule is being rescinded due to legislation that repeals the requirement for out-of-state salvage-buyers to obtain a nonresident salvage-buyer's identification card in order to buy at Missouri salvage pools and disposal sales.

EMERGENCY STATEMENT: The director finds that there is an immediate danger to the public welfare, which can only be addressed through this emergency rescission. This emergency rescission is necessary to ensure public awareness and to preserve a compelling governmental interest in rescinding the rule effective August 28, 2007, since Senate Bill 82 repeals the nonresident ID card requirement effective that date. Rescinding the rule effective the same date the law eliminates the requirement will make it clear to all nonresident salvage buyers that Missouri has eliminated the ID card registration requirement effective August 28, 2007, and ensure the regulation creates no confusion about the need for a nonresident salvage buyer card. As a result, the director finds that there is an immediate danger to the public welfare which can only be addressed through this emergency rescission. The department believes this emergency rescission is fair to all interested persons under the circumstances and good stewardship of state resources. The director has followed procedures best calculated to assure fairness to all interested persons and parties and has complied with protections extended by the *Missouri and United States Constitutions*. The director has limited the scope of the emergency rescission to the circumstances creating the required emergency action. Emergency rescission filed August 8, 2007, effective August 28, 2007, expires February 23, 2008.

AUTHORITY: section 301.218, RSMo 1986. Original rule filed Nov. 18, 1986, effective March 12, 1987. Emergency rescission filed Aug. 8, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. A proposed rescission covering this same material is published in this issue of the *Missouri Register*.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 103—Sales/Use Tax—Imposition of Tax**

EMERGENCY AMENDMENT

12 CSR 10-103.380 Photographers, Photofinishers and Photoengravers, as Defined in Section 144.030, RSMo. The director proposes to amend the title, amend subsections (3)(C), (3)(E), (3)(F), and (4)(D) through (4)(F).

PURPOSE: This rule is being amended due to TAFP HCS SCS SB 196, enacted by the 93rd General Assembly, 2005 and TAFP CCS HCS SB30, enacted by the 94th General Assembly, 2007.

EMERGENCY STATEMENT: The director finds that there is an immediate danger to the public welfare, which can only be addressed through this emergency amendment. This emergency amendment is necessary to ensure public awareness and to preserve a compelling governmental interest requiring an early effective date in that the emergency amendment informs the public of new sales tax exemptions that are available to various sellers and their customers as a result of enactment of TAFP CCS HCS SB 30 by the 94th Missouri General Assembly. These exemptions are effective August 28, 2007, and taxpayers need guidance regarding how these statutory changes impact them. A proposed amendment, which covers the same material, is published in this issue of the *Missouri Register*. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the *Missouri and United States Constitutions*. The director believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment filed August 14, 2007, effective August 28, 2007, expires February 23, 2008.

(3) Basic Application of Tax.

(C) The sale of negative development services only, where no prints, slides or other tangible personal property are received, is not subject to tax. The developer must pay tax on materials and supplies used in the development process **because developing is a service that is not subject to tax.**

(E) [Supplies such as film, chemicals and other materials purchased for the photographer's own use or consumption are taxable.] Chemicals that are intended to and do remain with the final product are considered an ingredient or component part of the final product for resale and are therefore not subject to tax.

(F) Equipment such as cameras and lenses, which is directly used to manufacture new **tangible** personal property intended to be sold ultimately at retail, is exempt from tax. Replacement parts for this exempt equipment are also exempt.

(4) Examples.

[[D)] A photographer purchases chemicals and other supplies used to develop photographs. These chemicals and supplies are not intended to remain with the photograph. These purchases are subject to tax because they are consumed in the developing process and do not become a component or ingredient part of the photograph.]

[[E)] (D) A photographer purchased new cameras and a new lens to replace a broken lens. The new cameras allow the photographer to photograph twice as many pictures. The photographer can purchase the cameras exempt because it increases productivity. The new lens would also be exempt as replacement equipment.

[[F)] (E) A photographer scans photographs into a computer for customers. If the photographer provides the customer a CD containing the images, the sale is taxable. However, if the photographer sends the images to customers via the Internet, the photographer has not sold tangible personal property and should not collect tax on this sale.

AUTHORITY: section 144.270, RSMo [1994] 2000. Original rule filed June 29, 2000, effective Dec. 30, 2000. Emergency amendment filed Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. A proposed amendment, which covers the same material, is published in this issue of the *Missouri Register*.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 103—Sales/Use Tax—Imposition of Tax**

EMERGENCY RULE

12 CSR 10-103.381 Items Used or Consumed by Photographers, Photofinishers and Photoengravers, as Defined in Section 144.054, RSMo

PURPOSE: Section 144.054.2, RSMo exempts from state sales tax and local use tax, but not local sales tax, machinery, equipment, materials and chemicals used or consumed in manufacturing, processing, compounding, mining or producing any product or used in research and development related to manufacturing. This rule explains the exemption for photographers, photofinishers and photoengravers.

EMERGENCY STATEMENT: The director finds that there is an immediate danger to the public welfare, which can only be addressed through this emergency rule. This emergency rule is necessary to ensure public awareness and to preserve a compelling governmental interest requiring an early effective date in that the emergency rule informs the public of new sales tax exemptions that are available to various sellers and their customers as a result of enactment of TAFP CCS HCS SB 30 by the 94th Missouri General Assembly. These exemptions are effective August 28, 2007, and taxpayers need guidance regarding how these statutory changes impact them. A proposed rule, which covers the same material, is published in this issue of the *Missouri Register*. The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the *Missouri and United States Constitutions*. The director believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule filed August 14, 2007, effective August 28, 2007, expires February 23, 2008.

(1) In general, purchases of machinery, equipment, materials and chemicals used or consumed in manufacturing, processing, compounding, mining or producing any product or used in research and development related to manufacturing are exempt from state sales tax and local use tax, but not local sales tax.

(2) Definition of Terms: See the definition of terms in 12 CSR 10-111.010 Machinery and Equipment Exemptions.

(3) Basic Application of Tax.

(A) Supplies such as film, chemicals and other materials purchased for the photographer's use or consumption are exempt from state sales tax and local use tax, but not local sales tax.

(4) Examples.

(A) A photographer purchases chemicals and other supplies used to develop photographs. These chemicals and supplies are not intended to remain with the photograph. These purchases are exempt from state sales tax and local use tax, but not local sales tax, because they are consumed in the developing process.

AUTHORITY: section 144.270, RSMo 2000 and CCS HCS SB 30, enacted by the 94th General Assembly, 2007. Emergency rule filed Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. A proposed rule, which covers the same material, is published in this issue of the *Missouri Register*.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 103—Sales/Use Tax—Imposition of Tax**

EMERGENCY AMENDMENT

12 CSR 10-103.400 Sales Tax on Vending Machine Sales, as Defined in Section 144.054, RSMo. The director proposes to amend section (1), and subsection (3)(I).

PURPOSE: This rule is being amended due to TAFP CCS HCS SB 30, enacted by the 94th General Assembly, 2007.

EMERGENCY STATEMENT: The director finds that there is an immediate danger to the public welfare, which can only be addressed through this emergency amendment. This emergency amendment is necessary to ensure public awareness and to preserve a compelling governmental interest requiring an early effective date in that the emergency amendment informs the public of new sales tax exemptions that are available to various sellers and their customers as a result of enactment of TAFP CCS HCS SB 30 by the 94th Missouri General Assembly. These exemptions are effective August 28, 2007, and taxpayers need guidance regarding how these statutory changes impact them. A proposed amendment, which covers the same material, is published in this issue of the *Missouri Register*. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the *Missouri and United States Constitutions*. The director believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment filed August 14, 2007, effective August 28, 2007, expires February 23, 2008.

(1) In general, sales of tangible personal property, other than photocopies and tobacco products, through vending machines are subject to tax based on one hundred thirty-five percent (135%) of the net invoice price of the tangible personal property. The applicable tax rate is the rate in effect at the location of the vending machine. Sales of photocopies and tobacco products are subject to tax on their retail sales price. *[Purchases of machines or parts for machines used in a commercial vending machine business are subject to tax unless tax is paid on the gross receipts derived from the use of the machines.] Purchases of machines or parts for machines used in a commercial vending machine business are not subject to tax if tax is paid on the gross receipts derived from the sale of the tangible personal property through the vending machines.*

(3) Basic Application of Tax.

(I) *[Purchases of machines or parts for machines used in a commercial coin-operated vending business are subject to tax unless tax is paid on the gross receipts derived from the use of the machines.] Purchases of machines or parts for machines used in a commercial vending machine business are not subject to tax if tax is paid on the gross receipts derived from the sale of the tangible personal property through the vending machines.*

AUTHORITY: section [143.961] 144.270, RSMo 2000, and CCS HCS SB 30, enacted by the 94th General Assembly, 2007. Original rule filed May 1, 2006, effective Nov. 30, 2006. Emergency amendment filed Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. A proposed amendment, which covers the same material, is published in this issue of the *Missouri Register*.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 103—Sales/Use Tax—Imposition of Tax**

EMERGENCY AMENDMENT

12 CSR 10-103.555 Determining Taxable Gross Receipts. The director proposes to amend the purpose, sections (2) through (4), and reletter existing subsections accordingly.

PURPOSE: This rule is being amended due to TAFP CCS HCS SB 30, enacted by the 94th General Assembly, 2007.

EMERGENCY STATEMENT: The director finds that there is an immediate danger to the public welfare, which can only be addressed through this emergency amendment. This emergency amendment is necessary to ensure public awareness and to preserve a compelling governmental interest requiring an early effective date in that the emergency amendment informs the public of new sales tax exemptions that are available to various sellers and their customers as a result of enactment of TAFP CCS HCS SB 30 by the 94th Missouri General Assembly. These exemptions are effective August 28, 2007, and taxpayers need guidance regarding how these statutory changes impact them. A proposed amendment, which covers the same material, is published in this issue of the *Missouri Register*. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the *Missouri* and *United States Constitutions*. The director believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment filed August 14, 2007, effective August 28, 2007, expires February 23, 2008.

PURPOSE: Section 144.021, RSMo, imposes a tax on a seller's gross receipts. Section 144.083, RSMo, addresses the application of tax involving third party payments. This rule provides guidance for reporting gross receipts.

(2) Definitions.

(A) Buydown payments—payments received by a seller under an agreement with a manufacturer or wholesaler to lower the cost of inventory sold to consumers for a stated sales price.

[(A)] (B) Gross receipts—the total amount of the sale price of taxable services and tangible personal property including any services, other than charges incident to the extension of credit, that are a part of such sale and are capable of being valued in money, whether received in money or otherwise.

[(B)] (C) Rebate—a return of part of an amount given in payment.

(D) Store coupons—coupons issued by the seller to reduce the stated price of a product to the purchaser.

[(C)] (E) Taxable sales—the total amount of gross receipts plus or minus any adjustments permitted or required by law.

(F) Third party coupons—coupons issued by a manufacturer or other third party to apply to the purchase of the product.

(3) Basic Application of Tax.

(C) When the [taxpayer] seller accepts third party coupons, only the [total sale] price [includes the value of the coupon. When the taxpayer accepts third party coupons along with food stamps, the value of the food stamps is not included in taxable sales, but the value of the coupon is included in taxable sales.] paid by the purchaser is included in the gross receipts subject to tax.

(D) The value of a store coupon issued and redeemed by [the] a seller is not [included in taxable sales] subject to tax. Store coupons are not included in gross receipts.

(E) When the seller accepts federal food stamp coupons, the value of the federal food stamp coupons is not included in gross receipts.

[(E)] (F) Rebates from sellers or manufacturers do not reduce taxable sales unless they are offered instantly at the time of sale, except for rebates on motor vehicles, boats, trailers and outboard motors.

[(F)] (G) A taxpayer accepting an article in trade as a credit or part payment on the purchase price should include the value of the article in gross receipts. The value of the article should be deducted from gross receipts when calculating taxable sales.

[(G)] (H) Money received in advance, such as down payments, lay-aways or gift certificates, are not included in gross receipts until the

sale has been consummated.

[(H)] (I) Charges to customers for the extension of credit, such as late fees or financing charges are excluded from gross receipts.

[(I)] (J) A seller's expenses associated with utilizing the service of credit card companies are not excluded from gross receipts.

[(J)] (K) If the taxpayer's inventory is stolen or destroyed by fire or other casualty, the insurance receipts are not subject to tax and should not be included in gross receipts.

(L) When tangible personal property is subject to a federal manufacturer's excise tax imposed by sections 4041, 4061, 4071, 4081, 4091, 4161, 4181, 4251, 4261, or 4271 of Title 26, United States Code, the amount of the tax is not included in gross receipts if the retail seller collects the excise tax from the purchaser and remits it to the federal government.

(M) Gross receipts from the sale of cigarettes do not include the amount of the sale price that represents the state tax on the cigarettes under Chapter 149, RSMo. Gross receipts from the sale of other tobacco products include the amount of the sale price that represents the state tax on the other tobacco products under Chapter 149, RSMo. Local cigarette taxes authorized by law and imposed and paid in the manner of the state tax under Chapter 149, RSMo, are not included in gross receipts. All other local cigarette taxes are included in gross receipts.

(N) Buydown payments are not gross receipts subject to tax. Buydown payments serve to reduce the sales price to all purchasers by reducing inventory cost to the seller. Buydown payments are not payments for the retail price of the product.

(4) Examples.

(A) A grocery store accepts manufacturer's coupons from its customers on purchases of various goods. The store sells aluminum foil for \$1.50. The customer presents to the store a \$.50 manufacturer's coupon and pays the remaining balance of \$1.00. The store submits the \$.50 coupon to the manufacturer for payment of the \$.50. The gross receipts from the sale of the aluminum foil are [\$ 1.50] \$ 1.00 and total taxable sales are [\$ 1.50] \$ 1.00. Tax should be charged on [\$ 1.50] \$ 1.00.

(B) On Tuesdays, the same grocery store in Example (A) doubles all manufacturers' coupons. The store then receives \$.50 from the customer and \$.50 from the manufacturer. Gross receipts are [\$ 1.00] \$.50, and total taxable sales are [\$ 1.00] \$.50. Tax should be charged on [\$ 1.00] \$.50.

(C) An appliance manufacturer offers a \$100 cash rebate on an \$800 refrigerator. [The store selling the refrigerator should charge tax on \$800.] Tax is due on [\$ 800] \$ 700, [whether] if the rebate is received by the customer at the time of purchase. If the customer must request the rebate from the manufacturer at [or] a later date[.], tax is due on \$800 because that is the sale price paid at the time of purchase.

(G) A retailer ordinarily sells a brand of cigarettes for \$4 per pack. The manufacturer of that brand of cigarettes agrees to a "buydown" with the retailer. Under the buydown agreement, the manufacturer will reimburse the retailer \$.50 per pack if the retailer sells the cigarettes for \$3.50 for a month. The gross receipts and taxable sales from the sales of the cigarettes are \$3.50 per pack, which includes the buydown, less any amount attributable to the state tax imposed pursuant to Chapter 149, RSMo.

(H) A retailer ordinarily sells a brand of cigarettes for \$4 per pack. The manufacturer of that brand of cigarettes agrees with the retailer to reduce the purchase price to the retailer by \$.50 per pack if the retailer sells the cigarettes for \$3.50. The gross receipts from the sales of the cigarettes are \$3.50 per pack, less any amount attributable to the state tax imposed pursuant to Chapter 149, RSMo.

AUTHORITY: section 144.270, RSMo [1994] 2000, and TAFP CCS HCS SB 30, enacted by the 94th General Assembly, 2007. Original

rule filed Aug. 21, 2000, effective Feb. 28, 2001. Emergency amendment filed Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. A proposed amendment, which covers the same material, is published in this issue of the *Missouri Register*.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 110—Sales/Use Tax—Exemptions**

EMERGENCY AMENDMENT

12 CSR 10-110.200 Ingredient or Component Part Exemption, as Defined in Section 144.030, RSMo. The director proposes to amend the title, and sections (1) and (4).

PURPOSE: This rule is being amended due to TAFP CCS HCS SB 30, enacted by the 94th General Assembly, 2007.

EMERGENCY STATEMENT: The director finds that there is an immediate danger to the public welfare, which can only be addressed through this emergency amendment. This emergency amendment is necessary to ensure public awareness and to preserve a compelling governmental interest requiring an early effective date in that the emergency amendment informs the public of new sales tax exemptions that are available to various sellers and their customers as a result of enactment of TAFP CCS HCS SB 30 by the 94th Missouri General Assembly. These exemptions are effective August 28, 2007, and taxpayers need guidance regarding how these statutory changes impact them. A proposed amendment, which covers the same material, is published in this issue of the *Missouri Register*. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the *Missouri and United States Constitutions*. The director believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment filed August 14, 2007, effective August 28, 2007, expires February 23, 2008.

(1) In general, purchases of ingredients or component parts are exempt from tax if they blend with the final product and are intended to and do become a part of the finished product. In addition, [certain] materials that are consumed in the manufacturing, processing, compounding, mining, producing or fabricating of [steel] products intended to be sold ultimately for final use or consumption are exempt from tax.

(4) Examples.

(A) A toy manufacturer purchases wood, glue, and paint [and sandpaper] to use in the manufacturing of wooden rocking horses. The purchases of wood, glue and paint are exempt from tax. [The purchase of sandpaper is taxable.]

(B) A restaurant purchases apple wood to use in the smoking of foods. The restaurant burns the wood in a closed chamber, called a smoker, in which it places the food. The burning wood releases compounds, and small but measurable quantities of the compounds enter and permeate the food. Because a part of the wood, in the form of smoke particles, blends with and remains as part of the finished product, the apple wood may be purchased tax exempt as an ingredient or component part.

(C) An automobile manufacturer purchases [soap and] wax to [wash and] wax all automobiles as they leave the manufacturing plant. [Some soap residue remains with the automobiles when they leave the plant. The soap does not qualify as an ingredient or component part because it is not intended to remain with the product.] The wax [does qualify] qualifies as a component part because it is intended to remain with the product.

(E) A steel fabricator purchases welding rods [and gases] for use in fabricating a product out of steel plates. The welding rods are

exempt because [it] they become[s] a component part of new personal property. [Even though the gases are consumed in the fabrication process, the gases are not exempt because the new personal property does not qualify as a steel product.]

[(F) A foundry creates a steel product by casting molten steel. After casting, a cleaning solution is poured over the product to remove impurities from the surface. The cleaning solution is not exempt because it does not blend, react or interact with a component part or ingredient of the steel product.]

AUTHORITY: section 144.270, RSMo [1994] 2000. Original rule filed Aug. 30, 2000, effective March 30, 2001. Emergency amendment filed Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. A proposed amendment, which covers the same material, is published in this issue of the *Missouri Register*.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 110—Sales/Use Tax—Exemptions**

EMERGENCY RULE

12 CSR 10-110.201 Materials and Other Goods Used or Consumed in Manufacturing, as Defined in Section 144.054, RSMo

PURPOSE: Section 144.054.2, RSMo exempts from taxation certain materials, goods, machinery and parts. This rule explains the requirements for this exemption.

EMERGENCY STATEMENT: The director finds that there is an immediate danger to the public welfare, which can only be addressed through this emergency rule. This emergency rule is necessary to ensure public awareness and to preserve a compelling governmental interest requiring an early effective date in that the emergency rule informs the public of new sales tax exemptions that are available to various sellers and their customers as a result of enactment of TAFP CCS HCS SB 30 by the 94th Missouri General Assembly. These exemptions are effective August 28, 2007, and taxpayers need guidance regarding how these statutory changes impact them. A proposed rule, which covers the same material, is published in this issue of the *Missouri Register*. The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the *Missouri and United States Constitutions*. The director believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule filed August 14, 2007, effective August 28, 2007, expires February 23, 2008.

(1) In general, purchases of gas (natural, artificial, or propane) water, coal, and energy sources, chemicals, machinery, equipment and materials that are used or consumed in the manufacturing, processing, compounding, mining or producing a product are exempt from state sales and use tax and local use tax, but not from local sales tax. Local sales tax applies to these transactions.

(2) Basic Application of Exemption.

(A) Gas (natural, artificial, or propane) water, coal, and energy sources, chemicals, machinery, equipment and materials that are used or consumed in manufacturing, processing, compounding, mining or producing a product are exempt from state sales and use tax and local use tax, but not local sales tax. It is not necessary for the item purchased to be used directly in manufacturing in order to qualify for the exemption.

(3) Examples.

(A) A toy manufacturer purchases sandpaper to use in the manufacturing of wooden rocking horses. The purchase of sandpaper is exempt from state sales and use tax and local use tax, but not local sales tax because it is a material that is consumed in producing a product.

(B) An automobile manufacturer purchases soap to wash all automobiles as they leave the manufacturing plant. The soap qualifies as a material used or consumed in the manufacturing process and is exempt from state sales and use tax and local use tax, but not local sales tax.

(C) A steel fabricator purchases gases for use in fabricating a product out of steel plates. The gases that are consumed in the fabrication process are exempt from state sales and use tax and local use tax, but not local sales tax, because they are consumed in producing a product.

(D) A foundry creates a steel product by casting molten steel. After casting, a cleaning solution is poured over the product to remove impurities from the surface. The solution is used or consumed in the producing of a product and is exempt from state sales and use tax and local use tax, but not local sales tax.

AUTHORITY: section 144.270, RSMo 2000. Emergency rule filed Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. A proposed rule, which covers the same material, is published in this issue of the Missouri Register.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 110—Sales/Use Tax—Exemptions**

EMERGENCY RULE

12 CSR 10-110.210 Television and Radio Broadcasters

PURPOSE: This rule explains the television and radio broadcasters sales tax exemption.

EMERGENCY STATEMENT: The director finds that there is an immediate danger to the public welfare, which can only be addressed through this emergency rule. This emergency rule is necessary to ensure public awareness and to preserve a compelling governmental interest requiring an early effective date in that the emergency rule informs the public of new sales tax exemptions that are available to various sellers and their customers as a result of enactment of TAFP CCS HCS SB 30 by the 94th Missouri General Assembly. These exemptions are effective August 28, 2007, and taxpayers need guidance regarding how these statutory changes impact them. A proposed rule, which covers the same material, is published in this issue of the Missouri Register. The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The director believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule filed August 14, 2007, effective August 28, 2007, expires February 23, 2008.

(1) In general, radio and television broadcasters are exempt from sales and use tax, both state and local, on purchases of utilities, machinery, and equipment used or consumed directly in the broadcasting of their programs.

(2) Definition of Terms.

(A) Broadcaster—An entity who transmits (a radio or television signal) over the airwaves for public or general use. A cable or satellite provider is not a broadcaster.

(3) Basic Application.

(A) A Missouri radio or television station purchases utilities, machinery and equipment for use directly in the broadcasting of their programming. The purchase of the utilities, machinery and equipment are not subject to state or local tax.

AUTHORITY: section 144.270, RSMo 2000, and TAFP CCS HCS SB 30, enacted by the 94th General Assembly, 2007. Emergency rule filed Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. A proposed rule, which covers the same material, is published in this issue of the Missouri Register.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 110—Sales/Use Tax—Exemptions**

EMERGENCY AMENDMENT

12 CSR 10-110.300 Common Carriers. The director proposes to amend sections (1) and (4), reletter existing subsections accordingly.

PURPOSE: This rule is being amended as a result of statutory changes to section 144.030.2(11), RSMo.

EMERGENCY STATEMENT: The director finds that there is an immediate danger to the public welfare, which can only be addressed through this emergency amendment. This emergency amendment is necessary to ensure public awareness and to preserve a compelling governmental interest requiring an early effective date in that the emergency amendment informs the public of new sales tax exemptions that are available to various sellers and their customers as a result of enactment of TAFP CCS HCS SB 30 by the 94th Missouri General Assembly. These exemptions are effective August 28, 2007, and taxpayers need guidance regarding how these statutory changes impact them. A proposed amendment, which covers the same material, is published in this issue of the Missouri Register. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The director believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment filed August 14, 2007, effective August 28, 2007, expires February 23, 2008.

(1) In general, materials, replacement parts, and equipment purchased for use directly upon, and for the repair and maintenance or manufacture of, motor vehicles, watercraft, railroad rolling stock or aircraft engaged as common carriers of persons or property are not subject to tax. Pumping machinery and equipment used to propel products delivered by pipelines engaged as common carriers are not subject to tax. Railroad rolling stock used in transporting persons or property in interstate commerce is not subject to tax. Motor vehicles licensed for a gross weight of twenty-four thousand (24,000) pounds or trailers used by common carriers [solely] in the transportation of persons or property [in interstate commerce] are not subject to tax.

(4) Examples.

(C) A common carrier purchases a cab and chassis. The cab and chassis are licensed for a gross weight of 24,000 pounds and will be used only in intrastate commerce as a common carrier. The purchase of the cab and chassis is **not** taxable. The common carrier subsequently purchases a dump bed to add to the cab and chassis. The dump bed is exempt from tax because it is materials or equipment used in the manufacture of a motor vehicle to be used by a common carrier.

[(E) A common carrier purchases a cab and chassis. The cab and chassis will be used only in intrastate commerce as

a common carrier. The purchase of the cab and chassis is taxable because the cab and chassis are not used in interstate commerce. The common carrier subsequently purchases a dump bed to add to the cab and chassis. The dump bed is exempt from tax because it is materials or equipment used in the manufacture of a motor vehicle to be used by a common carrier.]

[(F)] (E) A common carrier purchases a trailer. The common carrier subsequently purchases a refrigeration unit to add to the trailer. The refrigeration unit is exempt from tax because it is materials or equipment used in the manufacture of a motor vehicle to be used by a common carrier.

[(G)] (F) The sale of a switch engine to be used to move railroad cars around a switching yard, if part of an interstate rail system, is not subject to tax.

[(H)] (G) An airline purchases equipment to test engine parts that have been removed from the plane and brought to their repair facility. The equipment purchased would be exempt from tax.

[(I)] (H) The owner of a Missouri furniture store is registered as a common carrier, but does not hold itself out to the general public as a common carrier. It uses its truck only to deliver furniture sold to customers residing in and outside Missouri. The owner installs new brakes on the truck. Even though the owner is registered as a common carrier, the brakes are taxable because the furniture store is operating as a private carrier.

[(J)] (I) A charter company [only provides bus transportation by] contracts with private groups for [private groups] exclusive use of its bus and driver for [tours of] transportation between Missouri and destinations in the Southeastern United States. The company provides no other transportation services. The charter company purchases new tires. The tires are taxable because the business is a contract carrier.

[(K)] (J) A railroad purchases a flanged wheel mechanized tie replacement machine for repairing broken rail segments on an interstate system. The purchase of the machine is exempt.

AUTHORITY: section 144.270, RSMo 2000, and CCS HCS SB 30, enacted by the 94th General Assembly, 2007. Original rule filed Jan. 24, 2001, effective Aug. 30, 2001. Emergency amendment filed Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. A proposed amendment, which covers the same material, is published in this issue of the Missouri Register.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 110—Sales/Use Tax—Exemptions**

EMERGENCY AMENDMENT

12 CSR 10-110.600 Electrical Energy, as Defined in Section 144.030, RSMo. The director proposes to amend the title, the purpose, and sections (1) through (4).

PURPOSE: This rule is being amended due to TAFP HCS SCS SB 196, enacted by the 93rd General Assembly, 2005, and TAFP CCS HCS SB 30, enacted by the 94th General Assembly, 2007.

EMERGENCY STATEMENT: The director finds that there is an immediate danger to the public welfare, which can only be addressed through this emergency amendment. This emergency amendment is necessary to ensure public awareness and to preserve a compelling governmental interest requiring an early effective date in that the emergency amendment informs the public of new sales tax exemptions that are available to various sellers and their customers as a result of enactment of TAFP CCS HCS Senate Bill 30 by the 94th Missouri General Assembly. These exemptions are effective August 28, 2007, and taxpayers need guidance regarding how these statutory changes

impact them. A proposed amendment, which covers the same material, is published in this issue of the Missouri Register. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The director believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment filed August 14, 2007, effective August 28, 2007, expires February 23, 2008.

PURPOSE: Section 144.030.2(12), RSMo exempts from tax certain purchases of electrical energy used in primary or secondary manufacturing, processing, compounding, mining or producing a product, [or used in material recovery processing] or processing of raw materials that contain recovered materials. Section 144.030.2(31), RSMo, exempts from tax, electricity used in connection with the manufacturing of cellular glass products or in any material recovery processing plant. Section 144.030.2(33), RSMo, exempts from tax utilities used or consumed directly or exclusively in the research and development of agricultural biotechnology products and plant genomics products and prescription pharmaceuticals consumed by humans or animals. This rule explains when [this] these exemptions [applies] apply and how a taxpayer may claim the exemptions at the time of purchase of the electrical energy.

(1) In general, electrical energy used in facilities owned or leased by the taxpayer in the actual primary manufacturing, processing, compounding, mining or producing of a product is exempt from tax if the cost of the electrical energy used exceeds ten percent (10%) of the total cost of the primary manufacturing, processing, compounding, mining or producing, exclusive of the cost of electrical energy so used. Electrical energy used in facilities owned or leased by the taxpayer in the actual secondary manufacturing, processing, compounding, mining or producing of a product is exempt from tax if the cost of the electrical energy used exceeds ten percent (10%) of the total cost of the secondary manufacturing, processing, compounding, mining or producing, exclusive of the cost of electrical energy so used. Electrical energy used in a material recovery processing plant owned or leased by the taxpayer or in manufacturing cellular glass products is exempt from tax [if the total cost of electric energy used in such processing exceeds ten percent (10%) of the total cost of the processing, exclusive of the cost of electrical energy so used]. Utilities used or consumed directly or exclusively in the research and development of agricultural biotechnology products and plant genomics products and prescription pharmaceuticals consumed by humans or animals are exempt from tax. Electrical energy used in facilities owned or leased by the taxpayer in [manufacturing,] processing [, compounding, mining or producing a product or in a material recovery processing plant is exempt if the raw materials used in such processing] raw materials that contain at least twenty-five percent (25%) recovered materials is exempt from tax.

(2) Definition of Terms.

(B) Fabrication—See 12 CSR 10-111.010[(2)(C)].

(C) Manufacturing—See 12 CSR 10-111.010[(2)(E)].

(D) Material recovery processing plant—[A facility that converts recovered materials into a new product or into a different form that is used in producing a new product. It includes facilities or equipment used exclusively for the collection of recovered materials for delivery to a material recovery processing plant but does not include motor vehicles used on highways.] See 12 CSR 10-111.060.

(E) Mining—See 12 CSR 10-111.010[(2)(F)].

(F) Primary processing—Manufacturing, processing, compounding, mining or producing that results in the first marketable product.

[(G) Processing—Any mode of treatment, act or series of acts performed upon materials to transform and reduce them into an article with a use, identity and market value different

from the use, identity and market value of the materials, and includes treatment necessary to maintain or preserve such processing by the producer at the production facility.]

[(H)] (G) Producing—See 12 CSR 10-111.010[(2)(H)].

[(I)] (H) Product—An item with a new identity, use and market value produced by the taxpayer's efforts which is intended at the time of the production activity to be sold ultimately for final use or consumption. A product may be tangible personal property or a service, if the property or service is subject to state or local sales or use taxes, or any tax that is substantially equivalent thereto, in this state or any other state.

[(J)] (I) Production activity—Manufacturing, processing, compounding, mining, producing or fabricating.

(J) **Raw material—any ingredient or component that becomes part of, or is made into a finished product.**

(K) Recovered materials—[Materials that have been diverted or removed from the solid waste stream for sale, use, reuse or recycling, whether or not they require subsequent separation or processing.] See 12 CSR 10-111.060. In order for an item to be a recovered material, a facility must recover it from the solid waste stream. An item used in processing for its original intended purpose is not a recovered material.

(L) Secondary processing—Further processing or fabricating of a marketable product that results in another marketable product.

(M) Solid waste—See 12 CSR 10-111.060.

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

(3) Basic Application of Exemption.

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

(4) Examples.

(A) A manufacturing firm produces extruded sheet plastic. The automated production line is a closed system connected together by use of vacuum feed-pipe. When an order is received, the computer controlled production line first blends the necessary raw materials. After blending, the mix is conveyed through vacuum pipe to be dried, and then to the extruder, where the mix is heated to meltdown and rolled into sheets by the extruder rollers. These sheets are the end product. The cost of raw materials is 95% of the total cost of producing the end product. The cost of electrical energy is 99% of the cost of drying and extruding the blended raw materials. The plastic sheet is the only marketable product produced by this continuous, indivisible operation. [None of the electrical energy is exempt because it does not exceed 10% of the total cost of producing the end product.] **Because the cost of electricity does not exceed 10% of the total cost of producing the product, the purchase of the electricity does not qualify for the exemption.**

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

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

AUTHORITY: section 144.270, RSMo 2000. Original rule filed July 25, 2001, effective Feb. 28, 2002. Emergency amendment filed Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. A proposed amendment, which covers the same material, is published in this issue of the Missouri Register.

Title 12—DEPARTMENT OF REVENUE Division 10—Director of Revenue Chapter 110—Sales/Use Tax—Exemptions

EMERGENCY RULE

12 CSR 10-110.601 Electrical, Other Energy and Water as Defined in Section 144.054, RSMo

PURPOSE: Section 144.054.2, RSMo exempts from state sales and use tax and local use tax, but not local sales tax, electricity, gas (natural, artificial, or propane) water, coal, and energy sources used or consumed in manufacturing, processing, compounding, mining or producing any product or used in research and development related to manufacturing, processing, compounding, mining or producing any product or in the processing of recovered materials. This rule explains when this exemption applies and how a taxpayer may claim the exemption at the time of purchase of the utilities, energy and water.

EMERGENCY STATEMENT: The director finds that there is an immediate danger to the public welfare, which can only be addressed through this emergency rule. This emergency rule is necessary to ensure public awareness and to preserve a compelling governmental interest requiring an early effective date in that the emergency rule informs the public of new sales tax exemptions that are available to various sellers and their customers as a result of enactment of TAFP CCS HCS Senate Bill 30 by the 94th Missouri General Assembly. These exemptions are effective August 28, 2007, and taxpayers need guidance regarding how these statutory changes impact them. A proposed rule, which covers the same material, is published in this issue of the Missouri Register. The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The director believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule filed August 14, 2007, effective August 28, 2007, expires February 23, 2008.

(1) In general, electricity, gas (natural, artificial, or propane) water, coal, and energy sources used or consumed in manufacturing, processing, compounding, mining or producing any product, or used or consumed in the processing of recovered materials, or used in research and development related to manufacturing, processing, compounding, mining or producing any product is exempt from state sales and use tax and local use tax, but not local sales tax.

(2) Definition of Terms.

(A) Compounding—Producing a product by combining two (2) or

more ingredients or parts.

(B) Energy source—Those resources, such as petroleum, coal, gas, wind, steam, nuclear fuel and sunlight, from which energy is produced.

(C) Fabrication—See 12 CSR 10-111.010.

(D) Manufacturing—See 12 CSR 10-111.010.

(E) Material recovery processing plant—See 12 CSR 10-111.060.

(F) Mining—See 12 CSR 10-111.010.

(G) Producing—See 12 CSR 10-111.010.

(H) Recovered materials—See 12 CSR 10-111.060.

(3) Basic Application of Exemption.

(A) A taxpayer may claim the exemption for state sales and use tax and local use tax, but not local sales tax at the time of purchase. A taxpayer may not claim an exemption from local tax and then remit the tax directly to the department. It is the seller's responsibility to collect and remit the proper amount of local tax to the department.

(B) For purchases which are reported to the department under direct pay and Electrical Energy Direct Pay (EEDP) are exempt from the application of subsection (3)(A) of this rule.

(C) The electricity, other energy, and water source that is subject to this exemption is not required to be directly used in the process for which the exemption is being claimed. There is also no requirement that the electricity comprise ten percent (10%) of the cost of a primary or secondary production process in order to qualify for this exemption. There is also no requirement that twenty-five percent (25%) of the raw materials are recycled in order for the purchaser to claim this exemption.

(4) Method of Collection and Apportionment.

(A) Energy and water vendors are responsible for remitting tax to the department. Purchasers are responsible to inform energy vendors on the MO-149 (Sales/Use Tax Exemption Certificate) of the percentage of energy used for activities exempt under section 144.054, RSMo. The purchaser may use any reasonable method to calculate this percentage, such as square footage or reference to a use analysis. The exemption will be applied as follows:

Purchaser's Calculated Exempt Percentage	Percentage Exempt
76-100	100
51-75	75
26-50	50
1-25	25
0	0

(B) Beginning on August 28, 2007 and ending on October 28, 2007 any vendor who receives an exemption certificate exempting sales of electricity, gas (natural, artificial, or propane) water, coal, and energy sources used or consumed in manufacturing, processing, compounding, mining or producing any product, or used or consumed in the processing of recovered materials, or used in research and development related to manufacturing, processing, compounding, mining or producing any product after the bill was issued may take the correction as an adjustment on their sales tax return provided the net result is not a negative figure. In the event an exemption certificate is received after October 28, 2007 and an exemption was due and not properly applied by the vendor, the vendor may submit a refund request to the department.

(5) Exempt Examples.

(A) A manufacturer purchases propane to operate forklifts that move raw materials between production lines. The fuel is exempt from state sales and use tax and local use tax, but not local sales tax.

(B) A manufacturer uses electricity to run its equipment, maintain a moderate temperature in its production facility and to light the plant. The purchase of all of its electricity is exempt from state sales and use tax and local use tax, but not local sales tax because it is used or consumed in producing a product.

(C) A manufacturer uses coal to fuel boilers to generate steam used to manufacture a product. The purchase of the coal is exempt from state sales and use tax and local use tax, but not local sales tax because it is used or consumed in producing a product.

(D) A manufacturer purchases compressed gas used for welding a product. The purchase of the compressed gas is exempt from state sales and use tax and local use tax, but not local sales tax because it is used or consumed in producing a product.

(E) A manufacturer uses water to cool a product during the manufacturing process. The water is exempt from state sales and use tax and local use tax, but not local sales tax.

(F) A manufacturer preserves its final product in a warehouse located at the production facility awaiting shipment. The purchase of energy to maintain the desired temperature and provide lighting is exempt from state sales and use tax and local use tax, but not local sales tax.

(G) A construction company, who has been deemed a manufacturer, purchases fuel to be used in a concrete ready-mix truck. The fuel is subject to motor fuel tax, however if a refund claim is made, the refund will be exempt from state sales tax, but not local sales tax, because it is used in producing a product.

(6) Taxable Examples.

(A) A restaurant preparing food for immediate consumption is not exempt as a manufacturer. Therefore, all state and local taxes apply.

AUTHORITY: section 144.270, RSMo 2000 and TAFP CCS HCS SB 30, enacted by the 94th General Assembly, 2007. Emergency rule filed Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. A proposed rule, which covers the same material, is published in this issue of the Missouri Register.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 111—Sales/Use Tax—Machinery and
Equipment Exemptions**

EMERGENCY RULE

**12 CSR 10-111.011 Machinery, Equipment, Materials, and
Chemicals Used or Consumed in Manufacturing, as Defined in
Section 144.054, RSMo**

PURPOSE: Section 144.054.2, RSMo exempts machinery, equipment, materials, and chemicals used or consumed in manufacturing, processing, compounding, mining or producing any product, or used in research and development related to manufacturing, processing, compounding, mining or producing any product from state sales and use tax and local use tax, but not local sales tax. This rule explains what elements must be met in order to qualify for these exemptions.

EMERGENCY STATEMENT: The director finds that there is an immediate danger to the public welfare, which can only be addressed through this emergency rule. This emergency rule is necessary to ensure public awareness and to preserve a compelling governmental interest requiring an early effective date in that the emergency rule informs the public of new sales tax exemptions that are available to various sellers and their customers as a result of enactment of TAFP CCS HCS SB 30 by the 94th Missouri General Assembly. These exemptions are effective August 28, 2007, and taxpayers need guidance regarding how these statutory changes impact them. A proposed rule, which covers the same material, is published in this issue of the Missouri Register. The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The director believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule filed

August 14, 2007, effective August 28, 2007, expires February 23, 2008.

(1) In general, the purchase of machinery, equipment, materials and chemicals used or consumed in manufacturing, processing, compounding, mining or producing any product or is used in research and development related to manufacturing, processing, compounding, mining or producing any product is exempt from state sales and use tax and local use tax, but not local sales tax.

(2) Definition of Terms.

- (A) Equipment—See 12 CSR 10-111.010.
- (B) Fabrication—See 12 CSR 10-111.010.
- (C) Machinery—See 12 CSR 10-111.010.
- (D) Manufacturing—See 12 CSR 10-111.010.
- (E) Mining—See 12 CSR 10-111.010.
- (F) Producing—See 12 CSR 10-111.010.

(3) Basic Application of Exemption.

(A) Pursuant to section 144.054.2, RSMo purchases of machinery, equipment, materials and chemicals used or consumed in manufacturing, processing, compounding, mining or producing any product or used in research and development related to manufacturing, processing, compounding, mining or producing any product is exempt from state sales and use tax and local use tax, but not local sales tax.

(B) The exemptions do not require that the owner of the facility be the purchaser to qualify for the exemption or that the purchaser be the one who uses the machinery, equipment and materials in an exempt fashion. All that is required is that the machinery, equipment and materials are used in a tax-exempt manner.

(4) Exempt Examples.

(A) A manufacturing company purchases various pieces of testing equipment to perform research and development on potential future products. The testing equipment for research and development is exempt from state sales and use tax and local use tax, but not local sales tax, because it is used or consumed in research and development related to manufacturing a product.

(B) A commercial photo developer uses “crop cards” to hold individual negatives in the film developing process; they are discarded after a single use. The developer also uses tape to connect negative strips so that the negatives may be fed through its automatic film developing machinery and equipment. The crop cards and tape are exempt from state sales and use tax and local use tax, but not local sales tax, as materials used and consumed in producing a product.

(C) A manufacturer purchases materials to develop models for research and development for use in designing a new product. The manufacturer may purchase the materials exempt from state sales and use tax and local use tax, but not local sales tax, because they are used in research and development related to manufacturing.

(D) Workers in a manufacturing plant are required to wear safety equipment while producing a product. The safety equipment is exempt from state sales and use tax and local use tax, but not local sales tax, because it is used to produce a product.

(5) Nonexempt Examples.

(A) A taxpayer operates a concrete manufacturing plant. The taxpayer purchases dump trucks to haul, to customers, concrete slabs that had been manufactured in its plant. The dump trucks would not qualify for exemption because they are not used in the manufacturing process, but rather, in the shipping process.

(B) A taxpayer creates and sells a nontaxable information service. To develop its service, the taxpayer purchases computer hardware and software. The computer hardware and software do not qualify for the state tax exemption pursuant to section 144.054.2, RSMo, because they are machinery and equipment used in producing a service and not a product.

AUTHORITY: section 144.270, RSMo 2000 and CCS HCS SB 30, enacted by the 94th General Assembly, 2007. Emergency rule filed Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. A proposed rule, which covers the same material, is published in this issue of the Missouri Register.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 111—Sales/Use Tax—Machinery and
Equipment Exemptions**

EMERGENCY RULE

12 CSR 10-111.061 Exempt Items Used or Consumed in Material Recovery Processing as Defined in Section 144.054, RSMo

PURPOSE: Section 144.054.2, RSMo exempts machinery, equipment, materials, coal, energy sources and chemicals used or consumed in the processing of recovered materials from state sales and use tax and local use tax, but not local sales tax. This rule explains the elements that must be met in order to qualify for the exemption.

EMERGENCY STATEMENT: The director finds that there is an immediate danger to the public welfare, which can only be addressed through this emergency rule. This emergency rule is necessary to ensure public awareness and to preserve a compelling governmental interest requiring an early effective date in that the emergency rule informs the public of new sales tax exemptions that are available to various sellers and their customers as a result of enactment of TAFP CCS HCS SB 30 by the 94th Missouri General Assembly. These exemptions are effective August 28, 2007, and taxpayers need guidance regarding how these statutory changes impact them. A proposed rule, which covers the same material, is published in this issue of the Missouri Register. The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The director believes this emergency rule is fair to all interested persons and parties under the circumstances. Emergency rule filed August 14, 2007, effective August 28, 2007, expires February 23, 2008.

(1) In general, the purchase of machinery, equipment, materials and chemicals used or consumed in the processing of recovered materials are exempt from state sales and use tax and local use tax, but not local sales tax.

(2) Basic Application of Exemption.

(A) Purchases of machinery, equipment and materials used or consumed in the processing of recovered materials are exempt from state sales and use tax and local use tax, but not local sales tax. Coal, energy sources and chemicals used or consumed in the processing of recovered materials are also exempt from state sales and use tax and local use tax, but not local sales tax.

(B) Electrical energy or gas (natural, artificial or propane) water, or other energy sources consumed in processing recovered materials is exempt from state and local tax (144.030.2.(31), RSMo).

(3) Examples.

(A) A metal recycler uses diesel fuel to operate its hydraulic cutter. The diesel fuel may be purchased exempt from state sales and use tax and local use tax, but not local sales tax, because it is used or consumed in the processing of recovered materials.

(B) A paper recycler mixes water with paper in its pulping equipment in order to separate the paper fibers from each other. The water may be purchased exempt from state sales and use tax and local use tax, but not local sales tax.

(C) An aluminum can recycler uses natural gas in its furnace to melt aluminum scraps into molten aluminum. The purchase of the

natural gas is exempt from state sales and use tax and local use tax, but not local sales tax because it is consumed in the processing of recovered materials.

AUTHORITY: section 144.270, RSMo 2000 and TAFP CCS HCS SB 30, enacted by the 94th General Assembly, 2007. Emergency rule filed Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. A proposed rule, which covers the same material, is published in this issue of the Missouri Register.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 111—Sales/Use Tax—Machinery and
Equipment Exemptions**

EMERGENCY AMENDMENT

12 CSR 10-111.100 Commercial Printers, as Defined in Section 144.030, RSMo. The director proposes to amend the title and sections (1), (3), and (4).

PURPOSE: This rule is being amended due to TAFP HCS SCS SB 196, enacted by the 93rd General Assembly, 2005 and TAFP CCS HCS SB 30, enacted by the 94th General Assembly, 2007.

EMERGENCY STATEMENT: The director finds that there is an immediate danger to the public welfare, which can only be addressed through this emergency amendment. This emergency amendment is necessary to ensure public awareness and to preserve a compelling governmental interest requiring an early effective date in that the emergency amendment informs the public of new sales tax exemptions that are available to various sellers and their customers as a result of enactment of TAFP CCS HCS SB 30 by the 94th Missouri General Assembly. These exemptions are effective August 28, 2007, and taxpayers need guidance regarding how these statutory changes impact them. A proposed amendment, which covers the same material, is published in this issue of the Missouri Register. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The director believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment filed August 14, 2007, effective August 28, 2007, expires February 23, 2008.

(1) In general, sales of printed product by commercial printers are subject to tax. Purchases of materials and supplies, such as paper and ink, which become a component part or ingredient of the printed product are exempt. Other materials used by the printer may be exempt if title or ownership to the materials transfers to the customer. Purchases of machinery, equipment and parts for replacement or for a new or expanded plant are exempt if directly used in the manufacturing process. This includes printing presses and plates. *[Chemicals to develop the film and plates are not exempt unless they become an ingredient or component part of materials resold to the customer.]*

(3) Basic Application of Tax.

(B) Ingredients and component parts—Purchases of material and supplies such as paper and ink may be purchased tax exempt by printers as ingredients or component parts under section 144.030.2(2), RSMo.

1. Chemicals that blend with and become part of the ink mixture are exempt, including:

A. The fountain solution that blends with the ink at the press to keep the non-image area clean of ink while printing;

B. Chemicals used on the rollers to keep the ink from drying out;

C. Isopropyl alcohol to keep the ink wet on the rollers; and
D. Ink anti-stain used to keep the ink from bleeding onto other printed material.

[2. Purchases of material and supplies used in the printing process that do not blend with the ink are taxable, including:

A. Anti-static products used to reduce static on the printed product;

B. Chemicals used to clean the presses; and

C. Color wax used for layout purposes.]

(C) *[Other materials transferred to customers—]* Purchases of materials, including film, used by the printer in its manufacturing process do not qualify for the sale for resale exclusion unless title or ownership to such materials is transferred to the customer. Whether title passes is based on the intent of the parties, as evidenced by all relevant facts, including written agreements, course of dealing or usage of trade and availability of the materials for future use by the customer.

(D) Chemicals—Chemicals to develop the film and plates are *[not]* exempt *[unless]* if they become an ingredient or component part of materials resold to the customer. *[Chemicals that generally do not become an ingredient or component part include chemicals used on plates to desensitize the plates and to prevent them from oxidizing, developers, replenishers, finishers, fixers, store gum and plating solution.]*

(E) Supplies and Parts.

1. Perforation devices consumed in a single production cycle are not exempt as machinery and equipment or parts.

2. Perforation devices benefiting more than one production cycle are exempt as parts of machinery and equipment.

3. Blankets and necessary attachments are exempt as parts of machinery and equipment.

4. Proof paper and phototypesetting paper are not exempt as machinery and equipment or parts.

5. Mineral spirits used as a solvent to clean brushes, overspray and equipment are *[taxable]* not exempt as ingredients or component parts if used as a cleaning solvent separate from the ink. If mixed with the ink, then the mineral spirits are exempt as ingredients or component parts.

(4) Examples.

(B) A commercial printer purchases plates[,] and film[, phototypesetting paper, developer chemical for plates and film (which do not become a part of the plates or film), and press cleaning solvent that is not mixed with ink]. The plate is exempt machinery and equipment. The printer's contract with the customer states the negatives become the property of the customer. The film is exempt as a component part of the negative. *[The phototypesetting paper does not qualify for exemption as machinery or equipment, ingredient or component part or sale for resale. The developer chemicals and cleaning solvent do not qualify for exemption as ingredients or component parts or sales for resale.]*

AUTHORITY: section 144.270, RSMo 2000. Original rule filed Oct. 11, 2001, effective April 30, 2002. Emergency amendment filed Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. A proposed amendment, which covers the same material, is published in this issue of the Missouri Register.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 111—Sales/Use Tax—Machinery and
Equipment Exemptions**

EMERGENCY RULE

12 CSR 10-111.101 Items Used or Consumed by Commercial Printers, as Defined in Section 144.054, RSMo

PURPOSE: Section 144.054.2, RSMo exempts from state tax, but not local tax, machinery, equipment, materials and chemicals used or consumed in manufacturing, processing, compounding, mining or producing any product or used in research and development related to manufacturing. This rule explains the taxation rules for commercial printers and what elements must be met to qualify for these exemptions.

*EMERGENCY STATEMENT: The director finds that there is an immediate danger to the public welfare, which can only be addressed through this emergency rule. This emergency rule is necessary to ensure public awareness and to preserve a compelling governmental interest requiring an early effective date in that the emergency rule informs the public of new sales tax exemptions that are available to various sellers and their customers as a result of enactment of TAFP CCS HCS SB 30 by the 94th Missouri General Assembly. These exemptions are effective August 28, 2007, and taxpayers need guidance regarding how these statutory changes impact them. A proposed rule, which covers the same material, is published in this issue of the **Missouri Register**. The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the **Missouri and United States Constitutions**. The director believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule filed August 14, 2007, effective August 28, 2007, expires February 23, 2008.*

(1) In general, purchases of machinery, equipment, materials and chemicals used or consumed by a printer in the production process are exempt from state tax and local use tax, but not local sales tax.

(2) Definition of Terms. See definition of terms in 12 CSR 10-111.010 Machinery and Equipment Exemptions.

(3) Basic Application of Tax.

(A) Purchases of material and supplies used in the printing process that do not blend with the ink are exempt from state tax and local use tax, but not local sales tax, including, anti-static products used to reduce static on the printed product; chemicals used to clean the presses and color wax used for layout purposes.

(B) Chemicals to develop the film and plates are exempt from state tax and local use tax, but not local sales tax. Chemicals exempt from state, but not local tax include chemicals used on plates to desensitize the plates and to prevent them from oxidizing, developers, replenishers, finishers, fixers, store gum and plating solution.

(C) Perforation devices consumed in a single production cycle are exempt from state tax, but not local tax as machinery and equipment used or consumed in the printing process. Proof paper and phototypesetting paper are also exempt from state tax, but not local tax as machinery and equipment used or consumed in the printing process. Mineral spirits used as a solvent to clean brushes, overspray and equipment are exempt from state tax and local use tax, but not local sales tax even when used as a cleaning solvent separate from the ink.

(4) Example.

(A) A commercial printer purchases phototypesetting paper, developer chemical for plates, film (which does not become the property of the customer) and press cleaning solvent that is not mixed with ink. All these items are exempt from state tax and local use tax, but not local sales tax as materials used or consumed in producing a product.

*AUTHORITY: section 144.270, RSMo 2000 and CCS HCS SB 30, enacted by the 94th General Assembly, 2007. Emergency rule filed Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. A proposed rule, which covers the same material, is published in this issue of the **Missouri Register**.*

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 112—Sales/Use Tax—Contractors**

EMERGENCY AMENDMENT

12 CSR 10-112.010 Contractors. The director proposes to amend subsection (3)(D).

PURPOSE: This rule is being amended due to TAFP CCS HCS SS SCS SB 22, enacted by the 94th General Assembly, and to clarify the exemption contained in section 144.062, RSMo, as it relates to fuel and to add exempt entities.

*EMERGENCY STATEMENT: The director finds that there is an immediate danger to the public welfare, which can only be addressed through this emergency amendment. This emergency amendment is necessary to ensure public awareness and to preserve a compelling governmental interest requiring an early effective date in that the emergency amendment informs the public of new sales tax exemptions that are available to various sellers and their customers as a result of the enactment of TAFP CCS HCS SS SCS SB 22, by the 94th Missouri General Assembly. These exemptions are effective August 28, 2007, and taxpayers need guidance regarding how these statutory changes impact them. A proposed amendment, which covers the same material, is published in this issue of the **Missouri Register**. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the **Missouri and United States Constitutions**. The director believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment filed August 14, 2007, effective August 28, 2007, expires February 23, 2008.*

(3) Basic Application of Tax.

(D) Flow Through Project Exemptions—A contractor, including subcontractors working for the contractor, constructing, repairing or remodeling facilities for a specific exempt entity, may purchase tax exempt tangible personal property and materials incorporated into or consumed in the project if the exempt entity furnishes to the contractor a project exemption certificate. Tangible personal property and materials that can only be used for one construction, repair or remodeling job which are actually used up in performing the contract are consumed. Examples include sandpaper[, fuel to run equipment] and drill bits that are actually used up in the performance of the exempt contract. Items that are not consumed are hand tools, drinking water coolers, hardhats and bulldozers. For purposes of this flow through exemption an exempt entity is limited to:

1. Political subdivisions exempt under Article III section 39(10) of the *Missouri Constitution*;
2. Federal government and its instrumentalities;
3. Religious organizations;
4. Charitable organizations;
5. Elementary and secondary schools, public and private; [or]
6. Higher education institutions, public and private[.];
7. **Missouri Department of Transportation; or**
8. **Jackson County Sports Complex Authority.**

*AUTHORITY: section 144.270, RSMo [1994] 2000. Original rule filed June 13, 2000, effective Dec. 30, 2000. Emergency amendment filed Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. A proposed amendment covering this same material is published in this issue of the **Missouri Register**.*

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

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

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

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

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

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

Proposed Amendment Text Reminder:
Boldface text indicates new matter.

[Bracketed text indicates matter being deleted.]

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

PROPOSED AMENDMENT

3 CSR 10-6.415 Restricted Zones. The commission proposes to amend subsections (1)(E) and (2)(F) and section (4).

PURPOSE: This amendment will allow fishermen to collect bait fish within two hundred twenty-five feet (225') below Bagnell Dam, prohibits the use of atlatl as a method for harvesting fish in Blue Ribbon Trout Areas and changes the word longbow to bow for consistency.

- (1) The following zones are closed to all fishing:
 - (E) Osage River within two hundred twenty-five feet (225') below

Bagnell Dam, **except that live bait may be taken only by dip net and throw net.**

- (2) Fish may be taken only by pole and line from:

(F) Salt River from below Clarence Cannon Reregulation Pool Dam to Route A except that fish may also be taken by *long*/bow as prescribed in 3 CSR 10-6.550 from the no-boating zone (one thousand one hundred feet (1,100') below the Reregulation Dam) to Route A.

- (4) Fish may be taken by all prescribed methods except gig, **atlatl**, crossbow and *long*/bow on the following waters and as further restricted in subsections (5)(A), (B), (C), (D), (F), (H), (J), (K) and (M) of this rule. Fish taken by gig, **atlatl**, crossbow and *long*/bow may not be possessed on these waters or the banks thereof.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. Original rule filed June 13, 1994, effective Jan. 1, 1995. For intervening history, please consult the Code of State Regulations. Amended: Filed Aug. 14, 2007.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with John W. Smith, Assistant Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

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

PROPOSED AMENDMENT

3 CSR 10-7.431 Deer Hunting Seasons: General Provisions. The commission proposes to amend section (1).

PURPOSE: This amendment eliminates a reference to a particular year and should not reduce the efficacy of the rule.

- (1) The *[annual]* **current** *Fall Deer & Turkey Hunting Regulations and Information* booklet *[for 2007]*, **published annually in August**, is hereby adopted as a part of this Code and by this reference herein incorporated. A printed copy of this booklet can be obtained from the Missouri Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180 and is online at www.missouriconservation.org. This rule does not incorporate any subsequent amendments or additions.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. Original rule filed April 29, 2004, effective May 15, 2004. For intervening history, please consult the Code of State Regulations. Amended: Filed Aug. 14, 2007.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with John W. Smith, Assistant Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

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

PROPOSED AMENDMENT

3 CSR 10-7.438 Deer: Regulations for Department Areas. The commission proposes to amend provisions of this rule.

PURPOSE: This amendment eliminates a reference to a particular year and should not reduce the efficacy of the rule.

Deer may be hunted on lands owned or leased by the department and on lands managed by the department under cooperative agreement as authorized in the [annual] **current** *Fall Deer & Turkey Hunting Regulations and Information* booklet [for 2007], **published annually in August**. This publication is incorporated by reference. A copy of this booklet is published by and can be obtained from the Missouri Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180. It is also available online at www.missouriconservation.org. This rule does not incorporate any subsequent amendments or additions.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. Original rule filed Oct. 8, 2004, effective March 30, 2005. For intervening history, please consult the Code of State Regulations. Amended: Filed Aug. 14, 2007.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with John W. Smith, Assistant Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 9—Wildlife Code: Confined Wildlife: Privileges, Permits, Standards

PROPOSED AMENDMENT

3 CSR 10-9.110 General Prohibition; Applications. The commission proposes to amend subsections (1)(B) and (3)(E).

PURPOSE: This amendment updates the reference to the current edition of the Missouri Species and Communities of Conservation Concern and clarifies the syntax that excludes transgenic organisms from the Approved Aquatic Species List.

(1) Possession of Native Species.

(B) Native invertebrates listed in the [January 2006] **current** edition of the Missouri Species and Communities of Conservation Concern Checklist, **published annually in January**, may only be collected and held by holders of a Wildlife Collector's Permit and only as prescribed in 3 CSR 10-9.425. The Checklist is adopted as a part of this Code and by this reference is herein incorporated. A printed copy of this booklet can be obtained from the Missouri Department of Conservation, PO Box 180, Jefferson City, MO 65102-0180 and is online at www.missouriconservation.org. This rule does not incorporate any subsequent amendments or additions to the Checklist.

(3) Fish, tiger salamander larvae and crayfish may be bought, sold, transported, propagated, taken and possessed by any person without permit throughout the year in any number or size and by any method providing—

(E) That the privileges of this section apply only to the following:

1. Species listed in the Approved Aquatic Species List (*excluding transgenic organisms, but* including all subspecies, varieties and hybrids of the same bought, sold, transported, propagated, taken and possessed for purposes of aquaculture, **but excluding transgenic forms**).

2. Species frozen or processed for sale as food products.

3. Species incapable of surviving in fresh water.

4. Fish held only in aquaria, tanks or other containers having water discharged only into septic systems or municipal waste treatment facilities that are designed and operated according to guidelines of the Missouri Department of Natural Resources or that entirely recirculate all of the water so that none of it shall drain into a water body.

5. Species other than fish held only in aquaria, tanks or other containers that have the following specifications: all containers including the drain pipe or stand pipe must be completely covered with an intact screen of a maximum mesh size of 1/16 inch square, and having water discharged only into septic systems or municipal waste treatment facilities that are designed and operated according to guidelines of the Missouri Department of Natural Resources or that entirely recirculate all of the water so that none of it shall drain into a water body.

6. Species held only in a closed system from which the escape of live organisms (including eggs, parasites and diseases) is not possible. The species to be held and the system to be used must receive prior written approval from the director.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. This rule was previously filed as 3 CSR 10-4.110(5), (6) and (10). Original rule filed June 26, 1975, effective July 7, 1975. For intervening history, please consult the Code of State Regulations. Amended: Filed Aug. 14, 2007.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with John W. Smith, Assistant Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 12—Wildlife Code: Special Regulations for Areas Owned by Other Entities

PROPOSED AMENDMENT

3 CSR 10-12.115 Bullfrogs and Green Frogs. The commission proposes to amend subsection (1)(A), and add new paragraphs (1)(A)1. and (1)(B)11.

PURPOSE: This amendment establishes provisions for harvesting bullfrogs and green frogs at Blue Springs (Lake Remembrance) and adds St. Charles County (Henry's Pond and Quail Ridge Park Lake) to the list of areas where frogs can only be taken by pole and line.

(1) Bullfrogs and green frogs may be taken during the statewide season only by hand, handnet, gig, [long]bow, snagging, snaring, grabbing or pole and line except as further restricted by this chapter.

(A) [Long]Bows may not be used to take frogs on the following areas:

1. Blue Springs (Lake Remembrance)

[1.] **2.** Columbia (Antimi Lake, Cosmo-Bethel Lake, Lake of the Woods, A. Perry Phillips Park Lake, Stephens Lake, Twin Lake)

[2.] **3.** Farmington (Giessing Lake, Hager Lake and Thomas Lake)

[3.] **4.** Jackson County (Alex George Lake, Bergan Lake, Bowlin Road Lake, Prairie Lee Lake, Scherer Lake, Tarsney Lake, Wood Lake, Wyatt Lake)

[4.] **5.** James Foundation (Scioto Lake)

[5.] **6.** Mark Twain National Forest (department managed portions)

[6.] **7.** Mexico (Lakeview Lake, Kiwanis Lake)

[7.] **8.** Moberly (Rothwell Park Lake, Water Works Lake)

[8.] **9.** Odessa (Lake Venita)

(B) Only pole and line may be used to take frogs on the following areas:

1. Bridgeton (Kiwanis Lake)

2. Butler City Lake

3. Jennings (Koeneman Park Lake)

4. Kirksville (Spur Pond)

5. Kirkwood (Walker Lake)

6. Macon County (Fairground Lake)

7. Mineral Area College (Quarry Pond)

8. Overland (Wild Acres Park Lake)

9. Potosi (Roger Bilderback Lake)

10. St. Charles (Fountain Lakes Pond, Kluesner Lake, Moore Lake, Skate Park Lake)

11. St. Charles County (Henry's Pond, Quail Ridge Park Lake)

[11.] **12.** St. Louis County (Bee Tree Lake, Creve Coeur Lake, Simpson Lake, Spanish Lake, Sunfish Lake)

[12.] **13.** Sedalia (Clover Dell Park Lake, Liberty Park Pond)

[13.] **14.** Sedalia Water Department (Spring Fork Lake)

[14.] **15.** Warrensburg (Lion's Lake)

[15.] **16.** Watershed Committee of the Ozarks (Valley Water Mill Lake)

[16.] **17.** Wentzville (Community Club Lake)

[17.] **18.** Windsor (Farrington Park Lake)

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. This rule previously filed as 3 CSR 10-4.116. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the Code of State Regulations. Amended: Filed Aug. 14, 2007.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with John W. Smith, Assistant Director, Department of Conservation, PO Box 180,

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

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 12—Wildlife Code: Special Regulations for
Areas Owned by Other Entities**

PROPOSED AMENDMENT

3 CSR 10-12.130 Fishing, General Provisions and Seasons. The commission proposes to add new sections (6) and (7).

PURPOSE: This amendment restricts fishing at St. Charles County (Henry's Pond) to persons fifteen (15) years of age or younger and restricts Missouri Western State University (South Pond) to catch-and-release fishing by educational groups.

(6) On St. Charles County (Henry's Pond), fishing is restricted to persons fifteen (15) years of age or younger and not more than one (1) pole and line may be used by one (1) person at a time.

(7) On Missouri Western State University (South Pond), fishing is permitted only by reservation by educational groups, and fish must be returned to the water unharmed immediately after being caught except as provided by special use permit.

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. This rule previously filed as 3 CSR 10-4.116. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the Code of State Regulations. Amended: Filed Aug. 14, 2007.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with John W. Smith, Assistant Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 3—DEPARTMENT OF CONSERVATION
Division 10—Conservation Commission
Chapter 12—Wildlife Code: Special Regulations for
Areas Owned by Other Entities**

PROPOSED AMENDMENT

3 CSR 10-12.145 Fishing, Length Limits. The commission proposes to add new paragraphs (2)(B)3., 21., 22. and (2)(C)10., and remove paragraph (2)(C)6. and section (8) and renumber section (9) to (8).

PURPOSE: This amendment establishes a minimum length limit on largemouth bass at Blue Springs (Lake Remembrance); establishes a fifteen inch (15") minimum length limit on largemouth bass at Keytesville (Maxwell Taylor Park Pond); establishes an eighteen inch (18") minimum length limit on largemouth bass in St. Charles County (Quail Ridge Park Lake); removes the forty-two inch (42") minimum length limit on muskellunge at Kirksville (Hazel Creek

Lake); and, changes the minimum length limit on largemouth bass at Kirksville (Hazel Creek Lake).

(2) Black bass more than twelve inches (12") but less than fifteen inches (15") total length must be returned to the water unharmed immediately after being caught, except as follows:

(B) Black bass less than fifteen inches (15") total length must be returned to the water unharmed immediately after being caught on the following lakes:

1. Arrow Rock State Historic Site (Big Soldier Lake)
2. Bethany (Old Bethany City Reservoir)
3. **Blue Springs (Lake Remembrance)**
- [3.] 4. Big Oak Tree State Park (Big Oak Lake)
- [4.] 5. Butler City Lake
- [5.] 6. California (Proctor Park Lake)
- [6.] 7. Cameron (Reservoirs No. 1, 2 and 3, Grindstone Reservoir)
- [7.] 8. Carthage (Kellogg Lake)
- [8.] 9. Columbia (Stephens Lake)
- [9.] 10. Concordia (Edwin A. Pape Lake)
- [10.] 11. Confederate Memorial State Historic Site lakes
- [11.] 12. Dexter City Lake
- [12.] 13. Hamilton City Lake
- [13.] 14. Harrison County Lake
- [14.] 15. Higginsville City Lake
- [15.] 16. Holden City Lake
- [16.] 17. Iron Mountain City Lake
- [17.] 18. Jackson (Rotary Lake)
- [18.] 19. Jackson County (Alex George Lake, Bergan Lake, Bowlin Road Lake, Lake Jacomo, Prairie Lee Lake, Scherer Lake, Tarsney Lake, Wood Lake, Wyatt Lake)
- [19.] 20. Jefferson City (McKay Park Lake)
21. **Keytesville (Maxwell Taylor Park Pond)**
22. **Kirksville (Hazel Creek Lake)**
- [20.] 23. Kirksville (Spur Pond)
- [21.] 24. Macon (Blees Lake)
- [22.] 25. Macon County (Fairgrounds Lake)
- [23.] 26. Maysville (Willow Brook Lake)
- [24.] 27. Mark Twain National Forest (Fourche Lake, Huzzah Pond, Loggers Lake, McCormack Lake, Noblett Lake, Roby Lake)
- [25.] 28. Mineral Area College (Quarry Pond)
- [26.] 29. Odessa (Lake Venita)
- [27.] 30. Pershing State Park ponds
- [28.] 31. Potosi (Roger Bilderback Lake)
- [29.] 32. University of Missouri (Dairy Farm Lake No. 1 and McCredie Lake)
- [30.] 33. Warrensburg (Lion's Lake)
- [31.] 34. Watkins Mill State Park Lake
- [32.] 35. Windsor (Farrington Park Lake)

(C) Black bass less than eighteen inches (18") total length must be returned to the water unharmed immediately after being caught on the following lakes:

1. Ballwin (New Ballwin Lake, Vlasis Park Lake)
2. Bridgeton (Kiwanis Lake)
3. Columbia (Twin Lake)
4. Ferguson (January-Wabash Lake)
5. Jennings (Koeneman Park Lake)
- [6. Kirksville (Hazel Creek Lake)]
- [7.] 6. Kirkwood (Walker Lake)
- [8.] 7. Overland (Wild Acres Park Lake)
- [9.] 8. Sedalia Water Department (Spring Fork Lake)
- [10.] 9. St. Charles (Fountain Lakes Pond, Kluesner Lake, Moore Lake, Skate Park Lake)
10. **St. Charles County (Quail Ridge Park Lake)**
11. St. Louis City (Benton Park Lake, Boathouse Lake, Fairgrounds Park Lake, Horseshoe Lake, Hyde Park Lake, Jefferson Lake, Lafayette Park Lake, North Riverfront Park Lake, O'Fallon Park Lake, Willmore Park North Lake, Willmore Park South Lake)

12. St. Louis County (Bee Tree Lake, Bellefontaine Park Lake, Creve Coeur Lake, Queeny Park Lake, Simpson Lake, Spanish Lake, Sunfish Lake, Suson Park Lakes, No. 1, 2 and 3, Tilles Park Lake, Veteran's Memorial Park Lake)

13. Unionville (Lake Mahoney)

14. University of Missouri (South Farm R-1 Lake)

15. Wentzville (Community Club Lake)

[(8) Muskellunge less than forty-two inches (42") total length must be returned to the water unharmed immediately after being caught on Kirksville (Hazel Creek Lake).]

[(9)] (8) Walleye less than eighteen inches (18") total length must be returned to the water unharmed immediately after being caught on Memphis (Lake Showme).

AUTHORITY: sections 40 and 45 of Art. IV, Mo. Const. This rule previously filed as 3 CSR 10-4.116. Original rule filed April 30, 2001, effective Sept. 30, 2001. For intervening history, please consult the Code of State Regulations. Amended: Filed Aug. 14, 2007.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with John W. Smith, Assistant Director, Department of Conservation, PO Box 180, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 10—Missouri Highways and Transportation
Commission
Chapter 25—Motor Carrier Operations**

PROPOSED AMENDMENT

7 CSR 10-25.030 Apportioned Registration Pursuant to the International Registration Plan. The Missouri Highways and Transportation Commission is amending the title, purpose, and sections (1) through (35) of this rule.

PURPOSE: This proposed amendment updates these rules consistent with amendments to the International Registration Plan effective July 1, 2008, a reciprocity agreement for commercial motor vehicles in which Missouri is a member jurisdiction.

PURPOSE: The Missouri Highways and Transportation Commission has the authority to negotiate and to enter reciprocal agreements with other jurisdictions. This rule explains the provisions under which [apportioning] apportionment of registration fees with other jurisdictions can be accomplished and how to apply for registration under the International Registration Plan.

(1) Definitions.

(A) Commission means the Missouri Highways and Transportation Commission created in Article IV, Section 29 of the Missouri Constitution;

(B) Director means the director of the Motor Carrier Services Division of the Missouri Department of Transportation who is the official designated by the commission to be responsible for administration of the International Registration Plan (IRP);

(C) **Qualified vehicle** means any power unit that is used or intended for use in two (2) or more member jurisdictions and that is used for the transportation of persons for hire or designed, used, or maintained primarily for the transportation of property, and:

1. Has two (2) axles and a gross vehicle weight or registered gross vehicle weight in excess of twenty-six thousand (26,000) pounds (11,793.401 kilograms); or
2. Has three (3) or more axles, regardless of weight; or
3. Is used in combination, when the gross vehicle weight of such combination exceeds twenty-six thousand (26,000) pounds (11,793.401 kilograms).

A recreational vehicle, a vehicle displaying restricted plates, a bus used in the transportation of chartered parties, a government-owned vehicle, or a truck or truck tractor, or the power unit in a combination of vehicles having a gross vehicle weight of twenty-six thousand (26,000) pounds (11,793.401 kilograms), or less, are not apportionable, but may be registered under the IRP at the option of the registrant.

(D) **Temporary vehicle registration** means a temporary permit authorizing operation of vehicles in other member jurisdictions pending full registration upon completion of the initial or renewal application.

[(1)](2) Whenever the Missouri Highways and Transportation Commission (commission) has entered into a[n] **reciprocal** agreement providing for **exemption from registration** or the payment of [taxes and] **registration** fees on an apportionment basis with [an]other **member** jurisdictions, the operator of a fleet of vehicles based in any one (1) of the [contracting] **member** jurisdictions must [register his/her fleet under] **comply with the provisions of the applicable agreement**. The [International Registration Plan (IRP)] and *Missouri Department of Transportation Motor Carrier Services Instruction Manual, 2005 Edition, which is incorporated herein by reference and made a part of this rule as published by the Missouri Highways and Transportation Commission, Motor Carrier Services Division, 1320 Creek Trail Drive, Jefferson City, MO 65102, provide specific details and procedures and will be furnished upon request from the Missouri Department of Transportation, Motor Carrier Services Division. This rule does not incorporate any subsequent amendments or additions of this manual.* which is incorporated herein by reference and made a part of this rule as published by the **International Registration Plan, Inc., 4301 Wilson Blvd., Ste. 400, Arlington, VA 22203, effective July 1, 2008. This rule does not incorporate any subsequent amendments or additions of this manual.**

[(A)] *Fleet vehicles bearing a Missouri apportioned base plate must in fact be based at an established place of business where operational records of that fleet are maintained and mileage must be accrued by the fleet in Missouri.*

[(B)] *When referring to a Missouri corporation, a Missouri county or township personal property tax receipt must be submitted. If the information or documents cannot be furnished within thirty (30) days after receipt of initial letter of request, a full fee Missouri license must be purchased to perform any intrastate operation.]*

[(2)] *Except as otherwise provided by the appendix of bilateral agreements and if applicable agreements, understandings or declarations so provide between the contracting states, a fleet is defined as one (1) or more vehicles, except recreational vehicles, vehicles displaying restrictive plates, city pickup and delivery vehicles, buses used in transportation of chartered parties if registered in an IRP jurisdiction and government-owned vehicles, used in two (2) or more jurisdictions that proportionally register vehicles and used*

for the transportation of persons, or designed, used or maintained primarily for the transportation of property and—

(A) Is a power unit having a gross vehicle weight in excess of twenty-six thousand pounds (26,000 lbs.);

(B) Is a power unit having three (3) or more axles, regardless of weight; or

(C) Is used in combination, when the weight of the combination exceeds twenty-six thousand pounds (26,000 lbs.) gross vehicle weight.]

[(3)] *Vehicles, or combinations of vehicles, having a gross vehicle weight of twenty-six thousand pounds (26,000 lbs.) or less, two (2)-axle vehicles and buses used in transportation of chartered parties may be proportionally registered at the option of the registrant.]*

[(4)] *Vehicles which have paid full fee Missouri registration shall not be included as part of a proportional fleet.]*

[(5)](3) *[Mileage records for only the power unit need be kept and filed with the commission of the state.]* **The registrant shall be required to preserve all operational records on which the registrant's application for apportioned registration is based for a period of three (3) years following the close of the registration year to which the application pertains and to make these records available for examination by the commission at its request. Upon initial or renewal application for apportioned registration, the registrant will provide any actual distance traveled in any member jurisdictions for the reporting period or be allowed to estimate distance pursuant to the standards in the IRP in the jurisdictions intended to operate. The fees on estimated distances shall be calculated to conform with the IRP. The commission may use an average per-vehicle distance based on its own data if the registrant's estimated distance is not acceptable to the commission.**

[(6)] *An operator may divide his/her vehicles into two (2) or more separate fleets provided records for each fleet are maintained, the registrant has an established place of business and mileage is accrued by that fleet. Mileage traveled by vehicles in one (1) fleet may not be included on the application for another fleet.]*

[(7)] *The operator must keep accurate and complete mileage records for the period of twelve (12) consecutive months immediately prior to July 1 of the year immediately preceding the commencement of the registration or license year for which proportional registration is sought. Applicants may estimate mileage for a fleet anticipating operation in Missouri for the first registration period, expanded operations and if mileage was not accrued in an IRP jurisdiction during the reporting period. Estimated mileage by the applicant will not be acceptable if the operator has registered with the commission under a different or assumed name for the same or a similar operation.]*

[(8)] *In-jurisdiction miles means the total number of miles operated by a fleet of proportionally registered vehicles in a jurisdiction during the preceding year. In those cases where the registrant operated a fleet of proportionally registered vehicles in jurisdictions that require no apportionment and grant reciprocity, the base jurisdiction shall add the miles to the in-jurisdiction miles. The commission reserves the privilege to adjust the mileage percentage by the addition or deletion of nonapportioned states' miles.]*

[(9) *Total miles means the total number of miles operated by a fleet of proportionally registered vehicles in all jurisdictions during the preceding year. Total fleet mileage to be reported for any vehicle which was deleted from or added to the proportional fleet during the fiscal year reporting period shall be only those miles generated by the vehicle while the vehicle was part of the proportional fleet during the fiscal year reporting period.*]

[(10) *Operational records means documents supporting miles traveled in each jurisdiction and total miles traveled such as fuel reports, trip sheets and logs. The records must be preserved for a period of the three (3) preceding years.*]

[(11)](4) **Qualified** [V]vehicles proportionally registered and displaying the Missouri credentials shall be deemed properly registered in all jurisdictions where **such vehicle is** proportionally registered for any type of movement or operation provided the registrant has proper interstate or intrastate authority from the [appropriate regulatory agency] **commission** or is exempt from regulation by the [regulatory agency] **commission**.

[(12)](5) Missouri law forbids the granting of an exemption by the commission from any or all registration fees to any [motor] **qualified** vehicle owners or operators duly licensed in another jurisdiction where substantially equivalent exemptions are not extended by that jurisdiction to vehicles which are duly licensed in [this jurisdiction] **Missouri**.

[(13) *Household goods movers may be registered in the base state of the agent, referred to in this rule as service representative, the equipment shall be registered in the service representative's name and that of the carrier as lessee with the apportionment of fees according to the combined records of the service representative and those of the carrier. Records must be kept or made available in the service representative's base jurisdiction. If the base jurisdiction is of the carrier, the equipment shall be registered by and in the name of the carrier and that of the service representative as lessor with the apportionment of fees according to the records of the carrier and the service representative which must include intrastate miles operated by those vehicles applicable under this agreement, and the records must be kept or made available in the base jurisdiction of the carrier. Service representatives properly registered under this election shall be fully registered for operations under their own authority as well as under the authority of the carrier.*]

[(14) *Owner-operators who lease their vehicles to motor carriers shall accomplish registration as follows:*

(A) *The owner-operator (lessor) may be the registrant and the vehicle shall be registered in the name of the owner-operator with the apportionment of fees according to the operational records of the owner-operator. The identification plates and cab cards shall be the property of the lessor; and*

(B) *The lessee may be the registrant and the vehicle shall be registered by the carrier, but in both the owner-operator's name and that of the carrier as lessee, with the apportionment of fees according to the records of the carrier. The identification plates and cab cards shall be the property of the lessee for registration purposes.]*

[(15) *Vehicles of owner-operators that are not proportionally registered or not fully registered in a jurisdiction having a separate reciprocity agreement with the jurisdiction in which the vehicle is being operated shall be subject to the trip permit requirements.*]

[(16) *Registration of Rental Vehicles.*

(A) *A rental fleet means five (5) or more vehicles rented or offered for rent with or without drivers; the giving of possession and control of vehicles for a specified period of time, and which are designated as a rental fleet. A rental contract will be required to be carried in the vehicle.*

1. *The rental company shall be the registrant and the vehicle shall be registered by the rental company with the apportionment of fees according to the records of the rental company.*

2. *The identification plates and cab cards shall be the property of the rental company for registration purposes.*

(B) *Rental and leasing fleets owned by any person or firm engaged in the business of renting and leasing vehicles for rent or lease with or without drivers, the giving of possession and control of a vehicle for a specified period of time and construed as a long-term lease, and which are designated as a rental or leasing fleet shall register as follows:*

1. *The rental company shall be the registrant and the vehicles shall be registered by the rental company, but in both the rental and leasing company's name and that of the carrier as lessee, with the apportionment of fees according to the records of the rental company;*

2. *The identification plates and cab cards shall be the property of the rental and leasing company for registration purposes; and*

3. *The rental and leasing company must designate if the carrier is using the vehicles as a private carrier or hauling for hire.*

(C) *One (1)-Way Vehicles. Trucks of less than twenty-six thousand pounds (26,000 lbs.) gross vehicle weight operated as a part of an identifiable one (1)-way fleet will allocate vehicles to the respective jurisdictions based on the following mileage factor: Total miles traveled by all one (1)-way vehicles in State X divided by total miles traveled by all one (1)-way vehicles in all states equals percent. After having so registered the percentage of the total one (1)-way fleet in those jurisdictions, all trucks of the one (1)-way fleet so qualified will be allowed to perform both interstate and intrastate movements in all jurisdictions.]*

[(17) *Vehicles which are licensed for the full license year on the original application shall have until the last day of February to display the proportional credentials of Missouri.*]

[(18) *Once an owner has operated a fleet into Missouri without the payment of fees, the carrier cannot again operate any vehicle on the highways of Missouri on reciprocity until the payment of the required fees.*]

[(19)](6) All [commercial motor] **qualified** vehicles shall be registered on a [calendar] **quarterly staggered registration** year basis beginning either **January 1, April 1, July 1, or October 1**. Applications for renewal and payment are to be filed in accordance with section 301.041, RSMo. A waiver request, in writing, of late filing or late payment may be granted one (1) time only or for other circumstances which the director or his/her designee deems appropriate. [Vehicles being registered for the first time in Missouri as a proportional fleet of vehicles which have not been operated as part of a fleet in the member jurisdictions before April 1 and July 1 may pay three-fourths (3/4) the annual fee, between July 1 and October 1—one-half (1/2) the annual fee, and on and after October 1—one-fourth (1/4) the annual fee. This section shall not prevent the proportional registration at reduced fees for operators which have not entered Missouri with vehicles before the date of reduced fees provided in section 301.030(3), RSMo.]

[(20)](7) Properly prepared proportional applications will be accepted *[,]* by mail, in person, or electronically and subject to *[an]* audit. The commission may refuse to accept applications which *[list unrealistic mileage or number of vehicles]* list operations that do not appear to be based in or accumulating distance in Missouri, or from applicants or operations whose registration privileges are currently revoked or suspended in another member jurisdiction. The commission reserves the right to obtain further documentation or information to verify compliance with this section. All plates and cab cards and reciprocal exemptions are subject to cancellation and revocation in the event of erroneous issuance or if any fees remain unpaid.

[(21)](8) Cab Card. Evidence of registration other than the license plate which shall be carried at all times in the vehicle for which it is issued and shall be valid for the current registration period. Qualified vehicle cab cards are issued each registration year upon payment. Trailers will be issued a permanent, nonexpiring cab card. Acceptable forms of a cab card include, but are not limited to, the originally issued registration, including such registration issued by electronic means, and any facsimile transmission or photocopy of such original cab card. All acceptable forms of a cab card shall be legible upon visual inspection.

(9) Plates. Qualified vehicles (power units) and trailer plates shall be issued pursuant to section 301.041, RSMo, and displayed pursuant to section 301.130, RSMo. The transfer and refund of plates shall be governed by sections 301.067, 301.121, 301.130, and 301.442, RSMo. The registrant may also obtain one (1) year, three (3) year, or permanent trailer plates through the Department of Revenue.

[(22)](10) Upon completion of initial or renewal applications, subsequent applications may be filed during the current registration year to:

(A) Add vehicle—addition of a power unit or trailer to the fleet that has not been previously registered;

(B) Add vehicle and transfer—the removal of a vehicle from service in a registered fleet to be replaced with another vehicle whether the registered gross weight is the same, to be increased, or to be decreased. A fee credit is not allowed for a vehicle not permanently removed from the fleet such as removal for repair or rebuilding. *[Additions and deletions to a fleet may be made for the payment of the transfer fee only i]If the [deleted] vehicle has been permanently removed from fleet service [by wreckage] due to destruction by accident or change of ownership, change of base point, [extensive repairs,] or expiration or cancellation of lease, the registrant may replace the vehicle with a replacement vehicle. If a registrant elects to remove or withdraw a vehicle from its fleet, the registrant shall either: 1) return the cab card issued to the operator by the commission with an application for the transfer of proportional credentials; or 2) certify that the cab card has been lost, stolen, or destroyed. For each member jurisdiction in which operation has been requested, any required fees will be assessed for those member jurisdictions in accordance with those member jurisdictions' laws. Applications for transfer of apportioned credentials that request a replacement plate must be accompanied by a replacement fee for each plate replaced. Once a vehicle has been removed, the same vehicle cannot later be added back to the fleet for the registration year without the payment of additional fees unless proof of non-use or proof of new ownership is submitted. Upon audit, credit will not be transferable if it is determined that the removed unit was still operating. If a vehicle is added or re-added to the registration fleet and has been issued a Missouri plate in which one hundred percent (100%) of the fees were paid to Missouri, credit will be given on the apportioned fees due Missouri for the current registration year. [Additions may be made to a fleet when*

new vehicles are acquired by purchase or lease and the same number of vehicles are to be removed from service without the payment of additional registration charges. However, a]Additions and [deletions] removals to a registered fleet will not be accepted when the carrier's [file] account indicates that past additions and [deletions] removals were only temporary or for the purpose of allowing two (2) or more vehicles to operate on the payment of one (1) fee for the registration year[.];

(C) Delete vehicle—removal of a vehicle from service in a registered fleet. The plate(s) must be surrendered. The director uses the date the plate is surrendered as a basis for credit or refund, which will be issued pursuant to section 301.121, RSMo. The director provides the registrant with notification letters to other member jurisdictions in which fees have been paid that the applicant may use to obtain refunds, if applicable, from other member jurisdictions. All apportioned license plates for which renewal is not requested shall be returned or postmarked to the director at the end of the current registration year. If an applicant initially elects to renew registration for a vehicle during the annual renewal process and pays all required fees to Missouri and other member jurisdictions for the new registration year and then determines that registration is not desired prior to the effective date of the new registration year, the carrier may obtain a full refund of such registration fees if the plate is returned or postmarked to the director by the last day of the current registration year;

(D) Add jurisdiction—the addition of a member jurisdiction to a registered fleet due to expanding operations or a member jurisdiction was not included during initial registration or renewal. All active qualified vehicles will be assessed fees calculated from the date of request to the end of the current registration year. New cab cards will be issued upon payment. At no time will the director remove member jurisdictions from a fleet registration during the current registration year, unless discovery of an error by the director is made upon re-audit of an application;

(E) Replace cab card—the issuance of a new cab card to replace originally issued cab card;

(F) Fleet to fleet transfer—the movement of a vehicle with plate from one fleet to another within the same carrier account during the current registration year. The director allows credit for fees paid to Missouri. Other member jurisdictions listed in the fleet registration may require additional fees or repayment of fees based on the distance percentage of the new fleet;

(G) Replace plate—the reissuance of a lost, stolen, or destroyed plate;

(H) Amend vehicle—changes or corrections to vehicles in a registration fleet within a carrier account during the current registration year. Any vehicle information except the vehicle identification number may be changed. Fees are calculated based on the amended vehicle application date and vehicle changes;

(I) Cab card correction—changes or corrections to the cab card such as equipment number, make of vehicle, vehicle identification number, title state, title number, United States Department of Transportation (USDOT) number at the vehicle level, and federal identification number at the vehicle level, which has no bearing on fees previously assessed for other member jurisdictions. A new cab card will be issued upon payment of the cab card fee;

(J) Change carrier type/commodity class—changes or corrections to a carrier's type of operation for a specific registered fleet within a carrier account such as private, for hire, and commodity hauled. For member jurisdictions which base fees on carrier type and commodity hauled, additional fees may be due;

(K) Name change—change or correction of the legal name of the registrant at the account level, including USDOT number and federal identification number; or

(L) **Weight group change**—changes to the weights of a group of vehicles which operate at a specific weight in Missouri and other member jurisdictions. Fees will be assessed for the member jurisdictions in accordance with those member jurisdictions' laws based on the weight group changes which were made to all the vehicles within the group. In cases of weight group decrease, no refund or credit will be made.

[(23) If a vehicle is deleted or added to the proportional application, the vehicle must also be deleted or added to the proportional application of all other states listed on the original application. Once a vehicle has been deleted, the same vehicle cannot later be added back to the application for the license year without the payment of additional fees unless a credit is due.]

[(24) If an operator elects to remove or withdraw a vehicle from its fleet, the operator shall either: 1) return the cab card issued to the operator by the commission with a supplemental application for the transfer of proportional credentials or 2) certify that the cab card has been lost, stolen or destroyed. Applications for transfer of apportioned credentials that request a replacement plate must be accompanied by a replacement fee for each plate replaced. Vehicles registered in excess of fifty-four thousand pounds (54,000 lbs.) shall receive a refund or credit of the Missouri registration fees based on the calendar quarters remaining before expiration of the license plate if in accordance with section 301.120, RSMo.]

[(25)](11) [Telegraphic authority or t]Temporary [authorization] vehicle registration (TVR) will be issued for forty-five (45) days for Missouri-based licensed vehicles [and thirty (30) days for vehicles based in a member jurisdiction] upon establishing an account with the commission in lieu of [proportional] apportioned registration and licenses so that a vehicle may immediately operate upon the highways of Missouri unless the commission has cause to believe that the applicant will not forward immediately the fees and [old credentials] documentation due the state of Missouri. A Missouri-based licensed vehicle may have one (1) fifteen (15)-day [telegraphic] TVR extension, but only after all fees and required documents have been submitted. Copies of the [telegram or temporary authorization] TVRs must be carried in the vehicles at all times when no cab cards are available and displayed upon request of any law enforcement or Missouri Department of Transportation official.

(A) **Suspension.** If the commission determines that *[telegraphic authority] payment and documentation is not received prior to the expiration of the forty-five (45)-day TVR or the privilege of a TVR is being abused [or temporary authorities are unaccountable], the commission [can revoke or] shall suspend the privileges [for either six (6) months or one (1) year and until all the required fees are paid.] of receiving TVRs and/or additional credentials for that registrant's fleets for the duration of the suspension period. Prior to the issuance of any suspension of TVRs and credentials, the commission shall notify the registrant in writing that payment and/or documentation has not been received or the TVR privilege is being abused and provide information regarding action the registrant must take to become compliant. Upon the registrant taking the action set forth in the commission's notice, the suspension shall be terminated. If the suspension is due to TVR abuse, the registrant shall not receive TVRs for the length of the suspension, but may receive other credentials.*

(B) **Revocation.** The alteration of a TVR will result in a one (1)-year TVR revocation. Revocation of TVR privileges does not hinder a registrant's ability to register other vehicles. Revocation of privileges will be reviewed not later than one (1) year after revoca-

tion implementation *[of the suspension]* at which time if all delinquent fees are paid, then a reinstatement order will be issued.

(C) **Fees.** When a request for TVR is made, fees will be charged according to the application type from the time of issuance until the end of the registration year. At no time will the application type be changed during operation or after the expiration of the TVR unless approved by the director or his/her designee. The director or his/her designee may cancel the TVR if the registrant returns the TVR within five (5) days of issuance or reduce TVR fees if the TVR is returned before the expiration date and provided the registrant submits adequate proof to support registrant's written request for reduction of fees.

[(26)](12) Trip Leasing.

(A) A *[n apportioned operator] registrant* may lease equipment to another *[apportioned] fleet [operator] registrant* and the lessor shall be responsible for reporting *[on the proportional application] the [miles] distance* traveled by the leased equipment. The lessee shall be the person using and operating the equipment by the lease agreement. *[The leased vehicle must bear proportional credentials and be operated only in the jurisdiction to which fees have been paid or a trip permit will be required.]*

(B) An apportioned vehicle may be leased to a nonapportioned carrier in any *[IRP] jurisdiction*. The lessor shall be responsible for reporting the *[mileage] distance* traveled by the leased equipment. *[The leased vehicle must bear proportional credentials and can be operated in Missouri only if fees have been paid to Missouri, otherwise a trip permit will be required.]*

(C) *Full fee Missouri carriers may temporarily lease proportionally registered vehicles bearing proper Missouri credentials, provided the apportioned carrier reports the mileage traveled while the equipment is under lease. The Missouri full fee carrier must send a report of mileage traveled by the leased equipment to the apportioned carrier.]*

[(27) The nonfleet operator in a prorate state may be required to apply for a reciprocity cab card from the commission.]

[(28) A Missouri certificate of ownership (title) for a leased or rented vehicle shall not be required for a registrant if the motor vehicle is otherwise properly and duly registered under the provisions of the IRP. A copy of the valid title and a copy of the lease must be submitted with the registration application.]

[(29)](13) The commission reserves the power to fix and collect a reasonable fee to cover the costs of handling and issuing all credentials or other evidence of proper registration necessary for operating a [motor] qualified vehicle in this state. [In every event, the charge made against owners-operators from other jurisdictions will be at least equal to charges directed against Missouri-based owners-operators by other jurisdictions.]

(14) **The commission shall require the following prerequisite documentation to support an application for apportioned registration:**

[(30)](A) Personal Property Tax Receipt Required. A Missouri tax receipt or a statement certified by the county or township collector of the county or township in which the applicant's property was assessed showing payment of the personal property tax or that no tax is due by [a Missouri applicant] the owner is a prerequisite to the registration of [motor] qualified vehicles. A detailed vehicle listing or copy of the assessment form filed by the vehicle owner with the county assessor may be requested in addition to the tax receipts when the receipt does not include complete vehicle information. Carriers using Missouri as the base jurisdiction for

apportioned registration purposes asserting no distance was operated by specific vehicles in Missouri shall submit to the commission the Affidavit Affirming No Missouri Distance Traveled, which is incorporated herein by reference and made a part of this rule as published by the Missouri Highways and Transportation Commission, Motor Carrier Services Division, 1320 Creek Trail Drive, Jefferson City, MO 65109, effective August 1, 2007, which lists those specific vehicles and requires the signatures of both the county collector and assessor. This rule does not incorporate any subsequent amendments or additions of this affidavit. Such affidavit shall not be used as a waiver by any registrant. The Affidavit Affirming No Missouri Distance Traveled may be obtained from the Motor Carrier Services Division website at: http://www.modot.org/mcs/forms_manuals.htm.

[(31)](B) Federal Heavy Vehicle Use Tax Receipt Required. *[Highway motor]* **Qualified** vehicles that have a taxable gross weight of fifty-five thousand pounds (55,000 lbs.) or more are *[taxable. Proof]* **required to show proof** of payment of Federal Heavy Vehicle Use Tax or that no tax is due *[is]* as a prerequisite to the registration of a *[motor]* **qualified** vehicle.

[(32)](C) Liability Insurance. Effective July 1, 1987 each Missouri-based registrant must maintain liability insurance coverage or provide proof of self-insurance, if applicable, on all vehicles bearing a Missouri-apportioned license plate. Proof of liability insurance coverage is a prerequisite to the registration of a *[motor]* **qualified** vehicle.

(D) Lease Agreement. A copy of all lease agreement(s), if applicable, will be required for all vehicles under the control and possession of the registrant. Such lease agreement shall comply with the requirements of 7 CSR 265-10.040.

(E) Titles. Proof of certificate of ownership is required for all vehicles. When the vehicle is owned by the registrant, a Missouri certificate of ownership in the legal name of the registrant will be required. When a vehicle is owned by another entity other than the registrant, the certificate of ownership from the entity's resident jurisdiction will be accepted.

[(33)](15) Vehicles Operated Solely in Intrastate Commerce. Notwithstanding any other provision of law, no reciprocity shall be granted under any statute or agreement for the operation of any *[commercial motor]* **qualified** vehicle within Missouri solely in intrastate commerce, but all vehicles so engaged must be duly registered and licensed in Missouri.

(16) Any contractor or sub-contractor of the commission that is subject to regulation under these administrative rules shall at all times while conducting business with the commission under such contract be in good standing with the laws of the state of Missouri and the administrative rules of the commission, or shall obtain full compliance with such laws or rules within ten (10) days of being notified in writing of noncompliance by Motor Carrier Services Division (MCS).

[(34) Does Not Cover Missouri Highways and Transportation Commission Fees. Nothing in these rules shall be interpreted to govern any provisions or agreements as to reciprocity concerning the commission's fees and charges. All questions concerning the fees and charges of the commission are to be determined exclusively by the reciprocal agreements entered into by the commission.]

[(35) Nothing in this rule shall be interpreted to govern any provisions or agreements as to motor fuel taxes, except for motor fuel taxes assessed or collected pursuant to the International Fuel Tax Agreement. All questions concerning the fees and charges relating to motor fuel taxes, other than motor fuel taxes pursuant to the International Fuel Tax Agreement, are to be determined by the Department of Revenue, Tax Administration Bureau, Special Fuel Tax Section.]

AUTHORITY: sections 142.617, **226.130** and 301.275, RSMo 2000 and 226.008, RSMo Supp. 2006. This rule originally filed as 12 CSR 20-3.010. Original rule filed July 22, 1965, effective Aug. 1, 1965. For intervening history, please consult the Code of State Regulations. Amended: Filed Aug. 9, 2007.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication 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 10-3.184 Electricity, Water and Gas. This rule interpreted the sales tax law as it applied to the sale of electricity, water and gas, and interpreted and applied sections 144.010, 144.020 and 144.030.2(23), RSMo.

PURPOSE: This rule is being rescinded because it has been replaced with 12 CSR 10-108.300 Sales of Electricity, Water and Gas.

AUTHORITY: section 144.270, RSMo 1994. This rule was previously filed as rule no. 55 Jan. 22, 1973, effective Feb. 1, 1973. S.T. regulation 010-86 was last filed Dec. 3, 1975, effective Jan. 10, 1976. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Dec. 30, 1983, effective April 12, 1984. Emergency amendment 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. Amended: Filed Aug. 18, 1994, effective Feb. 26, 1995. Rescinded: Filed Aug. 14, 2007.

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 3—State Sales Tax

PROPOSED RESCISSION

12 CSR 10-3.466 Revocation Orders. This rule interpreted the sales tax law as it applied to revocation orders.

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

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 083-1 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed Aug. 13, 1980, effective Jan. 1, 1981. Amended: Filed Jan. 15, 1987, effective May 11, 1987. Rescinded: Filed Aug. 14, 2007.

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 3—State Sales Tax

PROPOSED RESCISSION

12 CSR 10-3.468 Retail Sales Tax License Necessary. This rule interpreted the sales tax law as it applied to obtaining a retail sales tax license.

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

AUTHORITY: section 144.270, RSMo 1994. S.T. regulation 083-2 was last filed Oct. 28, 1975, effective Nov. 7, 1975. Refiled March 30, 1976. Amended: Filed June 22, 1987, effective Oct. 25, 1987. Rescinded: Filed: Aug. 14, 2007.

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 6—Motor Vehicle Fuel Tax

PROPOSED RULE

12 CSR 10-6.100 Motor Fuel Tax Exemption for Operators of Public Mass Transportation Service

PURPOSE: Section 142.817, RSMo exempts operators of public mass transportation service from motor fuel tax. This rule explains how the exemption is to be claimed.

(1) In general, fuel used to operate public mass transportation services is not subject to Missouri motor fuel tax. Fuel that is not subject to Missouri motor fuel tax is subject to Missouri state and local sales tax, unless otherwise exempted under Chapter 144, RSMo.

(2) Basic Application.

(A) Operators of public mass transportation services who purchase fuel on or after August 28, 2007, and paid the Missouri motor fuel tax may obtain a refund of the tax. The operator of the public mass transportation service must certify to the department, on a form prescribed by the director, that the motor fuel will be used exclusively in the operation of the mass transportation service.

1. The operator must submit the claim on a form prescribed by the department within one (1) year of the date of purchase or April 15 of the year following the purchase, whichever is later.

2. The refund will equal the motor fuel tax, less all applicable state and local sales taxes unless the entity is otherwise exempt from Missouri sales tax.

(B) Ultimate vendors may make bulk sales of motor fuel to the exempt public mass transportation service on or after August 28, 2007, without collecting the state motor fuel tax. The ultimate vendor that purchased the motor fuel and paid the Missouri motor fuel tax may obtain a refund if the ultimate vendor sold the motor fuel without charging the Missouri motor fuel tax.

1. Operators must furnish the ultimate vendor a Public Mass Transportation Operator Exemption Certificate in order to purchase the motor fuel without being charged the Missouri motor fuel tax. This form is available at the department's central office, or may be downloaded at <http://www.dor.mo.gov/tax/business/fuel/forms/index.htm>.

2. Any ultimate vendor who is a retailer, and not licensed as a supplier or distributor, must submit the claim on a form prescribed by the director within two (2) years of the date of purchase.

3. If the ultimate vendor is licensed as a Missouri supplier or distributor, the claim for refund must be submitted on a form prescribed by the director and must be filed within three (3) years of the date of purchase.

4. The ultimate vendor must collect and remit to the department any applicable state and local sales taxes at the rate in effect at the vendor's place of business.

(3) Examples.

(A) A public mass transportation service operator has vehicles that operate on gasoline or gasohol. The operator goes to the pump to fuel its vehicles. The operator will purchase the gasoline or gasohol subject to all taxes and may apply for a refund of the state motor fuel tax.

(B) A public mass transportation service operator has vehicles that operate on diesel fuel. The operator may purchase clear diesel fuel subject to the state motor fuel tax and apply for a refund or if allowed under federal law, it may purchase dyed diesel fuel, which is exempt

from state and federal fuel tax. It is required to complete and provide the ultimate vendor with an exemption certificate prior to filling any vehicles or ordering any dyed diesel fuel.

(C) A public mass transportation service operator has bulk storage facilities for the motor fuel used to fuel its vehicles. The ultimate vendor who delivers the motor fuel may sell the product without charging the motor fuel tax. The ultimate vendor would charge any applicable sales tax unless the operator is exempt from sales tax under state law. The ultimate vendor would then apply for a refund of the motor fuel tax it paid on the motor fuel but did not collect from the operator.

(D) A public mass transportation service operator has vehicles that operate on diesel fuel and meet the exemption requirements under federal law. Its routes include states other than Missouri, and the other state does not allow the use of dyed diesel fuel on public roadways. Even though Missouri and the federal government would allow the use of dyed diesel fuel, the operator must purchase and use clear fuel in the vehicles that cross into the neighboring state.

AUTHORITY: sections 142.818 and 142.824, RSMo 2000, 136.035, RSMo Supp. 2006, and TAFP CCS HCS SB 30, enacted by the 94th General Assembly, 2007. Emergency rule filed Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. Original rule filed Aug. 14, 2007.

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 approximately twenty-four thousand eight hundred seventy dollars (\$24,870) in fiscal year 2008 and thirty-seven thousand two hundred seventy-nine dollars (\$37,279) in fiscal years after 2008 with that cost recurring annually over the life of the rule.

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this 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 is scheduled.*

**FISCAL NOTE
PRIVATE COST**

- I. Department Title: Department of Revenue
Division Title: Director of Revenue
Chapter Title: Chapter 6 – Motor Fuel Tax**

Rule Number and Title:	12 CSR 10-6.100 Motor Fuel Tax Exemptions for Operators of Public Mass Transportation Service
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the 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:
829 - 1,243	Operators of public mass transportation services	\$24,870 - \$37,279

III. WORKSHEET

Based upon MODOT information in FN 0246-06, it is estimated that there will be approximately 829 claims for refund filed in FY08 (\$1,127,000 divided by \$0.17 divided by 8,000 gallons, average truck load) and 1,243 in subsequent years (\$1,691,000 divided by \$0.17 divided by 8,000 gallons). It is estimated that most if not all of these entities will be exempt from sales tax. The average cost of completion for a claim is \$30. The total cost to file is \$24,870 to \$37,279.

Filing Costs (FY08)	<u>\$ 24,870</u>
Total	\$ 24,870

Filing Costs – after FY08	<u>\$ 37,279</u>
Total	\$ 37,279

IV. ASSUMPTIONS

The department assumes that for purposes of this fiscal note, while the number of gallons claimed may not substantially change following the implementation of this rule, the number of claims may be less due to more gallons being claimed on each refund claim.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 22—Senior Citizens Tax Relief**

PROPOSED RESCISSION

12 CSR 10-22.010 Senior Citizen Claim Forms. The senior citizen claim form, together with certification for rent paid and table for determining amounts were assigned a rule number in order to comply with the uniform procedures adopted by the secretary of state under section 536.023, RSMo 1986. They were designed to assist senior citizens in computing the amount of credit or payment due to them on the basis of the relationship between their income and the property taxes or rent paid during the year.

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

AUTHORITY: sections 135.015 and 135.030, RSMo 1986. Form, statement and table filed Jan. 29, 1974, effective Feb. 8, 1974. Amended: Filed Feb. 10, 1975, effective Feb. 20, 1975. Amended: Filed Dec. 23, 1975, effective Feb. 2, 1976. Rescinded: Filed Aug. 14, 2007.

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 22—Senior Citizens Tax Relief**

PROPOSED RESCISSION

12 CSR 10-22.020 Eligibility to File Claim(s) by Married Persons. This rule was designed to clarify the eligibility of married persons filing combined or separate claims under the Tax Relief Law (sections 135.010–135.035, RSMo).

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

AUTHORITY: section 135.015, RSMo 1986. Original rule filed Oct. 15, 1985, effective Jan. 26, 1986. Rescinded: Filed Aug. 14, 2007.

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 23—Motor Vehicle**

PROPOSED RESCISSION

12 CSR 10-23.365 Issuance of Nonresident Salvage-Buyer's Identification Card. This rule set forth the procedures for issuance of nonresident salvage-buyer's identification card.

PURPOSE: This rule is being rescinded due to legislation that repeals the requirement for out-of-state salvage-buyers to obtain a nonresident salvage-buyer's identification card in order to buy at Missouri salvage pools and disposal sales.

AUTHORITY: section 301.218, RSMo 1986. Original rule filed Nov. 18, 1986, effective March 12, 1987. Emergency rescission filed Aug. 8, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. Rescinded: Filed Aug. 8, 2007.

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 License Bureau Rules**

PROPOSED AMENDMENT

12 CSR 10-24.444 Ten-Year Disqualification. The director proposes to amend sections (2), (3) and (4).

PURPOSE: This amendment clarifies the requirements for obtaining a commercial driver license after a ten-year disqualification.

(2) The applicant must prove to the director that during the ten (10) years immediately preceding the application the applicant:

(A) Has had no alcohol- or drug-related conviction(s) as defined in section 302.700, RSMo, in Missouri or any other jurisdiction [involving operation of a commercial motor vehicle or while operating a noncommercial motor vehicle when licensed as a commercial driver];

(B) Has successfully completed an alcohol- or drug-related traffic offender [or] rehabilitation, or a comparable program, which meets or exceeds the minimum standards approved by the Department of Mental Health [or a comparable program approved by the Department of Mental Health] if the disqualifying offenses were drug or alcohol related;

(C) Has had no commercial motor vehicle conviction(s) [or non-commercial motor vehicle convictions while licensed as a

commercial driver] in Missouri or any other state during the ten (10)-year period preceding the application;

(3) For purposes of [determining] **verifying** an applicant's [eligibility for restoration of commercial driving privileges] **prior ten (10)-year alcohol and drug history**, the applicant shall provide a copy of his/her **closed** criminal history for the immediately preceding ten (10) years to the director of revenue [or authorize access to such criminal history by completing DOR-4383, Authorization to Perform Criminal Background Check].

(4) If the director finds the applicant is eligible for restoration to commercial driving status, the written and driving skills examinations as specified in 12 CSR 10-24.395 shall be successfully completed before a commercial driver[s/] license is issued.

AUTHORITY: sections 302.755, RSMo Supp. 2006 and 302.765, RSMo 2000. Original rule filed Nov. 29, 1995, effective May 30, 1996. Amended: Filed April 11, 2005, effective Oct. 30, 2005. Amended: Filed Aug. 8, 2007.

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 26—Dealer Licensure

PROPOSED RULE

12 CSR 10-26.200 Out-of-State Dealer Request to Participate in Missouri Recreational Vehicle Show or Exhibit

PURPOSE: Section 301.566, RSMo, requires a recreational vehicle (RV) dealer licensed in another state who intends to participate in a RV show or exhibition in Missouri to notify the Department of Revenue at least thirty (30) days prior to the event. This rule establishes the form that must be used to notify the department.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) Each licensed out-of-state recreational vehicle (RV) dealer who wants to participate in a vehicle show or exhibition in Missouri must complete a Request For Out-Of-State Dealer Participation In Missouri Recreational Vehicle Show or Exhibit (FORM DOR 5132). The Form DOR 5132 must be received by the Department of Revenue, Customer Service Division, Dealer Licensing Section, PO

Box 43, Jefferson City, MO 65105-0043, at least thirty (30) days before the RV show or exhibit. No other notice may be used.

(A) The Request For Out-Of-State Dealer Participation In Missouri Recreational Vehicle Show Or Exhibit (FORM DOR 5132), revised April 2007, is incorporated by reference, is published by and can be obtained from the Missouri Department of Revenue, Customer Service Division, Dealer Licensing Section, PO Box 43, Jefferson City, MO 65105-0043, or at www.dor.mo.gov/mvdl/motorv/forms/5132.pdf. This form does not include any amendment or addition since the revision date noted.

(B) The department will notify the RV dealer of its decision to approve or deny the request for participation in the RV show or exhibition at least fifteen (15) days prior to the event. If approved, the dealer must keep a copy of the department's approval letter at the show or exhibition for inspection.

AUTHORITY: sections 301.552, RSMo 2000 and 301.566, RSMo Supp. 2006. Original rule filed Aug. 8, 2007.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of 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 103—Sales/Use Tax—Imposition of Tax

PROPOSED AMENDMENT

12 CSR 10-103.380 Photographers, Photofinishers and Photoengravers, as Defined in Section 144.030, RSMo. The director proposes to amend the title, amend subsections (3)(C), (3)(E), (3)(F), and subsections (4)(D) through (4)(F).

PURPOSE: This rule is being amended due to TAFP HCS SCS SB 196, enacted by the 93rd General Assembly, 2005 and TAFP CCS HCS SB 30, enacted by the 94th General Assembly, 2007.

(3) Basic Application of Tax.

(C) The sale of negative development services only, where no prints, slides or other tangible personal property are received, is not subject to tax. The developer must pay tax on materials and supplies used in the development process **because developing is a service that is not subject to tax.**

(E) [Supplies such as film, chemicals and other materials purchased for the photographer's own use or consumption are taxable.] Chemicals that are intended to and do remain with the final product are considered an ingredient or component part of the final product for resale and are therefore not subject to tax.

(F) Equipment such as cameras and lenses, which is directly used to manufacture new **tangible** personal property intended to be sold ultimately at retail, is exempt from tax. Replacement parts for this exempt equipment are also exempt.

(4) Examples.

[(D) A photographer purchases chemicals and other supplies used to develop photographs. These chemicals and

supplies are not intended to remain with the photograph. These purchases are subject to tax because they are consumed in the developing process and do not become a component or ingredient part of the photograph.]

[(E)] (D) A photographer purchased new cameras and a new lens to replace a broken lens. The new cameras allow the photographer to photograph twice as many pictures. The photographer can purchase the cameras exempt because it increases productivity. The new lens would also be exempt as replacement equipment.

[(F)] (E) A photographer scans photographs into a computer for customers. If the photographer provides the customer a CD containing the images, the sale is taxable. However, if the photographer sends the images to customers via the Internet, the photographer has not sold tangible personal property and should not collect tax on this sale.

AUTHORITY: section 144.270, RSMo [1994] 2000. Original rule filed June 29, 2000, effective Dec. 30, 2000. Emergency amendment filed Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. Amended: Filed Aug. 14, 2007.

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 103—Sales/Use Tax—Imposition of Tax**

PROPOSED RULE

12 CSR 10-103.381 Items Used or Consumed by Photographers, Photofinishers and Photoengravers, as Defined in Section 144.054, RSMo

PURPOSE: Section 144.054.2, RSMo exempts from state sales tax and local use tax, but not local sales tax, machinery, equipment, materials and chemicals used or consumed in manufacturing, processing, compounding, mining or producing any product or used in research and development related to manufacturing. This rule explains the exemption for photographers, photofinishers and photoengravers.

(1) In general, purchases of machinery, equipment, materials and chemicals used or consumed in manufacturing, processing, compounding, mining or producing any product or used in research and development related to manufacturing are exempt from state sales tax and local use tax, but not local sales tax.

(2) Definition of Terms: See the definition of terms in 12 CSR 10-111.010 Machinery and Equipment Exemptions.

(3) Basic Application of Tax.

(A) Supplies such as film, chemicals and other materials purchased for the photographer's use or consumption are exempt from

state sales tax and local use tax, but not local sales tax.

(4) Examples.

(A) A photographer purchases chemicals and other supplies used to develop photographs. These chemicals and supplies are not intended to remain with the photograph. These purchases are exempt from state sales tax and local use tax, but not local sales tax, because they are consumed in the developing process.

AUTHORITY: section 144.270, RSMo 2000 and CCS HCS SB 30, enacted by the 94th General Assembly, 2007. Emergency rule filed Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. Original rule filed Aug. 14, 2007.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of 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 103—Sales/Use Tax—Imposition of Tax**

PROPOSED AMENDMENT

12 CSR 10-103.400 Sales Tax on Vending Machine Sales, as Defined in Section 144.054, RSMo. The director proposes to amend section (1), and subsection (3)(I).

PURPOSE: This rule is being amended due to TAFP CCS HCS SB 30, enacted by the 94th General Assembly, 2007.

(1) In general, sales of tangible personal property, other than photocopies and tobacco products, through vending machines are subject to tax based on one hundred thirty-five percent (135%) of the net invoice price of the tangible personal property. The applicable tax rate is the rate in effect at the location of the vending machine. Sales of photocopies and tobacco products are subject to tax on their retail sales price. *[Purchases of machines or parts for machines used in a commercial vending machine business are subject to tax unless tax is paid on the gross receipts derived from the use of the machines.] Purchases of machines or parts for machines used in a commercial vending machine business are not subject to tax if tax is paid on the gross receipts derived from the sale of the tangible personal property through the vending machines.*

(3) Basic Application of Tax.

(I) *[Purchases of machines or parts for machines used in a commercial coin-operated vending business are subject to tax unless tax is paid on the gross receipts derived from the use of the machines.] Purchases of machines or parts for machines used in a commercial vending machine business are not subject to tax if tax is paid on the gross receipts derived from the sale of the tangible personal property through the vending machines.*

AUTHORITY: section [143.961] 144.270, RSMo 2000, and CCS HCS SB 30, enacted by the 94th General Assembly, 2007. Original rule filed May 1, 2006, effective Nov. 30, 2006. Emergency amendment filed Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. Amended: Filed Aug. 14, 2007.

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 103—Sales/Use Tax—Imposition of Tax

PROPOSED AMENDMENT

12 CSR 10-103.555 Determining Taxable Gross Receipts. The director proposes to amend the purpose, sections (2) through (4), and reletter existing subsections accordingly.

PURPOSE: This rule is being amended due to TAFP CCS HCS SB 30, enacted by the 94th General Assembly, 2007.

PURPOSE: Section 144.021, RSMo, imposes a tax on a seller's gross receipts. Section 144.083, RSMo, addresses the application of tax involving third party payments. This rule provides guidance for reporting gross receipts.

(2) Definitions.

(A) Buydown payments—payments received by a seller under an agreement with a manufacturer or wholesaler to lower the cost of inventory sold to consumers for a stated sales price.

[(A)] (B) Gross receipts—the total amount of the sale price of taxable services and tangible personal property including any services, other than charges incident to the extension of credit, that are a part of such sale and are capable of being valued in money, whether received in money or otherwise.

[(B)] (C) Rebate—a return of part of an amount given in payment.

(D) Store coupons—coupons issued by the seller to reduce the stated price of a product to the purchaser.

[(C)] (E) Taxable sales—the total amount of gross receipts plus or minus any adjustments permitted or required by law.

(F) Third party coupons—coupons issued by a manufacturer or other third party to apply to the purchase of the product.

(3) Basic Application of Tax.

(C) When the [taxpayer] seller accepts third party coupons, only the [total sale] price [includes the value of the coupon. When the taxpayer accepts third party coupons along with food stamps, the value of the food stamps is not included in taxable sales, but the value of the coupon is included in taxable sales.] paid by the purchaser is included in the gross receipts subject to tax.

(D) The value of a store coupon issued and redeemed by [the] a seller is not [included in taxable sales] subject to tax. Store coupons are not included in gross receipts.

(E) When the seller accepts federal food stamp coupons, the value of the federal food stamp coupons is not included in gross receipts.

[(E)] (F) Rebates from sellers or manufacturers do not reduce taxable sales unless they are offered instantly at the time of sale, except for rebates on motor vehicles, boats, trailers and outboard motors.

[(F)] (G) A taxpayer accepting an article in trade as a credit or part payment on the purchase price should include the value of the article in gross receipts. The value of the article should be deducted from gross receipts when calculating taxable sales.

[(G)] (H) Money received in advance, such as down payments, layaways or gift certificates, are not included in gross receipts until the sale has been consummated.

[(H)] (I) Charges to customers for the extension of credit, such as late fees or financing charges are excluded from gross receipts.

[(I)] (J) A seller's expenses associated with utilizing the service of credit card companies are not excluded from gross receipts.

[(J)] (K) If the taxpayer's inventory is stolen or destroyed by fire or other casualty, the insurance receipts are not subject to tax and should not be included in gross receipts.

(L) When tangible personal property is subject to a federal manufacturer's excise tax imposed by sections 4041, 4061, 4071, 4081, 4091, 4161, 4181, 4251, 4261, or 4271 of Title 26, United States Code, the amount of the tax is not included in gross receipts if the retail seller collects the excise tax from the purchaser and remits it to the federal government.

(M) Gross receipts from the sale of cigarettes do not include the amount of the sale price that represents the state tax on the cigarettes under Chapter 149, RSMo. Gross receipts from the sale of other tobacco products include the amount of the sale price that represents the state tax on the other tobacco products under Chapter 149, RSMo. Local cigarette taxes authorized by law and imposed and paid in the manner of the state tax under Chapter 149, RSMo, are not included in gross receipts. All other local cigarette taxes are included in gross receipts.

(N) Buydown payments are not gross receipts subject to tax. Buydown payments serve to reduce the sales price to all purchasers by reducing inventory cost to the seller. Buydown payments are not payments for the retail price of the product.

(4) Examples.

(A) A grocery store accepts manufacturer's coupons from its customers on purchases of various goods. The store sells aluminum foil for \$1.50. The customer presents to the store a \$.50 manufacturer's coupon and pays the remaining balance of \$1.00. The store submits the \$.50 coupon to the manufacturer for payment of the \$.50. The gross receipts from the sale of the aluminum foil are [~~\$1.50~~] **\$1.00** and total taxable sales are [~~\$1.50~~] **\$1.00**. Tax should be charged on [~~\$1.50~~] **\$1.00**.

(B) On Tuesdays, the same grocery store in Example (A) doubles all manufacturers' coupons. The store then receives \$.50 from the customer and \$.50 from the manufacturer. Gross receipts are [~~\$1.00~~] **\$.50**, and total taxable sales are [~~\$1.00~~] **\$.50**. Tax should be charged on [~~\$1.00~~] **\$.50**.

(C) An appliance manufacturer offers a \$100 cash rebate on an \$800 refrigerator. [*The store selling the refrigerator should charge tax on \$800.*] Tax is due on [~~\$800~~] **\$700**, [*whether*] if the rebate is received by the customer at the time of purchase. **If the customer must request the rebate from the manufacturer at [or] a later date[.], tax is due on \$800 because that is the sale price paid at the time of purchase.**

(G) A retailer ordinarily sells a brand of cigarettes for \$4 per pack. The manufacturer of that brand of cigarettes agrees to a "buydown" with the retailer. Under the buydown agreement, the manufacturer will reimburse the retailer \$.50 per pack if the retailer sells the cigarettes for \$3.50 for a month. The gross receipts and taxable sales from the sales of the cigarettes are

\$3.50 per pack, which includes the buydown, less any amount attributable to the state tax imposed pursuant to Chapter 149, RSMo.

(H) A retailer ordinarily sells a brand of cigarettes for \$4 per pack. The manufacturer of that brand of cigarettes agrees with the retailer to reduce the purchase price to the retailer by \$.50 per pack if the retailer sells the cigarettes for \$3.50. The gross receipts from the sales of the cigarettes are \$3.50 per pack, less any amount attributable to the state tax imposed pursuant to Chapter 149, RSMo.

AUTHORITY: section 144.270, RSMo [1994] 2000, and TAFP CCS HCS SB 30, enacted by the 94th General Assembly, 2007. Original rule filed Aug. 21, 2000, effective Feb. 28, 2001. Emergency amendment filed Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. Amended: Filed Aug. 14, 2007.

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 108—Sales/Use Tax—Taxable Services**

PROPOSED RULE

12 CSR 10-108.100 Amusement, Entertainment and Recreation

PURPOSE: Section 144.020.1(2) imposes a tax on amounts paid for admission and fees paid to or in a place of amusement, entertainment and recreation. This rule explains what services are taxable in places of amusement, entertainment or recreation, games and athletic events. This rule also addresses the purchase of amusement devices under section 144.518, RSMo.

(1) In general, tax is imposed on the amount paid for admission to or participation in any place of amusement, entertainment or recreation, games and athletic events. Such amounts are exempt if all the proceeds benefit a political subdivision.

(2) Definitions.

(A) Amusement—a pleasurable diversion or entertainment.

(B) *De minimis*—a minimal or insignificant portion of the business activity. Factors to consider in determining whether amusement, entertainment or recreation, games and athletic events constitute more than a *de minimis* portion of business activity include, but are not limited to:

1. Comparative amounts of revenue or profit;
2. The physical space devoted to the activity at the business location;
3. The way the taxpayer holds itself out to the public; and
4. How the activity is held out to the public.

(C) Equity ownership interest—the right to participate in or direct the distribution of any surplus of the organization upon dissolution.

(D) Place of amusement—a place where, for the period of time for

which an amount is charged, amusement, entertainment or recreation, games and athletic events constitutes more than a *de minimis* portion of the business activity. The term “place of amusement” also includes a location for amusement purposes that is separated from the rest of the business location, even if the rest of the business is not treated as a place of amusement. The term “place of amusement” does not include a location that is separated from the rest of the business location and used for purposes other than amusement, even if the rest of the business is treated as a place of amusement.

(3) Basic Application.

(A) Amounts paid to a place of amusement for admission to or participation in the amusement are taxable. Amounts paid for lessons are not subject to tax.

(B) Amounts paid to obtain, maintain or enhance an equity ownership interest in a place of amusement are not subject to tax. Non-refundable initiation fees and capital assessments paid by a member who does not have an equity ownership interest in the place of amusement are taxable. An equity ownership does not exempt a member from paying tax on other amounts subject to tax under this regulation, including charges for guests.

(C) Regardless of whether tax was paid on the purchase of tangible personal property, if the tangible personal property is an indispensable part of the amusement, any amount paid to participate in such amusement activity is subject to tax. The tax is due whether or not the amounts charged for the tangible personal property and other items are separately stated.

(D) Any amount paid in a place of amusement for optional services that are themselves an amusement, or that facilitate participation in or admission to an amusement, is subject to tax.

(E) Admission tickets to a place of amusement located in Missouri that are sold through other businesses, such as grocery stores and ticket outlets (inside or outside the state of Missouri), are taxed on the gross receipts received by the place of amusement at the rate applicable for the location of the place of amusement. The place of amusement is responsible for reporting all admission ticket sales made through all outlets. Amounts received for admission to a place of amusement by businesses other than the place of amusement (e.g., ticket brokers) are not subject to tax. Mandatory service charges imposed by a place of amusement in addition to the stated ticket price on tickets sold for admission to the place of amusement are subject to sales tax.

(F) Receipts from amusement devices, other than coin-operated amusement devices, are taxable if the devices are located in a place of amusement and tax was not paid on the purchase of the devices. If the amount of tax is posted or otherwise disclosed, the tax is assumed to be included in the receipts. If the amount of tax is not posted or otherwise disclosed, the tax is calculated on the full amount of the receipts. The tax is due at the tax rate of the place of amusement, not the device owner’s place of business. If both the owner of the device and the operator of the place of amusement where the device is located sign a written receipt setting forth each party’s share of the receipts, each party is responsible for its portion of the tax. If the owner of an amusement device takes control over the receipts and there is no signed receipt, the owner is responsible for one hundred percent (100%) of the tax and the operator is not liable for any tax. If the operator takes control over the receipts and there is no signed receipt, the operator is responsible for one hundred percent (100%) of the tax.

(G) Purchases of machines or parts for machines used in a commercial coin-operated amusement business are subject to tax unless tax is paid on the gross receipts derived from the use of the machines.

(H) The place of amusement must pay tax on purchases of printed tickets and game tokens. The purchase of tangible personal property, other than the amusement device, used to provide the amusement, recreation and entertainment services is also subject to tax.

(I) The purchase of prizes and awards to be given to participants

who pay to participate in a game or contest is subject to tax unless tax is paid on the receipts from the game or contest. The purchase of promotional items is subject to tax, unless the items are provided only to people who pay for the taxable amusement.

(J) Gifts of tickets by a place of amusement are not subject to tax.

(K) Purchases of game to stock a sports hunting range are not subject to tax.

(4) Examples:

(A) Places of amusement include, but are not limited to:

1. Billiard center
2. Fitness center
3. Excursion vessel
4. Helicopter hired for sightseeing
5. Country club
6. Arcade
7. Wild game ranch
8. Bowling alley
9. Adult video arcade
10. Hot air balloon ride
11. Nightclub
12. Resort
13. Racetrack
14. Shooting range
15. Indoor and outdoor sports facilities
16. Scenic railway
17. Summer camp
18. Amusement park
19. Private lake
20. Tavern

(B) The following are examples of places that are not usually considered to be places of amusement:

1. River
2. Hotel or motel lobby
3. Bus station
4. Airport

(C) A golf course charges \$40 to play golf, which price does not include the use of a golf cart. The course charges an additional \$20 if the players choose to rent one of its golf carts. The \$40 for golf is subject to tax. The \$20 for the rental of the cart is subject to tax unless the course paid tax on the cart at the time of purchase.

(D) A golf course charges \$50 to play golf and an additional mandatory \$20 charge designated as the rental of a golf cart. The entire \$70 is subject to tax even though the amount for the cart rental is separately stated. The course also must pay tax on the purchase of the golf cart.

(E) A country club charges \$40 per session of golf lessons. The \$40 is not subject to tax.

(F) A guest at a resort pays \$40 for a haircut. This amount is not taxable, even though paid in a place of amusement, because a haircut is not an amusement, and does not facilitate participation in or admission to an amusement.

(G) A private golf club operates a dining facility that serves food and beverages only to the club's members and their guests. The sales of food and beverages by the club are not subject to tax but the club must pay tax on its purchases of these items.

(H) A shooting range charges a fee for its customers to use its facilities to shoot at various types of targets. The fee is subject to tax as a fee paid to a place of amusement. The business must also pay tax on any items used or consumed to provide the amusement unless title or ownership to such items is actually transferred to the customer.

(I) A nightclub or tavern charges patrons a mandatory \$5 cover charge on Friday nights. This cover charge is subject to tax because the nightclub or tavern is a place of amusement.

(J) A business offers patrons helicopter sightseeing rides for a fee. The fee is subject to tax.

(K) A business operates a hunting preserve. It charges a fee for

patrons to hunt on the preserve. The fee is subject to tax and the business must also pay tax on any items used or consumed to provide the entertainment.

(L) A business charges a \$10 fee for participants to use its go-karts. The go-karts may only be used on the business's racetrack. The entire \$10 fee is subject to tax. In addition, the business must pay tax on the purchase of the go-karts.

(M) A country club has two classes of members, senior and junior. In order to obtain membership, senior members are required to pay a one-time fee of \$50,000, which entitles them to vote on club matters and to receive a share of any distribution on liquidation of the club. The \$50,000 payment is not taxable. Junior members must pay a one-time initiation fee of \$5,000. Junior members have the right to use club facilities, but do not have the right to vote or share in a distribution. The \$5,000 initiation fee is taxable because the junior member does not obtain an equity ownership (the right to vote and share in distributions) in the club. In addition, all members must pay \$200 per month to use the facilities. The \$200 is subject to tax as a fee paid to a place of amusement.

(N) A hotel offers two shuffleboard courts to guests for a fee. The courts are not in a separate facility. The profits from the shuffleboard are *de minimis* in relation to the total profits of the business. The fees paid for the shuffleboard are not taxable.

(O) A restaurant has a single pool table that is not a coin-operated amusement device located in its facility. The profit from the pool table is *de minimis* in relation to the total profits of the business. Tax was paid on the purchase of the pool table. The receipts from this pool table are not taxable.

(P) A ticket broker sells tickets for admission to a theatre that the broker does not operate. The broker charges a service charge on the sale of the ticket. The broker does not collect tax on its sales of the tickets or the service charge. The theatre must pay tax on the gross receipts it receives from the broker.

(Q) For a fee, a water park provides inner tubes for use in the wave pool. The inner tubes are not required to swim in the wave pool. These tubes may also be used in other activities at the park. The water park also provides without charge inner tubes for use in these other activities, but these tubes may not be used in the wave pool. The water park must collect and remit tax on the amounts received from the wave pool inner tubes if tax is not paid on the purchase of the inner tubes.

(R) An arcade has skee ball, air hockey, video games and pinball machines. The taxpayer may elect to pay tax either on the purchase of the machines or the gross receipts from the machines.

AUTHORITY: sections 144.270, RSMo 2000, and TAFP CCS HCS SB 30, enacted by the 94th General Assembly, 2007. Emergency rule filed Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. Original rule filed Aug. 14, 2007.

PUBLIC COST: This proposed rule is estimated to cost the Missouri Department of Revenue forty-four thousand three hundred thirty-eight dollars and fifty cents (\$44,338.50) with that cost recurring annually over the life of the rule.

PRIVATE COST: This proposed rule is estimated to cost private entities five hundred ninety-five thousand dollars (\$595,000) with that cost recurring annually over the life of the rule.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this 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 is scheduled.

PUBLIC COST

- I. Department Title: Department of Revenue**
Division Title: Director of Revenue
Chapter Title: Chapter 108 – Sales/Use Tax-Taxable Services

Rule Number and Name:	12 CSR 10-108.100 Amusement, Entertainment and Recreation
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Annual Cost of Compliance in the Aggregate
Missouri Department of Revenue	\$44,338.50

III. WORKSHEET

It costs the Department of Revenue \$2.25 to process a typical sales tax return. Based on an estimated 16,700 returns filed by amusement related businesses in a given year, the costs to process are $16,700 \times \$2.25 = \$37,575$. The Department of Revenue's costs to print and mail returns to amusement related businesses are \$.405 per return. The calculation for these costs are $16,700 \times \$.405 = \$6,763.50$.

IV. ASSUMPTIONS

The costs assume no postal discounts for mailing are realized.

**FISCAL NOTE
PRIVATE COST**

- I. Department Title: Department of Revenue**
Division Title: Director of Revenue
Chapter Title: Chapter 108 – Sales/Use Tax-Taxable Services

Rule Number and Title:	12 CSR 10-108.100 Amusement, Entertainment and Recreation
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the rule:	Classification by types of the business entities which would likely be affected:	Estimate annually in the aggregate as to the cost of compliance with the rule by the affected entities:
2,400	Amusement Related Businesses - \$30 in cost to prepare and file a sales tax return.	\$501,000
47	Coin Operated Amusement Services - \$2000 additional accounting	\$94,000

III. WORKSHEET

The Department of Revenue receives approximately 16,700 returns per year from approximately 2,400 amusement related businesses. The estimated cost to prepare and file a return per business is \$30 per filed return. The cost to all amusement related businesses to comply is 16,700 X \$30.

One business commenter, the owner of a company that rents coin operated amusement devices, stated that it may cost as much as \$2000 annually to account for which of the company's devices are subject to tax and which are not under current Supreme Court precedent. There are 47 businesses currently registered with the department using the Standard Industry Code applicable to such businesses. Total cost to these businesses would be \$94,000.

IV. ASSUMPTIONS

The rule does not change existing practice. The department cannot determine the actual costs of preparing and filing a return. The department assumes for purposes of this fiscal note that it costs \$30 annually. This cost would be incurred as a result of section 144.020.1(2), RSMo., regardless of the contents of this rule. The department assumes every business makes at least one sale per reporting period.

The department includes the estimate from the commenter without independently verifying the asserted costs. Assuming these costs are accurate, they would be incurred to distinguish between (1) machines on which the business collects and remits tax on the receipts from the machines, from (2) machines on which the business does not collect and remit tax on the receipts. The machines on which it collects and remits tax may be purchased exempt from tax pursuant to section 144.518, RSMo, while the others are subject to tax when purchased. To avoid this expense, the business could collect and remit tax on receipts from all its machines (assuming it would have no way of distinguishing without the additional expense) and buy all its machines exempt from tax.

The figure above is based on the assumption every business makes at least one sale per reporting period.

**Title 12—DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 110—Sales/Use Tax—Exemptions**

PROPOSED AMENDMENT

12 CSR 10-110.200 Ingredient or Component Part Exemption, as Defined in Section 144.030, RSMo. The director proposes to amend the title, and sections (1) and (4).

PURPOSE: This rule is being amended due to TAFP CCS HCS SB 30, enacted by the 94th General Assembly, 2007.

(1) In general, purchases of ingredients or component parts are exempt from tax if they blend with the final product and are intended to and do become a part of the finished product. In addition, [certain] materials that are consumed in the manufactur[e]ing, processing, compounding, mining, producing or fabricating of [steel] products intended to be sold ultimately for final use or consumption are exempt from tax.

(4) Examples.

(A) A toy manufacturer purchases wood, glue, and paint [and sandpaper] to use in the manufacturing of wooden rocking horses. The purchases of wood, glue and paint are exempt from tax. [The purchase of sandpaper is taxable.]

(B) A restaurant purchases apple wood to use in the smoking of foods. The restaurant burns the wood in a closed chamber, called a smoker, in which it places the food. The burning wood releases compounds, and small but measurable quantities of the compounds enter and permeate the food. Because a part of the wood, in the form of smoke particles, blends with and remains as part of the finished product, the apple wood may be purchased tax exempt as an ingredient or component part.

(C) An automobile manufacturer purchases [soap and] wax to [wash and] wax all automobiles as they leave the manufacturing plant. [Some soap residue remains with the automobiles when they leave the plant. The soap does not qualify as an ingredient or component part because it is not intended to remain with the product.] The wax [does qualify] qualifies as a component part because it is intended to remain with the product.

(E) A steel fabricator purchases welding rods [and gases] for use in fabricating a product out of steel plates. The welding rods are exempt because [it] they become[s] a component part of new personal property. [Even though the gases are consumed in the fabrication process, the gases are not exempt because the new personal property does not qualify as a steel product.]

[F] A foundry creates a steel product by casting molten steel. After casting, a cleaning solution is poured over the product to remove impurities from the surface. The cleaning solution is not exempt because it does not blend, react or interact with a component part or ingredient of the steel product.]

AUTHORITY: section 144.270, RSMo [1994] 2000. Original rule filed Aug. 30, 2000, effective March 30, 2001. Emergency amendment filed Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. Amended: Filed Aug. 14, 2007.

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 110—Sales/Use Tax—Exemptions**

PROPOSED RULE

12 CSR 10-110.201 Materials and Other Goods Used or Consumed in Manufacturing, as Defined in Section 144.054, RSMo

PURPOSE: Section 144.054.2, RSMo exempts from taxation certain materials, goods, machinery and parts. This rule explains the requirements for this exemption.

(1) In general, purchases of gas (natural, artificial, or propane) water, coal, and energy sources, chemicals, machinery, equipment and materials that are used or consumed in the manufacturing, processing, compounding, mining or producing a product are exempt from state sales and use tax and local use tax, but not from local sales tax. Local sales tax applies to these transactions.

(2) Basic Application of Exemption.

(A) Gas (natural, artificial, or propane) water, coal, and energy sources, chemicals, machinery, equipment and materials that are used or consumed in manufacturing, processing, compounding, mining or producing a product are exempt from state sales and use tax and local use tax, but not local sales tax. It is not necessary for the item purchased to be used directly in manufacturing in order to qualify for the exemption.

(3) Examples.

(A) A toy manufacturer purchases sandpaper to use in the manufacturing of wooden rocking horses. The purchase of sandpaper is exempt from state sales and use tax and local use tax, but not local sales tax because it is a material that is consumed in producing a product.

(B) An automobile manufacturer purchases soap to wash all automobiles as they leave the manufacturing plant. The soap qualifies as a material used or consumed in the manufacturing process and is exempt from state sales and use tax and local use tax, but not local sales tax.

(C) A steel fabricator purchases gases for use in fabricating a product out of steel plates. The gases that are consumed in the fabrication process are exempt from state sales and use tax and local use tax, but not local sales tax, because they are consumed in producing a product.

(D) A foundry creates a steel product by casting molten steel. After casting, a cleaning solution is poured over the product to remove impurities from the surface. The solution is used or consumed in the producing of a product and is exempt from state sales and use tax and local use tax, but not local sales tax.

AUTHORITY: section 144.270, RSMo 2000. Emergency rule filed Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. Original rule filed Aug. 14, 2007.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of 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 110—Sales/Use Tax—Exemptions**

PROPOSED RULE

12 CSR 10-110.210 Television and Radio Broadcasters

PURPOSE: This rule explains the television and radio broadcasters sales tax exemption.

(1) In general, radio and television broadcasters are exempt from sales and use tax, both state and local, on purchases of utilities, machinery, and equipment used or consumed directly in the broadcasting of their programs.

(2) Definition of Terms.

(A) Broadcaster—An entity who transmits (a radio or television signal) over the airwaves for public or general use. A cable or satellite provider is not a broadcaster.

(3) Basic Application.

(A) A Missouri radio or television station purchases utilities, machinery and equipment for use directly in the broadcasting of their programming. The purchase of the utilities, machinery and equipment are not subject to state or local tax.

AUTHORITY: section 144.270, RSMo 2000 and TAFP CCS HCS SB 30, enacted by the 94th General Assembly, 2007. Emergency rule filed Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. Original rule filed Aug. 14, 2007.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of 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 110—Sales/Use Tax—Exemptions**

PROPOSED AMENDMENT

12 CSR 10-110.300 Common Carriers. The director proposes to amend sections (1) and (4) and reletter existing subsections accordingly.

PURPOSE: This rule is being amended as a result of statutory changes to section 144.030.2(11).

(1) In general, materials, replacement parts, and equipment purchased for use directly upon, and for the repair and maintenance or manufacture of, motor vehicles, watercraft, railroad rolling stock or aircraft engaged as common carriers of persons or property are not subject to tax. Pumping machinery and equipment used to propel products delivered by pipelines engaged as common carriers are not subject to tax. Railroad rolling stock used in transporting persons or property in interstate commerce is not subject to tax. Motor vehicles licensed for a gross weight of twenty-four thousand (24,000) pounds or trailers used by common carriers *[solely]* in the transportation of persons or property *[in interstate commerce]* are not subject to tax.

(4) Examples.

(C) A common carrier purchases a cab and chassis. The cab and chassis are licensed for a gross weight of 24,000 pounds and will be used only in intrastate commerce as a common carrier. The purchase of the cab and chassis is **not** taxable. The common carrier subsequently purchases a dump bed to add to the cab and chassis. The dump bed is exempt from tax because it is materials or equipment used in the manufacture of a motor vehicle to be used by a common carrier.

[(E) A common carrier purchases a cab and chassis. The cab and chassis will be used only in intrastate commerce as a common carrier. The purchase of the cab and chassis is taxable because the cab and chassis are not used in interstate commerce. The common carrier subsequently purchases a dump bed to add to the cab and chassis. The dump bed is exempt from tax because it is materials or equipment used in the manufacture of a motor vehicle to be used by a common carrier.]

[(F)] (E) A common carrier purchases a trailer. The common carrier subsequently purchases a refrigeration unit to add to the trailer. The refrigeration unit is exempt from tax because it is materials or equipment used in the manufacture of a motor vehicle to be used by a common carrier.

[(G)] (F) The sale of a switch engine to be used to move railroad cars around a switching yard, if part of an interstate rail system, is not subject to tax.

[(H)] (G) An airline purchases equipment to test engine parts that have been removed from the plane and brought to their repair facility. The equipment purchased would be exempt from tax.

[(I)] (H) The owner of a Missouri furniture store is registered as a common carrier, but does not hold itself out to the general public as a common carrier. It uses its truck only to deliver furniture sold to customers residing in and outside Missouri. The owner installs new brakes on the truck. Even though the owner is registered as a common carrier, the brakes are taxable because the furniture store is operating as a private carrier.

[(J)] (I) A charter company [only provides bus transportation by] contracts with private groups for [private groups] exclusive use of its bus and driver for [tours of] transportation between Missouri and destinations in the Southeastern United States. The company provides no other transportation services. The charter company purchases new tires. The tires are taxable because the business is a contract carrier.

[(K)] (J) A railroad purchases a flanged wheel mechanized tie replacement machine for repairing broken rail segments on an interstate system. The purchase of the machine is exempt.

AUTHORITY: section 144.270, RSMo 2000, and CCS HCS SB 30, enacted by the 94th General Assembly, 2007. Original rule filed Jan. 24, 2001, effective Aug. 30, 2001. Emergency amendment filed Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. Amended: Filed Aug. 14, 2007.

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 110—Sales/Use Tax—Exemptions**

PROPOSED AMENDMENT

12 CSR 10-110.600 Electrical Energy as Defined in Section 144.030, RSMo. The director proposes to amend the title, the purpose, and sections (1) through (4).

PURPOSE: This rule is being amended due to TAFP HCS SCS SB 196, enacted by the 93rd General Assembly, 2005, and TAFP CCS HCS SB 30, enacted by the 94th General Assembly, 2007.

PURPOSE: Section 144.030.2(12), RSMo exempts from tax certain purchases of electrical energy used in primary or secondary manufacturing, processing, compounding, mining or producing a product, [or used in material recovery processing] or processing of raw materials that contain recovered materials. Section 144.030.2(31), RSMo exempts from tax electricity used in connection with the manufacturing of cellular glass products or in any material recovery processing plant. Section 144.030.2(33), RSMo exempts from tax utilities used or consumed directly or exclusively in the research and development of agricultural biotechnology products and plant genomics products and prescription pharmaceuticals consumed by humans or animals. This rule explains when [this] these exemptions [applies] apply and how a taxpayer may claim the exemptions at the time of purchase of the electrical energy.

(1) In general, electrical energy used in facilities owned or leased by the taxpayer in the actual primary manufacturing, processing, compounding, mining or producing of a product is exempt from tax if the cost of the electrical energy used exceeds ten percent (10%) of the total cost of the primary manufacturing, processing, compounding, mining or producing, exclusive of the cost of electrical energy so used. Electrical energy used in facilities owned or leased by the taxpayer in the actual secondary manufacturing, processing, compounding, mining or producing of a product is exempt from tax if the cost of the electrical energy used exceeds ten percent (10%) of the total cost of the secondary manufacturing, processing, compounding, mining or producing, exclusive of the cost of electrical energy so used. Electrical energy used in a material recovery processing plant owned or leased by the taxpayer **or in manufacturing cellular glass products** is exempt from tax *[if the total cost of electric energy used in such processing exceeds ten percent (10%) of the total cost of the processing, exclusive of the cost of electri-*

cal energy so used]. Utilities used or consumed directly or exclusively in the research and development of agricultural biotechnology products and plant genomics products and prescription pharmaceuticals consumed by humans or animals are exempt from tax. Electrical energy used in facilities owned or leased by the taxpayer in [manufacturing,] processing [, compounding, mining or producing a product or in a material recovery processing plant is exempt if the raw materials used in such processing] raw materials that contain at least twenty-five percent (25%) recovered materials is exempt from tax.

(2) Definition of Terms.

(B) Fabrication—See 12 CSR 10-111.010[(2)(C)].

(C) Manufacturing—See 12 CSR 10-111.010[(2)(E)].

(D) Material recovery processing plant—*[A facility that converts recovered materials into a new product or into a different form that is used in producing a new product. It includes facilities or equipment used exclusively for the collection of recovered materials for delivery to a material recovery processing plant but does not include motor vehicles used on highways.] See 12 CSR 10-111.060.*

(E) Mining—See 12 CSR 10-111.010[(2)(F)].

(F) Primary processing—Manufacturing, processing, compounding, mining or producing that results in the first marketable product.

[(G) Processing—Any mode of treatment, act or series of acts performed upon materials to transform and reduce them into an article with a use, identity and market value different from the use, identity and market value of the materials, and includes treatment necessary to maintain or preserve such processing by the producer at the production facility.]

[(H)] (G) Producing—See 12 CSR 10-111.010[(2)(H)].

[(I)] (H) Product—An item with a new identity, use and market value produced by the taxpayer's efforts which is intended at the time of the production activity to be sold ultimately for final use or consumption. A product may be tangible personal property or a service, if the property or service is subject to state or local sales or use taxes, or any tax that is substantially equivalent thereto, in this state or any other state.

[(J)] (I) Production activity—Manufacturing, processing, compounding, mining, producing or fabricating.

(J) Raw material—any ingredient or component that becomes part of, or is made into a finished product.

(K) Recovered materials—*[Materials that have been diverted or removed from the solid waste stream for sale, use, reuse or recycling, whether or not they require subsequent separation or processing.] See 12 CSR 10-111.060. In order for an item to be a recovered material, a facility must recover it from the solid waste stream. An item used in processing for its original intended purpose is not a recovered material.*

(L) Secondary processing—Further processing or fabricating of a marketable product that results in another marketable product.

(M) Solid waste—See 12 CSR 10-111.060.

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

(3) Basic Application of Exemption.

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

(4) Examples.

(A) A manufacturing firm produces extruded sheet plastic. The

automated production line is a closed system connected together by use of vacuum feed-pipe. When an order is received, the computer controlled production line first blends the necessary raw materials. After blending, the mix is conveyed through vacuum pipe to be dried, and then to the extruder, where the mix is heated to meltdown and rolled into sheets by the extruder rollers. These sheets are the end product. The cost of raw materials is 95% of the total cost of producing the end product. The cost of electrical energy is 99% of the cost of drying and extruding the blended raw materials. The plastic sheet is the only marketable product produced by this continuous, indivisible operation. *[None of the electrical energy is exempt because it does not exceed 10% of the total cost of producing the end product.]* **Because the cost of electricity does not exceed 10% of the total cost of producing the product, the purchase of the electricity does not qualify for the exemption.**

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

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

AUTHORITY: section 144.270, RSMo 2000. Original rule filed July 25, 2001, effective Feb. 28, 2002. Emergency amendment filed Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. Amended: Filed Aug. 14, 2007.

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 110—Sales/Use Tax—Exemptions**

PROPOSED RULE

12 CSR 10-110.601 Electrical, Other Energy and Water as Defined in Section 144.054, RSMo

PURPOSE: Section 144.054.2, RSMo, exempts from state tax and local use tax, but not local sales tax, electricity, gas (natural, artifi-

cial, or propane) water, coal, and energy sources used or consumed in manufacturing, processing, compounding, mining or producing any product or used in research and development related to manufacturing, processing, compounding, mining or producing any product or in the processing of recovered materials. This rule explains when this exemption applies and how a taxpayer may claim the exemption at the time of purchase of the utilities, energy and water.

(1) In general, electricity, gas (natural, artificial, or propane) water, coal, and energy sources used or consumed in manufacturing, processing, compounding, mining or producing any product, or used or consumed in the processing of recovered materials, or used in research and development related to manufacturing, processing, compounding, mining or producing any product is exempt from state sales and use tax and local use tax, but not local sales tax.

(2) Definition of Terms.

(A) Compounding—Producing a product by combining two (2) or more ingredients or parts.

(B) Energy source—Those resources, such as petroleum, coal, gas, wind, steam, nuclear fuel and sunlight, from which energy is produced.

(C) Fabrication—See 12 CSR 10-111.010.

(D) Manufacturing—See 12 CSR 10-111.010.

(E) Material recovery processing plant—See 12 CSR 10-111.060.

(F) Mining—See 12 CSR 10-111.010.

(G) Producing—See 12 CSR 10-111.010.

(H) Recovered materials—See 12 CSR 10-111.060.

(3) Basic Application of Exemption.

(A) A taxpayer may claim the exemption for state sales and use tax and local use tax, but not local sales tax at the time of purchase. A taxpayer may not claim an exemption from local tax and then remit the tax directly to the department. It is the seller's responsibility to collect and remit the proper amount of local tax to the department.

(B) For purchases which are reported to the department under direct pay and Electrical Energy Direct Pay (EEDP) are exempt from the application of subsection (3)(A) of this rule.

(C) The electricity, other energy, and water source that is subject to this exemption is not required to be directly used in the process for which the exemption is being claimed. There is also no requirement that the electricity comprise ten percent (10%) of the cost of a primary or secondary production process in order to qualify for this exemption. There is also no requirement that twenty-five percent (25%) of the raw materials are recycled in order for the purchaser to claim this exemption.

(4) Method of Collection and Apportionment.

(A) Energy and water vendors are responsible for remitting tax to the department. Purchasers are responsible to inform energy vendors on the MO-149 (Sales/Use Tax Exemption Certificate) of the percentage of energy used for activities exempt under section 144.054, RSMo. The purchaser may use any reasonable method to calculate this percentage, such as square footage or reference to a use analysis. The exemption will be applied as follows:

<u>Purchaser's Calculated Exempt Percentage</u>	<u>Percentage Exempt</u>
76-100	100
51-75	75
26-50	50
1-25	25
0	0

(B) Beginning on August 28, 2007 and ending on October 28, 2007 any vendor who receives an exemption certificate exempting sales of electricity, gas (natural, artificial, or propane) water, coal, and energy sources used or consumed in manufacturing, processing, compounding, mining or producing any product, or used or consumed in the processing of recovered materials, or used in research and development related to manufacturing, processing,

compounding, mining or producing any product after the bill was issued may take the correction as an adjustment on their sales tax return provided the net result is not a negative figure. In the event an exemption certificate is received after October 28, 2007 and an exemption was due and not properly applied by the vendor, the vendor may submit a refund request to the department.

(5) Exempt Examples.

(A) A manufacturer purchases propane to operate forklifts that move raw materials between production lines. The fuel is exempt from state sales and use tax and local use tax, but not local sales tax.

(B) A manufacturer uses electricity to run its equipment, maintain a moderate temperature in its production facility and to light the plant. The purchase of all of its electricity is exempt from state sales and use tax and local use tax, but not local sales tax because it is used or consumed in producing a product.

(C) A manufacturer uses coal to fuel boilers to generate steam used to manufacture a product. The purchase of the coal is exempt from state sales and use tax and local use tax, but not local sales tax because it is used or consumed in producing a product.

(D) A manufacturer purchases compressed gas used for welding a product. The purchase of the compressed gas is exempt from state sales and use tax and local use tax, but not local sales tax because it is used or consumed in producing a product.

(E) A manufacturer uses water to cool a product during the manufacturing process. The water is exempt from state sales and use tax and local use tax, but not local sales tax.

(F) A manufacturer preserves its final product in a warehouse located at the production facility awaiting shipment. The purchase of energy to maintain the desired temperature and provide lighting is exempt from state sales and use tax and local use tax, but not local sales tax.

(G) A construction company, who has been deemed a manufacturer, purchases fuel to be used in a concrete ready-mix truck. The fuel is subject to motor fuel tax, however if a refund claim is made, the refund will be exempt from state sales tax, but not local sales tax, because it is used in producing a product.

(6) Taxable Examples.

(A) A restaurant preparing food for immediate consumption is not exempt as a manufacturer. Therefore, all state and local taxes apply.

AUTHORITY: section 144.270, RSMo 2000 and TAFP CCS HCS SB 30, enacted by the 94th General Assembly, 2007. Emergency rule filed Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. Original rule filed Aug. 14, 2007.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of 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 111—Sales/Use Tax—Machinery and
Equipment Exemptions**

PROPOSED AMENDMENT

12 CSR 10-111.010 Manufacturing Machinery and Equipment Exemptions, as Defined in Section 144.030, RSMo. The director proposes to amend the title and add subsection (2)(J).

PURPOSE: This rule is being amended due to TAFP CCS HCS SB 30, enacted by the 94th General Assembly, 2007.

(2) Definition of Terms.

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

AUTHORITY: section 144.270, RSMo [1994] 2000. Original rule filed Aug. 31, 1999, effective March 30, 2000. Amended: Filed Aug. 14, 2007.

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 111—Sales/Use Tax—Machinery and
Equipment Exemptions**

PROPOSED RULE

12 CSR 10-111.011 Machinery, Equipment, Materials, and Chemicals Used or Consumed in Manufacturing, as Defined in Section 144.054, RSMo

PURPOSE: Section 144.054.2, RSMo exempts machinery, equipment, materials, and chemicals used or consumed in manufacturing, processing, compounding, mining or producing any product, or used in research and development related to manufacturing, processing, compounding, mining or producing any product from state sales and

use tax and local use tax, but not local sales tax. This rule explains what elements must be met in order to qualify for these exemptions.

(1) In general, the purchase of machinery, equipment and materials used or consumed in manufacturing, processing, compounding, mining or producing any product or is used in research and development related to manufacturing, processing, compounding, mining or producing any product is exempt from state sales and use tax and local use tax, but not local sales tax.

(2) Definition of Terms.

- (A) Equipment—See 12 CSR 10-111.010.
- (B) Fabrication—See 12 CSR 10-111.010.
- (C) Machinery—See 12 CSR 10-111.010.
- (D) Manufacturing—See 12 CSR 10-111.010.
- (E) Mining—See 12 CSR 10-111.010.
- (F) Producing—See 12 CSR 10-111.010.

(3) Basic Application of Exemption.

(A) Pursuant to section 144.054.2, RSMo purchases of machinery, equipment, materials and chemicals used or consumed in manufacturing, processing, compounding, mining or producing any product or used in research and development related to manufacturing, processing, compounding, mining or producing any product is exempt from state sales and use tax and local use tax, but not local sales tax.

(B) The exemptions do not require that the owner of the facility be the purchaser to qualify for the exemption or that the purchaser be the one who uses the machinery, equipment and materials in an exempt fashion. All that is required is that the machinery, equipment and materials are used in a tax-exempt manner.

(4) Exempt Examples.

(A) A manufacturing company purchases various pieces of testing equipment to perform research and development on potential future products. The testing equipment for research and development is exempt from state sales and use tax and local use tax, but not local sales tax, because it is used or consumed in research and development related to manufacturing a product.

(B) A commercial photo developer uses “crop cards” to hold individual negatives in the film developing process; they are discarded after a single use. The developer also uses tape to connect negative strips so that the negatives may be fed through its automatic film developing machinery and equipment. The crop cards and tape are exempt from state sales and use tax and local use tax, but not local sales tax, as materials used and consumed in producing a product.

(C) A manufacturer purchases materials to develop models for research and development for use in designing a new product. The manufacturer may purchase the materials exempt from state sales and use tax and local use tax, but not local sales tax, because they are used in research and development related to manufacturing.

(D) Workers in a manufacturing plant are required to wear safety equipment while producing a product. The safety equipment is exempt from state sales and use tax and local use tax, but not local sales tax, because it is used to produce a product.

(5) Nonexempt Examples.

(A) A taxpayer operates a concrete manufacturing plant. The taxpayer purchases dump trucks to haul, to customers, concrete slabs that had been manufactured in its plant. The dump trucks would not qualify for exemption because they are not used in the manufacturing process, but rather in the shipping process.

(B) A taxpayer creates and sells a nontaxable information service. To develop its service, the taxpayer purchases computer hardware and software. The computer hardware and software do not qualify for the state tax exemption pursuant to section 144.054.2, RSMo, because they are machinery and equipment used in producing a service and not a product.

AUTHORITY: section 144.270, RSMo 2000 and CCS HCS SB 30, enacted by the 94th General Assembly, 2007. Emergency rule filed

Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. Original rule filed Aug. 14, 2007.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of 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 111—Sales/Use Tax—Machinery And
Equipment Exemptions**

PROPOSED RULE

12 CSR 10-111.061 Exempt Items Used or Consumed in Material Recovery Processing as Defined in Section 144.054, RSMo

PURPOSE: Section 144.054.2, RSMo exempts machinery, equipment, materials, coal, energy sources and chemicals used or consumed in the processing of recovered materials from state sales and use tax and local use tax, but not local sales tax. This rule explains the elements that must be met in order to qualify for the exemption.

(1) In general, the purchase of machinery, equipment, materials and chemicals used or consumed in the processing of recovered materials are exempt from state sales and use tax and local use tax, but not local sales tax.

(2) Basic Application of Exemption.

(A) Purchases of machinery, equipment and materials used or consumed in the processing of recovered materials are exempt from state sales and use tax and local use tax, but not local sales tax. Coal, energy sources and chemicals used or consumed in the processing of recovered materials are also exempt from state sales and use tax and local use tax, but not local sales tax.

(B) Electrical energy or gas (natural, artificial or propane) water, or other energy sources consumed in processing recovered materials is exempt from state and local tax (144.030.2(31), RSMo).

(3) Examples.

(A) A metal recycler uses diesel fuel to operate its hydraulic cutter. The diesel fuel may be purchased exempt from state sales and use tax and local use tax, but not local sales tax, because it is used or consumed in the processing of recovered materials.

(B) A paper recycler mixes water with paper in its pulping equipment in order to separate the paper fibers from each other. The water may be purchased exempt from state sales and use tax and local use tax, but not local sales tax.

(C) An aluminum can recycler uses natural gas in its furnace to melt aluminum scraps into molten aluminum. The purchase of the natural gas is exempt from state sales and use tax and local use tax, but not local sales tax because it is consumed in the processing of recovered materials.

AUTHORITY: section 144.270, RSMo 2000 and TAFP CCS HCS SB 30, enacted by the 94th General Assembly, 2007. Emergency rule filed Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. Original rule filed Aug. 14, 2007.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of 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 111—Sales/Use Tax—Machinery and
Equipment Exemptions**

PROPOSED AMENDMENT

12 CSR 10-111.100 Commercial Printers, as Defined in Section 144.030, RSMo. The director proposes to amend the title and sections (1), (3), and (4).

PURPOSE: This rule is being amended due to TAFP HCS SCS SB 196, enacted by the 93rd General Assembly, 2005 and TAFP CCS HCS SB 30, enacted by the 94th General Assembly, 2007.

(1) In general, sales of printed product by commercial printers are subject to tax. Purchases of materials and supplies, such as paper and ink, which become a component part or ingredient of the printed product are exempt. Other materials used by the printer may be exempt if title or ownership to the materials transfers to the customer. Purchases of machinery, equipment and parts for replacement or for a new or expanded plant are exempt if directly used in the manufacturing process. This includes printing presses and plates. *[Chemicals to develop the film and plates are not exempt unless they become an ingredient or component part of materials resold to the customer.]*

(3) Basic Application of Tax.

(B) Ingredients and component parts—Purchases of material and supplies such as paper and ink may be purchased tax exempt by printers as ingredients or component parts under section 144.030.2(2), RSMo.

1. Chemicals that blend with and become part of the ink mixture are exempt, including:

A. The fountain solution that blends with the ink at the press to keep the non-image area clean of ink while printing;

B. Chemicals used on the rollers to keep the ink from drying out;

C. Isopropyl alcohol to keep the ink wet on the rollers; and

D. Ink anti-stain used to keep the ink from bleeding onto other printed material.

[2. Purchases of material and supplies used in the printing process that do not blend with the ink are taxable, including:

A. *Anti-static products used to reduce static on the printed product;*

B. *Chemicals used to clean the presses; and*

C. *Color wax used for layout purposes.]*

(C) *[Other materials transferred to customers—]*Purchases of materials, including film, used by the printer in its manufacturing process do not qualify for the sale for resale exclusion unless title or ownership to such materials is transferred to the customer. Whether title passes is based on the intent of the parties, as evidenced by all relevant facts, including written agreements, course of dealing or

usage of trade and availability of the materials for future use by the customer.

(D) Chemicals—Chemicals to develop the film and plates are *[not]* exempt *[unless]* if they become an ingredient or component part of materials resold to the customer. *[Chemicals that generally do not become an ingredient or component part include chemicals used on plates to desensitize the plates and to prevent them from oxidizing, developers, replenishers, finishers, fixers, store gum and plating solution.]*

(E) Supplies and Parts.

1. Perforation devices consumed in a single production cycle are not exempt as machinery and equipment or parts.

2. Perforation devices benefiting more than one production cycle are exempt as parts of machinery and equipment.

3. Blankets and necessary attachments are exempt as parts of machinery and equipment.

4. Proof paper and phototypesetting paper are not exempt as machinery and equipment or parts.

5. Mineral spirits used as a solvent to clean brushes, overspray and equipment are *[taxable]* **not exempt as ingredients or component parts** if used as a cleaning solvent separate from the ink. If mixed with the ink, then the mineral spirits are exempt as ingredients or component parts.

(4) Examples.

(B) A commercial printer purchases plates~~,~~ and film~~,~~ *phototypesetting paper, developer chemical for plates and film (which do not become a part of the plates or film), and press cleaning solvent that is not mixed with ink].* The plate is exempt machinery and equipment. The printer's contract with the customer states the negatives become the property of the customer. The film is exempt as a component part of the negative. *[The phototypesetting paper does not qualify for exemption as machinery or equipment, ingredient or component part or sale for resale. The developer chemicals and cleaning solvent do not qualify for exemption as ingredients or component parts or sales for resale.]*

AUTHORITY: section 144.270, RSMo 2000. Original rule filed Oct. 11, 2001, effective April 30, 2002. Emergency amendment filed Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. Amended: Filed Aug. 14, 2007.

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 111—Sales/Use Tax—Machinery and
Equipment Exemptions**

PROPOSED RULE

12 CSR 10-111.101 Items Used or Consumed by Commercial Printers, as Defined in Section 144.054, RSMo

PURPOSE: Section 144.054.2, RSMo exempts from state tax, but not local tax, machinery, equipment, materials and chemicals used or consumed in manufacturing, processing, compounding, mining or producing any product or used in research and development related to manufacturing. This rule explains the taxation rules for commercial printers and what elements must be met to qualify for these exemptions.

(1) In general, purchases of machinery, equipment, materials and chemicals used or consumed by a printer in the production process are exempt from state tax and local use tax, but not local sales tax.

(2) Definition of Terms. See definition of terms in 12 CSR 10-111.010 Machinery and Equipment Exemptions.

(3) Basic Application of Tax.

(A) Purchases of material and supplies used in the printing process that do not blend with the ink are exempt from state tax and local use tax, but not local sales tax, including, anti-static products used to reduce static on the printed product; chemicals used to clean the presses and color wax used for layout purposes.

(B) Chemicals to develop the film and plates are exempt from state tax and local use tax, but not local sales tax. Chemicals exempt from state, but not local tax include chemicals used on plates to desensitize the plates and to prevent them from oxidizing, developers, replenishers, finishers, fixers, store gum and plating solution.

(C) Perforation devices consumed in a single production cycle are exempt from state tax, but not local tax as machinery and equipment used or consumed in the printing process. Proof paper and phototypesetting paper are also exempt from state tax, but not local tax as machinery and equipment used or consumed in the printing process. Mineral spirits used as a solvent to clean brushes, overspray and equipment are exempt from state tax and local use tax, but not local sales tax even when used as a cleaning solvent separate from the ink.

(4) Example.

(A) A commercial printer purchases phototypesetting paper, developer chemical for plates, film (which does not become the property of the customer) and press cleaning solvent that is not mixed with ink. All these items are exempt from state tax and local use tax, but not local sales tax as materials used or consumed in producing a product.

AUTHORITY: section 144.270, RSMo 2000 and CCS HCS SB 30, enacted by the 94th General Assembly, 2007. Emergency rule filed Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. Original rule filed Aug. 14, 2007.

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

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri Department of 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 112—Sales/Use Tax—Contractors**

PROPOSED AMENDMENT

12 CSR 10-112.010 Contractors. The director proposes to amend subsection (3)(D).

PURPOSE: This rule is being amended due to TAFP CCS HCS SS SCS SB 22, enacted by the 94th General Assembly, and to clarify the exemption contained in section 144.062, RSMo, as it relates to fuel and to add exempt entities.

(3) Basic Application of Tax.

(D) Flow Through Project Exemptions—A contractor, including subcontractors working for the contractor, constructing, repairing or remodeling facilities for a specific exempt entity, may purchase tax exempt tangible personal property and materials incorporated into or consumed in the project if the exempt entity furnishes to the contractor a project exemption certificate. Tangible personal property and materials that can only be used for one construction, repair or remodeling job which are actually used up in performing the contract are consumed. Examples include sandpaper[, fuel to run equipment] and drill bits that are actually used up in the performance of the exempt contract. Items that are not consumed are hand tools, drinking water coolers, hardhats and bulldozers. For purposes of this flow through exemption an exempt entity is limited to:

1. Political subdivisions exempt under Article III section 39(10) of the *Missouri Constitution*;
2. Federal government and its instrumentalities;
3. Religious organizations;
4. Charitable organizations;
5. Elementary and secondary schools, public and private; [or]
6. Higher education institutions, public and private[.];
7. **Missouri Department of Transportation; or**
8. **Jackson County Sports Complex Authority.**

AUTHORITY: section 144.270, RSMo [1994] 2000. Original rule filed June 13, 2000, effective Dec. 30, 2000. Emergency amendment filed Aug. 14, 2007, effective Aug. 28, 2007, expires Feb. 23, 2008. Amended: Filed Aug. 14, 2007.

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 400—Individual Income Tax**

PROPOSED AMENDMENT

12 CSR 10-400.250 Computation of an Individual's Missouri Adjusted Gross Income on a Combined Income Tax Return. The director proposes to amend section (1).

PURPOSE: This rule is being amended to include additional sectional references due to the recent passage of TAFP SS HCS HB 453, enacted by the 94th General Assembly, 2007.

(1) In general, if a married couple files a combined Missouri income tax return, the combined Missouri adjusted gross income equals the sum of each spouse's separate Missouri adjusted gross income. The spouse's separate Missouri adjusted gross income equals the federal adjusted gross income reportable by the spouse had the spouse filed a separate federal return, as adjusted by the modifications under sections 143.121 and 135.647, RSMo.

AUTHORITY: section 143.961, RSMo 2000, and TAFP SS HCS HB 453, enacted by the 94th General Assembly, 2007. Original rule filed Dec. 1, 2004, effective July 30, 2005. Amended: Filed Aug. 14, 2007.

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 20—Highway Reciprocity Commission
Chapter 1—Organization and Description**

PROPOSED RESCISSION

12 CSR 20-1.010 General Organization. This rule provided the organization and description for the Highway Reciprocity Commission.

PURPOSE: This rule is being rescinded because the Highway Reciprocity Commission was abolished with the enactment of section 226.008, RSMo, when all functions, duties, and powers relating to commercial motor vehicle intrastate and interstate transportation were transferred to the Missouri Highways and Transportation Commission.

AUTHORITY: sections 32.050, and 536.023, RSMo 1986. Original rule filed Dec. 31, 1975, effective Jan. 10, 1976. Amended: Filed Oct. 15, 1986, effective Jan. 30, 1987. Amended: Filed Nov. 1, 1991, effective March 9, 1992. Rescinded: Filed Aug. 9, 2007.

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 Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

**Title [12]7—DEPARTMENT OF [REVENUE]
TRANSPORTATION
Division [20—Highway Reciprocity] 10—Missouri
Highways and Transportation Commission
Chapter [2—Reciprocity in Registration with Other
States—Registration of Trailers] 25—Motor
Carrier Operations**

PROPOSED AMENDMENT

[12 CSR 20-2.010] 7 CSR 10-25.050 **Reciprocity with Other States—Registration of Trailers.** The Missouri Highways and Transportation Commission is amending the purpose and sections (1) through (8) of this rule.

PURPOSE: This proposed amendment clarifies administrative rules for the proper registration of trailers in interstate and intrastate commerce.

PURPOSE: The Missouri Highways [Reciprocity] and Transportation Commission has the authority to negotiate and to enter reciprocal agreements with other [states] jurisdictions for registration of commercial motor vehicles for interstate commercial use of the highways. This rule interprets the statutes with respect to reciprocity and registration.

[(1) Unless otherwise provided by duly executed agreements entered into under sections 301.271–301.279, RSMo, a nonresident owner, owning any motor vehicle which has been duly registered for the current year in the state, District of Columbia, territory or possession of the United States, foreign country or other place of which the owner is a resident and which at all times when operated in this state has displayed upon it the number plate issued for the vehicle in the place of residence of the owner, may operate or permit the operation of the vehicle within this state without registering the vehicle or paying any registration fee to this state; but the provisions of this section shall be operative to allow the owner to operate or permit the operation of the vehicle owned by a nonresident of this state only the extent that under the laws of the state, District of Columbia, territory or possession of the United States, foreign country or other place of residence of the nonresident owner, substantially equivalent exemptions are granted to residents of Missouri for the operation of vehicles duly registered in Missouri.]

[(2)] (1) Trailers. Unless otherwise provided by duly executed reciprocity agreements [entered into under sections 301.271–301.279, RSMo] authorized by law, trailers registered in any member jurisdiction may be operated in combination with any motor vehicle properly registered [in accordance with sections 301.271–301.279, RSMo] pursuant to such reciprocity agreement.

[(3) In those instances where Missouri does not have a formal written agreement with another state, the reciprocal privileges granted by the state of Missouri will be those provided for by section 301.271, RSMo. The provisions of section 301.271, RSMo apply only to vehicles registered with a state with which Missouri does not have another type of agreement. No reciprocal privileges shall be granted under the provisions of section 301.271, RSMo to a resident of, or for the operation of a vehicle registered in, a state with which Missouri has a written agreement.]

(2) The Highways and Transportation Commission delegates to the Department of Transportation's Motor Carrier Services Division (MCS) the authority to issue temporary vehicle registration in lieu of permanent registrations for interstate trailers. The original or a copy of the cab card authorized pursuant to 7 CSR 10-25.030(8) for the trailer must be carried in or upon the tractor pulling the trailer at all times. To register any number of trailers with the commission, a person or corporation must have at least one (1) tractor registered with the commission.

[[4]](3) Reciprocal privileges granted under section 301.271, RSMo can only be granted to an owner who is not a resident of Missouri, who has properly registered the vehicle desired to be operated within the [state] jurisdiction where the owner is a resident.

[[5]](4) Vehicles operating solely in interstate commerce on the highways of Missouri [without being] are not required to pay Missouri motor vehicle registration fees [on the basis of resident-type reciprocity granted under the statutes are limited to the operations and movements as are exclusively interstate in character]. Vehicles operating or moving in solely intrastate commerce between two (2) points in Missouri or carrying any merchandise or passengers between two (2) points in Missouri will be required to pay the full Missouri motor vehicle registration fees required for the operation.

[[6] Resident. The residence of a corporation shall be the state in which the corporation is incorporated. (Transport Rentals, Inc. v. Carpenter (Mo.) 325 SW2d 745.) The residence of an individual owner is the bona fide place of abode where s/he exercises the privileges of that state's citizenship such as residence-type hunting or fishing license, voting, education, unemployment insurance, workers' compensation, insurance, payment of state income and personal property tax.]

[[7] Duly executed agreements shall be the sole source of reciprocity when an agreement exists. If no agreement exists, resident-type reciprocity shall be the sole source of reciprocity.]

[[8] A carrier or individual from a resident type state may lease equipment bearing registration from another resident type state.]

(5) In the event of the loss, theft, mutilation, or destruction of any license plate the registrant may file with the commission a notice of such loss, theft, mutilation, or destruction together with any fee required by section 301.300, RSMo, to obtain a duplicate or replacement plate.

(6) Any contractor or sub-contractor of the commission that is subject to regulation under these administrative rules shall at all times while conducting business with the commission under such contract be in good standing with the laws of the state of Missouri and the administrative rules of the commission, or shall obtain full compliance with such laws or rules within ten (10) days of being notified of noncompliance by MCS.

AUTHORITY: sections 226.130 and 301.275, RSMo [1986] 2000 and 226.008, RSMo Supp. 2006. This rule previously filed as 12 CSR 20-2.010. Original rule filed July 22, 1965, effective Aug. 1, 1965. Amended: Filed Oct. 28, 1974, effective Nov. 7, 1974. Amended: Filed Oct. 15, 1986, effective Jan. 30, 1987. Moved to 7 CSR 10-25.050 and amended: Filed Aug. 9, 2007.

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

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

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

Title 12—DEPARTMENT OF REVENUE Division 20—Highway Reciprocity Commission Chapter 4—Multistate Agreement

PROPOSED RESCISSION

12 CSR 20-4.010 Bilateral Basing Point—Multistate Agreement. This rule authorized the Highway Reciprocity Commission to negotiate and enter into reciprocal agreements with other states for interstate commercial use of the highways.

PURPOSE: This rule is being rescinded due to the agreements set forth with the Bilateral Basing Point—Multistate Agreement being replaced by the provisions in the International Registration Plan.

AUTHORITY: sections 142.621 and 301.275, RSMo 1986 and 142.617, RSMo Supp. 1990. Original rule filed July 22, 1965, effective Aug. 1, 1965. Amended: Filed Oct. 28, 1974, effective Nov. 7, 1974. Amended: Filed Oct. 15, 1986, effective Jan. 30, 1987. Amended: Filed Nov. 1, 1991, effective March 9, 1992. Rescinded: Filed Aug. 9, 2007.

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 Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

Title [12]7—DEPARTMENT OF [REVENUE] TRANSPORTATION Division [20] 10—Missouri Highways [Reciprocity] and Transportation Commission Chapter [5—Investigation] 25—Motor Carrier Operations

PROPOSED AMENDMENT

[12 CSR 20-5.010] 7 CSR 10-25.080 Investigation and Audits. The Missouri Highways and Transportation Commission is amending the purpose and section (1) of this rule.

PURPOSE: This proposed amendment clarifies the transfer of the powers, duties, and functions to MHTC regarding audits required under reciprocity agreements.

PURPOSE: The Missouri Highways [Reciprocity] and Transportation Commission is authorized to require reports [from owners and operators of motor vehicles] and perform audits and investigations of registrants and licensees to assist the commission in the performance of its duties. [This rule explains the procedure normally used.]

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) The [Highway Reciprocity C]commission may require reports from [owners and operators of motor vehicles] registrants/licensees as may be useful to assist the commission in performance of its duties. These reports shall furnish information as may be required by the **International Registration Plan (IRP)**, which is incorporated herein by reference and made a part of this rule as published by the **International Registration Plan, Inc., 4301 Wilson Blvd., Ste. 400, Arlington, VA 22203**, effective July 1, 2008; and/or the **International Fuel Tax Agreement (IFTA)**, which is incorporated herein by reference and made a part of this rule as published by the **International Fuel Tax Association, Inc., 912 West Chandler Blvd., B-7, Chandler, AZ 85225**, revised January 2007; and/or the commission and shall cover certain periods and be made at the times the commission [or secretary] may direct. **This rule does not incorporate any subsequent amendments or additions of the Plan or Agreement.** These reports shall be in the form prescribed by the commission and shall be [verified by the] signed under certification as to the accuracy of the information included in such report. The aforementioned signatory shall be a person [making the] authorized to make such report [or by] on behalf of the registrant/licensee, which shall include but not be limited to the president, vice-president, secretary or other responsible officer or employee of a corporation or association or by a partner or a responsible employee of a partnership.

(2) The commission may [make or direct the making of the investigation within or without the state as may be necessary for the performance of its duties] investigate and/or audit any registrant/licensee. Audits may be [made] performed by the [commissioners of several] commission in other member jurisdictions or the commission may participate in joint audits with other member jurisdictions. The commission shall follow the audit standards and procedures established in the IFTA and IRP.

(3) Upon completion of any audit, the [secretary] commission's **Motor Carrier Services Division (MCS)** shall [notify all jurisdictions in which the registrant was proportionally registered on the accuracy of the records of the registrant] provide notice of the audit findings to the registrant/licensee and to all member jurisdictions in which the registrant/licensee was apportioned or in which it traveled. Should the registrant/licensee have underpaid or overpaid [(in excess of ten dollars (\$10))] any member jurisdiction in which [his/her] its vehicles were [proportionally registered] apportioned or in which it traveled, this [information] amount shall be [furnished to the jurisdiction for collection or refund] netted when computing the results of the audit for refund or billing from MCS.

(4) If any [owner or operator of motor vehicles] registrant/licensee shall file any false report or give false information called for, or refuse or delay to give information pertinent to the commission in performing its duties [under sections 301.271–301.279, RSMo], the commission shall have power to revoke any or all reciprocity as to the [owner or operator] registrant/licensee. [The Uniform Operational Audit Procedures Guidelines approved by the International Registration Plan (IRP) jurisdictions set forth procedures required under audit and applicable to the preservations of records sufficient for a determination of true liability will be furnished upon request from the Missouri Highway Reciprocity Commission.]

AUTHORITY: sections 226.130 and 301.275, RSMo [1986] 2000 and 226.008, RSMo Supp. 2006. This rule originally filed as 12 CSR 20-5.010. Original rule filed July 22, 1965, effective Aug. 1, 1965. Amended: Filed Oct. 28, 1974, effective Nov. 7, 1974. Amended: Filed Oct. 15, 1986, effective Jan. 30, 1987. Amended: Filed Sept. 8, 1989, effective Jan. 26, 1990. Moved to 7 CSR 10-25.080 and amended: Filed Aug. 9, 2007.

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

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

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

**Title [12]7—DEPARTMENT OF [REVENUE]
TRANSPORTATION**

**Division [20] 10—Missouri Highways [Reciprocity] and
Transportation Commission**

**Chapter [6—Trip Permits] 25—Motor Carrier
Operations**

PROPOSED AMENDMENT

[12 CSR 20-6.010] 7 CSR 10-25.060 **Trip Permits and Hunter's (Unladen) Permits.** The Missouri Highways and Transportation Commission is amending the title, purpose, and sections (1) through (5), deleting section (6) of this rule and adding additional sections.

PURPOSE: This proposed amendment clarifies the transfer of the powers, duties, and functions regarding the issuance of interstate trip permits to the Missouri Highways and Transportation Commission. Also, it authorizes trip permits to be procured in one (1) to three (3) parts and requires third party contractors to retain records for three (3) years.

PURPOSE: The [Department of Revenue] Missouri Highways and Transportation Commission has the authority to issue trip permits for specified limited periods of commercial interstate use of Missouri highways. This rule interprets the purposes and the requirements for such issuance by the [Highway Reciprocity C]commission.

(1) [A trip permit properly executed before entering a jurisdiction may legalize operation of vehicles.] **Definitions.**

(A) Fuel trip permit means a seventy-two (72) hour permit which is used to satisfy motor fuel use tax obligations on a trip-by-trip basis.

(B) Hunter's (Unladen) permit authorizes the movement of a vehicle which was proportionally registered in Missouri for purposes of securing a new lease agreement at the empty weight for thirty (30) days in member jurisdictions of the International Registration Plan (IRP).

(C) Seventy-two (72) hour reciprocity trip permit authorizes a vehicle legally registered in another jurisdiction to be operated intra-jurisdictionally and inter-jurisdictionally on the highways of Missouri in lieu of apportioned or full registration.

(D) Seventy-two (72) hour permit authorizes the movement of a vehicle on the highways of Missouri pending issuance of credentials when such vehicle is registered in accordance with Chapter 390, RSMo.

[(2) The period for which a trip permit may be issued shall be computed from the time the motor vehicle enters a jurisdiction until it leaves that jurisdiction. If a motor vehicle is unable to complete the trip within the specified period of time due to a mechanical failure or weather conditions, an additional permit shall be issued upon application being made and an additional fee being paid. The additional permit is only to be effective for a specific period of time.]

[[3]] (2) Trip permits may be [secured] obtained from the [Highway Reciprocity C]ommission[, Department of Revenue,] through its Motor Carrier Services Division (MCS) in Jefferson City, Missouri, by [transmitter service] facsimile, electronically, [or] telephone, [and request the Highway Reciprocity Commission to issue the permit by transmitter service] private contractors, or in person. [for each motor vehicle. Permits issued by transmitter service will be transmitted by the Department of Revenue after receipt of the appropriate fee for each requested permit.] The commission will not assume responsibility of loss for a transaction between two (2) private entities when a permit is not claimed by the applicant. [The fee for the permit shall be collected by the Department of Revenue and deposited with the state treasurer to the credit of the state highway department fund except when an agreement has been negotiated with another jurisdiction whereby prepayment is not required. In such cases, the terms of the agreement shall prevail.]

[[4]](3) [Reciprocity and special fuel] Trip permits may be [secured from the Highway Reciprocity Commission, Department of Revenue, Jefferson City, Missouri] obtained either singly as one (1) permit, in two (2) parts as one (1) permit, or in three (3) parts as one (1) permit in any number by completing the application and remitting the proper [amount] fees.

(4) The commission is authorized to enter into contracts with third parties to sell trip permits to the general public.

(5) A hunter's permit may be obtained from the commission only when:

(A) The commercial motor vehicle has been proportionally registered with the commission;

(B) The vehicle cannot be operated on Missouri highways because of lease cancellation;

(C) The plate on the vehicle has been returned to either the commission or to the lessee; and

(D) All other prerequisites of section 301.266, RSMo are fulfilled.

(6) The fee for trip or hunter's permits specified under state law is nonrefundable.

[(5)](7) [A trip permit may be issued for a motor vehicle originating its interstate operation in this state, but t]The trip or hunter's permit shall be in full force and effect before the operation of the motor vehicle commences on Missouri highways.

[(6) A trip permit shall be considered in full force and effect when it is fully documented and all the information required is recorded.]

AUTHORITY: sections 142.830, 226.130, 301.265, 301.267, and 301.275, RSMo [1986] 2000 and 226.008 and 390.136, RSMo Supp. 2006. This rule originally filed as 12 CSR 20-6.010. Original rule filed Nov. 20, 1967, effective Jan. 1, 1968. Amended: Filed Oct. 15, 1986, effective Jan. 30, 1987. Moved to 7 CSR 10-25.060 and amended: Filed Aug. 9, 2007.

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

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

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

Title [12]7—DEPARTMENT OF [REVENUE] TRANSPORTATION

Division [20] 10—Missouri Highways [Reciprocity] and Transportation Commission

Chapter [7] 25—[International Fuel Tax Agreement] Motor Carrier Operations

PROPOSED AMENDMENT

[12 CSR 20-7.010] 7 CSR 10-25.070 Definitions. The Missouri Highways and Transportation Commission is amending section (1) of this rule.

PURPOSE: This proposed amendment evidences the transfer of the powers, duties, and functions to administer the International Fuel Tax Agreement from the Highway Reciprocity Commission to the Missouri Highways and Transportation Commission.

PUBLISHER'S NOTE: The secretary of state has determined that the publication of the entire text of the material which is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

(1) When used in [this chapter] administrative rules 7 CSR 10-25.070 through 7 CSR 10-25.073, the following words and phrases have the meaning set forth here in this rule:

(A) "Agreement" means the International Fuel Tax Agreement (IFTA), which is incorporated herein by reference and made a part of this rule as published by the International Fuel Tax Association, Inc., 912 West Chandler Blvd., B-7, Chandler, AZ 85225, revised January 2007. This rule does not incorporate any subsequent amendments or additions of this manual;

(B) "Bulk storage" means when a licensee maintains tax paid fuel in a bulk storage tank that will be redistributed into qualified vehicles as needed. A licensee may claim the gallons as a tax paid purchase, on the IFTA return, as it is placed into the tanks of qualified vehicles but not before;

(C) "Cash bond" means a guaranteed payment to cover any outstanding tax liability;

[(B)](D) "Commission" means the Missouri Highways [Reciprocity] and Transportation Commission [established by section 301.273, RSMo (1986)] created in Article IV, Section 29 of the Missouri Constitution;

[(C)](E) "Director" means the [D]director of [Revenue established by Article IV, section 22 of the Missouri Constitution] the Motor Carrier Services Division of the Missouri Department of Transportation who is the official designated by the commission to be responsible for administration of the Agreement;

[(D)](F) [Executive director means the secretary of the Highway Reciprocity Commission, as established in section 301.273, RSMo (1986)] "Fuel trip permit miles" means miles accumulated while operating on a temporary fuel permit. Fuel trip permit miles are not considered taxable miles in any jurisdiction. These miles would be included in total miles traveled but not in total taxable miles;

(G) "Idle time" means fuel used when the engine is running but not propelling the vehicle;

[(E)](H) "IFTA" means the International Fuel Tax Agreement;

[(F) Licensee means a person who has been issued a license under the IFTA; and

[(G) Report means any quarterly calendar fuel tax report required to be filed with the Highway Reciprocity Commission.]

(I) "Non-IFTA miles" means miles traveled in jurisdictions that are not members of IFTA. These miles must be included on the IFTA quarterly return in order to determine the correct miles per gallon;

(J) "Nontaxable fuel" means fuel purchased from a non-IFTA jurisdiction or used to operate unlicensed equipment that is drawn from a supply tank of a motor vehicle;

(K) "Nontaxable mileage" means miles traveled that are not subject to motor fuel taxes;

(L) "Off highway/road miles" means any miles not driven on a public highway. These miles are not taxable in Missouri but may be in some IFTA member jurisdictions;

(M) "Power of attorney" means a written statement legally authorizing a person to act on behalf of the applicant or licensee; and

(N) "Power Take Off (PTO) Equipment" means vehicle-mounted equipment that is powered by the main engine that also propels the vehicle.

AUTHORITY: sections [142.621] 142.617, 226.130 and 301.275, RSMo [1986 and 142.617, RSMo Supp. 1990] 2000 and 226.008, RSMo Supp. 2006. This rule originally filed as 12 CSR 20-7.010. Original rule filed Nov. 1, 1991, effective March 9, 1992. Moved to 7 CSR 10-25.070 and amended: Filed Aug. 9, 2007.

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

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

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

**Title [12] 7—DEPARTMENT OF [REVENUE]
TRANSPORTATION**

**Division [20] 10—Missouri Highways [Reciprocity] and
Transportation Commission**

**Chapter [7] 25—[International Fuel Tax Agreement]
Motor Carrier Operations**

PROPOSED AMENDMENT

[12 CSR 20-7.020] 7 CSR 10-25.071 Application for International Fuel Tax Agreement License. The Missouri Highways and Transportation Commission is amending sections (1) through (8) of this rule and removing the form incorporated in this rule.

PURPOSE: This proposed amendment adds information requirements for International Fuel Tax Agreement license applicants.

(1) A person or entity desiring to obtain an International Fuel Tax Agreement (IFTA) license shall file an application with the [Missouri Highway Reciprocity C]commission in accordance with provisions of the IFTA and sections 142.617 and 226.008, RSMo.

(2) All initial applications will be accepted via United States mail, facsimile, or in person. All subsequent applications may be filed electronically.

[(2)](3) The applicant shall provide the information requested on the application form[, which] prescribed by IFTA and shall also include, but not be limited to, the following:

(A) The [federal employer identification number of the entity, or in the case of a sole proprietorship, the Social Security number of the owner] applicant's United States Department of Transportation (USDOT) number, if applicable;

[(B) The name of all owners or partners; if the applicant is a corporation, the names of the president, vice president, secretary and treasurer;

(C) The legal name of the business;

(D) The principal place of business and physical location(s), if different;

(E) The mailing address of the business;

(F) A list of all IFTA jurisdictions for which the applicant seeks authority;

(G) Signature of the person submitting the application and indication of representative capacity, if applicable; if the application is submitted by an authorized representative, a copy of a power of attorney must accompany the application and a signature of an owner or officer also must appear on the application;

(H) Number of qualified motor vehicles which are owned by the applicant on which Missouri IFTA decals will be used;

(I) Number of IFTA decals requested; and

(J) Statement of existence of bulk storage in all member jurisdictions]

(B) Whether petroleum products are transported;

(C) Lease information, if applicable;

(D) Proof of Missouri plate registration and/or proof of Missouri application for apportioned registration under the International Registration Plan; and

(E) History of any out-of-state IFTA license.

[(3)](4) The applicant shall certify under penalty of *[perjury]* law that the information contained in the application is true, accurate and complete, and that s/he agrees to comply with the reporting, record keeping, payment, display of decals and other requirements of the IFTA and the laws of this state.

(5) The applicant may appoint a carrier service or any other person other than the applicant as its power of attorney, but must submit the notarized power of attorney in writing to the commission prior to the applicant being issued an IFTA license.

[(4)](6) The applicant shall agree as part of the application that this state may withhold any refunds due if the applicant is delinquent in payment of fuel taxes due any IFTA member jurisdiction.

[(5)](7) The commission shall review the application and, upon satisfaction that the information contained in the application is true, accurate and complete, and that the applicant is not under revocation by any IFTA member jurisdiction at the time of application, issue the IFTA license and decals.

(8) The new year IFTA decal may be displayed one (1) month prior to its effective date with the current and new year IFTA license.

(9) The IFTA license shall be valid for the current calendar year ending December 31, and shall be reproduced by the licensee and placed in the qualified motor vehicles of the licensee's fleet.

(10) A thirty (30)-day temporary decal permit may be issued to a licensee in good standing to carry in lieu of displaying the annual decals. The temporary decal shall be vehicle specific, include an expiration date, and need not be displayed, but shall be carried in the vehicle with the current IFTA license.

[(6)](11) A *[n applicant]* licensee who has been **suspended, or an applicant or licensee who has been denied issuance [or renewal]** of an IFTA license **for failure to comply with the requirements of IFTA or other requirements set forth by the commission** may appeal the **suspension or denial** in accordance with the procedures set forth in *[this chapter]* 7 CSR 10-25.090.

[(7) A licensee shall make annual application for renewal of his/her IFTA license no later than December 31 of each calendar year.]

[(8) A licensee shall notify the commission at any time during the license year of any change in the information specified in section (2) of this rule.]

AUTHORITY: sections [142.621] 142.617, 226.130 and 301.275, RSMo [1986 and 142.617, RSMo Supp. 1990] 2000 and 226.008, RSMo Supp. 2006. This rule previously filed as 12 CSR 20-7.020. Original rule filed Nov. 1, 1991, effective March 9, 1992. Moved to 7 CSR 10-25.071 and amended: Filed Aug. 9, 2007.

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

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

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

**Title [12] 7—DEPARTMENT OF [REVENUE]
TRANSPORTATION**

**Division [20] 10—Missouri Highways [Reciprocity] and
Transportation Commission**

**Chapter [7] 25—[International Fuel Tax Agreement]
Motor Carrier Operations**

PROPOSED AMENDMENT

[12 CSR 20-7.030] 7 CSR 10-25.072 Fuel Tax *[Reports]* Returns. The Missouri Highways and Transportation Commission is amending the title, purpose, and sections (1) through (12) of this rule, adding additional sections, and removing the forms incorporated in this rule.

PURPOSE: This proposed amendment clarifies the transfer of the powers, duties, and functions regarding International Fuel Tax Agreement fuel tax returns to the Missouri Highways and Transportation Commission.

PURPOSE: This rule sets forth the procedures to be followed by a licensee in filing quarterly fuel tax *[reports]* returns.

(1) The licensee shall file a *[report]* return with the *[Highway Reciprocity C]*commission each calendar quarter. Quarterly *[reports]* returns required to be filed by this rule and the agreement shall be filed as follows:

- (A) First quarter *[reports]* returns are due on or before April 30;
- (B) Second quarter *[reports]* returns are due on or before July 31;
- (C) Third quarter *[reports]* returns are due on or before October 31; and
- (D) Fourth quarter *[reports]* returns are due on or before January 31.

(2) Quarterly returns are provided to the licensee at no charge at least thirty (30) days prior to the due date. Failure to receive the authorized return form does not relieve the licensee of the obligation to file the required return.

[(2)](3) If any date for filing a quarterly *[report]* return shall fall on a Saturday, Sunday or legal holiday, the deadline shall be the next day which is neither a Saturday, Sunday nor legal holiday.

[(3)](4) Every licensee shall file a *[report every]* separate return each calendar quarter for each fuel type indicated on the initial or renewal application, even if the licensee conducted no operations that quarter.

(5) Quarterly returns may be sent via United States mail, delivered in person, or electronically filed.

[(4) Quarterly report forms shall be provided to the licensee at no charge at least thirty (30) days prior to the due date. Failure to receive the authorized report form does not relieve the licensee of the obligation to file the required report.]

[(5)](6) The quarterly [report] return shall cover the previous calendar quarter and shall be on forms prescribed by the commission. [and shall include, but not be limited to, the following:

(A) Total distance traveled during the reporting period by qualified motor vehicles in the licensee's fleet. Total distance shall include both taxable and nontaxable travel;

(B) Total number of gallons or liters of motor fuel used by the licensee in the operation of qualified motor vehicles;

(C) Total miles/kilometers per gallon/liter consumed by the qualified motor vehicles in the fleet. To determine the miles per gallon (MPG) or kilometers per liter (KPL) divide total miles/kilometers by total gallons/liters;

(D) In-jurisdiction miles or kilometers traveled by qualified motor vehicles within each member jurisdiction;

(E) Gallons/liters of taxable motor fuel consumed within each member jurisdiction;

(F) Total number of gallons/liters of tax-paid fuel purchased within each member jurisdiction; and

(G) Signature of licensee or designated representative.]

(7) A valid signature on the initial or renewal application, or certification that the licensee agrees to comply with the requirements as specified in the International Fuel Tax Agreement (IFTA) when filing electronically, shall serve as the signature for all subsequent tax returns.

(8) Gallons of fuel consumed during idle time are taxable and must be reported on the IFTA quarterly return.

(9) Fuel used in a tank separate from the tank that propels the power unit is defined as reefer fuel. This fuel is not subject to tax and should not be included on the IFTA quarterly return. Refunds may be obtained by contacting the Missouri Department of Revenue, Taxation Bureau.

[(6)](10) Payment of all taxes, penalties, and interest, if applicable, due and owing to all IFTA member jurisdictions shall accompany the quarterly tax [report] return. [Payment shall be by one (1) check made payable to the Director of Revenue.] Any licensee may be required to make all payments by certified check or money order for good cause determined by the [executive] commission's Motor Carrier Services Division (MCS) director or his/her designee.

(11) Quarterly returns, after calculating all taxes owed to jurisdictions operated in during the quarter by the licensee, that results in a credit to the licensee may be refunded at the request of the licensee or credit may be accumulated to use on subsequent quarterly returns not to exceed eight (8) calendar quarters. Refunds of accumulated credits shall only be issued on credits of ten dollars (\$10) or more.

(12) Refunds to licensees will only be made when all tax liability, including audit assessments, have been satisfied to all applicable jurisdictions.

[(7)](13) A [report] return not filed by the due date shall be considered as late and any taxes due delinquent. If the return is received on or before the due date, but rejected because the return is not sufficient for processing and the return is received a second or subsequent time after the due date, penalty and interest will be assessed. A return shall contain total miles traveled in all jurisdictions, total fuel consumed in all jurisdictions, total miles, total taxable miles, and tax paid gallons to be processed.

[(8)](14) A licensee who files a late [report] return or who fails to pay taxes due by the required due date shall be subject to a penal-

ty of fifty dollars (\$50) or ten percent (10%) of the tax due, whichever is greater. A licensee who files a late report shall be subject to the assessment of a penalty for late filing] even if no tax is due or the licensee is entitled to a refund or credit [Upon good cause, the penalty for late filing may] of any taxes paid. The licensee may request in writing that the late penalty be waived by the [executive] MCS director or his/her designee. The waiver may be granted one (1) time only over a period of three (3) calendar years or for other circumstances which the director or his/her designee deems appropriate.

[(9)](15) A licensee who fails to pay taxes due shall be assessed interest at the rate of twelve percent (12%) per annum as established by the Agreement. The interest due on taxes owing to other jurisdictions shall not be waived without prior written approval from such other jurisdictions.

[(10)] A licensee who fails to pay taxes due shall be assessed a penalty of fifty dollars (\$50) or ten percent (10%) of the tax due, whichever is greater. Upon good cause shown the executive director may waive the penalty for late payment of taxes.]

[(11)] A report is delinquent if—

(A) Postmarked or hand-delivered after the due date; or

(B) Originally received on or before the due date, but rejected because the report is not sufficient for processing and the report is received for a second or subsequent time after the due date.]

[(12)] An incomplete report postmarked or hand-delivered on or before the due date shall be considered as timely filed if the report contains sufficient information for the commission to be able to process the report. A report contains sufficient information to process, if Line A (total miles traveled in all states), Line B (total fuel consumed in all states), Column 2 (total miles), Column 3 (total taxable miles) and Column 5 (tax paid gallons) on the report are completed and the report is signed. No report shall be considered filed until it is received, signed by the licensee or designated representative.]

(16) A licensee may be required by the commission to post a cash bond: a) to reinstate a suspended account; or b) when in the commission's discretion, a bond is required to protect the interests of the IFTA member jurisdictions. The IFTA license can be suspended for nonfiling of a quarterly tax return and/or delinquent taxes, penalties, and/or interest. Licensees will be notified thirty (30) days after the required due date that their account is in jeopardy of being suspended. Failure to respond within thirty (30) days of the notification will result in a Notice of Suspension.

(17) To reinstate an IFTA license, all delinquent quarterly returns must be filed and all outstanding taxes, penalties, and/or interest paid. Licensees with a tax liability of more than one hundred twenty-five dollars (\$125) are required to post a cash bond in the amount twice the average tax liability. The minimum bond amount to be posted will be three hundred dollars (\$300). The MCS bond form must be completed in the exact name as the IFTA fleet, must be signed and notarized. The MCS director or his/her designee may reduce the bond amount for other circumstances which the director or his/her designee deems appropriate.

(18) Licensees may request their bond to be refunded upon closing their IFTA fleet or if they have filed timely returns for the last three (3) years and all tax liabilities and assessments have been satisfied.

(19) Any contractor or sub-contractor of the commission that is subject to regulation under these administrative rules shall at all times while conducting business with the commission under such contract be in good standing with the laws of the state of Missouri and the administrative rules of the commission, or shall obtain full compliance with such laws or rules within ten (10) days of being notified of noncompliance by MCS.

AUTHORITY: sections [142.621] 142.617, 226.130 and 301.275, RSMo [1986 and 142.617, RSMo Supp. 1990] 2000 and 226.008, RSMo Supp. 2006. This rule previously filed as 12 CSR 20-7.030. Original rule filed Nov. 1, 1991, effective March 9, 1992. Moved to 7 CSR 10-25.072 and amended: Filed Aug. 9, 2007.

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

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

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

**Title [12] 7—DEPARTMENT OF [REVENUE]
TRANSPORTATION
Division [20] 10—Missouri Highways [Reciprocity] and
Transportation Commission
Chapter [7] 25—[International Fuel Tax Agreement]
Motor Carrier Operations**

PROPOSED AMENDMENT

[12 CSR 20-7.040] 7 CSR 10-25.073 **Record Keeping Requirements.** The Missouri Highways and Transportation Commission is amending sections (1) through (3) and (5) through (8) of this rule.

PURPOSE: This proposed amendment updates information required for fuel and distance records and clarifies the extension of statute of limitations for motor fuel tax delinquency claims.

(1) A licensee shall maintain sufficient records to substantiate any fuel tax [report] return filed with the commission.

(2) A complete record of all fuel purchased, received and used in its operations shall be maintained by each licensee for a period of not less than four (4) years from the date of the [report] return to which the records are applicable. Fuel records at a minimum, shall contain, the following:

(C) Number of gallons/liters received and the price per gallon/liter;

(D) Type of fuel; [and]

(E) Identity of vehicle or equipment into which the fuel was placed[.]; and

(F) Purchaser's name.

(3) A licensee shall maintain individual distance records for each trip for each qualified motor vehicle in its fleet for a period of not less than four (4) years from the date of the [report] return to which the records are applicable. Distance records at a minimum, shall contain, the following:

(A) Taxable [miles/kilometers] distance;

(B) Nontaxable [miles/kilometers] distance;

(C) Monthly and quarterly [D]distance recaps for each jurisdiction in which the vehicle was operated;

(5) Records required to be kept by this rule and the Agreement may be kept on microfilm, [or] microfiche, or an imaging system.

(6) Failure to keep records in accordance with the rule and the Agreement may be cause for cancellation or revocation of the International Fuel Tax Agreement license. Refer to 7 CSR 10-25.072(17) for the reinstatement requirements for a cancelled or revoked International Fuel Tax Agreement license.

(7) Failure to provide records for the purpose of audit extends the statute of limitations for filing any claim for recovery of motor fuel taxes until the records are provided. Successive failure to provide any records requested for audit relate back to the first demand for those records.

(8) Records required to be kept under this rule and the Agreement shall be available to the commission and any member jurisdiction upon request.

AUTHORITY: sections [142.621] 142.617 and 301.275, RSMo [1986 and 142.617, RSMo Supp. 1990] 2000 and 226.008, RSMo Supp. 2006. This rule previously filed as 12 CSR 20-7.040. Original rule filed Nov. 1, 1991, effective March 9, 1992. Moved to 7 CSR 10-25.073 and amended: Filed Aug. 9, 2007.

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

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

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

**Title 12—DEPARTMENT OF REVENUE
Division 20—Highway Reciprocity Commission
Chapter 7—International Fuel Tax Agreement**

PROPOSED RESCISSION

12 CSR 20-7.050 Good Cause. This rule authorized the director to waive any International Fuel Tax Agreement penalty for good cause shown.

PURPOSE: This rule is being rescinded due to the requirement for requesting a waiver of penalties has been incorporated in 7 CSR 10-25.072, Fuel Tax Returns.

AUTHORITY: sections 142.621 and 301.275, RSMo 1986 and 142.617, RSMo Supp. 1990. Original rule filed Nov. 1, 1991, effective March 9, 1992. Rescinded: Filed Aug. 9, 2007.

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 Transportation, Mari Ann Winters, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title [12] 7—DEPARTMENT OF [REVENUE]
TRANSPORTATION**
**Division [20] 10—Missouri Highways [Reciprocity] and
Transportation Commission**
**Chapter [7] 25—[International Fuel Tax Agreement]
Motor Carrier Operations**

PROPOSED AMENDMENT

[12 CSR 20-7.060] 7 CSR 10-25.090 Appeals. The Missouri Highways and Transportation Commission is amending the purpose and sections (1) through (5) of this rule.

PURPOSE: This proposed amendment clarifies the transfer of the powers, duties, and functions regarding determination of any tax, penalties, and/or interest under the International Fuel Tax Agreement and under the International Registration Plan from the Highway Reciprocity Commission to the Highways and Transportation Commission.

PURPOSE: This rule sets forth the procedures for appealing a determination of the Missouri Highways [Reciprocity] and Transportation Commission concerning the assessment of any tax, penalties, and/or interest under the International Fuel Tax Agreement and under the International Registration Plan.

(1) A licensee/[applicant] registrant may request an informal review of a decision of the commission regarding the assessment of any tax, penalties or interest under the Agreement or Plan or of any suspension, revocation, cancellation or denial of a license, except a decision [of the commission] resulting from an audit, within thirty (30) days of issuance of an initial determination.

(2) The informal review may be conducted in person, in writing or by telephone with [the executive director of] Missouri Department of Transportation, Motor Carrier Services Division, personnel delegated such authority by the commission.

(3) In the event that the informal review is unable to resolve the dispute between the commission and the licensee/[applicant] registrant, the initial determination shall become the final decision of the [director of revenue] commission.

(4) Upon issuance of a final decision of the [director of revenue] commission, a licensee/[applicant] registrant may file, within thirty (30) days of the date of the decision or receipt, whichever is earlier, a written appeal of the decision with the Administrative Hearing Commission, P.O. Box 1557, Jefferson City, MO 65102-1557.

(5) A licensee/registrant shall renew his/her license/registration, if applicable, and shall continue to file all [reports] returns/applications not under appeal pending the determination of the Administrative Hearing Commission.

AUTHORITY: sections [142.621] 142.617, 226.130 and 301.275, RSMo [1986 and 142.617, RSMo Supp. 1990] 2000 and 226.008, RSMo Supp. 2006. This rule previously filed as 12 CSR 20-7.060. Original rule filed Nov. 1, 1991, effective March 9, 1992. Moved to 7 CSR 10-25.090 and amended: Filed Aug. 9, 2007.

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

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

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

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

PROPOSED AMENDMENT

13 CSR 70-10.060 Retrospective Reimbursement Plan for State-Operated Facilities for ICF/MR Services. The division is amending sections (1), (2), (3), (4), (5), (6), (7), (10), and (12).

PURPOSE: This amendment modifies the language for state-operated facilities for ICF/MR services by substituting state-owned for the current terminology state-operated. This regulation change will provide the flexibility needed to address Missouri's plan to improve the safety, care, and quality of life for the residents of state ICF/MR facilities. This amendment also changes the name of the state's medical assistance program to MO HealthNet and revises the name of the program's administering agency to MO HealthNet Division to comply with state law. The amendment changes reference to program recipients to participants.

(1) Objectives. The retrospective rate plan described in this rule shall apply to state-[operated] owned intermediate care facility/mentally retarded (ICF/MR) facilities for dates of service on and after March 1, 1990, and the objective of this plan is to provide reimbursement of allowable cost.

(2) General Principles. The Missouri Medical Assistance program shall reimburse qualified providers of ICF/MR services based solely on the individual [Medicaid recipient's] MO HealthNet participant's days of care (within benefit limitations) multiplied by the facility's Title XIX per-/diem rate less any payments made by [recipients] participants as described in sections (4) and (5).

(3) Definitions.

(A) Allowable cost areas. Those cost areas which are allowable for allocation to the [Medicaid] MO HealthNet program based upon the principles established in this plan. The allowability of cost areas not specifically addressed in this plan will be based upon criteria of the Medicare Provider Reimbursement Manual (HIM-15) and section (7) of this rule.

(E) Division. The division, unless otherwise specified, refers to the [Division of Medical Services] MO HealthNet Division.

(G) ICF/MR. State-[operated] owned facilities certified to provide intermediate care for the mentally retarded under the Title XIX program.

(J) Patient days. Patient day of care is that period of service rendered a patient between the census-taking hours on two (2) consecutive days, including the twelve (12) temporary leave of absence days per any period of six (6) consecutive months as specifically covered under section (6) of this rule, the day of discharge being counted only when the patient was admitted the same day. A census log shall be maintained in the facility for documentation purposes. Census shall be taken daily at midnight. A day of care includes those overnight periods when a *[recipient] participant* is away from the facility on a facility-sponsored group trip and remains under the supervision and care of facility personnel.

(K) Providers. A provider under the Retrospective Reimbursement Plan is a state-*[operated]* owned ICF/MR facility with a valid participation agreement in effect on or after February 28, 1990, with the Missouri Department of Social Services for the purpose of providing long-term care (LTC) services to Title XIX-eligible *[recipients] participants*.

(4) Interim Rate.

(A) For service dates beginning March 1, 1990 through and including June 30, 1991, each provider shall be assigned an interim per-/diem rate for reimbursement under the Missouri Medicaid program. The interim per-/diem rate will be based on the provider's fiscal year (FY)-89 desk-reviewed allowable costs inflated forward on the basis of the historical rate of change. This rate of change shall be thirty-five percent (35%) of the following amount: the percentage increase between the FY-87 weighted mean allowable cost per patient day for all state-operated facilities (WMACPDPSOF) and the FY-89 WMACPDPSOF annualized by dividing by two (2).

Example

FY-87 WMACPDPSOF \$128.06
 FY-89 WMACPDPSOF \$161.47
 Percent of Change
 $(\$161.47 - \$128.06) \div \$128.06 = 26.09\%$
 Annualized Percent of Change
 $(/26.09\% \div 2) = 13.04\%$
 35% of Annualized Percent of Change
 $(13.04\% \times 35\%) = 4.57\%$
 Facility FY-89 Allowable Cost
 \$24,220,500
 Facility FY-89 Patient Days 150,000
 Inflated Cost
 $(\$24,220,500 \times 104.57\%) = \$25,327,376$
 Interim Rate
 $(\$25,327,376 \div 150,000) = \168.85

(C) In the case of newly constructed state-*[operated]* owned ICF/MR facilities or existing facilities not previously certified to participate in the Title XIX Program entering the *[Missouri Medicaid] MO HealthNet* Program after February 28, 1990, the facilities shall have an interim rate based on one hundred twenty-five percent (125%) of the weighted mean rate of all providers for the month prior to entering the *[Missouri Medicaid] MO HealthNet* Program until the time a second prior year cost report is available, at which time the provisions of subsection (4)(B) will apply.

Example

Weighted Mean Rate of All Providers
 (7/01/91) \$160
 Interim Rate Effective (8/01/91)
 $(\$160 \times 125\%) = \200

(5) Retroactive Adjustments.

(A) The division shall desk review the *[Medicaid] MO HealthNet* cost reports for each facility and shall determine the facility's allowable cost per patient day. This shall be the final per-/diem rate for the service dates covered by the cost report. A payment adjustment will be made equal to the difference between the final

per-/diem rate and the interim per-/diem rate multiplied by the *[Medicaid] MO HealthNet* days corresponding to the service dates covered by the interim per-/diem rate. For the period March 1, 1990 through June 30, 1990, the full facility Fiscal Year 1990 Medicaid cost report will be used to establish the final per-/diem rate for payment adjustment purposes.

(6) Covered Services and Supplies. ICF/MR services and supplies covered by the per-/diem reimbursement rate under this rule, and which must be provided, are found in 42 CFR 442.100-442.516 and include, among other services, the regular room, dietary and nursing services or any other services that are required for standards of participation or certification, also included are minor medical and surgical supplies and the use of equipment and facilities. These items include, but are not limited to, the following:

(B) Items which are furnished routinely and relatively uniformly to all *[recipients] participants*, for example, gowns, water pitchers, soap, basins and bed pans;

(E) Items which are utilized by individual *[recipients] participants* but which are reusable and expected to be available such as ice bags, bed rails, canes, crutches, walkers, wheelchairs, traction equipment and other durable, nondepreciable medical equipment;

(I) All general personal care services which are furnished routinely and relatively uniformly to all *[recipients] participants* for their personal cleanliness and appearance shall be covered services; for example, necessary clipping and cleaning of fingernails and toenails, basic hair care, shampoos and shaves to the extent necessary for reasonable personal hygiene. The provider shall not bill the patient or his/her responsible party for this type of personal service;

(K) Semiprivate room and board and private room and board when necessary to isolate a *[recipient] participant* due to a medical or social condition, such as contagious infection, irrational loud speech and the like. Unless a private room is necessary due to a medical or social condition, a private room is a noncovered service and a *[Medicaid recipient] MO HealthNet participant* or responsible party may pay the difference between a facility's semiprivate charge and its charge for a private room. *[Medicaid recipients] MO HealthNet participants* may not be placed in private rooms and charged any additional amount above the facility's *[Medicaid] MO HealthNet* per diem unless the *[recipient] participant* or responsible party specifically requests in writing a private room prior to placement in a private room and acknowledges that an additional amount not payable by *[Medicaid] MO HealthNet* will be charged for a private room;

(L) Twelve (12) days per any period of six (6) consecutive months during which a *[recipient] participant* is on a temporary leave of absence from the facility. These temporary leave of absence days specifically must be provided for in the *[recipient's] participant's* plan of care. Periods of time during which a *[recipient] participant* is away from the facility because s/he is visiting a friend or relative are considered temporary leaves of absence; and

(M) Days when *[recipients] participants* are away from the facility overnight on facility-sponsored group trips under the continuing supervision and care of facility personnel.

(7) Allowable Cost Areas.

(B) Depreciation.

1. An appropriate allowance for depreciation on buildings, furnishings and equipment which are part of the operation and sound conduct of the provider's business is an allowable cost item. Finder's fees are not an allowable cost item.

2. The depreciation must be identifiable and recorded in the provider's accounting records, based on the basis of the asset and prorated over the estimated useful life of the asset using the straight-line method of depreciation from the date initially put into service.

3. The basis of assets shall be the lower of the book value of the provider, fair market value at the time of acquisition or the recognized Internal Revenue Service (IRS) tax basis. Donated assets will

be allowed basis to the extent of recognition of income resulting from the donation of the asset. Should a dispute arise between a provider and the Department of Social Services as to the fair market value at the time of acquisition of a depreciable asset and an appraisal by a third party is required, the appraisal cost will be shared proportionately by the *[Medicaid]* MO HealthNet Program and the facility in ratio to *[Medicaid recipient]* MO HealthNet participant reimbursable patient days to total patient days.

4. Allowable methods of depreciation shall be limited to the straight-line method. The depreciation method used for an asset under the *[Medicaid]* MO HealthNet Program need not correspond to the method used by a provider for non-*[Medicaid]* MO HealthNet purposes; however, useful life shall be in accordance with the American Hospital Association's Guidelines. Component part depreciation is optional and allowable under this rule.

5. Historical cost is the cost incurred by the provider in acquiring the asset and preparing it for use except as provided in this rule. Usually, historical cost includes costs that would be capitalized under generally accepted accounting principles. For example, in addition to the purchase price, historical cost would include architectural fees and related legal fees. Where a provider has elected to expense certain items such as interest and taxes during construction, the historical cost basis for *[Medicaid]* MO HealthNet depreciation purposes may include the amount of these expensed items. However, where a provider did not capitalize these costs and has written off the costs in the year they were incurred, the provider cannot retroactively capitalize any part of these costs under the program. For Title XIX purposes and this rule, any asset costing less than five hundred dollars (\$500) or having a useful life of one (1) year or less may be expensed and not capitalized at the option of the provider.

6. When an asset is acquired by trading in an existing asset, the cost basis of the new asset shall be the sum of undepreciated cost basis of the traded asset plus the cash paid.

7. Capital expenditures for building construction or for renovation costs which are in excess of one hundred fifty thousand dollars (\$150,000) and which cause an increase in a provider's bed capacity shall not be allowed in the program or depreciation base if the capital expenditures have not received approved CON or waiver.

8. Amortization of leasehold rights and related interest and finance costs shall not be allowable costs under this plan.

(C) Interest and Finance Costs.

1. Necessary and proper interest on both current and capital indebtedness shall be an allowable cost item excluding finder's fees.

2. Interest is the cost incurred for the use of borrowed funds. Interest on current indebtedness is the cost incurred for funds borrowed for a relatively short-term. This is usually for purposes as working capital for normal operating expenses. Interest on capital indebtedness is the cost incurred for funds borrowed for capital purposes such as acquisition of facilities and capital improvements and this indebtedness must be amortized over the life of the loan.

3. Interest may be included in finance charges imposed by some lending institutions or it may be a prepaid cost or discount in transactions with those lenders who collect the full interest charges when funds are borrowed.

4. To be an allowable cost item, interest (including finance charges, prepaid costs and discounts) must be supported by evidence of an agreement that funds were borrowed and that payment of interest and repayment of the funds are required, identifiable in the provider's accounting records, relating to the reporting period in which the costs are claims and necessary and proper for the operation, maintenance or acquisition of the provider's facilities.

5. Necessary means that the interest be incurred for a loan made to satisfy a financial need of the provider and for a purpose related to *[recipient]* participant care. Loans which result in excess funds or investments are not considered necessary.

6. Proper means that the interest be incurred at a rate not in excess of what a prudent borrower would have had to pay in the money market existing at the time the loan was made and provided

further the department shall not reimburse for interest and finance charges any amount in excess of the prime rate current at the time the loan was obtained.

7. Income from a provider's qualified retirement fund shall be excluded in consideration of the per-/diem rate.

8. A provider shall amortize finance charges, prepaid interest and discount over the period of the loan ratably or by means of the constant rate of interest method on the unpaid balance.

9. Usual and customary costs excluding finder's fees incurred to obtain loans shall be treated as interest expense and shall be allowable costs over the loan period ratably or by means of the constant interest applied method.

10. Usual and customary costs shall be limited to the lender's title and recording fees, appraisal fees, legal fees, escrow fees and closing costs.

11. Interest expense resulting from capital expenditures for building construction or for renovation costs which are in excess of one hundred fifty thousand dollars (\$150,000) and which cause an increase in a bed capacity by the provider shall not be an allowable cost item if the expenditure fails to comply with other federal or state requirements that promulgate a limitation on reimbursement for capital expenditures, such as CON.

(K) Utilization Review. Incurred cost for the performance of required utilization review for ICF/MR is an allowable cost area. The expenditures must be for the purpose of providing utilization review on behalf of Title XIX *[recipients]* participants. Utilization review costs incurred for Title XVIII and XIX must be apportioned on the basis of reimbursable *[recipient]* participant days recorded for each program during the reporting period.

(M) Nonreimbursable Costs.

1. Bad debts, charity and courtesy allowances are deductions from revenue and are not to be included as allowable costs.

2. Those services that are specifically provided by Medicare and *[Medicaid]* MO HealthNet must be billed to those agencies.

3. Any costs incurred that are related to fund drives are not reimbursable.

4. Costs incurred for research purposes shall not be included as allowable costs.

5. The cost of services provided under the Title XX program, by contract or subcontract, is specifically excluded as an allowable item.

(N) Other Revenues. Other revenues, including those listed that follow, will be deducted from the total allowable cost, and must be shown separately in the cost report by use of a separate schedule if included in the gross revenue: income from telephone services; sale of employee and guest meals; sale of medical abstracts; sale of scrap and waste food or materials; rental income; cash, trade, quantity time and other discounts; purchase rebates and refunds; parking lot revenues; vending machine commission or profit; sales from drugs to other than *[recipients]* participants; Medicare Part B revenues; and room reservation charges for temporary leave of absence days which are not covered services under section (6) of this rule. Failure to separately account for any of the revenues specifically set out previously in this rule in a readily ascertainable manner shall result in termination from the program.

(O) Apportionment of Costs to *[Medicaid Recipient]* MO HealthNet Participant Residents. Provider's allowable cost areas shall be apportioned between the certified ICF/MR portion and the noncertified portion so that the share borne by the *[Medicaid]* MO HealthNet program is based upon actual services received by program *[recipients]* participants.

(10) Payment Assurance.

(B) Where third-party payment is involved, *[Medicaid]* MO HealthNet will be the payor of last resort with the exception of state programs such as Vocational Rehabilitation and the Missouri Crippled Children's Service. Procedures for remitting third-party

payments are provided in the Missouri Medical Assistance [(Medicaid)] (MO HealthNet) Program provider manuals.

(12) Payment in Full. Participation in the program shall be limited to providers who accept as payment in full for covered services rendered to [Medicaid recipients] MO HealthNet participants, the amount paid in accordance with these rules and applicable copy-payments.

AUTHORITY: sections 208.153, [RSMo Supp. 1991,] 208.159 [RSMo 1986] and 208.201, RSMo [Supp. 1987] 2000. Original rule filed March 5, 1990, effective June 11, 1990. Amended: Filed Dec. 14, 1992, effective June 7, 1993. Amended: Filed Aug. 15, 2007.

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

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2060—State Board of Barber Examiners
Chapter 1—General Rules**

PROPOSED RESCISSION

20 CSR 2060-1.010 General Organization. This rule established the State Board of Barber Examiners' operation and the methods of communication.

PURPOSE: This rule is being rescinded pursuant to the enactment of SB 280 (2005) of the 93rd General Assembly.

AUTHORITY: sections 328.030, 328.040, 328.050.1 and 328.070, RSMo 1994. This rule originally filed as 4 CSR 60-1.010. Original rule filed April 2, 1976, effective Oct. 11, 1976. Amended: Filed May 23, 1995, effective Nov. 30, 1995. Rescinded and readopted: Filed Nov. 12, 1997, effective May 30, 1998. Moved to 20 CSR 2060-1.010, effective Aug. 28, 2006. Rescinded: Filed Aug. 1, 2007.

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 State Board of Cosmetology and Barber Examiners, Darla Fox, Executive Director, PO Box 1062, Jefferson City, MO 65102, by faxing comments to (573) 751-8176, or by emailing comments to cos-bar@pr.mo.gov. To be considered, comments must be received with-

in thirty (30) days after publication of this notice in the *Missouri Register*. No public hearing is scheduled.

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2060—State Board of Barber Examiners
Chapter 1—General Rules**

PROPOSED RESCISSION

20 CSR 2060-1.015 Public Complaint Handling and Disposition Procedure. This rule established the procedure for receipt, handling and disposition of public complaints by the board.

PURPOSE: This rule is being rescinded pursuant to the enactment of SB 280 (2005) of the 93rd General Assembly.

AUTHORITY: sections 328.060.2, and 328.150.2, RSMo 1994. This rule originally filed as 4 CSR 60-4.030. This rule previously filed as 4 CSR 60-1.015. Original rule filed Nov. 12, 1997, effective May 30, 1998. Moved to 20 CSR 2060-1.015, effective Aug. 28, 2006. Rescinded: Filed Aug. 1, 2007.

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 would 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 State Board of Cosmetology and Barber Examiners, Darla Fox, Executive Director, PO Box 1062, Jefferson City, MO 65102, by faxing comments to (573) 751-8176, or by emailing comments to cos-bar@pr.mo.gov. 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,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2060—State Board of Barber Examiners
Chapter 1—General Rules**

PROPOSED RESCISSION

20 CSR 2060-1.030 Requirement of Identification. This rule established the requirement for state identification.

PURPOSE: This rule is being rescinded pursuant to the enactment of SB 280 (2005) of the 93rd General Assembly.

AUTHORITY: sections 328.060 and 328.150, RSMo 2000. This rule originally filed as 4 CSR 60-1.030. Original rule filed Dec. 1, 2000, effective May 30, 2001. Moved to 20 CSR 2060-1.030, effective Aug. 28, 2006. Rescinded: Filed Aug. 1, 2007.

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 State Board of Cosmetology and Barber Examiners, Darla Fox, Executive Director, PO Box 1062, Jefferson City, MO 65102, by faxing comments to (573) 751-8176, or by emailing comments to cosbar@pr.mo.gov. 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,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2060—State Board of Barber Examiners
Chapter 1—General Rules**

PROPOSED RESCISSION

20 CSR 2060-1.040 Reinstatement of Expired License. This rule established the requirements for reinstatement of an expired license.

PURPOSE: This rule is being rescinded pursuant to the enactment of SB 280 (2005) of the 93rd General Assembly.

AUTHORITY: sections 328.080, RSMo 2000 and 328.110, RSMo Supp. 2003. This rule originally filed as 4 CSR 60-1.040. Original rule filed July 31, 2003, effective Jan. 30, 2004. Moved to 20 CSR 2060-1.040, effective Aug. 28, 2006. Rescinded: Filed Aug. 1, 2007.

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 State Board of Cosmetology and Barber Examiners, Darla Fox, Executive Director, PO Box 1062, Jefferson City, MO 65102, by faxing comments to (573) 751-8176, or by emailing comments to cosbar@pr.mo.gov. 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,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2060—State Board of Barber Examiners
Chapter 2—Licensure Requirements**

PROPOSED RESCISSION

20 CSR 2060-2.015 Licensure by Examination for a Barber. This rule established the requirements and procedures for obtaining a barber license by examination.

PURPOSE: This rule is being rescinded pursuant to the enactment of SB 280 (2005) of the 93rd General Assembly.

AUTHORITY: sections 328.080 and 328.110, RSMo Supp. 2004. This rule originally filed as 4 CSR 60-2.015. Original rule filed Nov. 12, 1997, effective May 30, 1998. Amended: Filed April 1, 2005, effective Sept. 30, 2005. Moved to 20 CSR 2060-2.015, effective Aug. 28, 2006. Rescinded: Filed Aug. 1, 2007.

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 State Board of Cosmetology and Barber Examiners, Darla Fox, Executive Director, PO Box 1062, Jefferson City, MO 65102, by faxing comments to (573) 751-8176, or by emailing comments to cosbar@pr.mo.gov. 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,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2060—State Board of Barber Examiners
Chapter 2—Licensure Requirements**

PROPOSED RESCISSION

20 CSR 2060-2.020 Licensure by Examination for Instructor. This rule established the requirements and procedures for obtaining an instructor license by examination.

PURPOSE: This rule is being rescinded pursuant to the enactment of SB 280 (2005) of the 93rd General Assembly.

AUTHORITY: sections 328.080, 328.090 and 328.110, RSMo 1994. This rule originally filed as 4 CSR 60-2.020. Original rule filed Nov. 12, 1997, effective May 30, 1998. Moved to 20 CSR 2060-2.020, effective Aug. 28, 2006. Rescinded: Filed Aug. 1, 2007.

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 State Board of Cosmetology and Barber Examiners, Darla Fox, Executive Director, PO Box 1062, Jefferson City, MO 65102, by faxing comments to (573) 751-8176, or by emailing comments to cosbar@pr.mo.gov. 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,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2060—State Board of Barber Examiners
Chapter 2—Licensure Requirements**

PROPOSED RESCISSION

20 CSR 2060-2.030 Reciprocity. This rule established the requirements for obtaining licensure by reciprocity.

PURPOSE: This rule is being rescinded pursuant to the enactment of SB 280 (2005) of the 93rd General Assembly.

AUTHORITY: sections 328.085 and 328.100, RSMo 1994. This rule originally filed as 4 CSR 60-2.030. Original rule filed Nov. 12, 1997, effective May 30, 1998. Moved to 20 CSR 2060-2.030, effective Aug. 28, 2006. Rescinded: Filed Aug. 1, 2007.

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 State Board of Cosmetology and Barber Examiners, Darla Fox, Executive Director, PO Box 1062, Jefferson City, MO 65102, by faxing comments to (573) 751-8176, or by emailing comments to cos-bar@pr.mo.gov. 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,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2060—State Board of Barber Examiners
Chapter 2—Licensure Requirements**

PROPOSED RESCISSION

20 CSR 2060-2.040 Barbershops. This rule established the requirements and procedures for obtaining a license for a barbershop.

PURPOSE: This rule is being rescinded pursuant to the enactment of SB 280 (2005) of the 93rd General Assembly.

AUTHORITY: sections 328.115.3 and 328.120, RSMo 2000 and 328.075.3, RSMo Supp. 2004. This rule originally filed as 4 CSR 60-2.040. Original rule filed Nov. 12, 1997, effective May 30, 1998. Amended: Filed April 1, 2005, effective Sept. 30, 2005. Moved to 20 CSR 2060-2.040, effective Aug. 28, 2006. Rescinded: Filed Aug. 1, 2007.

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 State Board of Cosmetology and Barber Examiners, Darla Fox, Executive Director, PO Box 1062, Jefferson City, MO 65102, by faxing comments to (573) 751-8176, or by emailing comments to cos-bar@pr.mo.gov. 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,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2060—State Board of Barber Examiners
Chapter 2—Licensure Requirements**

PROPOSED RESCISSION

20 CSR 2060-2.050 Barber School/College. This rule established the requirements and procedures for obtaining a license for a barber school/college.

PURPOSE: This rule is being rescinded pursuant to the enactment of SB 280 (2005) of the 93rd General Assembly.

AUTHORITY: sections 328.115, RSMo 1994 and 328.120, RSMo Supp. 1997. This rule originally filed as 4 CSR 60-2.050. Original rule filed Nov. 12, 1997, effective May 30, 1998. Moved to 20 CSR 2060-2.050, effective Aug. 28, 2006. Rescinded: Filed Aug. 1, 2007.

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 State Board of Cosmetology and Barber Examiners, Darla Fox, Executive Director, PO Box 1062, Jefferson City, MO 65102, by faxing comments to (573) 751-8176, or by emailing comments to cos-bar@pr.mo.gov. 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,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2060—State Board of Barber Examiners
Chapter 3—Curriculum Requirements for Barber
Schools/Colleges**

PROPOSED RESCISSION

20 CSR 2060-3.015 Rules and Curriculum Prescribed for Barber Schools/Colleges. This rule established the general requirements for barber school/college curriculum and teaching (instructor) requirements.

PURPOSE: This rule is being rescinded pursuant to the enactment of SB 280 (2005) of the 93rd General Assembly.

AUTHORITY: sections 328.115, 328.120 and 328.150, RSMo 2000 and 328.080, RSMo Supp. 2004. This rule originally filed as 4 CSR 60-2.010. This rule previously filed as 4 CSR 60-3.015. Original rule filed Nov. 12, 1997, effective May 30, 1998. Amended: Filed April 1, 2005, effective Sept. 30, 2005. Moved to 20 CSR 2060-3.015, effective Aug. 28, 2006. Rescinded: Filed Aug. 1, 2007.

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 State Board of Cosmetology and Barber Examiners, Darla Fox, Executive Director, PO Box 1062, Jefferson City, MO 65102, by faxing comments to (573) 751-8176, or by emailing comments to cos-bar@pr.mo.gov. 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,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2060—State Board of Barber Examiners
Chapter 4—Sanitation Rules**

PROPOSED RESCISSION

20 CSR 2060-4.015 Sanitation Rules. This rule explained sanitary requirements for shops, schools/colleges and persons lawfully practicing the occupation of barbering.

PURPOSE: This rule is being rescinded pursuant to the enactment of SB 280 (2005) of the 93rd General Assembly.

AUTHORITY: sections 328.060.2, 328.115, 328.130, 328.150 and 328.160, RSMo Supp. 2000. This rule originally filed as 4 CSR 60-3.010. This rule previously filed as 4 CSR 60-3.010. Original rule filed Nov. 12, 1997, effective May 30, 1998. Amended: Filed Dec. 1, 2000, effective May 30, 2001. Amended: Filed July 31, 2003, effective Jan. 30, 2004. Moved to 20 CSR 2060-4.015, effective Aug. 28, 2006. Rescinded: Filed Aug. 1, 2007.

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 State Board of Cosmetology and Barber Examiners, Darla Fox, Executive Director, PO Box 1062, Jefferson City, MO 65102, by faxing comments to (573) 751-8176, or by emailing comments to cos-bar@pr.mo.gov. 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,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2085—Board of Cosmetology and Barber
Examiners
Chapter 1—Organization and Description of Board**

PROPOSED RULE

20 CSR 2085-1.010 General Organization

PURPOSE: This regulation complies with section 536.023(3), RSMo 2000, which requires each agency to adopt as a regulation, a description of its operation and the methods and procedures whereby the public may obtain information or make submissions or requests.

(1) The board was established by section 329.015, RSMo, and is vested with the duties previously exercised by the State Board of Barber Examiners and the State Board of Cosmetology.

(2) The State Board of Cosmetology and Barber Examiners is a board within the Division of Professional Registration of the Department of Insurance, Financial Institutions and Professional Registration.

(3) Each member of the State Board of Cosmetology and Barber Examiners shall receive the sum of seventy dollars (\$70) as compen-

sation for each day actually spent in attendance at meetings of the board, not to exceed forty-eight (48) days in any calendar year and in addition they shall be reimbursed for all necessary expenses incurred in the performance of their duties as members of the board.

(4) The board shall meet at least six (6) times per year as determined by the board. The time and location for each meeting may be obtained by contacting the executive director of the board at PO Box 1062, Jefferson City, MO 65102, or by calling toll free at (866) 762-9432.

(5) The board shall elect one (1) of its member's president, one (1) vice president and one (1) secretary, with the limitation that no single profession can hold the positions of president and vice president at the same time. Election of officers of the board shall be held annually at the May meeting of the board. If any elected position is vacated during the year for any reason, then an election shall be held for that position only.

(6) The executive director of the board is hereby designated as the custodian of records for the board. The public may obtain information from the board or make submissions or requests to the board by writing the executive director at the following address: PO Box 1062, Jefferson City, MO 65102.

(7) Unless otherwise provided by statute or regulation, all meetings of the board will be conducted according to the current edition of *Robert's Rules of Order* to the extent not inconsistent with the practices and procedures of the board.

AUTHORITY: sections 329.023 and 329.025.1, RSMo Supp. 2006. Original rule filed Aug. 1, 2007.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions approximately forty-two thousand six hundred fifteen dollars (\$42,615) annually for the life of the rule. It is anticipated that the costs will recur for the life of the rule, may vary with inflation and are expected to increase at the rate projected by the Legislative Oversight Committee.

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

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Missouri State Board of Cosmetology and Barber Examiners, Darla Fox, Executive Director, PO Box 1062, Jefferson City, MO 65102, by faxing comments to (573) 751-8167, or by emailing comments to cos-bar@pr.mo.gov. 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.

**Department of Insurance, Financial Institutions and Professional Registration
Division of Professional Registration
PUBLIC ENTITY COST**

I. RULE NUMBER

**Title 20 - Department of Insurance, Financial Institutions and Professional Registration
Division 2085 - State Board of Cosmetology and Barber Examiners
Chapter 1 - Organization and Description of Board
Proposed Rule - 20 CSR 2085-1.010 General Organization**

Prepared May 8, 2007 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Annual Cost of Compliance in the Aggregate
State Board of Cosmetology and Barber Examiners	\$42,615

III. WORKSHEET

The costs for this rule are detailed in the table below and are based on the following assumptions:

- 1) Personal service costs are incurred for staff time to prepare for board meetings, process per diem requests and respond to request for public information.
- 2) Expense and equipment costs are incurred for board expenses for preparing board agendas and request for public information.
- 3) Transfers are costs incurred for board and staff support provided by the Division of Professional Registration (also includes data processing, cash receiving room and MIS) and costs incurred for services provided by agencies such as the Office of the Attorney General, Secretary of State and State Auditor.

Table 1 – Estimated Cost of Compliance by Category of Allocation

Category of Allocation	Licensure – 0%	Enforcement - 5%
Personal Service	\$0	\$12,132
Expense & Equipment	\$0	\$5,972
Transfers	\$0	\$24,511
TOTAL	\$0	\$42,615

IV. ASSUMPTIONS

In developing this fiscal note, the total public entity costs of the State Board of Cosmetology and Barber Examiners were determined by using allotment figures for personal service, expense and equipment, and transfers based on actual costs incurred by each of the boards prior to the merger. These annual costs will recur each year for the life of the rule; may vary with inflation; and are expected to increase annually at the rate projected by the Legislative Oversight Committee.

For the purpose of calculating the fiscal impact of the administrative rules, two major categories of board activity were identified: licensure and enforcement. The board estimates 60% of personal service, expense & equipment and transfer costs will be dedicated to the licensure effort and an estimated 40% of personal service, expense & equipment and transfer costs will be dedicated to the enforcement effort. Transfer costs also include rent and utilities. (See Table 2, 3 & 4)

Table 2– Allocation of Personal Service Dollars

Allotment	Percentage & Category	Dollar Amount
\$606,595	60% Licensure	\$363,957
\$606,595	40% Enforcement	\$242,638

Table 3– Allocation of Expense & Equipment

Allotment	Percentage & Category	Dollar Amount
\$298,595	60% Licensure	\$179,157
\$298,595	40% Enforcement	\$119,438

Table 4– Allocation of Transfer Dollars

Allotment	Percentage & Category	Dollar Amount
\$1,225,541	60% Licensure	\$735,325
\$1,225,541	40% Enforcement	\$490,216

In allocating costs, this proposed rule was reviewed to determine if the rule contained attributes of licensure and/or enforcement. It is estimated that 5% of the total time involving the administration of the proposed rule will be spent on licensure efforts and 1% of the time will spent on enforcement efforts. These percentages have been applied to personal service, expense & equipment and transfer dollars. (See Table 1)

**Title 20—DEPARTMENT OF INSURANCE,
FINANCIAL INSTITUTIONS AND PROFESSIONAL
REGISTRATION
Division 2085—Board of Cosmetology and
Barber Examiners
Chapter 2—Public Complaint Handling and Disposition
Procedures**

PROPOSED RULE

**20 CSR 2085-2.010 Public Complaint Handling and Disposition
Procedures**

PURPOSE: This rule establishes a procedure for the receipt, handling and disposition of public complaints by the board.

(1) The State Board of Cosmetology and Barber Examiners shall receive and process each complaint made in writing against any licensee, permit (registration) holder, registrant of the board or unlicensed individual or entity, which alleges certain acts or practices which may constitute one (1) or more violations of the provisions of Chapters 328 and 329, RSMo. Any member of the public or the professions licensed, or any federal, state or local official, may make and file a complaint with the board. Complaints from sources outside Missouri will be received and processed in the same manner as those originating in Missouri.

(2) The board, executive director, or any staff member of the board may file a complaint pursuant to this rule in the same manner as any member of the public. No member of the State Board of Cosmetology and Barber Examiners shall file a complaint with the board while he/she holds that office, unless that member excuses him/herself from further board deliberations or activity concerning the matters alleged within that complaint.

(3) Complaints may be made on forms provided by the board and are available upon request. Complaints should be mailed or delivered to the following address: Executive Director, State Board of Cosmetology and Barber Examiners, PO Box 1062, Jefferson City, MO 65102. However, actual receipt of the complaint by the board at its administrative office in any manner shall be sufficient. Complaints may be made based upon personal knowledge or upon information and belief reciting information received from other sources.

(4) All complaints shall be made in writing, signed and shall fully identify the nature of the complaint and the name and address of the complainant. The board may require that a complaint be made by affidavit sworn before a notary public or other authorized officer and that the complaint fully identify the affiant by name and address. Oral, telephone, written but unsworn or unsigned communications of any sort may not be considered or processed as complaints, however, the person making these communications, if known, may be provided with a complaint form and requested to complete it and return it to the board in affidavit form. Any member of the administrative staff of the board may make and file a complaint based upon information and belief, in reliance upon oral, telephone or written communications received by the board, unless those communications are believed by that staff member to be false.

(5) Each complaint received under this rule shall be acknowledged in writing. The acknowledgement shall state that the complaint is being referred to the board for consideration at its next regularly scheduled meeting. The complainant shall be informed in writing as to whether the complaint is being investigated, and later, as to whether the complaint is being dismissed by the board. The complainant shall be notified of the ultimate disposition of the complaint by the board and shall be provided with copies of any decisions of the Administrative

Hearing Commission and the board at that time. The provisions of this section shall not apply to complaints filed by staff members of the board, based on information and belief, acting in reliance on third party information received by the board.

(6) Each complaint received under this rule shall be logged in consecutive order as received. The log shall contain a record of each complainant's name and address; the name and address of the subject(s) of the complaint; the date each complaint is received by the board; a brief statement of the acts complained of, including the name of any person injured or victimized by the alleged acts or practices; a notation whether the complaint resulted in its dismissal or closure by the board or formal charges being filed with the Administrative Hearing Commission; and the ultimate disposition of the complaint.

(7) Both the complaint and any information obtained as a result of the investigation shall be considered a closed record, pursuant to section 620.010.14(7), RSMo, and shall not be available for inspection by the general public. However, upon receipt of a signed authorization on a form provided by the board from the person who is the subject of the complaint and payment of any applicable fee, the board shall provide that person, or that person's authorized representative, with a copy of the complaint and any attachments to the complaint unless otherwise privileged.

(8) This rule shall not be deemed to limit the board's authority to file a complaint with the Administrative Hearing Commission charging a licensee, permit holder or registrant of the board with any actionable conduct or violation, whether or not the complaint exceeds the scope of the acts charged in a preliminary public complaint filed with the board and whether or not any public complaint has been filed with the board.

(9) The board interprets this rule, as required by law, to exist for the benefit of those members of the public who submit complaints to the board, and for those persons or entities within the legislative and executive branches of government having supervisory or other responsibilities or control over the professional licensing boards. This rule shall not be deemed to protect or inure to the benefit of those licensees, permit holders, registrants or other persons against whom the board has instituted or may institute administrative or judicial proceedings concerning possible violations of the provisions of Chapters 328 and 329, RSMo.

AUTHORITY: sections 328.150 and 329.140, RSMo 2000 and 620.010.15(6) and 329.025(1), RSMo Supp. 2006. Original rule filed Aug. 1, 2007.

PUBLIC COST: This proposed rule will cost state agencies or political subdivisions approximately forty-two thousand six hundred fifteen dollars (\$42,615) annually for the life of the rule. It is anticipated that the costs will recur for the life of the rule, may vary with inflation and are expected to increase at the rate projected by the Legislative Oversight Committee.

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**Department of Insurance, Financial Institutions and Professional Registration
Division of Professional Registration
PUBLIC ENTITY COST**

I. RULE NUMBER

**Title 20 - Department of Insurance, Financial Institutions and Professional Registration
Division 2085 - State Board of Cosmetology and Barber Examiners
Chapter 2 - Public Complaint Handling and Disposition Procedures
Proposed Rule - 20 CSR 2085-2.010 Public Complaint Handling and Disposition Procedures**

Prepared May 8, 2007 by the Division of Professional Registration

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Annual Cost of Compliance in the Aggregate
State Board of Cosmetology and Barber Examiners	\$42,615

III. WORKSHEET

The costs for this rule are detailed in the table below and are based on the following assumptions:

- 1) Personal service costs are incurred for staff time to prepare for receiving complaints, acknowledging receipt of the complaint and logging the complaint into the board's tracking system.
- 2) Expense and equipment costs are incurred for board expenses for preparing board agendas and request for public information.
- 3) Transfers are costs incurred for board and staff support provided by the Division of Professional Registration (also includes data processing, cash receiving room and MIS) and costs incurred for services provided by agencies such as the Office of the Attorney General, Secretary of State and State Auditor.

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